



# ATLANTIC INTERNATIONAL STUDIES JOURNAL

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GLOBAL WATER  
GOVERNANCE

Rebecca Anne Dixon

COVERT OPERATIONS  
IN ISRAEL/PALESTINE

Mike Dunn

FREE/OPEN SOURCE

Jean-Francois Arseneau

THE VALIDITY OF  
DESERTEC  
SKEPTICISM

Sarah Irving

UN'S EFFECTIVENESS,  
RWANDAN GENOCIDE

Eric Blake

Climate Change  
Implications:  
LDC challenges  
post-Copenhagen

Susan Humphrey

THE RIGHTS OF  
AFGHAN WOMEN,  
POST-INVASION

Louise Cockram

## THE MAKINGS OF HUMAN SECURITY

UNDERSTANDING FEMINICIDE:  
THE CASE OF GUATEMALA

Rebecca Caissie

AN ANTAGONISTIC RELATIONSHIP:  
SOVEREIGNTY & HUMAN RIGHTS

Brad Ledgerwood

---

## AFRICAN TRANSITIONAL JUSTICE

Hannah Button

## AFRICA'S FIGHT OVER IMPUNITY

Sasha Van Katwyk

---

## Understanding Femicide

The Case of Guatemala: Exploring the Historical Connection between Genocide and Femicide

*Rebecca Caissie*.....3

## The Desertec Mirage

The Validity of DII Skepticism

*Sarah Irving*.....9

## Freedom to Develop

Free/Open Source Software in the Developing World

*Jean-Francois Arseneau*.....20

## Global Water Sensitivity of Transboundary Rivers

Levels & Leagues: The Nile and the Implications for Global Water Policy

*Rebecca Anne Dixon*.....24

## Twilight Guardians

Covert Operations and the Palestinian-Israeli Conflict

*MikeDunn*.....34

## The Antagonistic Relationship between Sovereignty and Human Rights

*Brad Ledgerwood*.....40

## Willful Ignorance

Examining the UN's Effectiveness in the Rwandan Genocide

*Eric Blake*.....44

## African Transitional Justice

Universal Ideal or Political Reality?

*Hannah Button*.....56

## The Fight over Impunity

How Political Forces are Misdirecting the Efforts to Establish Accountability in Africa

*Sasha Van Katwyk*.....64

## Africa & Climate Change

The realities of climate change's implications – paving the way to Copenhagen

*Susan Humphrey*.....69

## Short Essay

Are Afghan women really better-off post invasion?

*Louise Cockram*.....79

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# Understanding Femicide

## The Case of Guatemala: Exploring the Historical Connection between Genocide and Femicide

Rebecca Caissie

Through this essay I am going to explore Femicide in Guatemala and the connection it has to the 36 year Civil War that has left a legacy that fosters the continuation of violence against women, specifically those of Mayan decent<sup>1</sup>. I would like to warn you that the content of my paper is disturbing. It probes the very essence of what "Human Security" is and how we as a society have reacted to the lack of it to date, demonstrated by a preponderance of evidence. The goal of my paper is to make the connection between the human rights violations perpetrated by the State of Guatemala against its indigenous population during the civil war and the modern crisis of Femicide seen within the country now.<sup>2</sup> I aim to do this by following the lead of the United Nations (UN) reporter Yakin Erturk and reviewing the historical roots of Femicide in Guatemala through the report of the Commission for Historical Clarifications (CEH) in order to address the current situation of Femicide in Guatemala.

### DEFINING FEMINICIDE

Femicide differs from femicide one subtle yet important way.<sup>3</sup> Many people are unaware of the difference between femicide and Femicide, often mistakenly using the terms interchangeably. To define Femicide we have to define femicide first.

Femicide is the killing of women by men, because they are women. The word builds on the word genocide, which denotes the killing of a certain group of people due to their genetic affiliation. Often if not always this is a form of terrorism used to suppress the group in question. The goal is the extermination and destruction of the particular group, so as to dominate through oppression. Femicide adds this important component, making Femicide a political term which addresses the impunity, silence and judicial system created by the government to the male component of killing women as described in femicide allowing and even encouraging femicide to continue without any repercussions.<sup>4</sup>

### A HISTORY OF BRUTALITY

George Santayana once said, "Those who cannot remember the past are destined to repeat it."<sup>5</sup> In the case of Guatemala, perhaps it is more true to say those who do not take action on the recent reachable history are choosing to repeat it. This especially true in Guatemala where, I believe, the current crisis is defined by the historical evidence still accessible through the survivors both as victims and government agents still living. UN reporter Erturk notes that violence against women is connected to the civil war conflict and has its roots in the history of inequality, poverty and exclusion<sup>6</sup>.

Erturk states: "there is a need for recognition of the gravity of sexual violence used as a weapon of war during the conflicts and the need for justice for the victims and survivors, the majority of who in Guatemala are indigenous women"<sup>7</sup>. Further, she states that "A comprehensive historical analysis is not within the terms of reference of [her] report; however, in addressing violence against women it is necessary to reflect on the legacy of the conflict and the basic tenets of the success and failure of

<sup>1</sup> Erturk, Yakin. "Integration of the Human Rights of Women and the Gender Perspective." *United Nations*. Version E/CN.4/2004/66/Add.3. United Nations, 8 Mar. 2004. Web. 17 Nov. 2009. <<http://www.un.org/en/search/index.shtml>>

<sup>2</sup> Erturk, Yakin. "Integration of the Human Rights of Women and the Gender Perspective." *United Nations*. Version E/CN.4/2005/72/Add.3. United Nations, 10 Feb. 2005. Web. 17 Nov. 2009. <<http://www.un.org/en/search/index.shtml>>.

<sup>3</sup> Sanford, Victoria. "From Genocide to Femicide: Impunity and Human Rights in Twenty-First Century Guatemala." *Journal of Human Rights* 7 (2008): 104-122. Print.

<sup>4</sup> Ibid.

<sup>5</sup> Santayana, George. "Unknown." *Reason in Common Sense: The Life of Reason Volume 1*. N.e.of 1905 Ed ed. New York: Dover Publications, 1905. 284. Print.

<sup>6</sup> Erturk, Yakin (10 Feb. 2005.)

<sup>7</sup> Erturk, Yakin. (8 Mar. 2004.)

the implementation of the Peace Accords”<sup>8</sup>. In order to follow the line of inquiry that Erturk suggests, I turned to the CEH report on Guatemala from 1999.

The CEH estimates the number of persons killed or disappeared to surpass 200,000<sup>9</sup>. During its investigation the CEH reported that its researchers were able to document 42,275 victims of human rights violation and acts of violence connected with the armed confrontation. 83% of fully identified victims were Mayan and 17% were Ladino. A Ladino in Central America is a Spanish-speaking or acculturated Indian; a mestizo.<sup>10</sup> The oppressive and militarized Guatemalan government has been used as an instrument to protect the economic interests of the privileged minority with violence fundamentally directed at the excluded class, principally the poor and above all the Mayan people, as well as any groups that arose to fight for social justice and equality<sup>11</sup>.

With the issuance of the National Security Doctrine, the State declared “internal enemies,” stating that the Mayan communities were natural allies of the guerilla forces operating in Guatemala during the war. It was based on this position that the State organized massacres and “scorched earth operations”, resulting in the complete extermination of many Mayan communities, including children, women and the elderly, through cruel actions that have outraged the civilized world.<sup>12</sup> Those actions included multiple acts of extreme savagery such as the killing of defenseless children, often by beating them against walls or throwing them alive in pits where later the corpses of adults were thrown; the impaling of victims; the amputation of limbs; the killing of victims by

covering them with petro and burning them alive; the extraction of the viscera of victims while still alive in the presence of witnesses; and the opening of wombs of pregnant women<sup>13</sup>. During this time Mayan women were seen as the mothers of future guerillas and as such became the direct targets of the military’s most exaggerated and cruel acts of genocide.

According to both the UN reports and the CEH report, the act of rape during torture and before murder became commonplace an act aimed at destroying the individual’s dignity.<sup>14 15</sup> This had the effect of desensitizing society to the horrific nature of rape and other human rights violations, normalizing these acts. According to the CEH, during the most violent and bloody period of the entire confrontation the victims were principally Mayan and Ladinos.<sup>16</sup> The CEH report states it was confirmed and undeniable that the state repeatedly expressed racist doctrines such as a “doctrine of superiority” to explain the massacres and “scorched earth operations,” in particular the brutality of the military actions against the Mayan community in 1981 – 1983, when more than half the massacres and “scorched earth operations” occurred<sup>17</sup>.

Though the militarization of Guatemala’s society and state was defined, planned and executed by the Guatemalan army through the National Security Doctrine, the most disturbing concerns arise from the army’s clandestine operations as well as from the *Kaibiles*. The *Kaibiles* was the army’s special counter insurgency force. The training of this particular group included killing animals and then eating them raw and drinking their blood as a way of demonstrating “courage.” This training in cruelty was later put to use in a range of operations carried out by these troops. Their Decalogue was “The *Kaibilil* is a killing machine.” It has been uncovered by the CEH that Kaibiles operations were used to impart and maintain a climate of terror within Guatemala so that even should the violence decline

<sup>8</sup> Erturk, Yakin (10 Feb. 2005.)

<sup>9</sup> "Conclusions: The tragedy of the armed confrontation." *AAAS - Science and Human Rights Program*. Commision for Historical Clarification, n.d. Web. 30 Oct. 2009. <<http://shr.aaas.org/guatemala/ceh/report/english/conc1.html>>.

<sup>10</sup> "Ladino Definition | Definition of Ladino at Dictionary.com."

*Dictionary.com | Find the Meanings and Definitions of Words at*

*Dictionary.com*. N.p., n.d. Web. 20 Jan. 2010.

<<http://dictionary.reference.com/browse/ladino>>.

<sup>11</sup> "Conclusions: The tragedy of the armed confrontation."

<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

<sup>15</sup> Erturk, Yakin . (8 Mar. 2004.)

<sup>16</sup> "Conclusions: The tragedy of the armed confrontation."

<sup>17</sup> Ibid.

the terror would remain and endure for a long period of time.<sup>18</sup>

Another component of the military were their "Death Squads" which were initially criminal groups made up of private individuals who enjoyed the tolerance and complicity of state authorities. Over time these clandestine groups were taken over by the incorporation of military personnel, or began acting on the commands of the army. The objective of the clandestine groups was to eliminate "subversives" with the help of lists prepared by military intelligence.<sup>19</sup>

#### THE CURRENT ECONOMIC CONDITION

Here is some basic statistical information about Guatemala's current economic condition that I would like to share with you to assist in demonstrating my claim that the Inquisitional approach remains intact and successful in Guatemala in current times. There are extreme social-economic disparities as well with unequal land distribution and income disparity in Guatemala: There are extreme social-economic disparities as well as unequal land distribution and income disparity in Guatemala particularly: 2% of the population in Guatemala owns 70-75% of all productive lands, 77% of small farmers do not own the land they work with an estimated 60% of these farmers being Mayan. 64% of all indigenous women live in rural areas and are predominantly unpaid domestic workers, have no land access, credit or productive resources. The poorest 20% of the population shares 2.6% of the income and the richest 20% of the population shares 64.1% with 75% of Guatemalans living below the poverty line. 80% of the indigenous population is reportedly extremely poor. The estimated income per capita of women in 2002 was \$2007 U.S. to the male counterpart of \$6092 U.S. Public spending of the

GDP is 1.7% on education and 2.3% on health care, resulting in only 30% of all births taking place

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"Kaibiles operations were used to impart and maintain a climate of terror within Guatemala so that even should the violence decline the terror would remain and endure for a long period of time."

in medical facilities and the vast majority of women and infants being put at risk. According to UN Reporter Erturk, indigenous women in Guatemala are discriminated against on four levels: 1) for

their indigenous standing, 2) for their poverty, 3) for their sex and 4) for being rural inhabitants; language in another primary cause for the exclusion of indigenous women. All these compounded issues results in a marginalized citizenship for Mayan women who live predominantly in rural Guatemala.

#### CURRENT POLITICAL CONDITIONS IN GUATEMALA

Since the Peace Accord was signed in 1996, violence against women has continued with impunity, as authorities fail to investigate cases much less prosecute and punish perpetrators.<sup>20 21</sup> The absence of law has caused a notable perpetuation of violence against women.<sup>22</sup> Further, there is no political will to press for the reforms detailed by the government in the Peace Accords. In fact, it is widely acknowledged by the United Nations that even with the intervention of human rights groups and the United Nations, violence towards women has increased at an alarming rate, with state agents being accused as principal players in the crimes.<sup>23</sup> Despite the signing of accords, and recent court cases, no moves have been made to reform the key institutions, namely police, public prosecutors and the courts. As late as 2005, the

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<sup>20</sup> Erturk, Yakin. (8 Mar. 2004.)

<sup>21</sup> Erturk, Yakin. (10 Feb. 2005.)

<sup>22</sup> Erturk, Yakin. (8 Mar. 2004.)

<sup>23</sup> NGO, Society of Threatened Peoples. "Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development." *United Nations*. Version A/HRC/7/NGO/50. United Nations, 25 Feb. 2008. Web. 17 Nov. 2009. <<http://www.un.org/en/search/index.shtml>>.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

military influence in state affairs continued, garnering a budgetary increase of up to 85% for military support.<sup>24</sup>

Language and education are primary causes of exclusion for women, affecting their access to opportunities and their ability to seek protection. Social and societal barriers further hamper women's awareness of their rights, restrict their leverage with partners and increase their vulnerability to violence in the public and private spheres.

Erturk's report states that "One observer has noted that counter-insurgency security that evolved during the war [is] still present and [has] become for the most part [...] organized crime, and that it is these structures and elite interests that represent a significant obstacle to the implementation of the 1996 Peace Accords."<sup>25</sup> Erturk goes on to clarify that the term "clandestine groups" refers to criminal networks involving the business sector, private security companies, common criminals and gang members, with investigations implicating members of the police and both former and current members of the military. These clandestine groups are closely linked both to organized crime, and to so-called "hidden or parallel powers," an informal group of powerful individuals embedded within the state structure who use their power to control lucrative illegal activities and guarantee impunity from prosecution. Many of the increasing number of attacks against human rights defenders, while often disguised as common crimes are believed to be carried out by members of these clandestine groups.<sup>26</sup>

## FEMINICIDE FACTS IN GUATEMALA

### Murder:

- Majority of victims are between 13-30 yrs old
- Majority are abducted, gang raped, tortured, mutilated and killed

- Bodies are usually disposed of in public places
- Most frequent victims: housewives, victims of domestic violence, students.

To date only two cases of Femicide have ever led to trial and sentencing, one with a sentence of 25 years and the second with a sentence of 40, both in 2009. Throughout all UN reports, from 2004 to 2009, only token efforts towards reform have been documented, yet the violence against women has steadily escalated and branched out to encompass workers for human rights organizations working directly within the women's rights arena.

| <u>National Civil Police</u> |      | <u>Guatemala HRC</u> |      |
|------------------------------|------|----------------------|------|
| 2001                         | 303  |                      | 317  |
| 2002                         | 317  |                      | 317  |
| 2003                         | 358  |                      | 383  |
| 2004                         | 489  |                      | 497  |
| 2005                         |      |                      | 517  |
| 2006                         |      |                      | 603  |
| 2007                         |      |                      | 590  |
| 2008                         |      |                      | 773  |
| 2009                         |      |                      | 708  |
| Total                        | —    |                      | —    |
| 4yr period                   | 1467 | 8yr period           | 4705 |

According to a 2008 report submitted by The Society for Threatened Peoples, an NGO, most of the reported murder victims in Guatemala are Ladino women living in urban areas.<sup>27</sup> This is not due to the violence being focused on Ladino women, but rather to the fact that violence against women – particularly indigenous women – often goes unreported because most relatives are too scared to approach the authorities. This makes it impossible to provide exact data on the number of victims. In 2008, a written statement by the Society for Threatened Peoples to the UN, under a special consultative non-governmental party, declared that the Society... "act[s] on the assumption that the

<sup>24</sup> Erturk, Yakin. (10 Feb. 2005.)

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

<sup>27</sup> NGO, Society of Threatened Peoples.

number of victims of femicide of indigenous origin can hardly be overestimated”<sup>28</sup>.

## SECONDARY ISSUES

There are several secondary issues directly related to and resulting from Femicide in Guatemala. One of these issues is illegal international adoption of children from Guatemala, at an estimated rate of 5000-6000 children per year, making Guatemala the country with the second highest number of international adoptions, and preceded only by China.<sup>29</sup> Each child is adopted out at a cost of 13-40 thousand dollars, an average profit of \$145,750,000 per year.<sup>30</sup> During the adoption process, both the state and international laws are not observed and the fate and welfare of the child is disregarded, in direct violation of the established human rights of children.<sup>31</sup>

Another issue arising as a direct consequence of Femicide in Guatemala is human trafficking. Guatemala has become a source, transit and destination country for women and children trafficked for the purpose of sexual exploitation.<sup>32</sup> To a lesser extent, there are reports of forced labor trafficking, mainly involving children used in begging rings in Guatemala City<sup>33</sup>.

## LASTED DEVELOPMENT

On July 5<sup>th</sup> 2005, the Guatemalan government's Humans Rights Office (PDH) discovered a vast collection of files stored in five buildings belonging to the National Police, the central branch of Guatemala's security forces during the war. The PDH officials estimate 4.5 kilometers or 75 million pages of material. They also found hundreds of rolls of still photography, containing pictures of bodies and detainees; lists of police informants; vehicle license plates; video tapes and computer disks. These records are currently being archived by

George Washington University through the National Security Archive headed by Kate Doyle. These records have this past year been used at the trial in Spain of the Guatemalan government against the perpetrators of the genocidal acts committed during the civil war.<sup>34</sup>

## CONCLUSION

By reviewing the CEH historical research as well as the current reports from the UN on Guatemala, we can see the causes and effects of Femicide in Guatemala. What has remained elusive to me is how we should respond. How we have responded thus far has been partially explored by my report. Remembering that repression and violence has been the *modus operandi* of the previous government, often used in lieu of law, the evidence strongly suggests that the power structure of the elite ruling by means of exclusion and genocide will continue, resulting in the continuance of the condition of Femicide currently observed in Guatemala.<sup>35</sup>

The violence in Guatemala is not strictly a female issue. These acts of Femicide leave grieving families and motherless children in their wake. The international response has been futile and the response from the state has been slow and deliberately counterproductive. Good intentioned as we may be, we in Canada and the United States have in part become consumers of the gross domestic products creating, or created by, Femicide in Guatemala. This encourages the Guatemalan state to continue to resist the much needed change. In the end I am left with the echoing voices asking the question I would like to also leave with you, “How should we respond?”

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<sup>28</sup> Ibid.

<sup>29</sup> Erturk, Yakin. (8 Mar. 2004.)

<sup>30</sup> NGO, Society of Threatened Peoples.

<sup>31</sup> Ibid.

<sup>32</sup> Erturk, Yakin. (10 Feb. 2005.)

<sup>33</sup> Ibid.

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<sup>34</sup> Doyle, Kate. "The Guatemalan Police Archives." *George Washington University*. George Washington University, n.d. Web. 6 Jan. 2010.

<[www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB170/index.htm](http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB170/index.htm)>

<sup>35</sup> Erturk, Yakin. (10 Feb. 2005.)

# The Desertec Mirage

## The Validity of DII Skepticism

Sarah Irving

The project is ambitious, and the financing not confirmed, but the technology is proven and support is growing stronger with every new study and assessment. The Desertec Industrial Initiative (DII) is a private sector consortium that pursues an ideal that few can discredit in terms of potential environmental merit. The DII envisions a partnership in large-scale renewable energy projects between the European Union and Middle East and North Africa (EU-MENA). The Desertec Foundation predicts that along with providing renewable energies to the MENA region, this project could provide up to 15% of the EU's energy needs by 2050<sup>1</sup>. Just 20 GW of Concentrated Solar Power (CSP) energy developments "would save some 80–100 Mt CO<sub>2</sub>, if coal power is replaced, which would be a significant step for European climate target compliance."<sup>2</sup>

Media sources have been covering the progress of the DII, and many positive reports have been made with only a few general criticisms of the proposal. Yet other sources do not react so positively, outlining how the Desertec project is technologically unfeasible and even completely unrealistic. A much-quoted critic, Hermann Scheer, president of both Eurosolar and the International Parliamentary Forum on Renewable Energies, goes as far as saying that "the initiators know: There is no prospect of success"<sup>3</sup>. In addition, it is

suggested that the DII could possibly even contribute to existing problems in the MENA region. But Desertec's proponents still wield some convincing arguments, which should be duly noted because of the extensive studies already conducted to date, and the research to be undertaken until 2012. In the coming decades many nations will still be emerging from the recent financial crisis and thus the investment of large amounts of resources towards a project of this scale should be carefully scrutinized. In order to better judge the likelihood of success for the DII, it is necessary to look more closely at the validity of the initiative's major criticisms. For the purpose of this analysis we will focus on the issues related to Europe and North Africa, mainly in Algeria and Morocco, and cover the most predominant fears within three main areas of concern: the economic, logistical and political arenas.

### THE DESERTEC INDUSTRIAL INITIATIVE: AN OVERVIEW

The Desertec Industrial Initiative is a €400 billion plan for energy sustainability in the European Union (EU) and the Middle East and North Africa (MENA). The primary objective of this project is to build Concentrated Solar Power (CSP) Plants in the Saharan deserts of Morocco, Algeria, and other locations such as Jordan and Egypt. It also strives to complete a sustainable energy grid of high voltage direct current (HVDC) power lines connecting MENA and the EU, including inputs from many different types of renewable energy sources in the region including wind and geothermal<sup>4</sup>.

Desertec began as the Trans-Mediterranean Renewable Energy Cooperation Paper (TREC) for the Arab Thought Forum of the Club of Rome, in Amman in 2003. It included contributors from Morocco, Jordan, Benin, Egypt, Germany and the Netherlands. TREC involved the Club of Rome,

<sup>1</sup> Desertec Foundation. *Press Release: Joint venture DII established and ready to take up work*. 2009. <http://www.desertec.org/en/press/press-releases/091030-01-formation-dii-gmbh/>

<sup>2</sup> Antonella Battaglinia, Johan Lilliestamb, Amin Haasb, and Anthony Pattc.

"Development of SuperSmart Grids for a more efficient utilisation of electricity from renewable sources." *Journal of Cleaner Production*. (London: Elsevier, 2009) 917.

<sup>3</sup> Hermann Scheer. *European power from the desert is a Fata Morgana*. 2009.

[http://www.hermannscheer.de/en/index.php?option=com\\_content&task=view&id=256&Itemid=10](http://www.hermannscheer.de/en/index.php?option=com_content&task=view&id=256&Itemid=10)

<sup>4</sup> Redpaper. *Red paper: An Overview of the Desertec Concept*. (Desertec Foundation, 2009.)

[http://www.desertec.org/fileadmin/downloads/DESERTEC\\_RedPaper\\_2nd\\_en.pdf](http://www.desertec.org/fileadmin/downloads/DESERTEC_RedPaper_2nd_en.pdf)

the German Aerospace Centre (DLR), as well as many other European and MENA institutions of research, and organizations for sustainable energies. From the TREC paper materialized three studies commissioned by the German Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (BMU). The German Aerospace Center took the lead, producing the ‘MED-CSP’ and ‘TRANS-CSP’ studies between 2004 and 2006. Another study followed after water security emerged as a prominent area of concern, called the ‘AQUA-CSP’ study. This covered topics such as solar desalination prospects and reached completion in 2007<sup>5</sup>. The DII itself was proposed in the summer of 2009, by the Club of Rome in conjunction with the German Aerospace Centre. Now an in-depth feasibility study is underway for the DII, with funding coming solely from the 12 current shareholder companies. The DII is now legally recognized as a limited liability company, and the current shareholders include: ABB, ABENGOA Solar, Cevital, DESERTEC

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“The Desertec Foundation predicts that along with providing renewable energies to the MENA region, this project could provide up to 15% of the EU’s energy needs by 2050.”

Foundation, Deutsche Bank, E.ON, HSH Nordbank, MAN Solar Millennium, Munich Re, M+W Zander, RWE, SCHOTT Solar and Siemens<sup>6</sup>. These companies represent a diverse assortment, from the world’s largest reinvestment firm, Munich Re, to solar technology companies like Spain’s ABENGOA. They indeed have a wide range of expertise, including MAN Solar Millennium which specializes in large-scale solar thermal development, construction and financing. Another matter of note is Cevital, the only non-European firm currently on board, is an Algerian agro-foods company.

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<sup>5</sup> Desertec Foundation, *Concept: Studies*. 2009 <http://www.desertec.org/en/concept/studies/>

<sup>6</sup> Desertec Foundation. *Press Release: Joint venture DII established and ready to take up work*. 2009. <http://www.desertec.org/en/press/press-releases/091030-01-formation-dii-gmbh/>

## THE TECHNOLOGY: CSP & HVDC

To begin, it is necessary to examine the details of this project, including the technological parameters proposed by the DII. Desertec plans to employ two key technologies in its projects: Concentrated Solar Power (CSP) and High Voltage Direct Current power lines (HVDC). In this section we will review the basic functioning of these two technologies as well as a few of the main concerns regarding their feasibility.

Concentrated Solar Power energy generation systems use reflection devices, such as mirrors, to concentrate the sun’s direct rays on to a specific location (such as a tube or tower) where it serves to heat a liquid like water or liquid sodium. This liquid is used to create steam which powers turbine-style electricity generators in much the same manner as would a conventional power plant. CSP technologies differ from other types of solar power such as photovoltaic (PV) in many ways, and have

significant advantages for deployment in the MENA region. For example, CSP can be deployed to operate while heating liquids to very high

temperatures to take advantage of vast amounts of solar irradiation in areas such as deserts. In addition, contrary to PV systems, which are excellent for small scale and off-grid electrification, CSP has been proven on numerous occasions to operate best on a large “power plant”-style scale. Exemplar plants exist in the Mojave Desert of Nevada, in California and in Spain, which has six operational plants and an additional 12 under construction<sup>7</sup>. The other matter of interest for CSP is its potential for round the clock energy production and hybridization. Unlike PV systems which transform solar energy directly into electricity, CSP technology directs solar rays to heat

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<sup>7</sup> The Times. *Surfing a wave of Californian sunshine as America looks for renewable future*. (London: Times Newspapers, 2009.) [http://business.timesonline.co.uk/tol/business/industry\\_sectors/natural\\_resources/article6965633.ece](http://business.timesonline.co.uk/tol/business/industry_sectors/natural_resources/article6965633.ece)

some medium for the purpose of powering turbines. Since CSP plants have the capacity to heat this medium to a very high temperature, it is possible to store this substance for use at night, or during possible power disruptions. In addition, since the basic functioning of a CSP plant is so similar to those burning natural gas, there is also the option of creating hybrid plants. These could primarily produce solar energy, and have a natural gas backup system for times of power disruption, ultimately creating an exceedingly stable resource. This is also convenient considering that Algeria, one of the proposed locations for CSP development, has the world's eighth largest natural gas reserves in the world<sup>8</sup>. CSP has been extensively studied, and furthermore deployed, in many different countries and is seen as a commercially proven and viable technology. In addition to the DLR studies already noted, Greenpeace has prepared a joint study on CSP energy with The International Energy Agency's Solar Power and Chemical Energy Systems (IEA SolarPACES) and the European Solar Thermal Electricity Association (ESTELA), which has been updated twice since 2003. The most recent revision in 2009 has grown even more convincing and is exceedingly supportive of CSP, calling it "one of the technologies best-suited to mitigating climate change in an affordable way, as well as reducing the consumption of fossil fuels"<sup>9</sup>.

The other technology that is slightly more debated in terms of viability is high voltage direct current power lines, which will connect the EU-MENA region and deliver the desert-generated energy to the homes of Europeans. HVDC cables "connect two separate high voltage AC Systems via a DC link" and are sometimes the only option for long-

distance connections between energy grids<sup>10</sup>. There are many benefits to using HVDC over the High Voltage Alternating Current (HVAC) systems which are currently in use in much of the world, namely that energy losses are as low as 3% per 1000 km. This means that "in theory, an HVDC line could be laid from Morocco to London, a distance of 2700 km, with losses of less than 8%"<sup>11</sup>. Though they would be extremely efficient, "the DLR has estimated that the cost of 20 transmission lines of 5 GW each would be approximately 45bn Euros" which is indeed a large sum<sup>12</sup>. On a positive note, the DII has on board companies with experience manufacturing these cables, like ABB and Siemens. Also there are numerous examples of functioning HVDC connections between landmasses, such as between Australia and Tasmania<sup>13</sup>. Since there remain a number of concerns about HVDC technology to be clarified we will further discuss this issue in the sections on economic and logistical issues for Europe.

In terms of geography, the Desertec project plans to target locations in Morocco, Algeria, Tunisia, Libya, Egypt, Jordan and possibly other areas in the MENA region. Many of these states have shown signs of willingness to participate in the development of their renewable resources, or have even already begun this process, and so prospects may be good for the Desertec Industrial Initiative. Notably, Algeria and Morocco have already begun development of solar technology within their borders, with the investment of ABENGOA Solar and its subsidiaries<sup>14</sup>. Furthermore, Algeria has even

<sup>8</sup> EIA. Energy Information Administration. *Algeria Energy Data, Statistics and Analysis: Natural Gas*. 2009.

<http://www.eia.doe.gov/cabs/Algeria/NaturalGas.html>

<sup>9</sup> Greenpeace, SolarPACES and ESTELA. *Concentrating Solar Power Global*

*Outlook 09: Why Renewable Energy is Hot*. 2009.

<http://www.greenpeace.org/raw/content/international/press/reports/concentrating-solar-power-2009.pdf>

<sup>10</sup> Siemens AG. *HVDC Classic: General information*. 2009.

<http://www.energy.siemens.com/hq/en/power-transmission/hvdc/hvdc-classic/>

<sup>11</sup> Polly Higgins. *Renewable electricity and transmission; HVDC; and supergrids*.

Renewable Energy Focus. 2008.

<http://www.renewableenergyfocus.com/view/3287/renewable-electricity-and-transmission-hvdc-and-supergrids/>

<sup>12</sup> Redpaper. *Red paper: An Overview of the Desertec Concept*. (Desertec Foundation, 2009.) 10.

[http://www.desertec.org/fileadmin/downloads/DESERTEC\\_RedPaper\\_2nd\\_en.pdf](http://www.desertec.org/fileadmin/downloads/DESERTEC_RedPaper_2nd_en.pdf)

<sup>13</sup> Siemens PTD. *Siemens Commissions HVDC Transmission Link Between Australia and Tasmania*. (Transmission and Distribution World, 2006.) <http://tdworld.com/news/SEIMENS-PTD-Australia/>

<sup>14</sup> Greenpeace, SolarPACES and ESTELA. *Concentrating Solar Power Global*

set a national goal of achieving 10% renewable energy consumption by 2025, and was the first OECD country to establish a feed-in tariff system for the encouragement of solar electricity generation<sup>15</sup>. The Algerian government went as far as forming a company called New Energy Algeria (NEAL) in 2003 to work toward this goal in the private sector. NEAL has successfully moved forward on a private-public partnership, which has lead to the construction of the Hassi R'mel hybrid CSP plant, which is predicted to be operating by 2010<sup>16</sup>. "The current race is to see who will control renewable energy technologies, and we are in the race," Algerian Energy Minister Chakib Khelil told the International Tribune Herald. "We have the human and financial resources, and we have the will."

#### THE ECONOMIC, LOGISTICAL, & POLITICAL: KEY CRITICISMS

Although the media coverage of this issue has been ample, criticisms of the project have mostly been noted in a general way, stating that continued energy dependency and instability in the region could lead to large obstacles ahead for this ambitious project, but do not often quote particular individuals. There are of course a handful of exceptions, and in particular one individual, Hermann Scheer, has mentioned his lack of faith in the project in numerous media sources. Scheer is a repeatedly quoted skeptic, and is furthermore noteworthy because of his numerous environmental awards and status within the renewable energy industry in Europe. He abruptly states that the DII is simply a mirage something that not even its proponents truly believe could seriously take form<sup>17</sup>. In his critical article on the

project he states that this initiative would be a monumental waste of money, since Europe can generate its own renewable energy, and would only support it if all of the energy produced would go solely to MENA nations<sup>18</sup>.

Though it is possible to pick away at every detail of the DII proposal, let us break down the key criticisms into three main areas of concern and assess the most pressing matters of each category. This analysis will focus on the separate issues for both Europe and North Africa, including the economic, political and logistical issues of highest priority. It is acknowledged that there are numerous possible uncertainties within these three categories and indeed many issues may be interlinked. For the purposes of this paper it is assumed that these are merely convenient labels in order to discuss some of the key questions and concerns raised by the Desertec Industrial Initiative. In addition to Scheer's concerns about misplacing valuable resources, there are also five other key problems here analyzed that have been gathered from the general statements made by various press releases and media sources. A total of six issues will herein be covered: monumental costs, continued exploitation of African resources for the benefit of the West, inefficiency of long distance transmission, African water security issues, energy security for Europe and political stability in the Maghreb.

#### ECONOMIC ISSUES: EUROPE

Though the validity of attempting to harness the sun's energy is not under question, ultimately many individuals are unimpressed when they notice the DII's €400 billion price tag. This considerable cost is mainly a reflection of the high costs of installing CSP power plants, and the expensive HVDC cables which would deliver the energy from the MENA to Europe.

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*Outlook 09: Why Renewable Energy is Hot*. 2009. 44.

<http://www.greenpeace.org/raw/content/international/press/reports/concentrating-solar-power-2009.pdf>

<sup>15</sup> Ibid.

<sup>16</sup> International Herald Tribune. *Algeria aims to tap vast sunbelt to export solar*

*energy to Europe*. 2009.

<http://www.gasandoil.com/goc/company/cna73731.htm>

<sup>17</sup> Hermann Scheer. *European power from the desert is a Fata Morgana*. 2009.

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[http://www.hermannscheer.de/en/index.php?option=com\\_content&task=view&id=256&Itemid=10](http://www.hermannscheer.de/en/index.php?option=com_content&task=view&id=256&Itemid=10)

<sup>18</sup> Ibid.

Though this type of project requires a large initial capital investment, it has been used commercially in the Mojave Desert for 25 years and also more recently on a greater scale in Spain. It is evident through these examples that there is little problem with the technology and feasibility of a commercial CSP plant operation. The construction of CSP power plants in Algeria, Morocco and Egypt show that it is possible politically to invest in the solar energy sector of these economies, not to mention the numerous fossil fuel extraction industries in the region riddled with foreign influence and investment. The example of the United States' CSP projects demonstrates another important factor: that financially it is viable to manage such a power plant in the long term. As well, the proven success of these projects has led to increased interest in the Desertec idea in general; proposals for a Desertec-like initiative have arisen for Australia and China as well<sup>19</sup>. It is interesting to note that according to the 2009 Greenpeace study of CSP energy, in the long term these power plants are quite economically attractive:

Although high initial investment is required for new CSP plants, over their entire lifecycle, 80% of costs are in construction and associated debt, and only 20% from operation. This means that, once the plant has been paid for, over approximately 20 years only the operating costs remain, which are currently about 3 cents/kWh. The electricity generated is cheaper than any competition, and is comparable only to long-written-off hydropower plants<sup>20</sup>

HVDC transmission lines will be another piece of infrastructure that drastically increases the price of the Desertec project. The economic viability of installing such long lines is ultimately in question,

but many examples of successful HVDC projects can be drawn upon to develop a more informative view of the prospects for HVDC transmission. The participation of ABB in the DII is notable because of its expertise in manufacturing and installing such electrical power lines and equipment, notably the second longest HVDC line in the world situated in the Democratic Republic of the Congo (DRC). The Inga-Shaba line "transmits power from the Inga falls in the Congo river to the copper mining district of Katanga" and has succeeded despite political instability in Zaire as well as "extreme line length and (...) difficult logistics along the route"<sup>21</sup>. In addition to ABB's proficiency in the technology, Siemens is also an industry leader, stating on their website that, "Siemens has been one of the leading companies in the HVDC business for more than 25 years"<sup>22</sup>. Their development of the Australia-Tasmania 'Basslink' is in fact the longest in the world<sup>23</sup>. Some have noted that HVDC could serve a greater purpose in the long term, leading to the development of a more sustainable EU-MENA grid. This could mean that the line would recoup its costs by the massive amount of energy saved in transmission, and even lead to an extension of the grid which could drastically increase efficiency. These matters concerning the use and expense of HVDC power lines will be further developed in the European section of the logistical issues because of its prominence in criticisms based on technological downfalls of the DII.

While talking about the viability of finance for the DII, it is interesting to look at the repertoire of firms who have decided to support this project. There are many well respected German corporations getting involved, including Munich Re, Deutsche Bank, and Siemens, who despite even the financial crisis are choosing to support such a large and potentially risky investment. A group of

<sup>19</sup> Desertec-Australia. *DESERTEC-Australia: Australia-Clean Energy Superpower by 2050*. 2009.

<http://www.youtube.com/watch?v=yFnnZWpmzYw>

<sup>20</sup> Greenpeace, SolarPACES and ESTELA. *Concentrating Solar Power Global*

*Outlook 09: Why Renewable Energy is Hot*. 2009. 13.

<http://www.greenpeace.org/raw/content/international/press/reports/concentrating-solar-power-2009.pdf>

<sup>21</sup> ABB Group, *Inga-Shaba*. 2009.

<http://www.abb.com/cawp/gad02181/c1256d71001e0037c1256c7d00387939.aspx?&opendatabase&v=17ea&e=us&m=9f2&>

<sup>22</sup> Siemens AG. *HVDC Classic: General information*. 2009.

<http://www.energy.siemens.com/hq/en/power-transmission/hvdc/hvdc-classic/>

<sup>23</sup> Siemens PTB. *Siemens Commissions HVDC Transmission Link*

*Between Australia and Tasmania*. (Transmission and Distribution World, 2006.) <http://tdworld.com/news/SEIMENS-PTD-Australia/>

such successful firms certainly have their own experts to review the data and would have analyzed very carefully the proposal before becoming such vocal supporters of the Desertec idea. Their support is proven by their commitment of funding for the outlining of a feasibility study which will be completed by 2012. It is similarly noteworthy that Munich Re, the world's largest re-insurer, is spearheading the promotion of this project, and one could assume that a business which focuses so heavily on risk assessment would have taken a thorough look at how risky their investment in the project would be in a very thorough and proven way.

#### ECONOMIC ISSUES: NORTH AFRICA

For Africa, the possibility of entering in another imbalanced agreement which favours European parties over indigenous people and business, could potentially lead to the exploitation of African resources. If terms of trade are not properly negotiated, such an arrangement could perpetuate the negative terms of trade which have in the past lead to underdevelopment and strife on the continent. Therefore, if investment in the project is not open to MENA firms, and if energy is not distributed within Africa, this could lead to the provision of electricity to Europe at the expense of African nations and their people. But providing a portion of electricity to African and Middle Eastern nations is considered a necessary facet of the project, and in the future DII hopes to include more MENA firms, in addition to Cevital. In terms of electricity distribution, it will likely be possible to allocate an adequate amount, because the total usage of energy in countries like Algeria and Morocco is still low compared to Europe. "Morocco doesn't have even 1 percent of Europe's energy consumption, so let's be realistic," said Said Mouline, the head of Morocco's renewable energy agency, "we would be generating enough power for us, and for export, for the next 100 years"<sup>24</sup>. This is

aided by the fact that the proposed scale of the project is sufficiently ambitious to easily allocate a portion for both Africa and for export. A basic political agreement should be formulated so that a sizable portion of this renewable electricity will go toward powering African homes and firms. This will ensure that both Europeans and Africans benefit directly from this resource. To illustrate the importance of this point we can compare to the industry of oil and gas, where extraction occurs primarily for export, and few Africans

**"If terms of trade are not properly negotiated, such an arrangement could perpetuate the negative terms of trade which have in the past lead to underdevelopment and strife on the continent."**

benefit from the resource's revenues. In addition, many protest the lack of new sources of employment generated by this industry. In this case, if political agreements do bind, Desertec will distribute energy on the African power grids, and hopefully will also be a source of employment for some Africans. In terms of employment generated by CSP installations, "the construction of only one 250 MW parabolic trough power plant requires 1,000 workers and engineers for a period of two to three years"<sup>25</sup>. Also, Greenpeace's report on CSP technology comments about investment and the creation of jobs, stating that "under just a moderate scenario, the countries with the most sun resources could together: create €11.1 billion (USD 14.4) in investment in 2010, peaking at €92.5 billion in 2050" and "create more than 200,000 jobs by 2020, and about 1.187 million in 2050"<sup>26</sup>. Also, some Algerian and Moroccan institutions have expertise in solar energy research and projects, such as

<sup>24</sup> Tom Pfeiffer. *Europe's Saharan power plan: miracle or mirage?* (Reuters, 2009.)  
[http://uk.mobile.reuters.com/mobile/m/FullArticle/eUK/CBUSUK/nbusinessNews\\_uUKTRE57N01H20090824](http://uk.mobile.reuters.com/mobile/m/FullArticle/eUK/CBUSUK/nbusinessNews_uUKTRE57N01H20090824)

<sup>25</sup> Redpaper. *Red paper: An Overview of the Desertec Concept*. (Desertec Foundation, 2009.) 8.  
[http://www.desertec.org/fileadmin/downloads/DESERTEC\\_RedPaper\\_2nd\\_en.pdf](http://www.desertec.org/fileadmin/downloads/DESERTEC_RedPaper_2nd_en.pdf)

<sup>26</sup> Greenpeace, SolarPACES and ESTELA. *Concentrating Solar Power Global Outlook 09: Why Renewable Energy is Hot*. 2009.  
<http://www.greenpeace.org/raw/content/international/press/reports/concentrating-solar-power-2009.pdf>

Hassiba Ben Bouali University where researchers have done work on projects associated with solar-powered desalination techniques<sup>27</sup>.

### LOGISTICAL ISSUES: EUROPE

As Hermann Scheer points out in his editorial on the DII, it is possible for Europeans to harness their own forms of renewable resources<sup>28</sup>. With sustainable technologies steadily increasing in variety and efficiency, it soon will be equally affordable for Europeans to generate their own green electricity. Scheer notes his dislike for investing great sums of money in power plants for the purposes of export because they will so quickly become obsolete. There are also general criticisms in the media relating to the fact that transporting energy over such a long distance is not efficient, especially when, as Scheer indicates, energy could be generated right in Europe itself. Such long transmission lines may not be feasible, because the cost is too expensive, especially considering that they will ultimately become redundant in the energy sector of Europe.

Long transmission lines would run between Morocco and Spain, Tunisia and Italy and in three other locations between MENA and the EU. As was earlier discussed, examples of successful HVDC long-distance transmission lines include 'Basslink' which connects Australia to Tasmania. The Basslink runs from Georgetown in Tasmania, to Loy Yang, Victoria, covering a total distance of about 360 km (220 miles). Approximately 290-kms (180-miles) of this connection is a HVDC underwater cable, "currently the longest in the world used for power transmission"<sup>29</sup>. This

connection delivers electrical power at 500MV, and as much as 600 MV for up to 10 overload hours a day. The Siemens website further outlines its capacity for construction of a HVDC line between "two AC systems separated by sea (Distance: a few 10km to 800 km and more)"<sup>30</sup>. 800 km would be more than enough to connect the most preferable locations between Europe and North Africa, considering the Strait of Gibraltar which passes between Spain and Morocco is very narrow, in places as little as 13 km across<sup>31</sup>. In other locations, for example between Tunisia and Italy, a cable of just over 140kms could be deployed between Ras el Tib and Marsala, or even a slightly longer cable of 200kms could run between the capital Tunis and Marsala<sup>32</sup>. Even at a distance of 300kms, Darnan and Crete could become connected, based on the success of the Australian example. The benefits of a HVDC link are mutual, exemplified by the Basslink case.

Tasmania, which generates electricity almost exclusively using water power, exports "green electricity" to cover the peak load demand in the state of Victoria. In return, the island can replenish its base load through electricity imports from the mainland in dry periods when Tasmania's reservoirs are not sufficiently filled. Tasmania also gains access to the electricity market on the Australian continent via the HVDC transmission link.<sup>33</sup>

In order for a move toward green energy for Europe to be achieved, a diversified array of technologies will be necessary. Wind power as well as solar power, fed in from small-scale sources, will be inherently problematic with the current energy grid in most of Europe and "our grids will need to accommodate these varied, complex and fluctuating loads" in order for sustainability to be

<sup>27</sup> Hacene Mahmoudi, Nawel Spahis, Mattheus F. Goosen, Shyam Sablani, Sabah. A. Abdul-wahab, Noredine Ghaffour, Nadjib Drouiche. "Assessment of wind energy to power solar brackish water greenhouse desalination units: A case study from Algeria." *Renewable and Sustainable Energy Reviews*. (London: Elsevier. 2009.)

<sup>28</sup> Scheer, Hermann. *European power from the desert is a Fata Morgana*. 2009.

[http://www.hermannscheer.de/en/index.php?option=com\\_content&task=view&id=256&Itemid=10](http://www.hermannscheer.de/en/index.php?option=com_content&task=view&id=256&Itemid=10)

<sup>29</sup> Siemens PTD. *Siemens Commissions HVDC Transmission Link Between Australia and Tasmania*. (Transmission and Distribution World, 2006.) <http://tdworld.com/news/SEIMENS-PTD-Austalia/>

<sup>30</sup> Ibid.

<sup>31</sup> Britannica, Encyclopedia. *Strait of Gibraltar*. 2009. <http://www.britannica.com/EBchecked/topic/233262/Strait-of-Gibraltar>

<sup>32</sup> National Geographic. *Atlas of the World Eighth Edition*. 2005. 86.

<sup>33</sup> Siemens PTD. *Siemens Commissions HVDC Transmission Link Between Australia and Tasmania*. (Transmission and Distribution World, 2006.) <http://tdworld.com/news/SEIMENS-PTD-Austalia/>

achieved<sup>34</sup>. The HVDC cables may not become obsolete so quickly upon the adoption of more European-generated green electricity, as they may be just the beginning of what some are calling the new European ‘Smartgrid’. Airtricity is a leading on- and off-shore wind power firm which operates internationally, and they are one of many groups proposing the creation of a European super-grid. In their proposal Airtricity states:

By connecting and integrating geographically dispersed wind farms across Europe, each experiencing a different phase of the region’s weather system, electricity is produced wherever the wind is blowing and transported to regions of demand, ensuring a reliable and predictable source of energy. By providing interconnection between electricity systems, the Super grid will automatically overcome the most significant barrier to establishing a single internal market for electricity, and thereby will create a more competitive electricity supply for Europe.<sup>35</sup>

Polly Higgins of Renewable Energy Focus outlines the need for an update to aging European electricity grids, and move toward a “trans-national smart grid, able to accommodate clean energy sourced from locations ranging from wind in Northern Europe, to concentrating solar power farms in the Sahara”<sup>36</sup>. After these HVDC cables are installed for Desertec, they could be built off of to create an ultimately more efficient and more sustainable energy grid in the EU and MENA regions. These lines will not just benefit the Desertec project, but could possibly have larger benefits to sustainable energy as a more

competitive alternative to fossil fuels. Other sustainable energy projects will in the end be aided by these pre-existing infrastructure developments and be able to add more diverse energy source to the grid which will ultimately make it more stable and secure.

## LOGISTICAL ISSUES: NORTH AFRICA

One logistical issue that cannot be underestimated when talking about the Sahara desert is water security. Many North African and Middle Eastern countries are water-poor regions that must use their valuable fuel resources to desalinate seawater to provide drinking water to their populations. Excessive water use by CSP plants would create an additional strain on fresh water resources and could potentially exacerbate water scarcity problems in the MENA region. The argument stands that development of a water resource-heavy project could tap finite resources, such as the underground aquifers, which are already relied on heavily and may already be used unsustainably. The largest contributor to water consumption in a CSP plant is its cooling system, but advanced dry-cooling methods have shown that a large reduction in a CSP plant’s water needs could be achieved by ‘dry cooling’.

Dry cooling when applied for any of these plants will reduce water consumption to zero for the heat rejection system of a Rankine power system, requiring only a minimal amount of water for boiler blowdown, mirror washing and miscellaneous domestic plant uses. A dry-cooled trough plant requires about 80gal/MWh for cycle makeup and mirror washing. This compares to a wet-cooled plant that requires 800gal/MWh<sup>37</sup>.

Directly heating water to create steam to power the plant’s turbines could also be a portion of this figure, but liquid salt could replace water and may

<sup>34</sup> Polly Higgins. *Renewable electricity and transmission; HVDC; and supergrids*.

Renewable Energy Focus. 2008.

<http://www.renewableenergyfocus.com/view/3287/renewable-electricity-and-transmission-hvdc-and-supergrids/>

<sup>35</sup> Airtricity. *Supergrid: the power to connect*.

[http://www.airtricity.com/wind\\_farms/supergrid/?region=international](http://www.airtricity.com/wind_farms/supergrid/?region=international)

<sup>36</sup> Polly Higgins. *Renewable electricity and transmission; HVDC; and supergrids*.

Renewable Energy Focus. 2008.

<http://www.renewableenergyfocus.com/view/3287/renewable-electricity-and-transmission-hvdc-and-supergrids/>

<sup>37</sup> US Dept of Energy. *Concentrating solar power commercial application study*:

*reducing water consumption of concentrating solar power electricity generation*. 2007. 11. <http://www.solarthermalworld.org/node/644>

even be a more economical option because of its properties of retaining heat for overnight plant operation. Besides the use of water for boiling inside the plant, there is also the argument that sandstorms in the Sahara desert will dirty the mirrors which will thus have to be washed with water to continue being efficient. There may, of course, be other ways to clean these mirrors, but if not it can still be noted that according to the U.S. Dept of Energy only 2% of a CSP plant's water needs would go toward mirror washing, or roughly 16 gal per MWh<sup>38</sup>. It is possible that this number could even be reduced, possibly by using manual labour or compressed air, so there may be a number of ways to clean off these sand particles without using large amounts of water resources.

There are a number of ways to reduce the water consumption of a CSP plant but it is evident that even then some water will be needed. So how will Desertec offset CSP water usage in MENA's water-scarce regions? In this case Desertec argues that solar power will not be a contributor to water insecurity, but will actually help create more water resources by powering operations which desalinate sea water.

For building a sustainable water supply by desalination, clean and inexhaustible forms of energy are required at large quantities. The MENA countries can provide such energy from their deserts and make the shore lines of North Africa and of the Middle East to inexhaustible sources of fresh water. In fact, our studies (MED-CSP, 2006, AQUACSP, 2007) show how the imminent water crisis in the MENA region could be coped with by desalinating sea water<sup>39</sup>.

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<sup>38</sup> US Dept of Energy. *Concentrating solar power commercial application study: reducing water consumption of concentrating solar power electricity generation*. 2007. 4. <http://www.solarthermalworld.org/node/644>

<sup>39</sup> Whitebook. *Clean Power from Deserts The DESERTEC Concept for Energy, Water and Climate Security*. (Desertec Foundation. 2009.) 12. [http://www.desertec.org/fileadmin/downloads/DESERTEC-WhiteBook\\_en\\_small.pdf](http://www.desertec.org/fileadmin/downloads/DESERTEC-WhiteBook_en_small.pdf)

If the CSP energy can be used to desalinate sea water then it should be made assured by a political body/document that water usage of the power plant be reliant on this process, and not on the access to finite aquifers and other bodies of fresh water.

## POLITICAL ISSUES: EUROPE

Europe already struggles with energy security issues and, as is outlined in the 2000 European Commission's 'Green Paper', this could become a very pressing matter in the near future. In this report it is shown that "the EU meets 50% of its energy needs through imports and, if no action is taken, this will increase to 70% by 2020 or 2030"<sup>40</sup>. The countries topping the charts for exports to Europe include Russia at 40% of natural gas imports, and the Middle East delivering 45% of oil imports<sup>41</sup>. Since the DII will not contribute to the construction or enhancement of sustainable sources of energy in Europe, investing in such a large project would seem to only enhance Europe's dependency, which is not seen as very favourable in terms of bolstering energy security for the region. This argument is a well-founded one, and logically we can speculate that since energy resources are coming from outside the region, this will continue to feed Europe's dependency. Still, some speculate that renewable resources in Africa could shift some of Europe's imports away from Russia, which is at the present time considered fairly unstable and could be possibly considered a method of diversifying energy sources. This could possibly lead to a relatively more secure energy balance and as up to "6 000 MW of CSP in 2020 from Algeria to Europe would comply with energy dependency limits" points out NEAL's Eng. Tewfik Hasni, and furthermore states that "Of course, this could lead to an equivalent reduction in exports of gas, if necessary"<sup>42</sup>.

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<sup>40</sup> Green Paper. *Towards a European strategy for the security of energy supply*. (Brussels: European Commission, 2000.) <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52000DC0769:EN:HTML>

<sup>41</sup> Ibid

<sup>42</sup> Whitebook. *Clean Power from Deserts The DESERTEC Concept for Energy*,

Another important way to frame energy security is through the lens of sustainability. If the energy resources of a nation are based on nonrenewable fossil fuels, whether from internal or external sources, there also exists a level of threat to national security, i.e. climate security. The shift to renewable sources of energy is exceedingly important for avoiding the catastrophic effects of global warming predicted by climate change science. Scholars from numerous streams of thought argue that the issue of climate change represents an overwhelming security threat for the entire globe. Indeed, nations must strategically analyze where their energy resources are generated and where they are consumed, but much more pressing is the matter of developing forms of renewable energy quickly and decisively in order to prevent the continued release of greenhouse gasses into the atmosphere. If climate-related energy security were to be addressed as a key component of energy security then it would be necessary to account for not only where the energy comes from, but the nature of the energy itself to be fully secure. In that case, shifting European dependence on Russian fossil fuels, to more renewable energy from multiple African nations, would likely be a net move towards a more secure system. To illustrate this point it can be noted that it may not be possible to adopt a completely, or even a nearly completely, renewable energy economy in European countries, without imports, because of the nature of renewables available within the geographical limits of the region. George Monbiot in his book *Heat* sets out to formulate a plan where Britain could become a carbon-neutral society, or at least very close at a 90% emissions cut by 2030. In the end he concludes that going beyond 50% renewables would lead to periodic collapses in the

entire grid, because Britain's main renewable, wind power, has a tendency to fluctuate wildly<sup>43</sup>. He notes that since a reliable energy source is necessary in order to meet the drastic fluctuations in demand, some coal or nuclear power would be necessary to create a viable base supply<sup>44</sup>. This secure supply could in some portion be replaced by a more secure renewable energy source where fluctuations do not

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“Indeed, nations must strategically analyze where their energy resources are generated and where they are consumed, but much more pressing is the matter of developing forms of renewable energy quickly and decisively in order to prevent the continued release of greenhouse gasses.”

occur as radically. It has been shown in earlier sections of this paper that solar energy from the Sahara, backed up by Algerian natural gas, could very well provide such a source of renewable energy to complement the ebbing a flowing nature of wind power. Importing solar energy from nations that are relatively better at producing it may be necessary to get another step closer to a renewable

energy grid; a secure grid in terms of climate security. This of course will take a certain level of international trust and cooperation, but the shift to low-carbon economies and the mitigation of climate change in general, has always been considered a matter that relies heavily on the continued cooperation of many nations. Indeed international cooperation may be a fundamental pre-requisite to a successful transition to carbon neutrality, and to achieving climate security for any nation. Whether it is Desertec or some other agreement/project, climate change mitigation is a problem of international scope and for its success we will rely heavily on other nations to reach their commitments.

#### POLITICAL ISSUES: NORTH AFRICA

The Maghreb region has been noted as an area where political stability would potentially add an

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*Water and Climate Security*. (Desertec Foundation. 2009.) 51.  
[http://www.desertec.org/fileadmin/downloads/DESERTEC-WhiteBook\\_en\\_small.pdf](http://www.desertec.org/fileadmin/downloads/DESERTEC-WhiteBook_en_small.pdf)

<sup>43</sup> George Monbiot. *Heat*. (London: Penguin, 2006) 123.

<sup>44</sup> *Ibid.* 99.

element of risk to a large investment such as Desertec. Criticism relating to the security of the region has arisen, with individuals noting that energy sources could be disrupted by political uprisings, and the plants or transmission lines could become a target for terrorist attacks. The argument may be well placed considering that borders are currently closed between Morocco and Algeria, because of a dispute over Western Sahara. But the argument can also be made that business goes on as usual in the energy industry, even in such unstable areas as the Sudan and Equatorial Guinea. There has also been mention of an increased amount of foreign investment in the Maghreb in recent years, in such articles as *The Rise of the Maghreb* in Business Week, which points to the notable investments by Sumimoto, BP, Airbus, Boeing, Renault, Groupe Safran, Royal Dutch Shell and ExxonMobil.

“Led by Morocco and Tunisia, the region of 84 million people is attracting serious investment—more than \$30 billion over the past five years—to build everything from auto and aerospace factories to five-star resorts and call centers for multinationals. Even Algeria and Libya, long shunned on the international stage, are starting to revive their stagnant economies. Both are opening up to foreign investment and, with pipelines under the Mediterranean, have become important suppliers of natural gas to Europe as it seeks alternatives to politically unstable Russia. The Maghreb countries all “have very different politics, but they’re on track, moving in the same direction,” says André Azoulay, a former French bank executive who is an economic adviser to Morocco’s King Mohammed VI”<sup>45</sup>.

Another interesting way of gauging the political stability of a region is by taking a look at the World Bank’s ‘Governance Indicators’. This set of

indicators was formulated by the World Bank for research purposes by aggregating the indicators of many business and political related assessments such as the Global Insight Business Conditions and Risk Indicators, the Reporters Without Borders Press Freedom Index, the Political Risk Services International Country Risk Guide and the World Economic Forum Global Competitiveness Survey. In terms of political stability Algeria ranks in the 13<sup>th</sup> percentile, which is comparable to Thailand (13), and higher than Bangladesh (10), the Philippines (11), Venezuela (12), Kenya (12) and Nigeria (3). Morocco’s indicators are more favourable, ranking in the 29<sup>th</sup> percentile, making it much more stable than Mexico and Russia (24), and comparable to Angola (30) and Madagascar (30) as well as Saudi Arabia (31) and even China (33). Tunisia (54) and Libya (63) look better still ranking well above Spain (43), Brazil (38), Argentina (42) and South Africa (42). Libya, in terms of stability is even surpassing Italy which ranks in the 60<sup>th</sup> percentile<sup>46</sup>. Out of the 10 African nations which rank within the 0-10<sup>th</sup> percentile on the continent, such as Ethiopia, Zimbabwe, Sudan and Cote D’Ivoire, none are in the Maghreb region and only Algeria ranks anywhere near this lowest bracket. Also it is notable that the energy industry has for many years worked in countries within this lowest percentile, including Nigeria and Sudan, and have been operating in Algeria for many years extracting natural gas, which is transported via trans-Mediterranean pipeline to Europe for export. The energy supply from the region has been arguably increasing in stability and as the CEO of the New Energy Algeria, Eng. Tewfik Hasni, stated “in the last 30 years, there has not been a single interruption in energy supply coming from our region to Europe”<sup>47</sup>.

Creating new vested corporate interests in the success of a sustainable energy project could even

<sup>45</sup> Carol Matlack and Stanley Reed. “Manufacturing: The Rise of the Maghreb.” *Business Week*. (New York: Bloomberg, 2009) [http://www.businessweek.com/magazine/content/09\\_11/b4123038640646.htm](http://www.businessweek.com/magazine/content/09_11/b4123038640646.htm)

<sup>46</sup> World Bank. *Governance Matters 2009*. (Washington: The World Bank Group, 2009.)

<http://info.worldbank.org/governance/wgi/index.asp>

<sup>47</sup> Whitebook. *Clean Power from Deserts The DESERTEC Concept for Energy*,

*Water and Climate Security*. (Desertec Foundation. 2009.) 51.

[http://www.desertec.org/fileadmin/downloads/DESERTEC-WhiteBook\\_en\\_small.pdf](http://www.desertec.org/fileadmin/downloads/DESERTEC-WhiteBook_en_small.pdf)

take something that seemingly works inherently against green energy and put it behind the cause. So involving big business interests in Europe, and especially in the Maghreb, will possibly increase the DII's likelihood for success. Through NEAL, Algeria has been working on receiving foreign investment in the area of solar power since 2003, and have continuously partnered with the US and the EU to develop strategies to make renewable energy projects happen in the Maghreb. The US-Algeria Energy Forum of 2009 was focused on the topic of renewable energy development in Algeria, and about highlighting roles that the US can play in investment in sustainable energy projects<sup>48</sup>.

## CONCLUSION

The Desertec Industrial Initiative is an ambitious venture in terms of scale and monetary investment. There exist numerous criticisms of the project, but in this analysis it has been demonstrated that many of these criticisms do not hold true under careful investigation. At first glance it seems that the project is too expensive, too risky, and not politically viable, but it can be demonstrated that this project actually does have some prospect for success and could even create some positive spin-off effects, such as the beginning of an EU-MENA Smart-grid. In order to meet the commitments that Europe has made it will have to develop an arrangement to generate more of its consumed electricity from sustainable sources. This goal might be partially achieved through Saharan solar power energy projects such as the DII. The mitigation of climate change demands change, and it demands it soon, so Europe should start thinking 'big' about its move toward sustainable energy, and support large scale transitions to renewable electricity use. The progress made during the current feasibility study will likely dictate whether the DII will come to fruition, and for the sake of the climate, let us hope that the private sector begins paving the way to a more sustainable status-quo for Europe and North Africa.

## Freedom to Develop

### Free/Open Source Software in the Developing World

Jean-Francois Arseneau

**Y**ouTube, Facebook, Google, Microsoft Word and the dreaded PowerPoint presentations: technology has become ubiquitous in our post-industrial lives. Students wander around their university campuses with laptops while office workers remain glued in front of their computer monitors for their entire workday, sipping coffee while filling out endless spreadsheets. This has become the landscape of what is often termed the "Information Age." However, often left out of the story of the information age are the developing countries, most of which manufacture the parts that make up the backbone of our worldwide information technology infrastructures. For reasons of costs and even issues such as lack of localization, developing countries are not always able to benefit from the same unlimited access to information technology than users in the developed world can enjoy.

More pertinent to governments is the inability of developing world start-ups to penetrate a software market dominated by corporations in the developed world who have access to resources that can, for example in the case of Microsoft, even outstrip the funds of their entire country. Having to compete with such powerful competitors is not an easy challenge. It becomes even harder to compete when software products are usually widely pirated with impunity in developing countries. Any attempt to create a domestic software industry has to simultaneously be able to innovate with the limited resources available to them, be staffed with programmers who could have been brilliant but rarely have had access to the best training, and cope with the reality that the more lucrative markets are usually in the developed world where native products have more ready access to market.

<sup>48</sup> US-Algeria Business Council. 2009. [www.us-algeria.org](http://www.us-algeria.org)

Here is where Open Source steps in. Using the capacity for software to be replicated in an unlimited amount for virtually no cost, the open source movement radically changes the way in which software is developed by opening up the source code to everyone and allowing anyone to work on the software. This new way of developing software opens the door for developing countries to leapfrog into the latest of software technology and programming methods and gives programmers in developing countries access to a global community, free of charge. This essay first briefly explains what Free/Open Source Software (FOSS) is and its origins. It then looks at some of the reasons why developing countries would want to adopt FOSS and how it can be an engine of economic and national development.

### FREE/OPEN SOURCE SOFTWARE?

Free Software was born out of a culture clash between hacker culture and corporate culture. In 1971, Richard Stallman and other programmers were working in the MIT AI Lab and within this community they shared code amongst themselves.<sup>1</sup> But as the technology developed, most of the hackers, as Richard Stallman likes to call himself and the others at the MIT AI Lab,<sup>2</sup> were hired by a spin-off company called Symbolics, splitting their community. The MIT AI Lab then purchased new machines that came with conditions restricting the use of their built-in operating systems: non-disclosure agreements.<sup>3</sup> As Stallman recounts, "This meant that the first step in using a computer was to promise not to help your neighbor. A cooperating community was forbidden. The rule made by the owners of proprietary software was, 'If you share with your neighbor, you are a pirate. If you want any changes, beg us to make them.'"<sup>4</sup> This threw Stallman into a moral debate in which

he concluded that he could not stand by such a restrictive framework. In 1984 he quit the MIT AI Lab to start the GNU Project, a free clone of the Unix operating system; GNU standing for the recursive acronym (a hacker tradition) GNU's Not Unix.<sup>5</sup> The project was *copylefted*, meaning that it is licensed under a Free Software license called GPL (General Public License) that stated:

- You have the freedom to run the program, for any purpose.
- You have the freedom to modify the program to suit your needs. (To make this freedom effective in practice, you must have access to the source code, since making changes in a program without having the source code is exceedingly difficult.)
- You have the freedom to redistribute copies, either gratis or for a fee.
- You have the freedom to distribute modified versions of the program, so that the community can benefit from your improvements.<sup>6</sup>

From there, the Free Software movement has grown into a diverse and worldwide community.

### OPEN SOURCE IN DEVELOPING COUNTRIES

One of the realities of the spread of FOSS is that it has become a viable alternative to many proprietary technologies. Linux is now a popular alternative to Microsoft Windows, OpenOffice.org is competing with Microsoft Office for market share, and Mozilla Firefox has taken a sizeable chunk of the browser market share from Microsoft Internet Explorer. In some areas, open-source software has come to dominate the market, for example BIND, a domain name server and effectively the Internet's address book, has 95% market share.<sup>7</sup> This makes

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<sup>1</sup> Richard M. Stallman, "Free Software, Free Society: Selected Essays of Richard M. Stallman", 17, <http://www.gnu.org/philosophy/fsfs/rms-essays.pdf> (accessed March 14, 2008)

<sup>2</sup> In this context, hackers does not mean "security breaker" but rather "someone who loves to program and enjoys being clever about it", Stallman, *ibid*.

<sup>3</sup> Stallman, 18.

<sup>4</sup> *Ibid*.

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<sup>5</sup> Stallman, 19.

<sup>6</sup> Stallman, 20.

<sup>7</sup> Steven Weber, "Open Source Software in Developing Economies" (University of California, Berkeley, 2002), 6. <http://www.fossfa.net/fossfa/foss-ict-national-policy-south-africa/general-policy-statements/weber-open-source.pdf> (accessed January 30, 2008)

it a viable option for adoption in many locations including private and public organizations. Many countries, developing and developed, have even gone so far as to legislate FOSS as the preferred option when choosing what type of infrastructure to deploy.<sup>8</sup> Of the developing countries to legislate as such are Argentina, Brazil, China, South Africa and Singapore, to name but a few.<sup>9</sup> Each deployment strategy tends to be for a number of reasons and done in a variety of methods. For example, in Singapore, FOSS use is encouraged through tax breaks provided by the Singaporean government, while in China, the government has tasked the state-owned China Academy of Science with developing Red Flag Linux.<sup>10</sup> FOSS has gained increasing acceptance in developing countries for its comparative advantage over proprietary software due to its inherent open nature. Steven Weber cites three broad reasons for FOSS adoption in developing countries: desire for independence, drive for security and autonomy, and new intellectual property rights enforcement.<sup>11</sup>

As developing countries struggle to assert themselves, the quest for independence can become an important one. By cutting off their dependence from a single supplier (in the operating system or office suite case for example, from Microsoft) these countries reduce their reliance on an entity that might not be focused on the country's interests and simultaneously prevent these suppliers from taking the opportunity to exploit this monopolistic relationship.<sup>12</sup> There is also a financial aspect to this. Weber related how "a South African government council responsible for formulating the government's open source policy expressed foreign currency savings as an explicit rationale for considering OSFS [also known as FOSS] deployment."<sup>13</sup> This is because FOSS allows for the investment of more domestic talent to develop the necessary software; an investment

that can easily be a boon to a nascent domestic software industry.<sup>14</sup>

Then there is the matter of security and autonomy. With growing fears of cyber-terrorism and cyber-crime, governments have begun to think carefully about public data security.<sup>15</sup> FOSS at the very least introduces diversity in the software eco-system preventing a possible catastrophic failure due to a virus that would attack a monocultural software eco-system.<sup>16</sup> In terms of security from infiltrators or malicious attacks, FOSS operating systems such as Linux reveal themselves to be as secure, if not more in certain cases, than closed-source ones.<sup>17</sup> As for autonomy, Weber refers to a letter written by Congressman Edgar Villanueva to Microsoft Peru where he stated forcefully that "in order to guarantee the permanence of public data, the usability and maintenance of software should not depend on the goodwill of suppliers or monopoly conditions imposed by them" and that nations must be autonomous from systems controlled from outside the country so that they can guarantee national security.<sup>18</sup> Weber puts it in historical terms by arguing that "[n]o national government, if it had alternatives, would have chosen during the 20<sup>th</sup> century to accept dependence for steel or petroleum on a single or small number of suppliers based in another nation."<sup>19</sup> If we are to accept the importance of information technology to the twenty-first century world as that of steel and petroleum in the twentieth century, then reliance on single providers immediately reveals itself to be a foolish policy. What FOSS provides is the opportunity for a domestic software industry to take an active role in the developing of information technology instead of the country remaining locked

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<sup>8</sup> Weber, 26.

<sup>9</sup> Weber, 28.

<sup>10</sup> *Ibid.*

<sup>11</sup> Weber, 17.

<sup>12</sup> *Ibid.*

<sup>13</sup> *Ibid.*

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<sup>14</sup> *Ibid.*

<sup>15</sup> Weber, 18.

<sup>16</sup> *Ibid.*

<sup>17</sup> Carlos Serrao, Daniel Neves, and Paulo Trezentos, "Open Source Security Analysis: Evaluating Security of Open Source Vs. Closed Source Operating Systems", <http://paulotrezentos.polo-sul.org/artigos/ICEIS2003/opensourceAnalysis.pdf> (accessed March 14, 2008)

<sup>18</sup> Weber, 18.

<sup>19</sup> *Ibid.*

in to a single supplier that is usually from the United States.<sup>20</sup>

At the very core of the Free/Open Source Software idea is intellectual property rights. In developing countries, massive software piracy remains one of the obstacles preventing the growth of a domestic software industry, as has been argued in the case of China.<sup>21</sup> According to the Business Software Alliance, in 2006 piracy rates are among the highest in developing countries like Zimbabwe (91%), Vietnam (88%), Venezuela (86%), and China (82%) and lowest in developed countries such as the United States (21%), Japan (25%), Canada (34%), etc.<sup>22</sup> What FOSS does is completely sidestep software piracy and renders it obsolete, which can be an attractive third way to tackling piracy.<sup>23</sup>

Even more significant about FOSS in developing countries are its development capacities. FOSS can be a source for two major components of development: a technology transfer platform and a method for human resources capacity building. Many developers describe FOSS as a learning environment, so much so that in a survey carried out by the International Institute of Infonomics with developers, it is cited as being one of the main motivational reasons for contribution to free/open source projects.<sup>24</sup> In fact, it shows that 78% of developers participate in FOSS development to “learn and develop new skills” and 67% continue

“What FOSS provides is the opportunity for a domestic software industry to take an active role in the developing of information technology instead of the country remaining locked in to a single supplier.”

their participation to “share knowledge and skills.”<sup>25</sup> This not only leads to the development of domestic labour in developing countries, it also creates a form of technology transfer through informal apprenticeships.<sup>26</sup> Rishab A. Ghosh explains that FOSS communities are akin to informal apprenticeships where the apprentice/students and master/teachers contribute their time without any monetary compensation.<sup>27</sup> There are social costs but these are borne voluntarily by the participants and not directly by those who benefit from them like future employers or society at large.<sup>28</sup>

The investments are not equal however, and certain “teachers” have been formally trained in universities or at work. These “teachers” end up paying more to train others.<sup>29</sup> What this amounts to is a form of technology transfer where those who can pay for formal training teach those who do not or cannot.<sup>30</sup> Within a country, the dynamic takes the shape of big companies teaching small and medium-sized enterprises, and globally this takes shape in developed countries teaching those in the developing countries who cannot afford formal training.<sup>31</sup>

Weber takes another approach to the same idea of technology transfer by highlighting the importance of these freely available technological infrastructures for the advancement of developing countries.<sup>32</sup> He explains it as such:

<sup>20</sup> Weber, 20.

<sup>21</sup> Mingzhi Li and Ming Gao, “Strategies for Developing China’s Software Industry”, *Information Technologies and Development*, 2003, vol. 1, issue 1, 64, pages 61-73.

<sup>22</sup> Business Software Alliance, “Fourth Annual BSA and IDC Global Software Piracy Study”, <http://w3.bsa.org/globalstudy//upload/2007-Global-Piracy-Study-EN.pdf> (accessed March 14, 2008)

<sup>23</sup> Weber, 20.

<sup>24</sup> Rishab A. Ghosh, et al., “Free/Libre and Open Source Software: Survey and Study, Part 4: Survey of Developers”, (The Netherlands: International Institute of Infonomics, 2002), 45. [http://flossproject.org/report/FLOSS\\_Final4.pdf](http://flossproject.org/report/FLOSS_Final4.pdf) (accessed March 16, 2008)

<sup>25</sup> *Ibid.*

<sup>26</sup> Rishab A. Ghosh, “The Opportunities of Free/Libre/Open Source Software for Developing Countries”, *The Fourth Bellagio dialogue on development and intellectual property: Moving the pro-development IP agenda forward: Preserving Public Goods in health, education and learning*, 8. [http://www.iprsonline.org/unctadictsd/bellagio/docs/Gosh\\_Bellagio4.pdf](http://www.iprsonline.org/unctadictsd/bellagio/docs/Gosh_Bellagio4.pdf) (accessed March 16, 2008)

<sup>27</sup> *Ibid.*

<sup>28</sup> *Ibid.*

<sup>29</sup> *Ibid.*

<sup>30</sup> *Ibid.*

<sup>31</sup> *Ibid.*

<sup>32</sup> Weber, 20.

“To provide real products and services on top of the infrastructure requires an investment of local labor to start. Many emerging economies have a surplus of inexpensive technical manpower. Combining this with free software tools creates the possibility of an interesting kind of comparative advantage that will matter in local markets and in some cases might become important on global markets as well. (One of the advantages of the GPL is that it then prevents a dysfunctional enclosure of mobilized developing country resources into properties protected by patents that are offered for resale to the developing world at exploitative prices, a depressingly common pattern for knowledge intensive products as diverse as music, plant varieties, and pharmaceuticals.)”<sup>33</sup>

Countries such as South Africa did not miss this, at least, not in an internal context. In a government report on FOSS it stated that FOSS facilitates technology transfer from academia to the private sector.<sup>34</sup> Reading further on the subject, it is clear that South Africa has fully endorsed FOSS as one part of its development plan. Following the report, South Africa has adopted a forward policy on open-source, which is:

1) The South African Government will implement FOSS unless proprietary software is demonstrated to be significantly superior. Whenever the advantages of FOSS and proprietary software are comparable FOSS will be implemented when choosing a software solution for a new project. Whenever FOSS is not implemented, then reasons must be provided in order to justify the implementation of proprietary software.

2) The South African Government will move current proprietary software to FOSS whenever

comparable software exists.

3) All new software developed for or by the South African Government will be based on open standards, adherent to FOSS principles, and licensed using a FOSS license where possible.

4) The South African Government will ensure all Government content and content developed using Government resources is made Open Content, unless analysis on specific content shows that proprietary licensing or confidentiality is substantially beneficial.

5) The South African Government will encourage the use of Open Content and Open Standards within South Africa.<sup>35</sup>

A bit further in the document, it offers the justification that total cost of ownership is lower and return on investment is high. It also adds that many of the early barriers to FOSS adoption have rapidly eroded and that alternative business models have arisen which allow contributors to profit from their efforts without charging for the software itself and that there has been small and large commercial IT vendors that have professional teams contributing to open source.<sup>36</sup> Finally, it states that “because of the significant developmental benefits that result from the widespread use of FOSS/OC, in addition to the other positive benefits, the policy establishes a clear preference for FOSS/OC in the South African Government”<sup>37</sup>

## CONCLUSION

While there are problems with FOSS, it becomes apparent that there are many advantages that are very important or even unique to developing countries that FOSS can be of use for. As FOSS

<sup>33</sup> *Ibid.*

<sup>34</sup> National Advisory Council on Innovation Open Software Working Group, “Free/Libre & Open Source Software and Open Standards in South Africa – A Critical Issue for Addressing the Digital Divide”, Version 2.6.9, (July 2004), 26.  
[http://www.naci.org.za/pdfs/floss\\_v2\\_6\\_9.pdf](http://www.naci.org.za/pdfs/floss_v2_6_9.pdf) (accessed January 30, 2008)

<sup>35</sup> South African Department of Public Service & Administration, “Policy on Free and Open Source Software Use for South African Government”, 3.

<http://unpan1.un.org/intradoc/groups/public/documents/CPSI/UNPAN025432.pdf> (accessed March 16, 2008)

<sup>36</sup> South African Department of Public Service & Administration, 4.

<sup>37</sup> *Ibid.*

continues to grow and evolve and in parallel as previously developing countries transformed into developed countries, it will be interesting to see if FOSS will carve a larger part of the software ecosystem or if the current dominant players will be able to adapt to retain control or even be displaced by new closed-source companies from the previously developing world. Will the focus on

FOSS in some countries lead to those who grew up with it to favour it, or will they instead take their skills learned from FOSS and apply them to creating the next Microsoft? Regardless of what happens, for many countries FOSS will have played some part in development, whether minor or major, free/open source software has become more than just an ideal.

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## Global Water Governance of Transboundary Rivers

### Levels & Leakages: The Nile and the Implications for Global Water Policy

Rebecca Anne Dixon

A river can be the lifeline of a community, providing the most essential resource for human survival: water. This water is used for domestic consumption, agriculture and irrigation, industry, hydro-electricity and transport, and thus is crucial to a community's ability to meet the basic needs of its people as well as to the overall economic development of the region. When rivers cross the boundaries of states, conflicts can occur over a particular state's right to use and divert waters, potentially at the expense of other riparian states. The agreements for transboundary rivers at a global level are not widely supported or implemented nor do the corresponding institutions have sufficient legitimacy and authority to affect policy at regional, national and local levels. The fact that 263 watersheds crossing the political boundaries of at least two countries<sup>1</sup> are thus governed by complex and tense bilateral or multilateral arrangements. In order to move beyond the conflictual interests of the involved parties practicable coordination at the global level is needed.

This paper will examine the currently-existing global water governance structure of covenants and organizations. It will then review the circumstances and management of the Nile River, with a particular focus on resource use in Egypt, and Sudan, the riparian states with the firmest political and legal claim upon the river, as well as those taken on by Ethiopia, which has in the last two decades begun to assert itself and its rights to the Nile's waters. It will then examine the potential linkages and what stands in the way of these, ending with practical considerations for establishing effective global transboundary water governance. This paper will focus primarily on Nile development projects undertaken by Egypt and Sudan, the riparian states with the firmest political and legal claim upon the river, as well as those taken on by Ethiopia, which has in the last two decades begun to assert itself and its rights to the Nile's waters.

### CURRENT GLOBAL WATER GOVERNANCE STRUCTURES

Modern transboundary river management has mostly evolved since the mid-nineteenth century in the form of bilateral or multilateral agreements between riparian states. While a reported 264 international water cooperation agreements have been set in place,<sup>2</sup> there remain 158 that lack "any kind of cooperative management framework in

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1 United Nations Development Programme. "Transboundary Waters." Environment and Energy. Accessed November 12 2009. <<http://www.undp.org/water/priorityareas/trans.html>>

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2 Water Governance Facility. "Transboundary Water Cooperation." Accessed November 11 2009. <<http://www.watergovernance.org/improvingwatergovernancereform/transboundarywatercooperation.html>>

place [and] so plenty of work lies ahead for the international community.”<sup>3</sup>

In advance of the landmark Rio Earth Summit in June 1992, “government-designated experts from a hundred countries and representatives of eighty international, intergovernmental and non-governmental organizations”<sup>4</sup> gather to prepare a set of principles to present in Rio. These became known as the Dublin Principles and were to “urge all those involved in the development and management of our water resources to allow the message of those children to direct their future actions”<sup>5</sup> and to “bring water resources firmly under the State’s function.”<sup>6</sup> Subsequent water agreements have reflected the message of the Dublin Principles, which included equitable use, the role of women and the perception of water as an economic good.

In 1996 the World Bank, the United Nations Development Programme (UNDP), and the Swedish International Development Agency (SIDA) organized the Global Water Partnership (GWP) to promote and implement Dublin Principals.<sup>7</sup> Working in thirteen regions and over seventy countries, this organization has an extensive portfolio on dealing with water issues. At the World Water Forum in 2000 in The Hague, the GWP Framework for Action “identified making water governance effective as one of the highest priorities for action.”<sup>8</sup> The GWP also worked with the UNDP and the International Council for Local Environmental Initiatives (ICLEI) to establish a “Dialogue on Effective Water Governance,”

launched at the 2002 UN World Summit on Sustainable Development “to facilitate national and local level dialogues to help build distributed governance systems by adding value to existing processes.”<sup>9</sup>

At this Summit, states agreed to prepare a specific type of water governance labeled “Integrated Water Resource Management” (IWRM) by 2005, which would “take cognisance of prevailing governance systems and allow for necessary reforms.”<sup>10</sup> IWRM “aims to be a comprehensive and interdisciplinary approach that recognizes and deals with the many social, economic, political, technical and environmental aspects of water issues” and focuses on river basins and watersheds as the primary units for water management.<sup>11</sup> The GEF is meant to be “foster IWRM” as a form of water administration<sup>12</sup> and it has been further popularized by the World Bank, drawing from IWRM’s relative success in Chile.<sup>13</sup> Meanwhile, while certain focuses of Chile’s IWRM are progressive and broadly applicable, such as management on a basin-wide level, other aspects are not transferable and problems are becoming increasingly evident with its system. For example, “the first and clearest lesson” taken from IWRM is that state governments cannot ignore the need for “participation and openness.”<sup>14</sup>

Certain organizations such as the GEF and UNDP that deal with a full spectrum of environmental and water issues specify projects around the particular issue of transboundary rivers. The GEF assists collaborative efforts between riparian states “to modify human activities that place stress on these transboundary water systems and interfere with downstream uses of those resources” (International Waters, GEF). The intention is to ensure more sustainable and equitable use of resources, and the idea of common “global goals” is specifically referenced (International Waters, GEF). One of GEF’s specific projects regarding transboundary

3 UNDP “Transboundary Waters.”

4 Florida International University. (1992) “The Dublin Statement on Water and Sustainable Development.” EVR Graduate Certificate in Water, Environment, and Development. Accessed November 11 2009. Florida International University: 1. <[www.fiu.edu/~mcclainm/iwrm/THE\\_DUBLIN\\_STATEMENT.pdf](http://www.fiu.edu/~mcclainm/iwrm/THE_DUBLIN_STATEMENT.pdf)>

5 Dublin Statement on Water and Sustainable Development, pp 6.

6 Rogers, Peter and Alan W. Hall. 2003. “Effective Water Governance.” Global Water Partnership Technical Committee. The Background Papers No. 7: pp. 17

7 Bauer, Carl J. (2004) Siren Song: Chilean Water Law as a Model for International Reform. Washington DC: Resources for the Future: pp. 9.

8 Rogers, 15.

9 Ibid, 37.

10 Ibid, 16.

11 Bauer, 8.

12 Rogers, i.

13 Bauer, 15.

14 Rogers, 31-32.

waters is called IW:Learn and involves staff in different countries and regions who working on similar water projects and facing similar challenges to participate in exchanges and forums, “further increas[ing] the South-to-South exchange of experiences.”<sup>15</sup>

The UNDP's main programme for transboundary river governance is its Transboundary River Basin Initiative (TRIB). Created in 2000 its goal was to “support riparian countries in nationally owned efforts to improve their dialogues on shared rivers and build intra-riparian trust” as well as to develop capacity through the sharing of experienced learning. TRIB had completed nine of its proposed twelve components, including helping to establish the Nile River Basin Initiative, discussed later in this paper.<sup>16</sup>

Some existent covenants on international waters do exist. In 1966 the ILA's Helsinki Rules on Uses of International Rivers were created to “help shape regional arrangements, especially in developing countries.”<sup>17</sup> However, these were not legally binding and the UN General Assembly did not endorse them, indicating that this shaping was tenuous and limited.<sup>18</sup> These have been superseded by the 2004 Berlin Rules, which “integrat[e] domestic with international law.”<sup>19</sup> Like the Helsinki Rules, these have not been officially adopted by the UN and thus commitment from a wide range of states is not ensured. “It is difficult to predict” if they will be widely accepted.<sup>20</sup>

Three decades later, the UN Convention on Law of Non-Navigational Uses of International Watercourses was approved by the GA, but twelve years later, has yet come into force and has only been ratified by sixteen states.<sup>21</sup> This may “reflect the unwillingness of upstream states to accept the

principle of equitable utilization and the obligation not to cause significant harm to other states” or may simply indicate a lack of innovation in the proposed solutions, and thus little incentive to ratify.<sup>22</sup> Mostly, the Convent sets “an agenda for the future” without replacing previous agreements, unless party states choose to allow it.

Finally, in 2003 an organization entitled UN Water was formed to coordinate the various UN bodies concerned with water issues, including the UNDP, UNEP and UNICEF. With twenty-six members and numerous partners from without the UN system, UN Water is potentially situated in the position to govern water globally. However, states themselves are not members and thus national coordination may continue as a barrier.<sup>23</sup>

GWP defines water governance as “the range of political, social, economic and administrative systems that are in place to develop and manage water resources, and the delivery of water services, at different levels of society” and a “subset of the more general issue of the creation of a nation's physical and institutional infrastructure and of the still more general issue of social cooperation.”<sup>24</sup> However, according to the GWP “there is no blueprint for how transboundary water cooperation should be done.” They offer general guidelines as to the key elements to be included in bi- and multi-lateral agreements on transboundary waters, but without any formal treaty or convention, it can be extremely difficult for these guidelines, including developing “trust and personal relations” alongside “broad partnerships...for negotiated outcomes” while “shift[ing] focus and mov[ing] from challenges and constraints to opportunities” to be asserted.<sup>25</sup>

15 The Global Environment Facility. “International Waters.” Accessed November 16 2009.

<[http://www.gefweb.org/interior\\_right.aspx?id=236](http://www.gefweb.org/interior_right.aspx?id=236)>

16 UNDP “Transboundary Waters.”

17 Dellapenna, 439.

18 Ibid, 445.

19 Ibid, 448.

20 Ibid, 448.

21 Ibid, 444.

22 Ibid, 447.

23 Thomas, Dave. 2009. “Global Governance and Water.” Lecture presented for INLR 3101: Global Governance, Mount Allison University, November 16. Sackville, NB.

24 Rogers, 16.

25 Water Governance Facility. “Transboundary Water Cooperation.” Accessed November 11 2009.

<<http://www.watergovernance.org/improvingwatergovernancereform/transboundarywatercooperation.html>>

## REGIONAL MANAGEMENT OF THE NILE

The Nile River is 6485 kilometres long and passes through ten states: Burundi, the Democratic Republic of the Congo, Egypt, Ethiopia, Eritrea, Kenya, Rwanda, Sudan, Tanzania, and Uganda.<sup>26</sup> With this many riparian states, as well as the diverse level of economic development and political influence along the Nile's banks, the possibility of conflict over use of this valuable resource is a continuous possibility.

The Nile has always been essential to Egypt's survival and advancement. It rains rarely and therefore Egypt is dependent on the inflowing Nile water.<sup>27</sup> Ninety percent of the population lives on the banks of the river and all of its agricultural produce and additional export crops, such as cotton, are irrigated with Nile

waters. The Aswan Dam, finished in 1970 provides twenty seven percent of national energy demands.<sup>28</sup> As in many water-scarce countries, Egypt has tended to “(over)exploit the domestic water resources in order to increase water self-sufficiency.”<sup>29</sup> As a lower riparian state, it has a vested interest in what is being done with water resources further upstream. While it contributes no water to the Nile, “it needs every drop.”<sup>30</sup>

Egypt also claims a “historic right” to the Nile, based on precedence despite the complications involved. In ancient Egypt, flooding and irrigation

were vital to the prospering of the culture.<sup>31</sup> “Egypt has always used the waters of the Nile without restriction” and this was confirmed throughout legal international agreements<sup>32</sup> made throughout the last century. Many of these were made under colonial rule, such as the accord between Britain (acting for Egypt) and Italy (acting for Ethiopia) in 1881 and then again in 1902 that forbade projects of any type that would affect the water flow from the Nile's tributaries.<sup>33</sup> Other significant treaties include the 1929 agreement negotiated while Egypt, semi-independent, was still largely under British colonial control. This treaty allocated 48 billion cubic metres of Nile water for Egypt's use, and gave four billion to Sudan.<sup>34</sup> In 1959 tensions arose as Sudan was no longer content to follow “an

agreement that was entered into on its behalf by an erstwhile colonial master, especially as the agreement was seen as being antithetical to its interest.”<sup>35</sup> The result was a new agreement between the two, increasing their legal rights to 55.5 billion cubic metres and 18.5 billion cubic metres respectively.

The main tributaries of the Nile meet in Sudan; however, this country is likely to reach water stress - defined by the Water Stress Index as “the minimum level of water per capita required to maintain adequate quality of life”<sup>36</sup> - by the year 2050.<sup>37</sup> There is also a complex relationship between the Nile and Sudan's north-south conflict. The Jonglei Canal, commenced in the 1970s would have resulted in “165 square kilometres of Sudanese territory flooded and a dislocation of 70 000 people,”<sup>38</sup> and drained the southern Sudd swamp. The project was seen as “insensitive to the plight of southerners who lived in the area”<sup>39</sup> and was halted in 1984 when overt conflict began. One

26 Abiodun, Alao. (2007) *Natural Resources and Conflict in Africa: The Tragedy of Endowment*. Rochester NY: University of Rochester Press, 54.

27 Hoekstra, A.Y. “The global dimension of water governance: Nine reasons for global arrangements in order to cope with local water problems.” UNESCO-IHE. July 2006: 16.

28 Abiodun, 217.

29 Rogers, 20.

30 Hagai, Erikn. (2002) *The Cross and the River, Ethiopia, Egypt and the Nile*. Lynne Rienner Publishers, Inc. Boulder Colorado: 2.

31 Dellapenna, 438.

32 Hagai, 6.

33 Abiodun, 217.

34 Ibid.

35 Ibid, 218.

36 Ibid, 210.

37 Ibid, 212.

38 Ibid, 218.

39 Ibid, 219.

reason for resistance to the dam was the suspected number of Egyptians who would be brought in to assist in construction.<sup>40</sup>

Throughout Sudan's civil war, Egypt has retained friendly relations with both sides and tried "remodeling the Sudanese government's international image"<sup>41</sup> in hopes of minimizing the conflict's impact on the resource they share. It has generally sided with the northern-based government, not desiring a break-off state of southern Sudan, which would be yet another riparian claiming the right to Nile waters.<sup>42</sup>

Egypt and Sudan, although having disputes over the Nile, usually attempt to present a united front against the other riparian states "to ensure that the lower riparian states do not exploit the possible division...to acquire greater control."<sup>43</sup> Egypt and Sudan's exclusion of other Nile riparian conflicts with the Non-navigable Uses Convention, which requires that "all riparian parties have... [to] be involved in any agreements made with respect to the watercourse in question."<sup>44</sup> Unfortunately, political differences among these states have meant that they "have not been able to come up a coherent position against the domination of Egypt and Sudan."<sup>45</sup>

The most vocal and problematic of relationships so far has been that of Egypt with Ethiopia. 85 percent of the Niles' water originates in Ethiopia (the other source being in the mountains of Burundi), including the Blue Nile and the Atabara River,<sup>46</sup> but it "is the worst affected" by river developments. Ethiopia has further argued for the nullification of the 1959 agreement on the grounds that it "impedes development."<sup>47</sup> Indeed, the INGO WaterAid has listed Ethiopia as making

only poor progress toward its sustainable water usage goals.<sup>48</sup>

As of 1977 Ethiopia began to announce plans "to exploit hydrological opportunities in the Nile basin" and have progressed with the construction of several dams and irrigation projects.<sup>49</sup> Formerly, Egypt did not feel as threatened by these developments because it believed they were rather unlikely to be achieved on a large scale. However, "with the end of Marxism and the increasing access to international finance" Egypt's view had now changed, and it manifests this in its political support for Eritrea and Somalia in these states' difficulties with Ethiopia.<sup>50</sup>

Ethiopia's ambitious projects include the El Salam Canal and Sheikh Zayed Canal to irrigate the Sinai and Nubian deserts respectively. These canals would increase Ethiopia's annual quota of Nile water to 71 billion litres.<sup>51</sup> Furthermore, dams such as the Tekeze Project have been put in place to hopefully allow Ethiopia to "emerg[e] as a force in African hydroelectric power generation and become a major electricity exporter within a few years."<sup>52</sup>

There has been no actual widespread violence over the sharing of the Nile; however, it is "undoubtedly one of the most politicized rivers in the world."<sup>53</sup> Egypt has clearly identified "its determination to go to war to protect its access to the Nile River" while lower riparian states claim "they are not having adequate reward for their contribution to the river."<sup>54</sup> Among the various uses of water listed at the beginning of this paper, "the industrial uses are important and more pronounced in larger

40 Ibid, 234.

41 Ibid, 219.

42 Thomas.

43 Abiodun, 218.

44 Dellapenna, 445.

45 Abiodun, 220.

46 Ibid, 216.

47 Ibid, 220.

48 WaterAid UK Site. "Governance and accountability/Tracking commitments." WaterAid UK.

<[http://www.wateraid.org/uk/what\\_we\\_do/policy\\_and\\_research/governance\\_and\\_accountability/7262.asp](http://www.wateraid.org/uk/what_we_do/policy_and_research/governance_and_accountability/7262.asp)>

49 Abiodun, 220.

50 Ibid, 221.

51 Ibid, 217.

52 International Water Power and Dam Construction. 2006.

"Turning Potential Into Power." Accessed November 17 2009.

<<http://www.waterpowermagazine.com/story.asp?sc=2037246>>

53 Ibid, 215.

54 Ibid, 219.

economies” such as Egypt, and yet, although domestic consumption is smaller in less developed countries, “obtaining the needed quantity is crucial”<sup>55</sup> and can be vital for transport or tourism purposes. Meanwhile, there is a “disparity in the extent of these countries dependence on the river and the inverse relation this may have to their contribution to the river” and these political differences have “ripple effects [which are]

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“Despite the seemingly promising aspects of the NBI – its very existence is a clear sign of removal from Egypt's view of upstream development as a declaration of war – the real significance of the NBI is unclear.”

reflected in the politics surrounding the management of the river.”<sup>56</sup> In addition to Ethiopia, lower riparian states, such as Kenya, “have in fact been making subtle challenges to Egyptian domination”<sup>57</sup> further indicating a need for broader negotiations.

Water shortages in Nile riparians is evidently a problem of governance. “Sudan would be among the region's most developed economies, instead of being a low income country” if development were based on total water availability per person. Meanwhile “if total per capita availability of water resources not originating from outside a country was key....Ethiopia would be among the region's most developed economies, instead of the latter being one of the poorest countries on the planet.”<sup>58</sup>

Recently Egypt “appears to have recognized that a fairer division is required, particularly as there is little short of declaring war that it could do to stop the construction of dams upstream” and the Nile

Basin Initiative (NBI) was formed to settle these kinds of disputes.<sup>59</sup>

The NBI was formed in 1999 by the Council of Ministers of Water Affairs of the Nile Basin states to “develop the river in a cooperative manner, share substantial socioeconomic benefits, and promote regional peace and security.” It recognizes the complexity of managing an international river basin but that working together “holds the greatest prospects for bringing benefits to the entire region” and thus has developed a shared vision through a “participatory process” in which all of their projects are framed. There is a great focus on “confidence and capacity [building] throughout the basin” as well as bringing projects from planning into concrete action.<sup>60</sup>

The Water Resource Planning and Management (WRPM) Project is one of the eight projects under the Shared Vision Program. It hopes to initiate or improve national IWRM practices, multi-country projects and create an operational Nile Basin Decision Support System to be “used by riparians to exchange information, support riparian dialogue, and identify cooperative investment projects.”<sup>61</sup> Other positive signs include conferences on women's' role in the NBI and a Nile Basin Development Forum, both held for the first time in 2006.<sup>62</sup>

Despite the seemingly promising aspects of the NBI – its very existence is a clear sign of removal from Egypt's view of upstream development as a declaration of war – the real significance of the NBI is unclear. The commitment of riparian states themselves may not be completely sincere, and “there is a gap between the laws on the books and actual practice.”<sup>63</sup> Outside guidance at a global and

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55 Ibid, 55.

56 Ibid, 216-217.

57 Ibid, 220.

58 Selby, Jan. “The Geopolitics of Water in the Middle East: Fantasies and Realities.” *Third World Quarterly*, Vol. 26, No. 2 (2005): 335.

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59 International Water Power and Dam Construction.

60 Nile Basin Initiative. “NBI Background.” Accessed November 16 2009.

<[http://www.nilebasin.org/index.php?option=com\\_content&task=view&id=13&Itemid=42](http://www.nilebasin.org/index.php?option=com_content&task=view&id=13&Itemid=42)>

61 Water Resource Planning Management Project. “Project Components.” Nile Basin Initiative: Shared Vision Program.

Accessed November 16 2009. <<http://wrpmp.nilebasin.org/>>

62 “NBI Background.”

63 Dellapenna, 441.

international scale remains fragmented, with poor linkages between the bodies responsible and attentive to the transboundary issues faced along the Nile.

The example of the funding for the WRPM shows both of these issues. The sources of financial backing for this project comes from a multi-donor Nile Basin Trust Fund (NBTF) administered by the World Bank, the GEF resources provided from the SVP Nile Transboundary Environmental Action Program and “parallel financing provided by the Government of Germany and implemented by the German Agency for Technical Cooperation.”<sup>64</sup> While support from various sources is not uncommon, the diversity of actors who now have a vested interest in this project could potentially create conflict when those interests, attitudes and priorities differ. Additionally, with the funding coming from external sources – and even the NBTF being administered by the World Bank and not a committee formed of riparian states – the actual willingness and engagement of riparian states toward cooperation is not guaranteed.

This is not to discount the spirit and process in which the NBI and its Shared Values were made. However, a general agreement to cooperate for shared goals of sustainable and equitable development is easier to acquiesce than the existence of or specific details of a particular project. The NBI itself acknowledges that “the Nile Basin, [which] is characterized by water scarcity, poverty, a long history of dispute and insecurity, and rapidly growing populations and demand for water”<sup>65</sup> and it is likely to take time before the NBI truly changes the outlook and behaviour of riparian states, “reluctant to relinquish sovereignty or to honour international norms of equitable apportionment or utilization.”<sup>66</sup> Especially in developing countries, “different and contrasting legislations apply,” with twenty-two legal systems for water existent in the continent of Africa alone.<sup>67</sup>

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64 Water Resource Planning Management Project.

65 “NBI Background.”

66 Ingram, Helen, et al., ed. (2008) *Water, Place, and Equity*. Bogart GA: Massachusetts Institute of Technology, 20.

67 Dellapenna, 441.

## THE ROLE OF A GLOBAL GOVERNANCE FRAMEWORK FOR MANAGEMENT OF TRANSBOUNDARY RIVERS

The Dublin Principles, the UN Convention on Law of Non-Navigational Uses of International Watercourses and the Berlin Rules are evidence of some documents toward a global water governance structure, while the UN has established UN Water as the authoritative body on water issues at a global level. However, these have done little to assist with the development of effective and peaceful transboundary river management along the Nile to the benefit of individual riparian citizens. One of the reasons for this may be that the right to water has only been emphasized in recent years.

The United Nation's 1948 Universal Declaration of Human Rights only implicitly includes water as a human right in its Article 25 pertaining to adequate standards of living. In 2002 efforts to establish the right to water led to the International Covenant on Economic, Social, and Cultural Rights' General Comment No. 15. This states that “the human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses. An adequate amount of safe water is necessary to prevent death from dehydration, to reduce the risk of water-related disease and to provide for consumption, cooking, personal and domestic hygienic requirements.”<sup>68</sup> Enshrining water as a human right is an attempt to at least recognize its importance and exert moral pressure on states to attempt to provide adequate resources for their people. As with other human rights, practicalities such as economic status often limit the application of this principle.

Water and sanitation also have a prominent place in the Millennium Development Goals,<sup>69</sup> unanimously agreed to by the UN member states. This outlines targets to halve the number of people without regular access to safe drinking water.<sup>70</sup> The right to

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68 Hoekstra, 24-25.

69 Ingram, 2.

70 Hoekstra, 25.

water “is highly pertinent for the poorer countries”<sup>71</sup> - such as Ethiopia - which may lack the physical infrastructure and the political will to ensure water for their citizens.

Despite this one formal definition, there are no evident means of enforcing this right to water, especially as it is only clearly specified in relation to domestic use while food, economic, energy and transport uses may be equally or more important to the wellbeing of individuals and a state as a whole.<sup>72</sup> For the Nile, energy generation and irrigation for non-food purposes are some of the most controversial uses of water, accounting for problems with subsistence agriculture, thus the inclusion of these incidental rights is vital to those living alongside the river.

For transboundary water conflicts to be adequately understood, “a recognition of the multiple and incommensurable meanings of water in all of its specific geographical and historical sites of encounter”<sup>73</sup> is necessary. For example, in some African countries, rivers can represent or be the actually considered deities or means of connecting to a supreme being.<sup>74</sup> Water can be a “means of identity”<sup>75</sup> - such that the immigration of outsiders to change this resource, as Sudan intended to do using Egyptian workers, can be interpreted as threatening to locals who relate very personally to the river, more than to simply meet their basic-needs. Considering Africa has about eighty international rivers and lake basins<sup>76</sup> around which innumerable and diverse groups live and associate with each other and their environments, a framework for incorporating these various cultural views is pressing.

The participatory form of IWRM proposed by many water experts and water-issue organizations, such as the World Bank, the GEF and the NBI itself is one such framework. IWRM has a great

deal of strengths, including its focus on comprehensive and basin-wide approaches. Its advocates also want “a more ‘economic’ approach, making use of market incentives and other economic instruments to increase efficiency of water use and allocation.”<sup>77</sup> While an economic approach is not in itself negative, there is the potential for it to be overly focused on free market policies, to the detriment of certain parts of the population, especially those in the most marginalized social groups or geographical areas. The practical implementation of IWRM in Chile also “demonstrat[es] the critical limitations of a narrow approach to water economics and the failure of such an approach to adequately address the legal and institutional arrangements that are essential to IWRM” as advocated in theory.<sup>78</sup>

Various actors are involved in managing river basins, and “consequently, a large number of rules apply and lots of conflicting interests interact at any given level of water management.”<sup>79</sup> While water governance is “clearly characterized by a bottom-up approach...tied as it is to livelihoods,”<sup>80</sup> in respect to individual ownership it faces classic public good challenges. Each person will use it as they like because the problems will be shared with others. This is another reason to have various levels of involvement in water governance.

Communities generally form alongside rivers to have easy access to water, to benefit from the more fertile land bordering rivers, to use the river for transportation and sometimes to be close to a powerful culture symbol, as such, “the predominance of the community's role in ensuring necessary regulations for its management is greater than any other natural resource.”<sup>81</sup> A regional or basin-level perspective is required because “what happens at the headwaters of a river system has clear implications for downstream flooding, water

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71 Dellapenna, 443.

72 Hoekstra, 25.

73 Ingram, 2-3.

74 Abiodun, 5.

75 Ibid, 208.

76 Ibid, 215.

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77 Bauer, 7.

78 Ibid, 28.

79 Finger, Matthias, et al., ed. (2006) *The Multi-Governance of Water*. Ed. Finger, Matthias, et al. Albany, NY: State University of New York Press, 19.

80 Finger, 19.

81 Abiodun, 207.

quality and the environmental health of riverine species and estuaries.”<sup>82</sup> Finally, seventy percent of the world's land area is “potentially influenced by river basin development.”<sup>83</sup> This creates the need for a clear global regime framework managed by a permanent and specified global organization or secretariat with the capacity to amass knowledge on a broad level and to demonstrate concern for the overall water security of the planet.

All of this implies the need for a multi-level system of governance that works above, below and with states. The UNDP itself stresses this, building partnerships at all levels of governance, from local to NGO and state actors and creating “linkages between the political processes, development challenges, and environmental management in transboundary river basins.”<sup>84</sup> This multi-level governance is becoming more common and more possible through globalization and the emergence of non-state actors<sup>85</sup> as “states are too large to solve some local and regional problems, and too small to address some global challenges”<sup>86</sup> especially for “the economic, political or ecological issues linked to water resources.”<sup>87</sup> This does not diminish the importance of national level governance, but the fact that “more and more actors are being included in policy formulation, in the implementation, as well as in monitoring and compliance”<sup>88</sup> indicates that states are willing to share the responsibility of governance and recognize the legitimacy of actors working at different levels.

Most contemporary river governance structures still exist as regional agreements between states. As seen by the Nile example, these may not even include all of the pertinent riparian states. Most of these follow the norm of “limited territorial

sovereignty,”<sup>89</sup> allowing for states to use water flowing into its territory as long as it doesn't harm the territory or interest of other states. In the meantime, these are not the sole doctrines in existence<sup>90</sup> and states may disagree over what constitutes an abuse of a fellow riparian, exhibited in the Nile situation by Egypt's dissatisfaction with Ethiopia's dam and canal projects,<sup>91</sup> which the latter claimed to be crucial to its development and infrastructure.

Transboundary institutions exist at a global level<sup>92</sup> and there is little need to create newer structures without reviewing why the UN Convention on Law of Non-Navigational Uses of International Watercourses has not been widely adopted and without awaiting the impact of the Berlin Rules. The delay with these pieces of policy may be due in part to a “legitimacy gap” prompted by a “lack of technical competence or material reflection” of the structures so far.<sup>93</sup>

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“Outside guidance at a global and international scale remains fragmented, with poor linkages between the bodies responsible and attentive to the transboundary issues faced along the Nile.”

The key to providing opportunities for concrete implementation and thus influence is better “linkages between the political processes, development challenges, and environmental management in transboundary river basins.”<sup>94</sup> This would allow for greater diffusion of knowledge and information,<sup>95</sup> which in turn would allow increased participation, “enhanc[ing] the legitimacy of decision-making, incorporating local knowledge in policymaking and hence mak[ing] policy more

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82 Ingram, 19.

83 Finger, 21.

84 UNDP “Transboundary Waters.”

85 Finger, 3.

86 Ibid, 15.

87 Ibid, 173.

88 Ibid, 9.

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89 Ibid, 31.

90 Ibid, 30.

91 Dellapenna, 444.

92 Ünver, Olcay. “Global Governance of Water: A Practitioner's Perspective.” *Global Governance*, Oct-Dec, Vol. 14 (2008): 411.

93 Mukhtarov, F.G. 2006. “Global Water Governance and the Concept of Legitimacy.” PhD Thesis, 6.

94 UNDP “Transboundary Waters.”

95 Ünver, 413.

context relevant and implementation considerably easier.”<sup>96</sup>

In addition, the legitimacy of any institution, including those to govern water requires a system of enforcement.<sup>97</sup> UN Water could be a possibility for this, if states could become signatories to it, or to a document under its mandate, and if it could be given the power to press consequences upon states which trespassed this document. As with all UN treaties, enforcement will be the most difficult issue to determine in concrete terms. These powers evidently go widely beyond UN Water's original mandate of coordinating international agencies on water issues. As such, it may be more practical to create a new institution with such authority.

Regardless, any institution would also need to be resourced sufficiently, as does “every part of the water sector.”<sup>98</sup> The global level of governance is likely to face the greatest challenges in financing of operations as states may hope to freeloader off of others or to manipulate the system for their own national and political ends.

Finally, the fact that river basins around the world are diverse and cannot be adequately addressed by a global policy must be acknowledged, however, “diversity does not preclude the development of a global law on water.”<sup>99</sup> It is possible to create general rules and dispute resolution strategies that can be adjusted to local, national and regional circumstances but which centre around essential principles such as the human right to sufficient, clean and accessible water, the necessity of accounting for water's cultural meanings, basin-wide management encompassing the concerns of all riparian states and clear communication and transparency between all levels of governance. In this way, global governance legitimize its role in water governance and “provide[s] an institutional framework for countries to work together peacefully.”<sup>100</sup>

## CONCLUSION

The Global Water Partnership says that “water crisis is mainly a crisis of governance.”<sup>101</sup> To ameliorate this situation, there is a need for greater linkages between the already existent and growing actors on local, national, regional and global levels. The latter is the level most lacking cohesive governance structure, and yet has an important role to play in providing general principles and policies, enforcement and mediation for transboundary rivers, which are “characterized by an unequal power relationship between the upstream and the downstream country.”<sup>102</sup> When more powerful actors can exploit water resources at the expense of the less powerful, the negative impacts on a local level have implications for actors on all levels and could be addressed by a more legitimate, culturally-sensitive, fully resourced and authoritative system of global water governance.

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<sup>96</sup> Dellapenna, 443.

<sup>97</sup> Ünver, 413.

<sup>98</sup> Ünver, 415.

<sup>99</sup> Dellapenna, 438.

<sup>100</sup> Ibid, 444.

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<sup>101</sup> Bauer, 9.

<sup>102</sup> Ingram, 31.

## Twilight Guardians

### Covert Operations and the Palestinian-Israeli Conflict

Mike Dunn

In every conflict in human history, from minor skirmishes to wars that change the destiny of humanity, information is vital. In conflicts which rage through the Middle East—through the hearts and minds of the people—knowledge means the difference between life and death. The conflict fought on the ground belays an even deeper conflict; one fought across continent and culture. In the Israeli-Palestinian conflict these covert actors take on many forms. The Palestinian intelligence organizations—functioning as a wide collection of different people and groups—siphon intelligence back to Palestinian paramilitary organizations which then strike against Israel. The Israeli response to such a threat is Mossad<sup>1</sup>; its secretive foreign Intelligence service.

Mossad is tasked with foreign intelligence, and operates outside of the state of Israel—Internal affairs are handled by Shin Bet.<sup>2</sup> Both organizations work in cooperation with the Israeli Defense Forces to provide for the security of the Israeli people and the apparatus of government. Aside from Intelligence gathering, Mossad has additional roles. Historically, it assisted in the immigration of Jews to Israel from countries that prohibited or limited immigration, and carried out covert actions such as assassination.

Mossad's role is deeply engrained with Zionist ideology. Zionism at its core is the expression of Jewish nationalism, and like all previous forms of nationalism, includes certain hereditary elements. It lives on the belief of community and close ties with a certain group. However, it transcends ethnic identity unlike most forms of nationalism. To be a Zionist is to belong to a confessional group—a

group where one's ethnic origin does not come into effect. The Zionist movement has existed for as long as there has been a Jewish religion. However, it has become more popular in the early stages of the 20<sup>th</sup> century where it had attracted popular attention at the end of the first world war<sup>3</sup> and again at the end of the second world war with the creation of Israel—a manifestation of the Zionist movement. It is important to note that Zionism, while being nationalist, is not committed to a specific ideological backdrop, but instead is rife with debates over various tenets of social, cultural, and political thought.<sup>4</sup> It would be more accurate to describe Zionism as a belief in a Jewish Civilization, rather than a Jewish nation.

To state the obvious, Mossad is a committed Zionist organization and exists only to further the Zionist agenda. It kills in the name of Zionism, it steals in the name of Zionism, and it exists only to perpetuate the Zionist State of Israel.

Like virtually every other spy agency in the world, Mossad uses whatever tools it can to accomplish its mission, and true to many popularized movies, Mossad is not above using passports and identification of its allies to mask its movements. Canada plays a central role in the intelligence community; not only is CSIS a valued organization which passes information throughout the world to other spy agencies, but the Canadian passport is a favourite of covert operatives' world-wide. The assassin of Leon Trotsky had one; the assassin of Martin Luther King Jr had one; a member of Al-Qaeda was caught with one; and members of Mossad use Canadian passports regularly<sup>5</sup>.

Mossad uses varied forms of assassination—from shootings to bombings—to do what is necessary to safeguard Israel. During the highly popularized hunt for Black September, the Palestinian terrorist group responsible for killing the Israeli Olympians in the 1972 Munich Olympics, Mossad used a

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<sup>3</sup> Balfour Declaration

<sup>4</sup> As evidenced by the writings Martin Burber, Issah Berlin, and Gershon Scholem.

<sup>5</sup> Hewitt, Steve. The Secret History of the Canadian Passport. Beaver 2004 84(2): 40-42 3p.

<sup>1</sup> Translates from Hebrew to English as "The Institute"

<sup>2</sup> Translates from Hebrew to English as "The Unseen Shield"

variety of methods to kill its targets. In one case it used a bomb under the bed of a terrorist who was staying in a hotel. Others were gunned down.<sup>6</sup> Aside from bombing and shooting targets, Mossad agents have favoured poisons to carry out their missions.

In 1997 Mossad attempted to assassinate Khaled Meshal, one of the leaders in the militant Islamic movement Hamas, by way of poison. The Mossad agents were caught in Jordan with Canadian passports after successfully poisoning the leader. However, when they were caught the international community was placed into an uproar, the Canadian government threatened to pull its ambassador from Tel Aviv, the United States secured the antidote for Meshal, and the Israeli government was forced to release the founder of Hamas, Sheik Ahmed Yassin.<sup>7</sup> Out of this failure for Mossad, Jordan's King Hussien was to benefit the most. The successful negotiation of the aforementioned deal would provide the King with the ability to secure domestic relations and further his own rule of Jordan.<sup>8</sup>

Sources on Mossad's victories can be hard to find, as is proven by the above, a source only admitted to 20 years after the event occurred. What is more common is the publication of embarrassments for the Israeli spy agency. The backlash from such failures can have unforeseen consequences. In the poisoning of Meshal, Israel acknowledged that Hamas was a serious threat to Israel's security. The attempts on Meshal's life caused Hamas to become a serious rival to Arafat's PLO and become a new

voice for the Palestinian cause; one that endures to this day.<sup>9</sup>

The effectiveness of assassinations has always been under debate. If you chop off the head of a snake will the body die? Or will two heads grow in the place of the one? Do assassinations embolden the movement and turn the leaders into martyrs? Or does the assassination of a leader cause the

movement to collapse? There are many factors which ought to be taken into consideration when making the decision to assassinate someone. The type of organization that they work for; the views of the organization on martyrdom; the popularity of the organization and how the death of a leader will be received on the international stage are all important considerations before the assassination is used.<sup>10</sup>

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**“Mossad is a committed Zionist organization and exists only to further the Zionist agenda. It kills in the name of Zionism, it steals in the name of Zionism, and it exists only to perpetuate the Zionist State of Israel.”**

There are generally two types of leaders in an organization. The prophetic and the administrative.<sup>11</sup> The prophetic leaders are those that form the spiritual basis for the movement; administrative leaders handle the organization of the movement, and coordinate attacks. It is possible to be a prophetic leader and an administrative leader at the same time.

Administrative leaders “excel at the critical but quotidian tasks of Institution building, internal communication, and alliance formation.”<sup>12</sup> The work of an administrative leader is very valuable to the organization, but is often overlooked in comparison to the more public role of the prophetic leaders. The administrative leader will also wield less individual authority than the prophetic leader, but in contrast will establish

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<sup>6</sup> Hunting Black September: Now it can be told. Newsweek; 12/6/93, Vol. 122 Issue 23, p35, 1/4p.

<sup>7</sup> Cooperman, Alan and Carey W. English. .S. News & World Report; 10/13/97, Vol. 123 Issue 14, p42.

<sup>8</sup> Albreclit, Kirk and Neal Sandler. A FIASCO IN THE MIDEAST-FOR EVERYONE BUT KING HUSSEIN. BusinessWeek; 10/20/97 Issue 3549, p62-62

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<sup>9</sup> McGeough, Paul. Kill Khalid: The Failed Mossad Assassination of Khalid Mishal and the Rise of Hamas. New Press. 2009.

<sup>10</sup> Bob, Clifford and Sharon Erickson Nepstad. *Kill a Leader, Murder a Movement?*. American Behavioral Scientist. Vol. 50 Issue. 10, June 07, 1372

<sup>11</sup> *ibid*, 1376

<sup>12</sup> *ibid*, 1378

institutional arrangements which will create future leaders more readily.<sup>13</sup>

A prophetic leader will be one who provides vision to a movement; one who can speak persuasively about a movement and its goals. The prophetic leader will recruit the masses into the organization and use their support to effect change far above what could normally be achieved by the organization. In effect, a prophetic leader will add charisma to the organization.<sup>14</sup>

In the Middle East, the most common targets for Mossad assassinations are religious organizations which support the Palestinian movement. With the organizations centred on religion, a power motivator itself, the risk of increasing the strength of the movement is greater. With this in mind it would be prudent to focus the assassinations of Palestinian leaders to administration leaders, rather than the prophetic ones. However, this proves to be difficult as most of the administrative leaders are also prophetic leaders—or at the very least, they are members of the clergy.

When Mossad assassinates a bomb maker, or a Hamas spymaster, they are also assassinating a religious leader. A leader whose force of personality is required to hold the movement together will be a more effective target than one that is already cohesive.<sup>15</sup> The movement to establish a Palestinian homeland is not reliant on a single personality to see it through the days—its membership is cohesive and ideologically independent from a single person. This makes assassinating leaders of the movement virtually pointless without additional measures being taken. The usual side-dish to assassination is repression of the population by overwhelming force.<sup>16</sup> However, if the repression is not enough then it permits the organization to quickly reorganize, and to continue to act.<sup>17</sup>

Organizations like Hamas are perhaps the worst sort to practice assassinations. The leadership is more symbolic than effective. There are vast networks of supporting organizations which will provide funding, arms, and training to the organization. They are backed by religious fundamentalism, and they share in a common culture. The effectiveness of assassination is reduced to removing individual skill sets and talents that the organization can easily replace. For every Khalid Meshal that Israel succeeds in killing, two more are being groomed to replace him.

When talking about assassinating someone, the moral implications are always a concern. From a legal standpoint, international law provides for the assassination of combatants. The difficulty comes in identifying who are combatants and who are not. In recent years what defines a non-combatant has been narrowed, and the definition of a combatant expended. Is someone who simply finances terrorists a terrorist themselves? Should they be eligible for assassination? In terms of punishment the selective targeting of terrorist leaders is more equitable than collective punishment of a population. If a small subset of people is what is causing problems for the Israeli government, it makes sense for Mossad to target that subset, rather than impose harsh restrictions on the entire population.<sup>18</sup> The United States has repeatedly used assassination as a tactic during war.<sup>19</sup> Were assassination prohibited under international law it would be difficult, if not impossible, to conduct warfare on any level.

The main moral issues revolve around the acceptable collateral damage. Is it acceptable to bomb a car containing your target even though the explosion would surely kill the driver and any other passengers? The key in evaluating the moral stance of assassination is the degree of civilian casualties incurred while removing the target. The more civilians dead during the assassination, the less

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<sup>13</sup> *ibid* 1378

<sup>14</sup> *ibid*, 1378

<sup>15</sup> *ibid*, 1378

<sup>16</sup> *ibid*, 1378

<sup>17</sup> Bob, Clifford and Sharon Erickson Nepstad. *Kill a Leader, Murder a Movement?*. American Behavioral Scientist. Vol. 50 Issue. 10, June 07, 1378

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<sup>18</sup> Dershowitz, Alan. *The Case for Israel*. Willy & Sons. New Jersey: 2003. 173

<sup>19</sup> *ibid*, 174

moral that the assassination becomes. While there is no arbitrary amount 'dead civilians' that need to be accumulated to make an assassination wrong, at best the civilian casualties must be kept to a minimum.

In addition to the worries about the moral character of assassinations and the civilian casualties associated there is also a worry about the inherent justice involved. When a target is selected for assassination, there is no recourse to appeal the decision, and often there is no open trial for the target. The target does not get to plead his case why they should not be assassinated. Instead a government official simply signs the death warrant for an individual, and that individual is killed. Can such a system be in accordance with justice?<sup>20</sup>

Democracies in general, turn their collective backs on those who make frequent use of assassinations, or those who have been perceived of dominating their neighbors through military means. Israel finds itself in a strange position, while the other democratic nations are more than willing to use the same tactics and methods that Israel has been forced to use, they condemn Israel for their need to constantly use assassination and military occupations.

Israel has been, essentially, at a state of war since its inception. Every few years there is another threat to Israel, another war, another attack. This has provided many Israeli's with a siege mentality and a distinct sense of paranoia—albeit justified. When speaking on the most recent conflict in Lebanon, former chief of Mossad Efraim Halevy was questioned about the frustration that Israeli's are feeling about the performance of their military and intelligence forces. Halevy replied that the goal of removing Hezbollah completely from Lebanon was never a capability of the Israeli military, and that success can be measured in many different ways.

He drew upon the previous experiences of Yom Kippur and the Six Day War to provide a contrast to the engagements in Lebanon.<sup>21</sup>

When questioned about the ongoing conflict with Lebanon, Halevy stated that he believed that it would only be a matter of time until hostilities resumed with Lebanon. This is indicative of Israeli relations with its neighbors. Each conflict is viewed as a prelude to the next major conflict in the region in a never ending cycle. Halevy was correct when he said that all Hezbollah had to do was survive an

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“When a target is selected for assassination, there is no recourse to appeal the decision, and often there is no open trial for the target. Instead a government official simply signs the death warrant for an individual, and that individual is killed. Can such a system be in accordance with justice?”

encounter with Israel, whereas Israel would have to completely eliminate the entity of Hezbollah's membership as well as any infrastructure that they have accumulated in the region.<sup>22</sup> At the end of the day the power of Mossad and the Israeli Defense forces seem to be unable to effect real, positive change for Israel.

The above analysis highlights one of the major themes in Middle-Eastern politics that is often untouched when examining the situation. The Israeli's have powerful emotional motivations for the actions that they take. Israel feels abandoned by the West, abandoned by the rules of international law, and under siege by its neighbors. These factors contribute to a culture of terror within Israel. The actions of the Israeli government may seem irrational to the outside observer, but it must be understood in the terms of those who are part of that culture. Many horrible acts throughout history have been justified on the irrationality of the other. In this conflict it is important to understand the

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<sup>20</sup> *ibid*, 175

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<sup>21</sup> Frum, Linda. "Former Mossad Chief Efraim Halevy talks to Linda Frum about the war in Lebanon and who won and who lost" *Maclean's*; 9/4/2006, Vol. 119 Issue 35, p16-17. 2p

<sup>22</sup> *ibid*

powerful emotional, cultural, and historical forces which drive the conflict.<sup>23</sup>

The emotional factor is something which permeates the Israeli subconscious mind. It's not something that takes a forefront in the minds of Israeli leaders and the average citizen. Instead it is a backdrop to the actions that they take and the worldview that they hold. When attacked by suicide bombers, or rockets that are blasted into Israeli settlements, a response is necessary by the government. The emotional factor plays a critical role in that decision making process. By feeling that they are surrounded by enemies who do not wish to come to an agreeable solution<sup>24</sup>, Israel feels that it must use force to solve its problems. Sometimes that force is soldiers invading enemy territory, and sometimes that force is Mossad, working behind the scenes to disable international infrastructure and resources that are used to attack Israel. Sometimes, it is both.

It is clear that Mossad plays a vital role of the defense of Israel, and the security forces of the West, but the extent of its long term ability to help any given situation is uncertain. In a perfect world, its services would not be needed, but the conflicts that consume the Middle East are far from simple, and it is doubtful that they will ever be resolved. Until such a solution can be found, however, Mossad will be the silent guardian of Israel. It will ensure that Israelis live to see another day, and that the dream that is Israel is never extinguished.

<sup>23</sup> Moisi, Dominique. "The Geopolitics of Emotion." Doubleday: Toronto. 2009. 128-130

<sup>24</sup> I think it is critical to point out, at this point, that an agreeable solution is a *subjective* term. What amounts to agreeable is in the minds of the Israeli's and the Palestinians. What we think is a proper solution here in the West has no bearing on the situation from the perspective of those affected by the conflict.

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## The Antagonistic Relationship between Sovereignty and Human Rights

Brad Ledgerwood

In liberal democratic countries, many people take their rights—especially their human rights—for granted. However, in several parts of the world human rights violations continue to persist. While guaranteeing basic human rights may seem like a policy which all states and societies can support, it remains a highly contentious issue. Central to the debate is the issue of sovereignty. In other words, when, if ever, states are justified, or perhaps even obligated, to intervene in another country's internal affairs to assure the protection of human rights. This issue is further complicated by the high degree of subjectivity in determining the protections individuals are allotted by the term "human rights." Jack Donnelly believes that human rights are simply, "the rights that one has because one is human."<sup>1</sup> Unfortunately, even this relatively pragmatic definition of human rights has at times been contested. For the purposes of this paper, a broad definition of human rights will be assumed, that of the *Universal Declaration of Human Rights* which states that "all human beings are born free and equal without regard to race, sex, language, religion, political affiliation, or the status of the territory on which they were born."<sup>2</sup> This definition of human rights is arguably the most practical firstly, because the omission of any of these categories could allow for grievous injustices to go unpunished, and secondly, because it is this definition which has proven most discordant with state sovereignty. While the principles of sovereignty such as non-intervention and human rights may seem complimentary, state sovereignty, as a result of its theoretical underpinnings, the norms it has established, and its practical

applications, has demonstrably hampered the implementation of human rights.

While at one time state sovereignty was viewed as a method of facilitating and maintaining peace, it is arguably this assumption which has hampered many attempts to totally revamp the notion of sovereignty.<sup>3</sup> One possible explanation of the continued reluctance of states to intervene in other countries' internal affairs could be the situation under which state sovereignty was born. As Sens and Stoett explain, state sovereignty came about largely as a result of the Peace of Westphalia—which put an end to the 'Thirty Years' War in Europe.<sup>4</sup> Prior to the Peace of Westphalia, it was commonplace for religious groups to intervene in the internal affairs of other states.<sup>5</sup> In an attempt to limit the devastation and wars that came about as a result of external intervention, the Peace of Westphalia was signed.<sup>6</sup> It was one of the first formal recognitions of state sovereignty.<sup>7</sup> The signatories believed that such recognition would serve as a mechanism of peace by creating "territorial states" which were in control of their own domestic affairs.<sup>8</sup> As Stephen D. Krasner states, "Westphalian sovereignty ... refers to the autonomy of domestic authority structures—that is, the absence of authoritative external influences."<sup>9</sup>

Thus, the principle of state sovereignty is derived from the belief that non-intervention in the internal affairs of states is the best policy to promote or, at the very least, maintain international peace.<sup>10</sup> While this may have been an acceptable practice in the seventeenth century, conventional norms regarding civil rights and, more broadly, human rights have

<sup>1</sup> Jack Donnelly, *Universal Human Rights in Theory & Practice*, 2<sup>nd</sup> ed. (New York: Cornell University Press, 2003), 7.

<sup>2</sup> Joshua S. Goldstein and Jon C. Pevehouse, *International Relations: 2006-2007 Edition*, 7<sup>th</sup> ed. (New York: Pearson, 2007), 288.

<sup>3</sup> International Commission on Intervention and State Sovereignty, *The Meaning of Sovereignty*, <http://www.iciss.ca/report2-en.asp#sovereignty> (Jan. 22, 2009).

<sup>4</sup> Allen Sens and Peter Stoett, *Global Politics: Origins, Currents, Directions*, 3<sup>rd</sup> ed. (Toronto: Nelson, 2005), 48.

<sup>5</sup> Sens and Stoett, 48.

<sup>6</sup> Sens and Stoett, 48.

<sup>7</sup> Sens and Stoett, 47-8.

<sup>8</sup> Sens and Stoett, 48.

<sup>9</sup> Stephen D. Krasner, "Problematic Sovereignty," in Stephen D. Krasner, ed., *Problematic Sovereignty: Contested Rules and Political Responsibilities* (New York: Columbia University Press, 2001), 2.

<sup>10</sup> <http://www.iciss.ca/report2-en.asp#sovereignty>.

changed.<sup>11</sup> This is evident in such documents as the *Universal Declaration of Human Rights*, the *Convention on the Prevention and Punishment of the Crime of Genocide*, and the *International Covenant on Economic, Social, and Cultural Rights*.<sup>12</sup> Westphalian sovereignty no longer provides (and most likely hinders) a conception of human rights that is consistent with the previously mentioned documents. Violations of human rights continue to persist, and the perpetrators continue to claim that they are sovereign over the internal policies of their state.<sup>13</sup> In such cases, reaction is often limited to measures such as economic sanction, political condemnation or, potentially, military action.<sup>14</sup> Each of these measures has benefits; however, each can also further exacerbate strained inter-state relations. Hence, a theoretical paradox arises: while respect for state sovereignty may further international unity, it can also undermine the foundations of human rights. By asserting that states should not be subject to “authoritative external influences” (e.g. influence from other states or international organizations) Westphalian sovereignty places limits on other states’ abilities to protect human rights outside their borders.<sup>15</sup>

A recent example of this is the war conducted by Russia against its Chechen population. During the course of the conflict, Russia was reported to have violated several human rights through its use of “extrajudicial executions”, torture, and rape against the Chechen insurgents, as well as the Chechen population at large.<sup>16</sup> These acts are, at least by the United Nations’ (UN) standards, clearly violations of human rights on the basis of sex, religion, and the “status of the territory on which” one was

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“Violations of human rights continue to persist, and the perpetrators continue to claim that they are sovereign over the internal policies of their state. In such cases, reaction is often limited to measures such as economic sanction, political condemnation or, potentially, military action.”

born.<sup>17</sup> Despite these flagrant transgressions on the part of Russia, the European Union (EU), whom many expected to intervene, was relatively silent on the matter.<sup>18</sup> This, some speculated was the result of the European Union’s interest in fostering a “strategic” partnership with Russia.<sup>19</sup> As Andrew Osborne argues, the EU “knows that to voice its own opinion on Chechnya is not without risk.”<sup>20</sup> Accordingly, there is a disconnect between the theoretical foundation of sovereignty (preventing conflict) and the preservation of human rights. Indeed, by respecting Russia’s internal sovereignty, the EU has managed to evade the serious economic

and diplomatic repercussions that could accompany taking a stronger stand.<sup>21</sup> However, can it truly be maintained that non-intervention is the best policy when it allows encroachments on fundamental human rights and freedoms to continue? In this case, it seems that respect for state sovereignty stands in direct opposition to human rights.

In addition, sovereignty has further burdened human rights in the way it has framed interstate dialogue and the options which other states believe they have when peoples’ rights are denied. As Andrew Moravcsik argues, “human rights regimes are not generally enforced by interstate action. Although most arrangements formally empower governments to challenge one another, such challenges almost never occur.”<sup>22</sup> It would seem that just as human rights and actions

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<sup>11</sup> Sens and Stoett, 334.

<sup>12</sup> Sens and Stoett, 334.

<sup>13</sup> Goldstein and Pevehouse, 287.

<sup>14</sup> Goldstein and Pevehouse, 288.

<sup>15</sup> Krasner, 2.

<sup>16</sup> Amnesty International, *Chechnya – human rights under attack*, <http://www.amnesty.org/russia/chechnya.html> (Jan. 19, 2009).

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<sup>17</sup> Goldstein and Pevehouse, 288.

<sup>18</sup> Andrew Osborne, “The EU’s Chechnya Challenge,” *Guardian* [UK], Nov. 7, 2003, <http://www.guardian.co.uk/world/2003/nov/07/worlddispatch.russia> (January 22, 2009).

<sup>19</sup> *Guardian*, Nov. 7, 2003.

<sup>20</sup> *Guardian*, Nov. 7, 2003.

<sup>21</sup> Goldstein and Pevehouse, 289.

<sup>22</sup> Andrew Moravcsik, “The Origins of Human Rights Regimes: Democratic Delegation in Postwar Europe,” *International Organization* 54 (April, 2000): 217.

regarding them are shaped largely by norms, so too is state sovereignty. State sovereignty, by virtue of having preceded contemporary conceptions of human rights, underwent a process of reification long before human rights norms even existed. Moreover, even the United Nations—an advocate for human rights—recognizes state sovereignty.<sup>23</sup>

In recent years, the protection of human rights (even if in rhetoric only) has become a standard practice of many states. While the protection of human rights is one of the current goals of some western democracies, the same could be said of sovereignty in the past. Informal conventions, by their very nature, are perpetually shaped and reshaped by state actions and perceptions of what is acceptable. Given sovereignty's chronological advantage over human rights, it is perhaps even more firmly entrenched in the actions of governments. Arguably, the principle of Westphalian sovereignty still plays an important role, even if only subconsciously, in the way states frame problems and view the set of policy options available to them. The degree to which governments value sovereignty is shown in United Nations peacekeeping operations.<sup>24</sup> Even in cases where the government is not at fault—where the violators of human rights are internal factions—the seemingly neutral act of undertaking peacekeeping operations requires consent of the affected state.<sup>25</sup> The requirement of consent to engage in peacekeeping operations demonstrates that despite commitment to human rights, respect for another state's sovereignty takes precedence over enforcement of human rights.

The Rwandan genocide typifies the way in which state sovereignty restricts the policies that governments will consider in the wake of human rights violations. Samantha Power demonstrates that even after reports of widespread genocide and chaos, the United States (US), once having evacuated its diplomats, saw no role for itself in the country: having paid the price for meddling in the

domestic affairs of Somalia, it would not make the same mistake again.<sup>26</sup> Furthermore, even within the international community there was very little support for UN intervention.<sup>27</sup> Almost any attempt to intervene was thwarted and when a UN force was finally deployed, it lacked the size and strength to make any substantive difference: a result of lukewarm international support.<sup>28</sup> The UN peacekeeping force was further weakened when Belgium, due to popular backlash, withdrew the majority of its forces.<sup>29</sup> The Rwandan example demonstrates that despite international support for human rights, states are still very apprehensive about intervening into the affairs of other states. Furthermore, as Belgium's actions indicate, even when promoting such lofty goals as the prevention of genocide and the protection of human rights, popular support for such initiatives is, at best, fleeting. Citizens in democratic countries are especially wary of any attempt to intervene in what they view as a primarily domestic issue of another state, especially when such intervention leads to the death of its own military personnel.

In addition to shaping the way both governors and the governed view international human rights abuses, sovereignty has further buttressed the imposition of human rights upon 'Non-Western' governments, particularly those that are undemocratic or non-secular in nature. While few citizens of any liberal democracy would argue that people should be discriminated against on the basis of race, sex, language, or religion, the point is, that these are citizens of democratic (usually 'Western') governments. However, what if, far from denouncing discrimination on such grounds, government allowed it, and even institutionalized it?

The basic premise upon which liberal democracies rest, and more specifically, the civil rights of such countries, is that peoples' beliefs, opinions, and

<sup>23</sup> <http://www.iciss.ca/report2-en.asp#sovereignty>.

<sup>24</sup> Sens and Stoett, 265.

<sup>25</sup> Sens and Stoett, 265.

<sup>26</sup> Samantha Power, "Bystanders to Genocide," *The Atlantic*, <http://www.theatlantic.com/doc/200109/power-genocide> (Jan.20, 2009).

<sup>27</sup> <http://www.theatlantic.com/doc/200109/power-genocide>.

<sup>28</sup> <http://www.theatlantic.com/doc/200109/power-genocide>.

<sup>29</sup> <http://www.theatlantic.com/doc/200109/power-genocide>.

actions, even if we do not agree with them, are their own, and as such, should be permitted so long as they do not endanger, or discriminate, against anyone else. As John Stuart Mill argues, “When a person’s conduct affects the interests of no persons besides himself [sic], or needs not concern them unless they like,” that person should have the “freedom ... to do the action.”<sup>30</sup> The fundamental rights championed in the *Universal Declaration of Human Rights* and generally those that make up any evaluation of human rights, are essentially liberal views.<sup>31</sup> The right not to be discriminated against on the basis of any of the enumerated grounds above seems to tacitly acknowledge the right to ‘cultural relativism.’<sup>32</sup> This being said, can liberal democratic countries truly reject internationally, what in practice, they accept domestically? Nowhere is this dissonance between liberal human rights and the cultural traditions of existing societies more apparent than in Islamic states.

In many Islamic countries, the values of both moderate and fundamentalist Muslims stand in direct contravention to liberal notions of rights and freedoms. Many of these societies are patriarchal in nature, condemn any form of pre- or extra-marital promiscuity, outlaw any faith apart from Islam, and have limited gender equality. While most inhabitants of liberal democratic countries might find these practices, even in their mildest forms, archaic and fundamentalist in nature, there is no more legitimacy to ‘our’ claim of what is right and just than there is to theirs. In contrast, many ‘non-western’ governments view the spread of universal human rights as a form of “Western moral imperialism”.<sup>33</sup> While liberal thought may justify its beliefs about human rights on basis of humanistic notions of ‘self-actualization,’ international conventions, and perhaps even conceptions of the ‘state of nature,’ Islamic states can rebut these claims with an appeal to cultural relativism and the writings of the Quran. Furthermore, Islamic states

can appeal to what is, perhaps, a more widely accepted concept than the aforementioned arguments: the notion of state sovereignty.<sup>34</sup> In the absence of any objective, absolute, moral values, neither side can claim to have the ‘correct’ conception of human rights. As a result, the appeal to state sovereignty supersedes the enforcement of human rights conventions.

Despite some progress in the spread of human rights, respect for states’ sovereignty continues to take precedence. The mass dissemination of human rights continues to be slowed by the Westphalian understanding of sovereignty. States’ internalization and reification of sovereignty has only exacerbated the situation. However, the first step has already been taken by redefining sovereignty. On the issue of sovereignty, Kofi Annan maintains that, “States are now widely understood to be instruments at the service of their peoples, and not vice versa.”<sup>35</sup> This view is further complimented by the Pugwash paper which, in trying to rework sovereignty, stated that, “sovereignty is not -- and has never been -- an unlimited power to do all that is not expressly forbidden by international law”.<sup>36</sup> By adopting the human-centric view of Annan and supplementing it with the latter view of limited power, a new approach to state sovereignty emerges. This approach recognizes that sovereignty is for the benefit of the people, not the state, that sovereignty is not simply a mechanism to avoid international conflict, but rather, internal human rights abuses as well. This approximation of sovereignty not only nullifies the assumption that sovereignty is to avoid internal conflict but, in the process, provides a break from traditional notions of sovereignty that continue to structure international action. However, while progress towards the acceptance of universal human rights is being made, it is still far from being accepted and Westphalian sovereignty remains sovereign.

<sup>30</sup> John Stuart Mill, *On Liberty and Other Essays* (New York: Oxford University Press, 1998), 84.

<sup>31</sup> Sens and Stoett, 332-33.

<sup>32</sup> Sens and Stoett, 333.

<sup>33</sup> Michael Ignatieff, “The Attack on Human Rights,” *Foreign Affairs* 80 (November-December, 2001): 102-03.

<sup>34</sup> <http://www.iciss.ca/report2-en.asp#sovereignty>.

<sup>35</sup> Kofi A. Annan, *Two concepts of sovereignty*, United Nations <http://www.un.org/News/ossg/sg/stories/kaecon.html> (Jan. 20, 2009). [Original Source: *The Economist*, September 18, 1999].

<sup>36</sup> Alain Pellet, *State sovereignty and the protection of fundamental human rights: an international law perspective*, Pugwash Online: Conferences on Science and World Affairs, <http://www.pugwash.org/reports/rc/pellet.htm> (Jan. 19, 2009).

## Willful Ignorance:

### Examining the UN's Effectiveness in the Rwandan Genocide

Eric Blake

In April, 1994 Alison De Forges and Monique Mujawamariyaw<sup>1</sup> were actively lobbying the US government in order to convey the seriousness of events in Rwanda. Eventually they secured a meeting with the National Security Advisor, Anthony Lake. This was the type of person they needed, someone within the Clinton administration with the power to influence policy<sup>2</sup>. Upon meeting with Lake they presented the case for acting in Rwanda for over thirty minutes. After seeing Lake listen relatively emotionless for such a long time De Forges asked him what they had to do to be more effective. To this he replied "Make more noise"<sup>3</sup> (De Forges). If a sentence can sum up the world's failure to act in Rwanda, then it is represented in those three words. In the eyes of the United States, the International Community<sup>4</sup> and the United Nations, Rwanda was only worthy of quick, meaningful responses if the people asked for them first. The question that needs to be asked however, is why?

There were many failures in the UN's reaction to Rwandan Genocide. There were major logistical and resource shortages, very few nations were willing to provide serious troop commitments, both the UN bureaucracy and the bureaucracies of

major countries gave little attention to the crisis and failed to act quickly even if they did. Even more, the international community was suffering from peacekeeping fatigue and refused to even properly fund the mission let alone provide it with a sufficient mandate. While this is an impressive list of problems it is surprising that the majority could have been solved or reduced with the presence of adequate political will on the part of the international community. This essay will demonstrate that it was a lack of will that was behind the majority of the failures in Rwanda and that had the UN and the international community given Rwanda a higher priority then arguably the greatest failure in UN history could have been significantly reduced.

In attempting to understand modern social and political divisions within Rwanda, one must first examine the historical relationship between, what are today classified as the dominant ethnic groups in Rwanda, the Hutu and Tutsi. There are multiple theories explaining how Hutu and Tutsi came into being. Colonialists believed that the Tutsi had migrated into Rwanda, where the Hutu already lived. This made sense since the Hutu were shorter and squatter, while the Tutsi were tall and slender. However modern scholarship has cast doubt on this as the more protein rich diet of the elite Tutsi class would have led to greater overall population height.<sup>5</sup> This idea that Tutsi is a reference to class instead of race is bolstered by research from Dominique Franche who demonstrated that the one foot average difference between Tutsi and Hutu height was the same as an aristocrat and a peasant in eighteenth century France<sup>6,7</sup>.

In Rwanda there is no real consensus about how to define Hutu or Tutsi. The Rwandan Patriotic Front (RPF)<sup>8</sup> used to claim that there was no difference, while the proponents of Hutu power

<sup>1</sup> Alison De Forges was one of the preeminent Rwanda experts of the day and Monique Mujawamariyaw was a Rwandan Human Rights worker.

<sup>2</sup> Alison de Forges, *Ghosts of Rwanda: Interview Alison de Forges*, PBS Frontline, <http://www.pbs.org/wgbh/pages/frontline/shows/ghosts/interviews/desforges.html> (Oct. 1, 2003)

<sup>3</sup> In Anthony Lake's words noise refers to "Noise means television interviews. Noise means newspaper articles. Noise can even mean peaceful demonstrations, etc." Source: Anthony Lake, *Ghosts of Rwanda: Interview Anthony Lake*, PBS Frontline, <http://www.pbs.org/wgbh/pages/frontline/shows/ghosts/interviews/lake.html> (Dec. 15, 2003)

<sup>4</sup> The term 'International Community' refers to the world collection of states, in particular the major world powers.

<sup>5</sup> Mahmood Mamdani, *When Victims Become Killers* (Princeton: Princeton UP, 2001), 43-5.

<sup>6</sup> The debate over the anthropological and biological history of Hutu and Tutsi is another branch of scholarship entirely. For a thorough examination of the topic read Mamdani.

<sup>7</sup> Mamdani, 45.

<sup>8</sup> The RPF was one of the belligerents in the Rwandan Civil War,

would have vehemently denied such an assertion.<sup>9</sup> In the years before the genocide the Hutu comprised 84-90% of Rwanda's population, the Tutsi were roughly 9-15%, while the Twa (pigmy) were 1%. It would be incorrect to label them tribes for they speak the same language, live in the same area and have the same culture and religion<sup>10</sup>.

Regardless of anthropological arguments regarding the historical formation of these groups there is no debate about the modern implications of the Hutu, Tutsi divide. Most importantly it was under Belgian colonial rule that the racial divisions were codified. Each citizen was classified as either Tutsi, Hutu or Twa. In addition the Belgians crafted a system of government that favoured the Tutsi.<sup>11</sup> Tutsi's were favoured for jobs and education and assumed the role of colonial elite.<sup>12</sup> Their aim was to take the pre-existing ruling class in Rwanda and mold it into one that could manage the country effectively.<sup>13</sup>

The Belgian system continued until the late 1950s when rising racial violence caused the Belgians to accelerate the process towards independence<sup>14</sup>. The violence caused the Tutsi monarch and 200,000 fellow Tutsis to flee the country. Independence in 1962 brought elections and the country's first President was Gregoire Kayibanda, a Hutu<sup>15</sup>.<sup>16</sup> Rwanda was initially stable, yet an air of ethnic distrust was still prominent and this erupted in 1963 when a group of exiled Tutsis invaded the country. They had little success, yet ethnic violence still swept the country. Throughout the next decade there would be periodic outbreaks of similar ethnic violence. The Hutu were not a unified political force however, in 1973 Defense Minister Juvenal Habyarimana, a northern Hutu, began a coup

against the Southern Hutu president.<sup>17</sup> He was successful and one dictatorship quickly replaced another. The Habyarimana government itself was repressive. Some of their measures included forcing all citizens to carry identification cards with their racial status. Changing your status as well as moving your residence was illegal. In this society the colonial roles were reversed. The Tutsi were marginalized and discriminated against. For example, there was only one Tutsi cabinet member and only a certain portion of Tutsis were allowed to enter school and university.

A crucial event occurred in 1975 when Rwanda signed a military agreement with France. This agreement provided Rwanda with military training, assistance, and entrance into the Francophone to further solidify their relationship<sup>18</sup>. The French quickly became Rwanda's main military and financial benefactor<sup>19</sup>. The government of Habyarimana would never have survived had it not been for the intervention of French forces to protect the government against the Rwandan Patriotic Front.<sup>20</sup> The Rwandan Patriotic Front was a creation of the large community of Rwandan Tutsi refugees in Uganda that had fled the violence prior to independence. They invaded Rwanda in 1990, making progress before they were beaten back by the Rwandan army along with French and African troops sent to bolster the Rwandan regime<sup>21</sup>. The RPF regrouped and was revitalized by new leader Paul Kagame<sup>22</sup>.<sup>23</sup> Crucially the RPF

<sup>9</sup> Mamdani, 41.

<sup>10</sup> Scott Straus, *The Order of Genocide* (Ithaca: Cornell UP, 2006) 19-20.

<sup>11</sup> Mamdani, 88-9.

<sup>12</sup> Norrie Macqueen, *United Nations Peacekeeping in Africa since 1960* (Great Britain: Pearson Education, 2002), 62.

<sup>13</sup> Mamdani, 88-9.

<sup>14</sup> L. R. Melvern, *A People Betrayed: The Role of the West in Rwanda's Genocide* (New York: St. Martin's Press, 2000) 16.

<sup>15</sup> President Kayibanda soon turned into a dictator.

<sup>16</sup> Macqueen, 62.

<sup>17</sup> Macqueen, 62-3.

<sup>18</sup> The Francophonie is a worldwide group of countries that either have French as an official language or contain a significant population of French speakers.

<sup>19</sup> After decolonization France created a sphere of influence in the French speaking parts of Africa and fostered close ties with new African states to maintain that influence. Rwanda was important because it was situated on the border of what was once British controlled East Africa.

Source: Melvern, 24.

<sup>20</sup> Melvern, 24-5.

<sup>21</sup> It should be noted that during this conflict the Rwandan government was desperate for weapons, so they approached Egypt in hopes of procuring a deal for Egyptian weapons. The Egyptian Minister of Foreign Affairs who handled the negotiations of the arms deal was soon to be Secretary-General Boutros-Boutros Ghali. Source: Melvern 31.

<sup>22</sup> Paul Kagame's family fled Rwanda in 1959, he was one of the original members of Museveni's guerillas and was later highly

had become no longer a solely Tutsi group as the extremism of the Habyarimana regime had alienated many moderate Hutu. Furthermore, due to the significant assistance provided to the RPF from Uganda the RPF became largely Anglophone<sup>24</sup>. This idea of an Anglophone army invading a Francophone country was an important development for France, as it did not want to see its influence amongst French speaking nations reduced<sup>25, 26</sup>. This desire to retain influence amongst the Francophone, was the primary reason for their support of Habyarimana and it further influenced their actions during the genocide.

The Organization of African Unity (OAU) sent a monitoring force to the area but it made little difference. Civil war resumed and continued interventions by French forces and arms shipments were necessary for the government's survival.<sup>27</sup> In 1993 sufficient international pressure was applied to both sides that they agreed to come to the negotiating table. The Arusha Peace Negotiation took thirteen months to complete, and there were delegations from Burundi, Zaire, Senegal, Uganda and Tanzania, as well as the US, France, Belgium and Germany.<sup>28</sup> The UN even got involved by sending a mission to monitor the negotiations.<sup>29</sup> The Accords called for a broad-based transitional government (BBTG) that was to be in power for no more than twenty-two months. At the end of that period democratic elections were to be held. The BBTG consisted of the President's party, the RPF and the Hutu moderate opposition. The Presidency was to become a ceremonial position, while the Rwandan army and the RPF would

integrate. The refugees would have a right to return and as a first measure of good faith a battalion of RPF soldiers were to be moved into the Rwandan capital of Kigali. Many diplomats were ecstatic about the deal, calling it the best peace deal in Africa. It is from this hopeful point that the discussion must begin regarding how it all went wrong<sup>30</sup>.

The International Community's response to the Rwandan civil war was relatively productive during the 1990-93 period. The negotiations at Arusha were undertaken partially because of repeated instances of international pressure. It was not long however before problems began to arise with the agreement. While the United Nations did send a delegation to the negotiations to encourage progress, they were only observers and had no official say over the treaty's outcome. This was important since the UN was proscribed a central role in the implementation of the Accords, yet it had no say on whether such a role was practical.<sup>31</sup> To make matters worse the treaty called for the UN to deploy 4200 soldiers thirty-seven days after the Accord was signed. At the time, the average UN deployment took six months to get on the ground. Furthermore the accords called for the UN to undertake disarmament, demining, and deliver relief aid all while performing their main function of safeguarding the peace process.<sup>32</sup> Although specific details from these negotiations are not obtainable it is difficult to believe that the parties would have proceeded with such a timetable had the UN told the negotiators that such a timetable was impossible.

At any other time this would have already put the UN in a difficult position to execute both a timely and effective deployment. The early nineties however, was a unique time in the UN's history. The UN had begun taking a renewed role in international crises following the fall of the Soviet Union, and at the time of the Arusha Accords the UN was engaged in 17 missions worldwide,

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involved in the Rwandan National Resistance Army (precursor to the RPF).

Source: Melvern, 31.

<sup>23</sup> Melvern, 30.

<sup>24</sup> Besides the military aid the Ugandan government provided to the RPF, many RPF soldiers had fought in Yoweri Museveni's National Resistance army against the Ugandan government under Milton Obote. This provided RPF soldiers with invaluable combat experience.

Source: Macqueen, 63. And Melvern, 27-8.

<sup>25</sup> Macqueen, 64.

<sup>26</sup> Melvern, 24-5.

<sup>27</sup> Macqueen, 64.

<sup>28</sup> Melvern, 52.

<sup>29</sup> Macqueen, 64.

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<sup>30</sup> Melvern, 52-3.

<sup>31</sup> Macqueen, 65.

<sup>32</sup> Macqueen, 65. and Melvern, 82.

including large scale conflicts in both Somalia and Bosnia.<sup>33</sup> Moreover, the deaths of US soldiers in Mogadishu were very detrimental to UN efforts to secure troop contributions from member states.<sup>34</sup> Simply put, it was not going to be easy for the United Nations to find the troop contributions for a strategically unimportant country like Rwanda within this context. The Department of Peacekeeping Operations knew this and proposed sending roughly half the requested troops with a weaker mandate than the one outlined in the Arusha Accords.<sup>35</sup> Despite this reduced force it still took five months for the UN to secure contribution for the United Nations Assistance Mission for Rwanda (UNAMIR)<sup>36</sup>. The inevitable delays on the Arusha timetable cannot fully be blamed on the UN or the International Community, since as stated above the demands placed upon them were simply too unrealistic. Yet the UN observers at the negotiations failed by not making it clear that the timetables being negotiated were incredibly naïve.

Once the creation of the United Nations Assistance Mission in Rwanda (UNAMIR) was eventually secured the preparations for deployment began. Almost immediately the Force Commander, General Romeo Dallaire learned the difficulties of the United Nations procurement system. First, the UN provided little background information to General Dallaire. Upon first flying to Rwanda his only information came from an encyclopedia article Dallaire's assistant borrowed from a public library.<sup>37</sup> UNAMIR had to fight for all of its supplies and faced consistent shortages of everything from ammunition, to rations, to vehicles, to basic support staff. They had no intelligence capability and the five permanent members of the Security Council did not provide

them with relevant intelligence, since it was simply not required.<sup>38</sup> Although logistical problems are common to many UN missions, their occurrence in this case was exceptional<sup>39</sup>. The lack of proper planning, intelligence and basic logistics undoubtedly contributed to the slow start to UNAMIR and limited its effectiveness.

UNAMIR troops began arriving in December 1993 to fulfill their mandate<sup>40</sup>. They had little initial success and the situation in Rwanda quickly began to deteriorate<sup>41</sup>. In January 1994 Dallaire was contacted by an anonymous source who claimed to be a well connected member of the Rwandan government.<sup>42</sup> Belgian Commander Luc Marchal went to meet the informant code-named 'Jean-Pierre.' 'Jean-Pierre' told Commander Marchal a chilling story about the training of militia, distribution of weapons, and the registration of the Tutsi. Famously he told Marchal that the Interhamwe<sup>43</sup> could kill 1,000 Tutsis in twenty minutes (Dallaire 2). He offered to tell them the location of various weapons caches in exchange for the safety of his family and himself.

Dallaire immediately asked for permission to seize the weapons caches and for 'Jean-Pierre's' protection. He expressed in the cable to the Department of Peacekeeping Operations (DPKO) that he could not rule out the possibility that this was a set-up, yet that did not deter his final recommendation to move forward (Dallaire 2). However, he was denied this request by the head of the DPKO, Kofi Annan. Annan instead instructed Dallaire that he was told to warn President Habyarimana of what they knew.<sup>44</sup> These instructions were given despite a leading opposition

<sup>33</sup> Macqueen, 66.

<sup>34</sup> The full ramifications of the Battle of Mogadishu will be addressed later.

<sup>35</sup> Macqueen, 66.

<sup>36</sup> Terry M. Mays, *The Pearson Papers Paper Number 7: The 1999 United Nations and 2000 Organization of African Unity Formal Inquiries: A Retrospective Examination of Peacekeeping and the Rwandan Crisis of 1994* (Clementsport NS: The Canadian Peacekeeping Press, 2002) 17.

<sup>37</sup> Power, Samantha. "Bystanders to Genocide". *The Atlantic Monthly*. September, 2001, 2.

<sup>38</sup> Mays, 15-7.

<sup>39</sup> Mays, 16-7.

<sup>40</sup> Mays, 3.

<sup>41</sup> Deterioration refers to political deadlock, trouble implementing the Arusha Accords and acts of racial and political murder. Source: Macqueen, 68-9.

<sup>42</sup> Romeo Dallaire, *Code Cable: Request for Protection for Informant*, United Nations, <http://www.gvu.edu/~nsarchiv/NSAEBB/NSAEBB53/rw011194.pdf> (Jan. 11, 1994), 1.

<sup>43</sup> The main Hutu Power militia

<sup>44</sup> Melvern, 94.

politician vouching for the informant's credibility and the informant himself showing UNAMIR weapons hidden in the basement of the headquarters of the National Republican Movement for Democracy and Development (MRND), Rwanda's ruling party<sup>45</sup>, as well as hidden under bushes in the streets of Kigali.<sup>46</sup> In the end 'Somalia syndrome' had reared its head in Rwanda. In Somalia twenty-three Pakistani peacekeepers were killed performing an arms seizure and this eventually led to the catastrophic Battle of Mogadishu, where 19 US soldiers died<sup>47</sup>. The public backlash after the debacle in Mogadishu was disastrous and effectively ended the UN's mission in that country. In the aftermath of that event there was the creation of what was called the 'Mogadishu Line', which essentially meant that the US would not get involved in an operation that would involve casualties like it did in Somalia<sup>48</sup>. As well, DPKO leadership was afraid of such a disaster happening again and ignored the warnings<sup>49</sup>.

Outside of the UN the fax did not gain much traction. Secretary-General Boutros-Boutros Ghali later dismissed the fax, saying such things are commonplace at the UN<sup>50</sup>. Kofi Annan defended his interpretation, by saying that even if they had taken it to the Security Council they would not have acted<sup>51</sup>. According to Tony Marley, a State

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Department advisor at the time, he knew of the cable but he and many others dismissed it. This occurred because they had been receiving warnings of genocide in Rwanda since 1992, so they thought this was just another false alarm<sup>52</sup>. This seems to be a poor excuse, since 1992 to the beginning of 1994 is not a long time frame for planning genocide. Furthermore the crime they were being warned of was so serious that to have written it off as just more false alarms after such a short period of time is inexcusable. At the same time however, many of the bureaucrats in the US government were under the impression that those in more senior positions simply just did not want to hear about Rwanda so it just was not worth trying to raise concerns<sup>53 54</sup>.

Kuperman argues that even if the international community had wanted to invade Rwanda it would have found it hard to completely stop the genocide, contrary to the beliefs of Melvern, Power, Cohen and Dallaire. He states that the poor infrastructure and lack of a seaport would have made airlift the only viable option for transporting an intervention force (Kuperman 52-3). He also believes that a 15,000 strong intervention would have been necessary to constitute an effective response (Kuperman 64). While Kuperman's analysis is almost certainly correct under the assumptions that he puts into place, the assumptions themselves may be faulty<sup>55</sup>.

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<sup>45</sup> Ruling Rwandan political party

<sup>46</sup> Melvern, 93-5.

<sup>47</sup> Jared Cohen, *One Hundred Days of Silence: American and the Rwandan Genocide* (Lanham: Rowman & Littlefield Publishers, Inc., 2006) 49-50.

<sup>48</sup> Other Western countries saw the public reaction in the US to the death of the soldiers and came to the same conclusion the Americans did, that casualties in strategically unimportant foreign nations was just not worth it politically.

<sup>49</sup> Melvern, 92.

<sup>50</sup> Boutros Boutros-Ghali, Kofi Annan, *Ghosts of Rwanda: Interview Boutros Boutros-Ghali*, PBS Frontline, <http://www.pbs.org/wgbh/pages/frontline/shows/ghosts/interviews/ghali.html> (Jan. 21, 2004)

<sup>51</sup> Kofi Annan, *Ghosts of Rwanda: Interview Kofi Annan*, PBS Frontline, <http://www.pbs.org/wgbh/pages/frontline/shows/ghosts/interviews/annan.html> (Feb. 17, 2004)

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<sup>52</sup> Tony Marley, *Triumph of Evil: Tony Marley*, PBS Frontline, <http://www.pbs.org/wgbh/pages/frontline/shows/evil/interviews/marley.html>

<sup>53</sup> Although the sourced interviewee was a Defense Department official, judging from the government mood described in Cohen chapter 7 and Power ("A Problem from Hell") chapter 10 it is not a stretch to apply it to the bureaucracy in general

<sup>54</sup> James Woods. *Triumph of Evil: James Woods*, PBS Frontline, <http://www.pbs.org/wgbh/pages/frontline/shows/evil/interviews/woods.html>

<sup>55</sup> Kuperman makes informed assumptions about a hypothetical intervention regarding the necessary force strength, logistical capability and arrival times. As well as assumptions surrounding the potential effects of the various scenarios he discusses.

To illustrate that point it is worth examining that the various operations that evacuated most expatriates from Rwanda. The US made the decision to evacuate its foreign nationals from Rwanda on April 7<sup>th</sup>, and the operation concluded April 10<sup>th</sup>.<sup>56</sup> In addition, several European countries responded as follows: “France deployed 450 troops in Kigali with 800 others on standby in Bangui and N’Djamena, while Belgium dispatched 1,000, half to Kigali with the balance held in reserve in Nairobi. Shortly afterwards 80 Italian paratroopers arrived”.<sup>57</sup> The US also had 300 soldiers on reserve in Bujumbura in case their convoy leaving Rwanda came under attack. These incredibly fast reaction times demonstrate that modern militaries can move very quickly when ordered<sup>58</sup>. While these troops were in Rwanda they were not attacked or challenged, they showed their weapons openly without meeting resistance, and the militias essentially stood down.<sup>59</sup> While predicting how the militias would have reacted if these troops stayed is impossible, over the course of the genocide the perpetrators showed little willingness to commit acts of violence in front of Western observers<sup>60</sup>. Sending in troops so fast would have created difficulties in supplies as Kuperman suggests and there would have been

great difficulty placed on the troops since they would have received next to no mission specific training<sup>61</sup>. Despite those issues, however, this situation lends significant credence to the idea that the international community could have put sizeable reinforcements for UNAMIR on the ground in a very short period of time if they so desired. Kuperman might argue that this would not have been enough to halt the genocide. Whether that is true or not is irrelevant, an intervention of the size depicted above would have arguably saved thousands of lives.

So why was an intervention not attempted? Besides a lack of political will and strategic interest, ‘Somalia syndrome’ also had a large role to play in why the US and the rest of the Western world did not want to intervene. The violence in Rwanda occurred immediately after “The Battle of Mogadishu”, and the Clinton Administration was still reeling from that disaster. Deputy Secretary of Defense William Perry said, “The voice of criticism over the Somalia debacle was so overwhelming that such a meeting [on ruling out US intervention in Rwanda on account of Somalia] would not have been necessary to determine that Rwanda, six months after Somalia, was a political non-starter.”<sup>62</sup>

This feeling was codified soon after with Presidential Decision Directive (PDD) 25, which was signed on May 3<sup>rd</sup>, 1994. PDD-25 did not make peacekeeping impossible, but it did make it much more difficult for the US to become involved or provide consent in the Security Council. It aimed to ensure that an approved peacekeeping mission would be effective and that they would not descend, as Somali did, into peace enforcement.<sup>63</sup> The policy stated that US forces could not serve under foreign command, missions must be attached to firm political goals, they could not be open ended and consent of the parties was very important. Those are just a few of the many other

<sup>56</sup> Samantha Power, *A Problem from Hell* (New York: Basic Books, 2002) 351.

<sup>57</sup> Douglas Anglin, *The Pearson Papers Paper Number 6: Confronting Rwandan Genocide: The Military Options What Could and Should the International Community Have Done?* (Clementsport: The Canadian Peacekeeping Press, 2002), 38.

<sup>58</sup> It is important to note the distinction between normal UN reaction times, such as when UNAMIR first arrived and the proposed reaction times for an emergency intervention into Rwanda. The hypothetical emergency intervention into Rwanda would have to operate outside the DPKO bureaucracy and it would require that only highly trained militaries take part. It would have been risky, highly unconventional and quite different from traditional UN peacekeeping missions. UNAMIR was supposed to be a normal UN peacekeeping mission while the hypothetical intervention into the genocide was last move of desperation. The post Arusha period should not have required Western government to undertake such a quick intervention.

<sup>59</sup> Melvern, 142.

<sup>60</sup> There are exceptions to this statement. Ten Belgian peacekeepers were killed, however that was part of a plan to precipitate a UN withdrawal.

Source: Philip Gourevitch, *Triumph of Evil: Philip Gourevitch*, PBS Frontline, <http://www.pbs.org/wgbh/pages/frontline/shows/evil/interviews/gourevitch.html>

<sup>61</sup> To answer question of whether the lack of mission specific training would be a major problem we would have to speculate on how the intervening force would have been received by the militias and this is an issue that is beyond the scope of this case study.

<sup>62</sup> Cohen, 50.

<sup>63</sup> Cohen, 51.

conditions that would have to be met for the US to support a mission.<sup>64</sup> This directive made it much harder for the US to become involved in non-traditional international crises. To make matters worse the United States heavily promoted the ideas of PDD-25 within the Security Council and imposed the conditions of the directive upon the debate surrounding UNAMIR II. This meant that even if US troops were not taking part in the mission the US wanted it to abide by certain conditions of PDD-25, if the US was to vote in favour of an initiative.<sup>65</sup> The line of thinking was that if the US-approved a peacekeeping mission that ran into trouble, then it would be called upon to bolster the mission down the road. This rationale however, would prove a hindrance for all future efforts to intervene in Rwanda as the UN's ability to intervene was now severely restricted.

After the death of the Belgian peacekeepers on April 7<sup>th</sup><sup>66</sup>, UNAMIR began to decline. Belgium pulled out on April 14<sup>th</sup>, and on April 21<sup>st</sup> the Security Council decided to draw UNAMIR's forces down to 270, despite Red Cross estimations that the dead had reached the hundreds of thousands.<sup>67</sup> As the genocide became more apparent and public pressure for action mounted, the UN was soon forced to revisit the idea of bolstering UNAMIR. The UN's resolution to withdraw most of UNAMIR left the Secretary-General with the decision of putting further options about UNAMIR before the Council. The Secretary-General tried to push the Council to propose options for UNAMIR, yet the Security

Council<sup>68</sup> sent a letter back asking for the Secretary-General to come up with the proposals.<sup>69</sup> This delay in drafting the most basic suggestions of an expanded force lasted from April 21<sup>st</sup> to May 11<sup>th</sup>, until Boutros-Boutros Ghali put some unofficial suggestions before the Council.<sup>70</sup> This was bureaucracy at its worst and a clear sign that no one party had any desire to take ownership of the Rwanda issue.

The fact that the violence in Rwanda was defined as genocide became a particular problem for many states. Under the UN's Genocide Convention of 1948, an acknowledgement of genocide by a member state commits them to forceful action to "prevent and punish" it.<sup>71</sup> This clause was especially important for the United States which has a particularly legalistic form of government. This legal tradition stipulates that treaty obligations occupy a prominent place in strategic decisions.<sup>72</sup> They feared how they would look by acknowledging genocide and not acting on it. This fear of the term genocide would be present throughout the crisis, and the US did not call the Rwandan crisis Genocide until well into June 1994.<sup>73</sup>

In mid- April General Dallaire submitted a proposal for a reinforced UNAMIR. He called for five thousand troops to be airlifted into Kigali as soon as possible. The success of this plan however, was dependant on massive airlift capability and the United States was one of the few countries that could provide it.<sup>74</sup> The US government was very much against Dallaire's plan for a variety of reasons. They questioned how UNAMIR could secure the airport, fretted about the risks to US pilots and generally questioned the plan at every turn. Instead of an airlift the US

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<sup>64</sup> United States. *Clinton Administration Policy on Reforming Multilateral Peace Operations (PDD 25)*, <http://www.fas.org/irp/offdocs/pdd25.htm> (May 6, 1994).

<sup>65</sup> Power, *A Problem From Hell*", 342.

<sup>66</sup> Ten Belgian Peacekeepers had been sent to protect the acting prime minister, Agathe Uwilingiyimana. They were soon surrounded by Presidential Guard soldiers. The Belgians were taken captive and were taken to a nearby army base and shot. Uwilingiyimana fled with her family to a nearby UN compound but was chased down and shot.

Source: Macqueen, 71.

<sup>67</sup> PBS Frontline, *100 Days of Slaughter: A Chronology of U.S./U.N. Actions*, <http://www.pbs.org/wgbh/pages/frontline/shows/evil/etc/slaughter.html> (Jan. 6, 1999)

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<sup>68</sup> The five Permanent Members of the Security Council are the US, the UK, France, Russia and China

<sup>69</sup> Macqueen, 74-5.

<sup>70</sup> Macqueen, 74, 76..

<sup>71</sup> United Nations General Assembly. *Convention of the Prevention and Punishment of the Crime of Genocide*. (New York) Dec, 9. 1948. WordPerfect file.

<sup>72</sup> Macqueen, 75.

<sup>73</sup> PBS Frontline.

<sup>74</sup> Power, *A Problem From Hell*", 378.

preferred to create safe zones at the border to protect those in danger. This would have been much less risky but its ability to protect the Tutsis was dubious, as it would force survivors in hiding to flee to the safe zones leaving them open to attack<sup>75</sup>. Ultimately the US proposal was not a genuine attempt to take actions, but rather a stalling tactic. As a document from Deputy Secretary of State Strobe Talbott to US Ambassador to the UN shows “We recognize that our proposal contains many unanswered questions – such as, where will the needed forces come from; how will they be transported to the Rwandan border area ... where precisely should these safe zone be created; ... what conditions would need to obtain for the operation to end successfully?” (US State Department Cable). This was not the makings of a plan that had been thoroughly thought out.

Further complicating the problems at the UN was the general atmosphere of distrust between the United States and Secretary-General Boutros-Ghali. The relationship had become strained after differences over the purpose of the operation in Somalia. With Boutros-Ghali’s public denunciations of the work of the Security Council and the United States with regard to Rwanda, the relationship was deteriorating further.<sup>76</sup> This distrust had a serious impact on the UN’s ability to act. For example when UNAMIR II was proposed, the US dismissed its validity, thinking that Boutros-Ghali was just trying to salvage his reputation.<sup>77</sup> The job of Secretary-General is by no means an easy one. Trying to convince the states of the world to act on problems they can easily ignore through moral persuasion alone is a challenging task at the best of times. However, this does not excuse the way in which Boutros-Ghali let the

“Trying to convince the states of the world to act on problems they can easily ignore through moral persuasion alone is a challenging task at the best of times. However, this does not excuse the way in which Boutros-Ghali let the relationship between the US and himself crumble.”

relationship between the US and himself crumble. While the actions of the US during this time were shameful, the Secretary-General should not have let his deteriorating personal relationship with the US obstruct his ability to forge a compromise.

The non-paper<sup>78</sup> of the Secretary-General was officially submitted on May 13<sup>th</sup>, and it contained the main elements of Dallaire’s mid-April proposal.<sup>79</sup> The plan called for a brigade of 5,500 well-equipped and well-trained soldiers to be air-lifted into Kigali. As with Dallaire’s plan speed was the

key and contributions were asked to be in battalion size to help ensure smooth operations once they were deployed. It would require both military and civilian police, helicopters and armoured personnel carriers (which were needed to transport a Ghanaian battalion that was in Nairobi).<sup>80</sup> Security Council Resolution 918 was eventually passed May 17<sup>th</sup> and it contained 5, 500 soldiers for UNAMIR and gave the operation a mandate under Chapter VII of the UN charter, which provided it with greater enforcement powers. These powers allowed the UN to undertake broad military action to solve threats to world peace. The resolution was practically ineffective however because it called for a staged deployment and a ceasefire between the parties (United Nation *Resolution 918*)<sup>81</sup>. Security Council President Colin Keating of New Zealand wrote to Auckland on May 17<sup>th</sup> that “As you will see, the US has essentially gutted the resolution ... in reality the expansion is a fiction”<sup>82</sup>. One

<sup>75</sup> Power, *A Problem From Hell*, 378-9.

<sup>76</sup> Melvern, 195.

<sup>77</sup> Melvern, 195.

<sup>78</sup> A non-paper means an unofficial paper or proposal.

<sup>79</sup> Macqueen, 77.

<sup>80</sup> Melvern, 195.

<sup>81</sup> The RPF had already made it public that the time for a UN intervention was over and the chance that they would accept a ceasefire from the genocidal government was virtually nil. Source: George Moose, *Ghosts of Rwanda: Interview George Moose*, PBS Frontline,

<http://www.pbs.org/wgbh/pages/frontline/shows/ghosts/interviews/moose.html> (Nov. 21, 2003)

<sup>82</sup> Melvern, 198.

ambassador to the UN believed that it could take up to three months for action to be taken on UNAMIR II.<sup>83</sup>

Despite the pessimism, the UN went about trying to solicit commitments for UNAMIR II. Kofi Annan approached the governments of one hundred UN member states and came up with nothing. In addition, the UN had received commitments from nineteen countries to place portions of their armies on 'stand-by' for humanitarian crises; yet all nineteen initially refused once the crisis erupted.<sup>84</sup> By July 10<sup>th</sup> there had been five hundred and fifty soldiers committed to UNAMIR II. Public opinion in many countries favoured intervention in Rwanda; however, the prospect of their own soldiers intervening was much less appealing.<sup>85</sup> UNAMIR was eventually filled out once the genocide was over and recruiting contributions became much easier.<sup>86</sup> There were offers of troops during the genocide from African nations yet they were usually tied to conditions such as transport, weapons and/or funding<sup>87</sup>.

Even when offers from Western countries were made there was so little political will for Rwanda that the efforts were wasted. For example, the US offer to donate 48 Armoured Personnel Carriers (APC) to the Rwandan mission is a clear demonstration of bureaucratic failure. A call had been put out on May 19<sup>th</sup> to forty-four UN members with known military surpluses and the U.S was the only one to respond.<sup>88</sup> After the Clinton administration approved the APCs on May 31<sup>st</sup> it was passed off to the Pentagon bureaucracy.<sup>89</sup> The Pentagon and the UN were forced to argue over "who was going to pay for them, who was going to pay for refurbishing them, who was going to transport them, who was going

to pay for the transport, [and] who was going to pay for the training of the Ghanaians so that they could use them".<sup>90</sup> The Clinton administration eventually got involved in mid-June and the APCs were shipped July 19<sup>th</sup>. Even then they shipped the APCs without radios and guns. The entire debacle could have been avoided had a White House official pushed the proposal through the necessary bureaucratic regulations. Instead, it was allowed to languish in the Department of Defense while bureaucrats on both sides dithered about specifics<sup>91</sup>. This illustrates the low level of political significance attached to the Rwanda Crisis. This crisis was time-sensitive and as it will be demonstrated below, it would have been relatively easy for someone in the White House to phone the right people and say 'this is a priority, get this done'. Unfortunately this did not happen until a couple of weeks in.

Much to the relief of the United Nations, France officially stepped in mid-June and offered to lead a UN sanctioned multilateral francophone<sup>92</sup> intervention into Rwanda<sup>93</sup>. They proposed to create a safe zone covering one fifth of the country located in Southwest Rwanda. The official aim was to provide protection for the victims of the violence<sup>94</sup>.<sup>95</sup> This came as a relief to many countries such as the United Kingdom and the United States, who were relieved that someone was

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<http://www.pbs.org/wgbh/pages/frontline/shows/ghosts/interviews/moose.html>.

<sup>91</sup>

<http://www.pbs.org/wgbh/pages/frontline/shows/evil/interviews/woods.html>.

<sup>92</sup> The vast majority of the forces in Operation Turquoise were from France. Some of France's African allies did contribute but they were small in comparison.

<sup>93</sup> In a letter to the Security Council the Secretary-General had suggested such an intervention into Rwanda back on April 29<sup>th</sup> 1994. Source: United Nation Security Council, *Letter Dated April 26<sup>th</sup> 1994 From The Secretary-General*, S/1994/518. (29 April, 1994).

<sup>94</sup> There are many questions about the true aim of the French forces in Rwanda considering the prior support of the government.

Krosiak claims that they initially hoped they could engage the RPF but abandoned that aim once RPF victory was assured. It is also widely known that many perpetrators of the genocide passed through the French zone with no difficulty. Source: Daniela Krosiak, *The French Betrayal of Rwanda* (Bloomington: Indiana UP, 2008) 230-3.

<sup>95</sup> Krosiak, 230.

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<sup>83</sup> Melvern, 198.

<sup>84</sup> Mays, 11.

<sup>85</sup> Macqueen, 77.

<sup>86</sup> Macqueen, 81.

<sup>87</sup> Ibrahim Gambari, *Ghosts of Rwanda: Interview Ibrahim Gambari*, PBS Frontline,

<http://www.pbs.org/wgbh/pages/frontline/shows/ghosts/interviews/gambari.html> (Jan. 15, 2004)

<sup>88</sup> Melvern, 197.

<sup>89</sup> (Power "Bystanders to Genocide" 9)

doing something. It was equally attractive because France would bear the costs of the operation and not the UN.<sup>96</sup> The resolution itself was passed and the troops began arriving in Rwanda on June 23<sup>rd</sup>.<sup>97</sup> The swiftness with which the French were able to begin transporting their forces into the country is astounding, and supports the argument that a 5,000 strong intervention force would have been quite possible with an adequate level of commitments.

Further evidence of the ability of a modern military to enter an area quickly is with the intervention into Goma on the Tanzanian border. The RPF victory had pushed the remnants of the Hutu government through the Operation Turquoise Protection Zone and into Zaire. The perpetrators of the genocide got mixed in with fleeing Hutu refugees and soon a large humanitarian crisis emerged in the refugee camps that had been set up across the border.<sup>98</sup> The media were alerted to this massive migration of two million people and the ensuing cholera epidemic that was killing five thousand people per day. Eventually there were five hundred reporters in Goma.<sup>99</sup> The political will to undertake this mission was robust, President Clinton got involved and an intervention that was once only supposed to involve two hundred sanitation specialists grew to involving two thousand American soldiers<sup>101</sup>. Once the US president had Congressional approval and gave the executive order the wheels of bureaucracy moved impressively fast.<sup>102</sup> The general in charge of the operation asked how much time he had (thinking he needed a week to get the initial mission together), and was told that the President wanted him to deploy the next day, this is exactly what he did, and had a small team deployed in Goma the very next day.<sup>103</sup> In the end the U.S

spent \$237 million on humanitarian aid in Goma, while the projected expenditure for a Rwanda mission was around \$30 million.<sup>104</sup>

Throughout this case study the underlying argument is that it was a lack of political willpower that led to the slow and insufficient reactions to the crisis in Rwanda. Implicit in this argument, however, is the assumption that key governments and the UN either did know or could have known that there was genocide occurring in Rwanda. Knowledge of the genocide was not as apparent in some circles as in others, yet there is evidence to strongly suggest that the information was there for those who wished to acknowledge it.

One problem that tended to consistently appear in the bureaucracies of the UN and the major powers was the view that killing in a place such as Rwanda was just business as usual, that it had happened often enough so as to become commonplace. For example, prior to the Rwandan genocide 50,000 people were killed in Burundi and there was no major international reaction. Had the same thing occurred in the Balkans or the Middle East it is hard to imagine that it would have been ignored. According to Power, Deputy Assistant Secretary of State for African Affairs Prudence Bushnell was told by a colleague "Look Pru, these people do this from time to time." (Power "Bystander" 4)<sup>105</sup>. As for the UN, the Secretary-General himself said in an interview in reference to the 'genocide fax' that "we received hundreds of telegrams giving information -- that there will be an assassination of Mr. So-and-So, that there are arms which have been discovered. ... but we practically receive tens of telegrams of this kind every day."<sup>106</sup> While it is not hard to imagine why one becomes adjusted to a certain level of violence when you spend your life working on issues related to violent conflict, it does

<sup>96</sup> Krosiak, 213-6.

<sup>97</sup> Power, *A Problem From Hell*, 380.

<sup>98</sup> Power, *A Problem From Hell*, 381.

<sup>99</sup> There was only one reporter in Rwanda during the genocide, Mark Doyle.

<sup>100</sup> Melvern, 217-19.

<sup>101</sup> Interestingly, calculations were done by the US army on the value of an American casualty to a Rwandan and it would require 85,000 Rwandan casualties to be equal to one American.

Source: Power, *A Problem From Hell*, 381.

<sup>102</sup> Cohen, 164-7.

<sup>103</sup> Cohen, 166.

<sup>104</sup> Power, *A Problem From Hell*, 381.

<sup>105</sup> This statement implies a sort of deep seated racism that is very problematic in cases such as Rwanda. Unfortunately an analysis of implicit racism in government officials would be another branch of research altogether, and it would require training in Psychology beyond anything possessed by this author.

<sup>106</sup>

<http://www.pbs.org/wgbh/pages/frontline/shows/ghosts/interviewws/ghali.html>.

not change the fact that this complacency can have negative consequences during a major crisis.

While Central Africa was not a strategically important region there were some intelligence resources devoted to the region. As time passes more information will be released as it is declassified or discovered. It is now known that a few days after the genocide commenced around two dozen US Special Forces were inserted into Kigali for a one day reconnaissance mission. They were brought back and debriefed. They reported that there were “so many bodies on the streets that you could walk from one body to the other without touching the ground”.<sup>107</sup> As for the intelligence services, there was a U.S defense attaché in Rwanda purely by chance when the crisis began and he provided the Defense Intelligence Agency with valuable information.<sup>108109</sup> Joyce Leader, 2<sup>nd</sup> in command at the US embassy in Rwanda explained to her colleagues after her evacuation that there were three kinds of killing happening in Rwanda, “casualties in war, politically motivated murder and genocide”.<sup>110</sup> James Woods, the Defense Department’s Deputy Assistant Secretary for African Affairs believed that “It was known that this was planned, premeditated, carefully planned, and was being executed according to a plan with the full connivance of the Rwandan government. This was known.”<sup>111112</sup>

As for France, there is significant evidence to suggest that the government knew quite a bit about what was going on in Rwanda and that they were still arming the Genocidaires. Due to the seriousness of such charges however, information of the subject is much less concrete. The French Government conducted two inquiries into its involvement in the genocide although, neither had any judicial power and they are considered by many

to be whitewashes, restating only rumors<sup>113 114</sup>. However, considering the close ties between the French and Rwandan governments, the history of the French military training the Rwandan army, the rumors of numerous French arms deliveries during the genocide and the known arms shipments that went into Rwanda during the genocide that can only be traced back to shell companies, suggest that they most likely knew something about what was to come<sup>115 116</sup>.

While information for the inner workings of the United Nations is not nearly as well known as that of the US, there is evidence to suggest that parts of the UN were actually under-informed. There is no UN intelligence service, and major countries with sophisticated intelligence operations are under no obligation to share it with the UN.<sup>117</sup> During the Rwandan crisis the difference between the informal communications in the field and the formal communications for example in between the Secretary-General and the Security Council were shockingly different.<sup>118</sup> In the run-up to the Genocide General Dallaire’s communiqués to the DPKO grew ever more desperate for increased authority and supplies to counter the worsening situation. The formal communications had a much more optimistic tone and only focused on the delays in implementing the Arusha Accords<sup>119</sup>. Members had to turn to outside sources to gain more information. The five permanent members of the Security Council had embassies in Kigali and had intelligence networks; however the non-permanent members often did not have that

<sup>107</sup> Power, *A Problem From Hell*, 354-5.

<sup>108</sup> Cohen, 28.

<sup>109</sup> Details on this information are not available.

<sup>110</sup> Power, *A Problem From Hell*, 354.

<sup>111</sup> For a further study of what was known before the Genocide began see Kuperman Chapter four, Cohen chapter one, Power’s article “Bystanders to a genocide” and Krosiak chapter four.

<sup>112</sup> Cohen, 170.

<sup>113</sup> Belgium on the other hand conducted an inquiry into its involvement and it was much more thorough. While picking one quote from a 1,000 page report is hardly thorough there is one damning passage. Belgium’s ambassador to Rwanda wrote to Brussels in 1992 that “a secret command exists which is planning the total extermination of the Tutsis in order to resolve, once and for all, the ethnic problem and to destroy the Hutu opposition.” Source: Melvern, 233.

<sup>114</sup> Melvern, 234.

<sup>115</sup> For a brief run-down of the Mil-Tec arms deals read Melvern 182.

<sup>116</sup> Melvern, 181-2 234.

<sup>117</sup> Mays, 15.

<sup>118</sup> Howard Adelman, Astri Suhrke, “Rwanda” in David M. Malone, ed., *The U.N. Security Council: From the Cold War to the 21st Century* (Boulder CO: Lynne Rienner Publishers, Inc., 2004), 492-3.

<sup>119</sup> Adelman, Suhrke, 492-3.

advantage and had to use different sources. For example the Nigerian Ambassador to the UN (who was on the Security Council) approached Allison de Forges to brief him and many of the other non-permanent members on what was really happening in Rwanda<sup>120</sup>. This is not to totally excuse the Security Council, they can request information from the Secretariat, yet they frequently did not, due to Rwanda's low priority<sup>121</sup>. According to New Zealand's Representative to the Security Council at the time Colin Keating, the relationship between the Secretary-General and the Security Council was very poor. The Secretary-General disputed the level of Security Council input on decision making and disliked their micromanaging<sup>122</sup>. After April 6<sup>th</sup>, reports began to come in about mass murder taking place in Rwanda, yet reports coming through the Secretariat from the Special Representative of the Secretary-General (SRSG) placed most of the blame upon the civil war, confusing the situation. This is unfortunate because the SRSG is widely believed to have been incompetent and potentially sympathizing with the Hutu Government.<sup>123</sup> In general, there was a belief among members of the Security Council that the Secretary-General and the Secretariat were not doing their job, selectively providing information and providing no political suggestions (De Forges). According to De Forges "They talked about the disastrous events as if it were a natural catastrophe, a hurricane, or a volcano exploding." All of this suggests a United Nations that is severely lacking in intelligence

capability, and prone to bureaucratic breakdowns over responsibilities.

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The story of the U.N.'s inaction on Rwanda is a complicated one, yet when all the issues are examined together there is one reason that is at the root of this failure: lack of political will. While there were problems in logistics and information that were not related to political will, the large majority were. From troop

commitments, to mandates, to funding and to bureaucratic inertia all of these major problems could have been solved or improved had Rwanda been a higher strategic priority. Many today hide behind the reasoning that there was really nothing that could have been done to stop the Rwandan Genocide, but while containing some truth this argument is not sufficient. There have been numerous examples throughout this case study that professional armies can move very quickly when ordered. While no one should argue that this genocide would have been completely stopped by a robust UN intervention, it most definitely would have reduced the damage. Beyond saving lives it would have removed the stain on the International Community's reputation and avoided the long tortured debate over Rwanda that is still continuing fifteen years later.

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<sup>120</sup> De Forges

<http://www.pbs.org/wgbh/pages/frontline/shows/ghosts/interviews/desforges.html>.

<sup>121</sup> Adelman, Suhrke, 492-3.

<sup>122</sup> Keating, Colin. "An Insider's Account," in David M. Malone, ed., *The U.N. Security Council: From the Cold War to the 21st Century*. (Boulder CO: Lynne Rienner Publishers, Inc., 2004) 503.

<sup>123</sup> Cohen, 94.

# African Transitional Justice:

## Universal Ideal or Political Reality?

Hanna Button

When considering a continent so marked by violence and political upheaval, one cannot help but focus on the transitional nature of many African societies. At the end of almost every war or dictatorship, the international community seems to step forward, institutions at the ready, prepared to help. Theories and mechanisms of transitional justice are growing in popularity among scholars and policy-makers, alike. There is a growing consensus that people will inevitably be tried for their atrocious crimes and that the truth will need to be told. There is now broad agreement that impunity must end, and that truth should be considered an important objective in order to work towards reconciliation<sup>1,2</sup>. A wide array of possible definitions and images of what constitutes “reconciliation” could be considered. However, for the sake of clarity, an effective and functional definition of reconciliation can be explained as follows: reconciliation is the process through which a society learns to realistically live together despite its troubled past<sup>3</sup>.

The political reality is that there are a wide variety of ways to reach this goal of reconciliation, none of which can be guaranteed. The purpose of this paper is to first of all, examine two divergent options<sup>4</sup> for transitional justice and consider their contrasting roles towards facilitating a society’s

transformation to reconciliation. The work of South Africa’s Truth and Reconciliation Commission (hereafter referred to as the TRC) and the contributions of the International Criminal Court (ICC)<sup>5</sup> will be considered through the analysis of this paper’s argument. In terms of each institution’s purpose, universality is key to their underlying principles, though in very different regards. Both of these truth-seeking mechanisms are empowered by a contextual focus and a respect for the universality of the law. Yet each of these institutions seeks to find their own balance between the two principles. An in-depth analysis of this contention can be found toward the end of the paper<sup>6</sup>.

Secondly, this paper will discuss the evolution of academic discussion surrounding this topic. Of particular interest will be the shift from normative “one-size-fits-all” policy prescriptions regarding what *should* be done towards a broader understanding and respect for context in regards to these societal transitions. Finally, in acknowledging the critical importance of context in studying transitional justice, this presents a somewhat problematic consideration for certain goals of international and internal justice. Specifically, the legal ideal of universal application of the law seems to be at odds with the recognition that the understanding of local context proves crucial for the implementation transitional justice strategies<sup>7</sup>.

In a similar vein to the recent scholarship surrounding this issue, this paper hopes to encourage both debate and discussion regarding the various transitional justice strategies at the disposal of the international community. By questioning the purported aims and mandates of transitional justice, this paper hopes to generate a more profound

<sup>1</sup> Though much of the literature surrounding these subjects uses the language of “reconciliation” and “peace-building almost interchangeably”, this paper will be limited to the discussion of contributions to reconciliation.

<sup>2</sup> Debra DeLaet, “Gender Justice: A Gendered Assessment of Truth Telling Mechanisms,” in ed. Tristan Anne Borer *Telling the Truths: Truth Telling and Peace Building in Post-Conflict Societies* (Notre Dame: Notre Dame University Press, 2006). 55-76

<sup>3</sup> Charles Villa-Vincencio, “The Politics of Reconciliation,” in ed. Tristan Anne Borer *Telling the Truths: Truth Telling and Peace Building in Post-Conflict Societies* (Notre Dame: Notre Dame University Press, 2006).

<sup>4</sup> For the purpose of this paper, arguments will concentrate only on South Africa’s Truth and Reconciliation Commission and the International Criminal Court.

<sup>5</sup> This paper will also consider the International Criminal Tribunal for Rwanda (or ICTR) as an accompaniment to the ICC. Despite the fact that the ICC and the ICTR differ in terms of their mandate and function, they similarly represent the work of the international community on this topic and therefore, both serve as pertinent examples of an international alternative to the TRC.

<sup>6</sup> Please see: “Legal Challenges to Transitional Justice through the Concept of Universality”

<sup>7</sup> Tom Ginsburg, “The Clash of Commitments at the International Criminal Court,” *Chicago Journal of International Law* 9 (2009) 499-514.

understanding of this issue, which may generate a more experienced analysis towards the implementation of such strategies, specifically within the African context.

### A BRIEF OVERVIEW OF TRANSITIONAL JUSTICE SCHOLARSHIP

With the consensus that any society trying to move forward from a terrible past necessitates a solution in the form of transitional justice, the contributions of international trials and truth commissions became a prime focus. Prevention of impunity and the sharing of truth were both considered to be essential elements that should accompany any strategy<sup>8</sup>. The discussion soon shifted into a debate of “trial” vs. “non-trial” mechanisms, creating a striking dichotomy between granting amnesty and prosecution<sup>9</sup>. This classic debate, as put forth by Borer can be summarized as follows: Those in favour of prosecutions maintained that trials were essential in order to convince the public of the new regime’s commitment to democracy as it tried to distance itself from the old. This is often referred to as the “non-prosecution as complicity” argument—in other words, that an absence of punishment equates an absence of justice. Conversely, those who advocated for amnesty insist that it is the only way for achieving stability and a sense of “national reconciliation”. They emphasize that trials rarely take place due to logistical challenges and when they do, they only affect a small minority of perpetrators, and make prosecution seem more desirable in theory than in reality<sup>10</sup>.

Most contemporary views, especially those of cultural relativism, now tend to focus on the need for an appreciation of context and local conditions before advocating for one strategy over another. A more detailed analysis of this perspective will be

included later in the paper. Both of the above-mentioned strategies contain their own costs and benefits. This paper aims to provide an introductory analysis of the TRC and ICC’s mandate and functioning as well as outline several of their key strengths and weaknesses.

### SOUTH AFRICA’S TRUTH AND RECONCILIATION COMMISSION

#### Mandate and Functioning

South Africa’s system of Apartheid has proved to be one of the most brutal and oppressive regimes on the African continent. It involved examples of some of the worst conditions imaginable: dictatorship-sponsored violence, an oppressive top-to-bottom hierarchy of enforcement, and genocide<sup>11,12</sup>. In 1994, South Africa made the fateful decision to invest all of its hopes for transition within the TRC based on the dual premises that uncovering the truth was critical to restoring public trust, and secondly that making perpetrators subject to the consequences of public shame would prove essential for a “community” sense of justice<sup>13</sup>. Expectations were also high that the TRC would help to promote the rule of law within South African society by promoting civic trust through exposing compromised personnel (such as members of the judiciary)<sup>14</sup>. The TRC set out to create a record of human rights’ abuses by amassing the participation of citizens at large in order to also create broad awareness of the atrocities that had taken place<sup>15</sup>. The purpose of the hearings was to: provide an opportunity to begin dealing with the past; create a space within which truth could be expressed; allow for statements of forgiveness, empathy, and

<sup>8</sup> Tina Rosenberg, Martin Meredith, *Coming to Terms: South Africa’s Search for Truth* (New York: Public Affairs, 1999).

<sup>9</sup> Tristan Anne Borer, “Truth Telling as a Peace Building Activity: A Theoretical Overview,” in Tristan Anne Borer, ed., *Telling the Truths: Truth Telling and Peace Building in Post-Conflict Societies* (Notre Dame: Notre Dame University Press, 2006).

<sup>10</sup> Borer

<sup>11</sup> Rosenberg

<sup>12</sup> For further reading, see Rosenberg and Schnabel

<sup>13</sup> Rev. Abraham Adu, “Peace Building in Africa: Lessons from the Truth Commission,” *International Journal of Humanities and Peace* 20 (2004) : 23-33

<sup>14</sup> Pablo DeGreiff, “Truth Telling and the Rule of Law,” in Tristan Anne Borer, ed., *Telling the Truths: Truth Telling and Peace Building in Post-Conflict Societies* (Notre Dame: Notre Dame University Press, 2006).

<sup>15</sup> Jeremy, Sarkin, “The Necessity of Establishing a Truth and Reconciliation Commission in Rwanda,” *Human Rights Quarterly* 21 (1999) 767-823.

acceptance; and discover why and how certain deeds were able to take place<sup>16</sup>.

### Strengths of the Truth and Reconciliation Commission

The functioning of the TRC attempted to accord due process for all those who participated. Special procedures were set out to ensure that this principle was followed, for instance: all those who planned on testifying were interviewed in advance and every person who the victims planned to accuse was notified and given the right to attend the same hearing in order to reply. Amnesty seekers without lawyers were provided them. The accused were forewarned regarding what the commission would say and were given the right to tell their side of the story before the release of the final report<sup>17</sup>. Additionally, the idea of a truth commission proves more conducive towards healing in contrast to the adversarial nature found within most trials<sup>18</sup>. It tends to take a more conciliatory tone; on that may prove more effective at encouraging victims to come forward while also creating a sanctioned environment that may be more likely to reveal an accurate picture<sup>19</sup>.

South Africa was able to experience what is sometimes known as the “democratization of reconciliation”<sup>20</sup>. By creating a safe-space in which the truth could be told, the TRC was able to encourage many to come forward and share their stories. It allowed for the truth-telling to be spread among thousands of people<sup>21</sup> and thus democratized the process of healing and dealing with the past<sup>22</sup>. This notion of democratization contributed to the reconciliation process in yet another way in the sense that it removed the focus from the idea of individual guilt while also

dispelling the myth of collective innocence<sup>23</sup>.

Typically, a trial is only able to focus on one or two key perpetrators, thus individualizing guilt upon only one or two members of a society.

In contrast, the fact that the TRC was able to bring forward many victims as well as

perpetrators willing to share their stories enabled both a broader sense of justice and guilt respectively. Often, the assumption is made that all those not involved are, by default, innocent. This type of perception is highly problematic as it fails to account for bystanders whose inaction may have reflected complicity by those who more broadly benefited from the apartheid system (Fletcher and Weinstein, 2002)

The TRC pledged to grant amnesty based on full and complete disclosure of each applicant’s involvement and the fact that these actions must relate to a “political objective” under the apartheid regime<sup>24</sup>. This was not “blanket amnesty” that hid the truth and proliferated a culture of impunity; it was amnesty capable of bringing about a truth that may have otherwise been hidden making this a useful tool for bargaining<sup>25</sup>. Amnesty, in the case of South Africa, has proved highly effective at deterring further atrocities through its bargaining capacity as it takes into account the political realities of the local situation<sup>26</sup>.

“This notion of democratization contributed to the reconciliation process in yet another way in the sense that it removed the focus from the idea of individual guilt while also dispelling the myth of collective innocence.”

<sup>16</sup> Sarkin

<sup>17</sup> Berinyuu

<sup>18</sup> Sarkin

<sup>19</sup> DeLaet

<sup>20</sup> Laurel E. Fletcher and Harvey M. Weinstein, “Violence and Social Repair,” *Human Rights Quarterly* 24 (2002) 573-639

<sup>21</sup> Whereas in many other countries that had conducted similar commissions, attention had been limited to only one or two high-profile cases.

<sup>22</sup> Rosenberg

<sup>23</sup> Fletcher (2002)

<sup>24</sup> Berinyuu

<sup>25</sup> Rosenberg

<sup>26</sup> Jack Snyder and Leslie Vinjamuri, “Trials and Errors: Principle and Pragmatism in Strategies of International Justice,” *International Security* 28 (2004) 5-44

### Weaknesses and Criticism

Both the TRC and South African government have faced serious criticism as a result of the delayed nature of financial reparations. Despite signing numerous international conventions which oblige it to provide victims of human rights abuses with adequate and fair compensation, the South African government still seems reluctant to fully accept responsibility for the actions of its predecessors<sup>27</sup>.

Without a gendered lens, the picture will be incomplete. There is an urgent need to understand these processes by rethinking the relationship between men and women and the false dichotomies that can often take place. For instance, men cannot simply be conceptualized as the “violent gender” and women as perpetually “victims”<sup>28</sup>. A reassessment of gendered implications regarding violence, victimization and sexuality must take place in order for any transitional justice strategy to be truly effective. This will lead to a more accurate understanding of the truth while adding completion and credibility to accounts<sup>29</sup>. Based on the arguments of Debra DeLaet, the TRC failed to challenge gender norms that made women reluctant to come forward regarding their own victimization. Furthermore, the TRC did not prioritize sex-specific violence in its mandate, and as a result they were treated as secondary in their importance to the commission<sup>30</sup>.

Though the TRC did fail to live up to some of the expectations surrounding its work, it should still be considered as a remarkable achievement within a global context. It was capable of creating a climate that urged people to come forward and engage in the truth-telling process while promoting social healing and reconciliation on an unprecedented scale. The reality, however, is that not all countries will be able to replicate this strategy as they may lack the national will and political realities for effective implementation<sup>31</sup>. This realization should

prompt us to examine alternative strategies for transitional justice, which brings this paper to an analysis of international justice.

### STRATEGIES OF INTERNATIONAL JUSTICE: THE INTERNATIONAL CRIMINAL COURT AND THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

#### Mandate and Functioning

On July 1<sup>st</sup>, 2002 the Rome Statute entered into force upon its ratification by sixty countries<sup>32</sup>. Prior to its creation, international justice had already been at work within the African continent in the form of UN-subsiary, the ICTR<sup>33</sup>. These jurisdictions have transformed international humanitarian law in several important ways. Firstly, they have given human rights violations a higher profile within the international community<sup>34</sup>. Secondly, they have modernized the laws themselves; rape and other sex crimes are now considered to be part of what is defined as genocide. This is to say that serious crimes committed within the domestic context are no longer considered purely of national concern; the international community now has a right to be involved and the jurisdictional “teeth” to penalize perpetrators<sup>35</sup>. Thirdly, these international efforts (and their subsequent reception in Africa) have sent a clear message that the continent will no longer permit the continuation of impunity<sup>36</sup>.

#### Strengths

Trials can prove crucial for the families of victims as well as for the future of the nation. For many, the experience of seeing a perpetrator walk free upon receiving amnesty seems at odds with the notion of reconciliation<sup>37</sup>. Many prefer to see

<sup>27</sup> Berinyuu

<sup>28</sup> Borer

<sup>29</sup> DeLaet

<sup>30</sup> Fiona C. Ross, *Bearing Witness: Women and the Truth and Reconciliation Commission in South Africa* (London: Pluto Press, 2003)

<sup>31</sup> Rosenberg

<sup>32</sup> Jamie A. Williamson, “An Overview of the International Criminal Jurisdictions operating in Africa,” *International Review of the Red Cross* 88 (2006) 111-131.

<sup>33</sup> Ibid.

<sup>34</sup> Marlies Glasius, “We Ourselves, We are part of the Functioning: The ICC, Victims, and Civil Society in the Central African Republic,” *African Affairs* 108 (2008) 49-67.

<sup>35</sup> Rosenberg

<sup>36</sup> Williamson

<sup>37</sup> Berinyuu

justice at work in the form of a conventional trial and strict punishment for the violators of human rights. Trials drastically change the balance of power in terms of regime in order to “break the cycle” of the past. Additionally, these trials can provoke a public dialogue capable of cracking through myths of victimization in order to help people see and appreciate other ethnic groups that have also suffered<sup>38</sup>.

Transitional states are often highly dependent on the international community through a variety of different capacities. This proves to be especially true when international intervention is required to end the conflict in question<sup>39</sup>. A state’s reliance on international sources to bring about a peace-agreement will be mirrored in its subsequent demands to bring about transitional justice. This implies that the international community should be willing and able to contribute to not only conflict resolution but legal assistance in the form of transitional justice.

The growing consensus that there are some crimes so atrocious that they simply cannot go unpunished is validated by the jurisdiction<sup>40</sup> of the International Criminal Court. Leaving horrific crimes unpunished either through amnesty or the incapacity to prosecute, violates certain paradigms of justice and impunity<sup>41</sup>. African states have demonstrated their intent to hold accountable the perpetrators of the gravest crimes through the work of the ICTR<sup>42</sup> and the ICC<sup>43</sup>. In this light, many African states are able to more actively engage in the process of reconciliation.

In giving “teeth” to the prosecution efforts of international law, the ICC is able to communicate a clear warning to would-be violators of human rights<sup>44</sup>. The ICC, seen as a “court of last resort” is capable of intervening in the crimes of signatory states when the state in question is incapable or unwilling to prosecute on its own<sup>45, 46</sup>. Through this capacity, the ICC is supposed to act as a deterrent within international human rights law sending the message that impunity cannot continue and those who commit crimes against humanity or war crimes will be prosecuted<sup>47</sup>. Furthermore, the permanence of the ICC as opposed to the delineated timeframe of most truth commissions or *ad hoc* tribunals allows it to exert more power within the international arena. Its permanence holds the promise that internal or international atrocities will not go unpunished<sup>48</sup>.

#### Weaknesses and Criticism<sup>49</sup>

Despite their strong intent to hold perpetrators accountable, trials exclude: unindicted offenders (of which there can be many), states outside the area also responsible for violence, and bystanders, thereby contributing to the aforementioned myth of individualized guilt and collective innocence<sup>50</sup>.

Due to their adversarial nature and the element of cross-examination, trials may create conditions that deter some individuals from coming forward as this antagonistic environment may cause them to feel that they are being “victimized” all over again<sup>51</sup>. Not only can trials potentially deter the victims from engaging in the process, they also lack the

<sup>38</sup> Rosenberg

<sup>39</sup> Laurel E. Fletcher and Harvey M. Weinstein, “Context, Timing, and the Dynamics of Transitional Justice: A Historical Perspective,” *Human Rights Quarterly* 31 (2009) 163-220

<sup>40</sup> Limited to signatories and crimes occurring after July 1<sup>st</sup>, 2002

<sup>41</sup> Payam Akhavan, “Are International Criminal Tribunals a Disincentive to Peace?” *Human Rights Quarterly* 31 (2009) 624-654

<sup>42</sup> The ICTR is only one of several UN-Subsidiary bodies at work on the African continent. Other prominent examples include the SCSL as well as current interventions taking place in Sudan, Uganda, and the Central African Republic, see Williamson, 2006.

<sup>43</sup> Williamson

<sup>44</sup> Paul J. Magnarella, “The Consequences of the War Crimes Tribunals and an International Criminal Court for Human Rights and Transition Societies,” in Shale Horowitz and Albrecht Schnabel eds., *Human Rights and Societies in Transition: Causes, Consequences, Responses* (New York: United Nations University Press, 2004)

<sup>45</sup> Ginsburg

<sup>46</sup> See also Article 17 of the Rome Statute.

<sup>47</sup> Williamson

<sup>48</sup> Magnarella

<sup>49</sup> Though the ICC and various ad hoc tribunals have come under-fire for a variety of other criticisms and concerns (such as issues of legality, or problems with complementarity), this paper attempts to focus purely on weaknesses that serve as a relevant cross-comparison to South Africa’s TRC.

<sup>50</sup> Fletcher (2002)

<sup>51</sup> DeLaet

bargaining ability of amnesty that often proves necessary in order to bring perpetrators to the table<sup>52</sup>. As a result, many international trials and tribunals prove to be a long and exceedingly drawn-out process as they struggle to obtain the presence of those indicted<sup>53</sup>. This slow-moving nature has many negative implications for the process of transitional justice. This implies that the ICC or ad hoc tribunal will exceed its mandated timeframe (and perhaps run-out of allocated resources)<sup>54</sup>. Furthermore, it slows the very process of reconciliation for the society in question, which so desperately wants to move forward<sup>55</sup>.

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“A state’s reliance on international sources to bring about a peace-agreement will be mirrored in its subsequent demands to bring about transitional justice. This implies that the international community should be willing and able to contribute to not only conflict resolution but legal assistance in the form of transitional justice.”

#### Discussion:

Though both transitional justice strategies covered in this paper possess their own strengths and weaknesses, this is not to say that both are equally effective (or equally *ineffective* for that matter). One may, in fact prove far better suited than the other in regards to certain situations. However, the purpose of this paper and the majority of contemporary scholarship surrounding this issue are not to make a normative suggestion regarding the superiority of one method versus the other. Rather, this paper would prefer to suggest the recognition that there may not be an appropriate manner wherein to prescribe one or the other at this time. It is becoming clearer that the choice of action through legal response must be weighed carefully and implemented in combination with other appropriate forms of intervention<sup>56</sup>. It is

therefore much more pertinent to discuss these strategies as they relate to context.

#### RECENT SCHOLARSHIP: A GROWING CONSENSUS ON THE IMPORTANCE OF CONTEXT

Recent academic and policy-making literature has begun to revolve around the broad recognition that an understanding of context will prove critical for the implementation of transitional justice strategies<sup>57</sup>. In order to generate the most effective policies, one must be keenly aware of context, and therefore its underlying factors<sup>58</sup>. Intervention of any nature that fails to take into account local political realities will be doomed to fail. Consider for instance an attempt to bring universal standards of justice and human rights in the absence of pre-existing conditions. The outcomes are inherently bound to be problematic<sup>59</sup>. This broad recognition involves the shedding of conventional assumptions in order to appreciate the reality that multiple kinds of intervention and institutional changes can and will prove necessary<sup>60</sup>.

In acknowledging the critical role of context for transitional justice implementation, it is useful to consider some of the factors that should be covered in any analysis of context<sup>61</sup>:

*Culture* can play a significant role when a state is deciding its transitional justice strategy<sup>62</sup>. If the decision to potentially select one transitional justice initiative over another can incorporate an awareness of cultural understanding, it is likely to be more effective<sup>63</sup>. An awareness of local context

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<sup>52</sup> Sarkin

<sup>53</sup> Berinyuu

<sup>54</sup> Williamson

<sup>55</sup> Glasius

<sup>56</sup> Fletcher (2009)

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<sup>57</sup> Villa-Vicencio

<sup>58</sup> Albrecht Schnabel and Shale Horowitz, “Protecting Human Rights in Transition Societies: Lessons and Recommendations,” in Shale Horowitz and Albrecht Schnabel eds., *Human Rights and Societies in Transition: Causes, Consequences, Responses* (New York: United Nations University Press, 2004)

<sup>59</sup> Synder and Vinjamuri (2004)

<sup>60</sup> Fletcher (2009)

<sup>61</sup> Rosenberg

<sup>62</sup> Ibid.

<sup>63</sup> Borer

for concepts such as “conflict” or “peace” can be incorporated into a continuation of indigenous values<sup>64</sup>. Engaging with the local context through this capacity is likely to foster a local appreciation for such attention to details and perhaps encourage more widespread participation in the process.

The degree of *commitment* or *political will* to undertake one of the strategies in question will have a strong impact on its likelihood for success. The extent to which a state can support the public debate and dialogue necessary for the official record will influence the selection of one truth-seeking mechanism over another<sup>65</sup>. This willingness to commit will likely be mirrored in a society’s capacity to undergo the structural reforms necessary for transition<sup>66</sup>.

Other factors that should come into play when a country is making its decision include the type of dictatorship or conflict that occurred, the types of crime committed, the level of societal complicity during the conflict, the nation’s political culture and history, the possible conditions under which dictatorship could reoccur, the abruptness of the transition itself, and finally, the new democratic government’s power and resources<sup>67</sup>. Thus it would seem that the best “suggestion” of strategy would allow for a dynamic and multi-faceted response, one that will allow the possibility of new forms to develop. This active style of strategy, that endeavours to take into account a myriad of local influences, is more likely to encourage further innovation and creativity when selecting a truth-seeking mechanism<sup>68</sup>.

#### LEGAL CHALLENGES TO TRANSITIONAL JUSTICE THROUGH THE PRINCIPLE OF “UNIVERSALITY”

A universalist stand-point advocates for the principle “...that either the entire body of internationally recognized human rights or some core subset of such rights are applicable to all humans and to all states and societies.”<sup>69</sup> This notion, inherent to the fundamental underpinnings of the ICC and other related UN-subsiary bodies as well as elements of South Africa’s TRC, immediately appears to contradict an attempt to prioritize context in the search for appropriate truth-seeking mechanisms. As previously mentioned, each style of institution (TRC or International) values the concept of universality within its mandate in attempting to accord due process before the law to all actors. However, it is within the realm of *application* that these divergent transitional justice strategies modify adherence to the concept of universality. Therefore, the potentially problematic dichotomy between universality and a context-centred approach should prove central to an understanding of each institution and serve as a reminder that the scholarly and policy-making community may not immediately be capable of recommending one or the other.

In order to gain an appreciation of this tension between universality and a context-based approach in regards to transitional justice, consider the work of the ICC. For this institution, ending impunity must be a priority *regardless* of local conditions. If the ICC were to begin analyzing contextual factors prior to intervention, it would immediately begin to lose credibility. First of all, the ICC is ill-equipped to conduct such an analysis. Secondly, jurisprudence suggests that the prosecutor should be unaffected by external information of political consequences and simply commit to prosecuting. Finally, such a survey of local conditions does not fall under the requirements of the ICC’s mandate<sup>70</sup>. The ICC has an incentive to apply firm and certain prosecution towards all those who fall under the

<sup>64</sup> Fletcher (2009)

<sup>65</sup> Ibid.

<sup>66</sup> Ibid.

<sup>67</sup> Rosenberg

<sup>68</sup> Berinyuu

<sup>69</sup> Richard Lewis Siegel, “Universalism and Cultural Relativism: Lessons for Transitional States,” in Shale Horowitz and Albrecht Schnabel eds., *Human Rights and Societies in Transition: Causes, Consequences, Responses* (New York: United Nations University Press, 2004) 53

<sup>70</sup> Ginsburg

jurisdiction of the statute regardless of local politics<sup>71</sup>. This will prove problematic for those who recognize the importance of timing, context, and local dynamics within their recommendations of a transitional justice process.

This contradiction proves crucial to our holistic understanding of the rule of law, which can be summarized in three principles: the government of law, the supremacy of the law, and equality before the law. In other words, the power of the state may not be exercised arbitrarily, the law must apply to the sovereign as well as instruments of the state, and the law must apply to all persons equally, thereby offering equal protection<sup>72</sup>. The question then, is whether or not we conceptualize the principle of universality within transitional justice as a normative political ideal or a functional concept that can and should guide the intent of our actions.

This tension between core concepts of universalism and cultural pluralism is best interpreted by Richard Lewis Siegel in his article, "Universalism and Cultural Relativism: Lessons for transitional states". He explains that opposition to comprehensive or core versions of universalism are often based on the legitimacy of moral or cultural pluralism. Additionally, the imperative of adjusting human rights standards to varying degrees of economic or political development helps to recognize the argument that some widely-proclaimed human rights can be perceived as irrelevant or inapplicable in many non-Western contexts<sup>73</sup>.

This discussion is by no means trying to suggest that the focus of transitional justice initiatives should shy away from the imperatives of universal human rights. Quite the opposite is true: this paper recognizes the imperative of many African societies in transition to move forward *through* the empowerment of human rights within their local context. In doing so, this paper hopes to suggest

an opportunity to question some of the traditional assumptions regarding this topic and encourage further discussion in order to obtain a more holistic understanding of this topic.

## CONCLUSION

There is a wide range of transitional justice activities currently at work within various regions of Africa. Their diversity in mandate, functioning, strengths, and weaknesses reflects the inherent variety of the African continent itself. Each country possesses its own political history, national goals, and culture. This recognition should empower local communities with the support of international actors to devise thoughtful and appropriate strategies that will best serve existing needs.

Reconciliation between contextual variance and the principles of universality of humanitarian law should inform all decisions regarding truth-seeking initiatives aimed at restoring justice. A dual respect for pre-existing conditions of context and the imperatives of the rule of law will prove essential. Through this recognition, national and international authorities must begin to answer a litany of difficult questions that may challenge their traditional assumptions. In supporting transitional societies, innovation and adaptation will prove crucial as local and supranational actors attempt to work together in restoring justice and reconciliation. One of the strongest showings of support for these initiatives comes from the African actors themselves<sup>74</sup>. Effectively, this makes many members of African society much more than victims of conflict and injustice but strong proponents and advocates for these tentative and integral strategies.

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<sup>71</sup> Ibid.

<sup>72</sup> Simon Chesterman, "An International Rule of Law?," *American Journal of Comparative Law* 56 (2008) 331-361

<sup>73</sup> Siegel

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<sup>74</sup> Williamson.

# The Fight over Impunity

## How Political Forces are Misdirecting the Efforts to Establish Accountability in Africa

Sasha Van Katwyk

Impunity is not so much a specific facet in the culmination of global issues, as it is a buzzword to represent the failure of the international community to adequately address the immunity perpetrators of heinous crimes have enjoyed. The inability of major actors to conjure the political will to hold leaders of states and other individuals accountable for their war crimes and/or crimes against humanity has created a causal-nexus culture of impunity that welcomes further atrocity and despair for those on every part of the globe<sup>1</sup>. One part of the globe that has experienced a lamentably large portion of these atrocities is Africa.

As has become the tragic trend in states that have been host to the most extreme crimes against humanity, there are countries in Africa that have had to experience even further ordeal by not seeing the perpetrators of crimes of war, genocide, and extra-judicial killing, be held accountable for their actions. This impunity has negative effects that go beyond the punishment of individuals; (1) it hampers community reconciliation efforts as people feel they have not been given the necessary means to cope with what they experienced<sup>2</sup>; (2) it does not provide the legitimate authority in place the opportunity to officially recognize action taken against major criminals, thereby undermining confidence in the state and failing to force upon the institution the value of human rights and the individual under law<sup>3</sup>; (3) and failing to prosecute

for such crimes means no precedent is set against major crimes, nor is a deterrence presented to future perpetrators thereby leaving open the threat of future instability and insecurity<sup>4</sup>.

For these reasons, the problem of impunity in Africa—and around the world—is considered a serious hindrance and threat to global security, development, and universal recognition of human rights<sup>5</sup>. In more recent years there have been signs of impunity being addressed; with the establishment of the International Criminal Court (ICC) and the conflict-specific tribunals that burgeoned from its inception, prosecutions have begun and new international law precedent has been established<sup>6</sup>. These are indeed hopeful signs of the international community engaging with the menace of impunity. In terms of Africa itself, the ICC, International Criminal Tribunal for Rwanda (ICTR), Special Tribunal for Sierra Leone (STSL), and international bodies facilitating these bodies' work have made impressive strides to address breaches of humanitarian law<sup>7</sup>. These international bodies, in fact, have been the only valid actors to adequately address the problem of impunity, in Africa.

Two of the most disputed reasons for this will be discussed in this paper, as I argue that (1) reconciliatory commissions, that are more popular among African communities than punishment-based courts, have proven to not present deterrence for future crime, and (2) there are politically motivated forces within Africa that are misdirecting the justice system for individual and group political gain.

The legal framework behind humanitarian law, more specifically war crimes, crimes against humanity, and genocide, comes out of international

<sup>1</sup> Kofi A. Annan. Speech "The Effectiveness of the International Rule of Law in Maintaining International Peace and Security" The International Peace Conference. The Hague. May 18, 1999

<sup>2</sup> Kader Asmal. "Truth, Reconciliation and Justice: The South African Experience in Perspective" *The Modern Law Review*, Vol. 63, No. 1. Jan., 2000. (p. 3)

<sup>3</sup> Payam Akhavan. "The International Criminal Tribunal for Rwanda: The Politics and Pragmatics of Punishment" *The American Journal of International Law*, Vol. 90, No. 3. Jul., 1996. (p. 505)

<sup>4</sup> Kader Asmal.. (2000) p. 3

<sup>5</sup> Rome Statue of the International Criminal Court. A/CONF.183/9. 17, July 1998. (p. 1)

<sup>6</sup> K. P. Prakash. "International Criminal Court: A Review" *Economic and Political Weekly*, Vol. 37, No. 40. Oct. 5-11, 2002. (p. 415)

<sup>7</sup> Hassan B. Jallow. Prosecutor of the ICTR, to the UN Security Council, 4 June, 2008. INTR/AP1273.

agreements and conventions<sup>8</sup>. While it was agreed that international intervention was not necessary to prosecute and try violators of humanitarian law, in the cases of Rwanda and Sierra Leone, the creation of internationally-established tribunals were deemed necessary<sup>9</sup>. There have been criticisms by those favouring truth and reconciliation methods over punitive courts, that trying the accused does not create a new community without impunity. Instead, they argue, there must be an emphasis on forgiveness, social regeneration, and not dwelling on the past.<sup>10</sup> Indeed there is proof that the majority of African communities that have faced these atrocities, have felt a greater good has been served through truth commissions, and that this favouring is born out of traditional community culture that is simply at odds with Western perspectives on justice<sup>11</sup>. Both African and international observers have argued that communities are better served—and more likely to come to terms and recover from the atrocities carried out—through reconciliatory and truth commissions<sup>12</sup>. The following are expressed objectives attained by truth commissions:

- The rehabilitation of victims and the restoration of their dignity;
- The assertion of the rule of law and the building of a human rights culture;
- The legitimization of the State and its institutions;

- The establishment of an authoritative record of the past that can prevent future manipulation and distortion;
- The creation of a so-called “collective memory” that should contribute to a moral revival and provide the basis for national unity; and
- The education of the population and the deterrence of potential perpetrators<sup>13</sup>

Given the breadth of these objectives, proponents of truth commissions argue that they are more capable alternatives to punitive court institutions<sup>14</sup>. Conversely, while there is evidence of these commissions achieving their restorative goals within the communities affected<sup>15</sup>, there is further evidence suggesting that they cannot—and have not—provided adequate deterrence for future acts. The great majority of conflicts that have reached a wartime extreme that have breached humanitarian law, are politically motivated and then imbue themselves with ethnic, religious, and racial divide—rather than the other way around<sup>16</sup>. While truth commissions are excellent mechanisms to cope with atrocity and even—if one were to be generous with the assessment of outcomes—contribute to a ‘moral revival’ that may inhibit re-ignition of conflict<sup>17</sup>, political divides will remain and indeed have remained<sup>18</sup>.

Two examples of this are in Uganda and Sudan. Uganda was the first state to introduce a truth commission and in 2004, Sudan established a truth commission in response to the decades-long civil

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<sup>8</sup> K. P. Prakash. (2002) p. 415

<sup>9</sup> In the case of each of these, there were two primary reasons given. The first being the lack of national legal infrastructure at the time that could adequately take on cases. The second being that since the violent groups involved in committing the illicit action were still operating, there were fears of safety or escape of any prisoners. Sources: (1) Payam Akhavan (2000) p. 502 (2) Elizabeth M. Evenson. “Truth and Justice in Sierra Leone: Coordination between Commission and Court” *Columbia Law Review*, Vol. 104, No. 3. Apr., 2004. (p. 733)

<sup>10</sup> Helena Cobban. “Transitional Justice and Conflict Termination: Mozambique, Rwanda, and South Africa assessed” ed. Edel Hughes et al. *Atrocities and International Accountability: Beyond Transitional Justice*. United Nations University Press. Tokyo. 2007.

<sup>11</sup> Peter R. Baehr. “How to Come to Terms with the Past” ed. Edel Hughes et al. *Atrocities and International Accountability: Beyond Transitional Justice*. United Nations University Press. Tokyo. 2007. (p. 18)

<sup>12</sup> Michelle Parlevilet. “Considering Truth: Dealing with a Legacy of Gross Human Rights Violations” *Netherlands Quarterly on Human Rights* 1998. Vol. 16 (p.141-174)

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<sup>13</sup> Ibid.

<sup>14</sup> Kader Asmal. (2000) p.24

<sup>15</sup> See: Edel Hughes et al. “Atrocities and International Accountability: Beyond Transitional Justice.” United Nations University Press. Tokyo. 2007.

<sup>16</sup> Geoffrey Robertson. “Crimes Against Humanity: The Struggle for Global Justice” Penguin Books. London. 2002. (p.21)

<sup>17</sup> Indeed this would be a generous assessment as to prove or measure potentials and alternative courses of action given the plethora of potential human response and behaviour, would be exceedingly difficult to substantiate. This is why it is difficult for this author to fully comprehend the argument that truth commissions can act as a deterrent and even replacement to criminal proceedings in a court room.

<sup>18</sup> Geoffrey Robertson. “Crimes Against Humanity: The Struggle for Global Justice” Penguin Books. London. 2002. (p.21-2)

war. In both cases “political forces continued to hamper the progress of reconciliatory programmes.”<sup>19</sup> As current events show us, in both cases political turmoil has continued to plague these two states despite extensively funded and arguably successful<sup>20</sup> community reconciliation projects.

From a legal standpoint, if truth commissions are not addressing political actions nor are they providing institutionalized or authoritative deterrents<sup>21</sup>, then the principle motivator for future conflict has not been addressed nor has the breach of humanitarian law in that conflict been deterred. Conversely, if the potential for prosecution does prove to be a deterrent, then it is the court’s place to provide that deterrence and thereby eradicate perpetrators’ expectations of immunity. In this way, for truth commissions to be argued as an alternative to institutional justice in the courts is to redirect the perceptions of justice onto the victims rather than the perpetrators; and with no offering of substantive deterrence to future breach of humanitarian law, the problem of impunity is not practically or legally addressed. Therefore, while reconciliatory programmes have a valuable place in servicing the communities affected, it falls to the courts to address the problem of impunity at its core; the expectation of immunity by perpetrators of heinous crimes.

This refocus on the courts offers further insight to the second force misdirecting efforts to establish individual accountability; political agendas undermining the establishment of valuable legal precedent. As already mentioned, a state is promoted to seek justice in its own court system should crimes of humanitarian law occur within its own jurisdiction, provided the necessary legal infrastructure is in place<sup>22</sup>. The ‘necessary infrastructure’ to speak of is some legislative

recognition of the Geneva Convention and some formal definition as to what genocide, crimes against humanity, and war crimes are and how they may be prosecuted upon an individual<sup>23</sup>.

In many of the cases in the global south including Africa, however, the necessary infrastructure does not exist<sup>24</sup>, and yet states have headed prosecutions against individuals who have allegedly committed such crimes largely for political gains. An example of this is in the Democratic Republic of the Congo (DRC), where, in 2007, the transitional government led by President Joseph Kabila began rapidly rounding up political enemies—those involved, or not, in the violence of previous year. The complexities of power in the DRC present a challenge to fully describe the situation in a case study, however the theme of the cases has been for the transitional government to feed immediate perpetrators to the ICC, while conducting their own trials of political enemies in hopes of removing the ‘transitional’ from the government’s title.<sup>25</sup>

In 2005, the extra-judicial killing of nine UN peacekeepers resulted in the peace operation there (MONUC) to issue an ultimatum for disarmament of all rebel groups, or face prosecution. The transitional government at the time took advantage of the opportunity and “arrested the leaders of all the groups, with little regard for whether or not they might have been involved in the incident.”<sup>26</sup> Most of those prisoners remain in Kinshasa prisons to this day.

<sup>23</sup> Stephen Macedo, ed. “Universal Jurisdiction: National Courts and the Prosecution of Serious Crimes under International Law” University of Pennsylvania Press. Philadelphia. 2004. (p. 32)

<sup>24</sup> While all African states have at least accessed (not signed but ratified by default) to the Geneva Convention, only twelve states have legislative jurisprudence that addresses humanitarian law. Source: Dinah Shelton. “Remedies in International Human Rights Law” 2<sup>nd</sup> Ed. Oxford University Press. Oxford. 2005. (p.465)

<sup>25</sup> International Crisis Group. “Congo: Consolidating the Peace” Africa Report N°128. 5 July 2007

<sup>26</sup> Stephanie Wolters. “Selective Prosecutions Could Undermine Justice for Congo” Institute for War and Peace Reporting. Mar. 7, 2007  
<[http://www.iwpr.net/?p=acr&cs=f&o=333874&apc\\_state=henpacr](http://www.iwpr.net/?p=acr&cs=f&o=333874&apc_state=henpacr)>

<sup>19</sup> Dumisa Buhle Ntsebeza “Can Truth Commissions in Africa deliver justice?” *Human Rights in Africa*. 2008.

<[http://www.kas.de/upload/auslandshomepages/namibia/Human\\_Rights\\_in\\_Africa/12\\_Ntsebeza.pdf](http://www.kas.de/upload/auslandshomepages/namibia/Human_Rights_in_Africa/12_Ntsebeza.pdf)>

<sup>20</sup> Ibid.

<sup>21</sup> See footnote 16.

<sup>22</sup> See footnote 9.

In this same time frame, President Kabila delivered Thomas Lubanga, leader of the Hema-led UPC rebel group, to the ICC, making Lubanga the first person to be tried by the international court. This move, however, showed later to be a strategic step, as it resulted in the UN's further praising of the transitional government, MONUC's agreement to allow the Kabila administration to establish a military tribunal to "extend the fight against impunity", leading to the extensive and rapid prosecution of some 57 "rebel sympathizers" (non-coincidentally self-described political enemies of the Kabila administration), in only two months<sup>27</sup>. The process went widely unnoticed by the UN and ICC, as attention was turned to their single case against Lubanga, and later the pre-case processing of Germain Katanga and Mathieu Ngudjolo, both militia leaders accused of war crimes.

Further indications of corruption come out of the trial of Chief Kahwa Panga Mandro, leader of the Ituri militia group. He had been tried in the DRC on ten counts of murder, found guilty, and then granted amnesty by the domestic (not military) courts. The court's use of Congo's amnesty law in connection with the massacre of civilians, said UN spokesperson in Congo Kemal Saiki, was a "worrying [development] in the fight against impunity in the DRC".<sup>28</sup> Reports of corrupt courts in the DRC have become common in recent years; largely criticized for playing political games with the government, at the expense of justice itself. In the Chief Kahwa case, this was evidentially at play as part of a judiciary strike against President Kabila's forced retirement of over one hundred public prosecutors and judges.<sup>29</sup>

The problem of corruption and the politicizing of courts is a common symptom of impunity in

Africa<sup>30</sup> as well as a consequent factor for continued breach of humanitarian law. In the case of Uganda, the government has dragged its feet in the passing of an 'ICC bill' that would ratify the Rome Statute and jurisprudence within Uganda to try crimes against humanity and genocide. Meanwhile, Uganda has begun proceedings against Thomas Kwoyelo, a former Lord's Resistance Army (LRA) commander, on twelve counts of kidnapping with intent to murder.<sup>31</sup> The reason for the lesser charge is, evidentially, to speed up proceedings, however, the more apparent reason is that the government is looking to gain from the conviction of an LRA commander in the midst of new conflict, while avoiding to ratify the ICC<sup>32</sup>. There are strong pressures being put on the

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"While truth commissions are excellent mechanisms to cope with atrocity and even—if one were to be generous with the assessment of outcomes—contribute to a 'moral revival' that may inhibit re-ignition of conflict, political divides will remain and indeed have remained."

government, both within the administration as well as from political elites throughout Uganda, that are insisting the ICC bill not be passed for fear of an international body holding those within the

government accountable for previous actions that have thus far been met with impunity<sup>33</sup>.

These fears of current governmental actors and political elite being prosecuted should they ratify

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<sup>27</sup> Ibid.

<sup>28</sup> Eddy Isango. "Congo DRC: Chaos in the Courts" Institute for War and Peace Reporting. Jan. 28, 2008.

<sup>29</sup> Ibid.

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<sup>30</sup> (1) Payam Akhavan. "Beyond Impunity: Can International Criminal Justice Prevent Future Atrocities?" *The American Journal of International Law*, Vol. 95, No.1. Jan., 2001. (p. 23) (2) Martin Meredith. "The State of Africa: A History of Fifty Years of Independence" The Free Press. London. 2006. (p. 222)

<sup>31</sup> Bill Oketch. "Kampala puts former LRA commander on trial – but not for war crimes." Institute for War and Peace Reporting. 29, July 2009. <[http://iwpr.net/?p=acr&s=p&o=-&apc\\_state=henh](http://iwpr.net/?p=acr&s=p&o=-&apc_state=henh)>

<sup>32</sup> William Burke-White. "Peace vs. Justice in Uganda" *Foreign Policy Digest*. July 2009.

<<http://www.foreignpolicydigest.org/20080604103/Regional-Archive/Africa-Archive/special-report-peace-vs-justice-in-uganda.html>>

<sup>33</sup> Rachel Irwin. "Uganda's Ability to Try Rebels Questioned" 21, Nov. 2008. International Centre for Transitional Justice. <<http://www.ictj.org/en/news/coverage/article/2150.html>>

the Rome Statute have only been confirmed with the recent indictment of Sudanese President Omar al-Bashir<sup>34</sup>.

In this fear, nations are not only applying the law unfairly to meet their own agendas, as seen above, but—perhaps more importantly—the legal precedents they’re setting establish motive for their political rivals to more resolutely remove them from power and utilise the courts in a similar fashion, while establishing immunity for themselves. Cases of this political upheaval have been seen in Idi Amin’s Uganda, Colonel Jean-Bedel Bokassa’s Central African Republic, Soglo’s Benin, and Lamizana’s Burkina Faso (Upper Volta)<sup>35</sup> and each shows that this form of precedent-setting has become a learned and shared practice of African governments across the continent. Indeed, while state action to ‘bring justice’ to legitimate perpetrators of heinous crimes has been seen within many parts of Africa as a positive, the methods and motives that have been presented here point more towards politics than to the law.

There has been a more direct manner by which certain national governments are misdirecting efforts to fight impunity. Despite the infrastructural limitations of their national courts, many leaders have denounced the activities of the ICC and international tribunals; the criticism reached a new level when the African Union (AU) formally denounced the ICC following the indictment of al-Bashir<sup>36</sup>. It should be pointed out that this does not

mean the whole of African states disparage the ICC; the AU votes by closed consensus Benin’s Foreign Minister explained following the vote, “consensus usually means unanimity, but in this case there was some dissent.”<sup>37</sup> The general feeling amongst African states, however, has become clear. Whether disagreement with the ICC arises from a legitimate lack of confidence in the body’s capacity to establish an African-suited precedent of justice, or that there is enormous pressure from interest groups within their individual states and governments that fear the possibility of tribunals with equal accountability, is a question yet to be answered<sup>38</sup>.

The ‘African-suited precedent of justice’ referenced has been widely described by state leaders as truth and reconciliation commissions<sup>39</sup>, has already been addressed in this paper as a valuable institution, however not one that has proven to address the problem of impunity. From a legal standpoint, this seems to have been acknowledged by the framers of the African Union as well, for the African Union Court of Justice (AUCJ) is an intended body of the AU. Questions therefore arise as to the intended purpose of this not-yet existing body which is meant to be an extension to the African Court on Human and People’s Rights (ACHPR).<sup>40</sup> The ACHPR has only been ratified by fifteen states, and there has been no progress on the official creation of the AUCJ<sup>41</sup>; both strong indications that there is little motivation of national bodies to ratify any legal institution that follows precedents currently set.

The issues addressed here are profoundly layered and often dive into the complexities of individual

<sup>34</sup> William Burke-White. “Peace vs. Justice in Uganda” *Foreign Policy Digest*. July 2009.

<sup>35</sup> While it should be pointed out that certainly there have been circumstances beyond corrupt and politically motivated courts that have brought about these major coups, the source points out that in each of these events, the perpetration of rebel groups by military and civil courts puppeted by the state, was one of the distinct factors that drove the rebellion into a full out coup. It should also be noted that several of these occurred within only days of each other, as the language of coups, in the sources words, “resonated with many despotic groups and...after seeing the table of immunities turn to the victors, undoubtedly spurred them on.

Source: Martin Meredith. “The State of Africa: A History of Fifty Years of Independence” The Free Press. London. 2006. (p. 233-4, 277-8)

<sup>36</sup> Impunity Watch: Africa. “African Leaders Denounce ICC” 7, Apr. 2009.

<sup>37</sup> [http://www.impunitywatch.com/.m/impunity\\_watch\\_africa/2009/07/african-leaders-denounce-icc.html?p=2](http://www.impunitywatch.com/.m/impunity_watch_africa/2009/07/african-leaders-denounce-icc.html?p=2)

<sup>38</sup> Ibid.

<sup>39</sup> Bruce Baker. “Twilight of Impunity for Africa’s Presidential Criminals” *Third World Quarterly*, Vol. 25, No.8. 2004. (p. 1487)

<sup>40</sup> Carole Henderson-Tyson. Lecture “Truth and Reconciliation-Lessons Learned”. African and Middle Eastern Studies Institute. 7 Mar. 2009.

<sup>41</sup> Timothy Murithi. “The African Union: Pan-Africanism, Peacebuilding and Development” Ashgate, Hampshire. 2005. (p. 120)

<sup>42</sup> Ibid.

states' pasts while also spanning across the entire continent. This paper is not meant to access nor analyse all the cases surrounding the question of impunity, so much as take a critical pulse of Africa's efforts to address it. What becomes clear is that there is far greater support for truth and reconciliation commissions following major conflicts. This is an understandable reaction, as communities are being addressed and mechanisms for coping and moving on are realised. These commissions do not, however, offer deterrence to future perpetrators of war crimes and crimes against humanity, and therefore do not address the fundamental goal to combat impunity.

Furthermore, while individual states have expressed their own successes to fight impunity through their own trials, a deeper examination shows many of these cases to be fraught with corruption, politically motivated prosecutions, and double standards to the application of law. Not only are these trials deeply unjust, they establish negative precedent that has shown to in fact encourage further conflict, and with it the possibility of greater crimes against

humanitarian law. Finally, the more direct indications of states' unwillingness to address the question of impunity are seen in the public displays of anti-ICC legislation and resolution.

Both of these factors are politically motivated and have substantive explanation that goes beyond simply addressing or not addressing impunity. But once again, those concerned must return to the fundamental danger of impunity itself; it is not an isolated enigma, but instead the representation of a culture of ambivalence towards the fundamental rights of individuals. While every state and nation has the right to question the founded principles—in this case the necessity of individual accountability under law—the 'alternatives' presented by African states and scholars alike have shown to not halt or hinder the heinous crimes against their own people. The 'fight against impunity' is not so much being fought, as it is being *fought over*; the forms of justice being pursued in Africa will need to produce substantive precedent with tangible outcomes before this fight will be adequately addressed.

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## Africa & Climate Change

### The realities of climate change's implications – paving the way to Copenhagen

Susan Humphrey

Many would argue that climate change has become the defining issue of our generation. Discussion of its implications, consequences, and potential solutions floods the airwaves of radio and television, filling the pages of newspapers, magazines, and journals. At this particular moment in time, with the United Nations Climate Change Conference set to take place in Copenhagen next month, talk of climate change is everywhere. There is talk about how newly elected US President Barack Obama will act in light of the constraints imposed on him by Congress and

Senate, and about what we might expect the European Union's position to be. Everyone is concerned about the stances that China and India's representatives will adopt once they arrive in Copenhagen on December 7, and Canadians are wondering if their Prime Minister will make Canada a leader and not an impediment to the debates this time around.

But very little discussion is taking place around the subject of Africa and what *its* position will be. Little to no academic literature has been written or published on the topic, and one must dig deep within the pages of the leading media sources to find mention of the world's poorest continent and how it plans to represent itself in Copenhagen. There is, however, a great deal of research and writing being done on the subject of how climate change will affect the countries and regions of Africa, and the results are nothing short of horrifying. There exists, then, a disconnect; much is

being written about the role that Africa will be forced to play in dealing with the *consequences* of climate change, but nothing is being said about the role that Africa must play in the discussions about taking definitive and preventative *action* regarding climate change. If it is widely known and agreed upon that Africa will pay the highest price out of any other area of the world as a result of climate change, then why do we not care about what the Copenhagen Conference means for the continent? This paper seeks to address this disconnect. It will first engage in a discussion surrounding the issue of why Africa in particular is so highly sensitive to climatic changes, discussing the ways in which the continent is dependent upon its environment. The paper will then conduct a survey of the literature and research focused on how climate change will affect the African continent. While the implications of climate change will inevitably be different for different parts of the continent, this paper will focus on the three most central and commonly discussed implications of climate change for Africa: (1) water issues such as flooding, drought, sea-level rise, coastal erosion, and their consequences, (2) agricultural issues such as food security, shortages, and prices, and (3) health issues such as an increase in cases of malnutrition, water and vector-borne diseases, as well as heightened levels of air pollution and heat stress.

In light of the detrimental effects that climate change will have on Africa, the second section of this paper will use this information to demonstrate that Africa must play a key role in the upcoming negotiations at the UN Climate Change Conference in Copenhagen. It will briefly outline the purpose of the Copenhagen Conference and what it hopes to accomplish, and will follow with a discussion of how Africa will participate in the negotiations. The position that the continent is slated to adopt will be examined, and predictions will be made with respect to the possible and/or likely outcomes of the twelve day conference and the impacts these will have for Africa. In sum, this paper will argue that the devastating consequences that climate change will inflict upon Africa give the continent all the motivation it may need to adopt a strong,

united, and demanding position at the UN Climate Change Conference in Copenhagen. It will also argue that these same consequences provide African representatives with the right to demand reasonable and just compensation, as well as financial and technological support for mitigation and adaptation strategies. Finally, it will argue that world leaders, primarily from the industrialized countries, have a responsibility and moral imperative to listen to and act upon Africa's demands.

## THE IMPLICATIONS OF CLIMATE CHANGE FOR AFRICA

Climate change can have an enormous array of implications, both direct and indirect, that can vary widely from one part of the world to another. Drought, for example, may not be seen as an immediate concern for an urban area, though it can be an issue of life or death for a rural, agricultural population. Air pollution, while having negative effects for the entirety of the planet, is felt more severely in highly populated urban spaces than in sparsely populated rural regions.

This section of the paper seeks to address how climate change will affect the African continent in particular. It will first explain Africa's role in global climate change and then discuss why Africa is particularly sensitive to its consequences. The paper will then demonstrate why the continent will therefore be harder hit than any other as a result of climate change and will examine water, agricultural, and health issues, all of which are and will continue to arise as a result of climate change.

### Africa's Role in Global Climate Change

It is widely acknowledged that Africa contributes the least of any continent in the world to global warming. According to the US Department of Energy, Africa emits an average of one metric tonne of carbon dioxide per person per year, a statistic which pales in comparison to the 16 metric tonnes emitted by the average American per year. In total, the United States emits 23 percent of the global total of greenhouse gases while Africa, as an

entire continent emits roughly four percent.<sup>1</sup> According to the African Union, the emissions of Africa's one billion people are equivalent to the emissions of the state of Texas' 30 million people<sup>2</sup>, numbers which demonstrate that comparatively speaking, Africa's emissions are a very small slice of the global pie.

The consequences that Africa will suffer as a result of its emissions, however, are far from proportionate when one considers its levels of emissions. While there is much uncertainty in making predictions about how exactly climate change will affect Africa<sup>3</sup>, it is certain that "[t]he continent is more exposed to the impacts of climate change than many other regions of the world".<sup>4</sup> The World Bank estimates that Africa will suffer approximately 80 percent of the damages from climate change likely to occur worldwide<sup>5</sup>, though it "is powerless to prevent climate change, and is left merely to respond to it. Furthermore, the nations of this region are woefully ill-prepared to deal effectively with the adverse impacts of climate change".<sup>6</sup>

#### Africa's Sensitivity to Climate Change

"It's a cruel irony that, in many experts' opinions, the people living on the continent that has contributed the least global warming are in line to be hardest hit by the resulting climate changes".<sup>7</sup>

<sup>1</sup> Fields, Scott. 2005. "Continental Divide: Why Africa's Climate Change Burden is Greater." *Environmental Health Perspectives* 113: A534-A537.

<sup>2</sup> UKAID. 2009. "Africa to have stronger voice on climate change at Copenhagen." *Department for International Development*, September 24. <http://www.dfid.gov.uk/Media-Room/News-Stories/2009/Africa-Copenhagen/> (November 21, 2009).

<sup>3</sup> Challinor, Andrew, Tim Wheeler, Chris Garforth, Peter Craufurd, and Amir Kassam. 2007. "Assessing the vulnerability of food crop systems in Africa." *Climatic Change* 83: 381-399.

<sup>4</sup> Working Group on Climate Change and Development (WGCCD). 2005. *Africa – Up in smoke?* London: New Economics Foundation. (2)

<sup>5</sup> Parayre, Christophe. 2009. "Africa wants polluters to pay for climate change." *Agence France-Presse*, October 11. <http://www.google.com/hostednews/afp/article/ALeqM5gg29gPgSmlNulN17ZSb0Kbnx2cQ> (November 21, 2009).

<sup>6</sup> Justice, Christopher O., David Wilkie, Francis E. Putz, and Jake Brunner. 2005. "Climate change in sub-Saharan Africa: assumptions, realities and future investments." In *Climate Change and Africa*, ed. Pak Sum Low. Cambridge: Cambridge University Press. (176)

<sup>7</sup> Fields, Scott. 2005. (A535)

Why is this the case? Firstly, it is the huge number of people living within Africa that poses the biggest problem and threat to the continent, especially when one considers the proportion of these individuals who live in areas susceptible to droughts and flooding, as well as in of poverty to some degree. "[T]hose Africans who don't have sufficient wealth to buffer the effects of increasing climatic variability will plunge deeper into poverty"<sup>8</sup>, largely as a result of the fact that the average per capita income is lower in Africa than anywhere else in the world. This makes it difficult, if not nearly impossible, for families to adapt or bear the adverse effects of climate change, particularly if they are reliant on natural resources.<sup>9</sup> "Climate change is happening, and it's affecting livelihoods that depend on the natural environment, which, in Africa, means nearly everyone".<sup>10</sup>

It is this reliance and dependence on natural environments and resources that make Africans so desperately susceptible to the harsh effects of climate change. Over 70 percent of African workers are employed in agriculture, while 40 percent of Africa's GDP is dependent upon agriculture.<sup>11</sup> The vast majority of the African economy is based on the agricultural and wild resource sectors, which are both invariably linked to the climate. With weather events expected to be much more extreme and much more difficult to predict, African governments will be left scrambling to prevent, adapt, and react to these changes. Many African governments, however, lack the technical skills, infrastructure, and fiscal ability to predict, plan and respond to climate change.<sup>12</sup>

"The multiple stresses on African countries, particularly from poverty, infectious disease, fragile environments, limited institutional capacities and

<sup>8</sup> Fields, Scott. 2005. (A537)

<sup>9</sup> Justice, Christopher O., David Wilkie, Francis E. Putz, and Jake Brunner. 2005.

<sup>10</sup> WGCCD, 2005. (2)

<sup>11</sup> Fields, Scott. 2005.

<sup>12</sup> Justice, Christopher O., David Wilkie, Francis E. Putz, and Jake Brunner. 2005.

unsustainable development, mean that even modest fluctuations in weather or climate conditions can lead to severe consequences".<sup>13</sup> Since Africa is so sensitive to and so highly reliant upon its environment, climate change threatens to undo even the smallest amounts of progress which have been made by some countries with respect to development. Money will need to be diverted from economic development plans to be spent on emergency care as a result of natural disasters and more slowly occurring climatic changes.<sup>14</sup> This is not something that African states can afford to do, though may be inadvertently forced to do should the international community prove itself unable to unite and take equitable action against climate change.

#### WATER, FOOD, AND HEALTH: A CHANGING CLIMATE THREATENS AFRICA

##### Water and Climate Change

All human beings rely on water for their economic and environmental well-being. But the fact that so many Africans, who rely on water, have livelihoods so profoundly based in subsistence means that occurrences affecting water represent "a serious climate related hazard for the continent".<sup>15</sup> Climate change *is* this hazard, as it threatens to increase temperatures, therefore altering precipitation patterns<sup>16</sup> and increasing the evaporation process, leading to more droughts, less flow in rivers and aquifers and more water stress in some places. Other areas will receive a higher intensity of rainfall, but fewer rainy days in total, and longer periods with no rain at all.<sup>17</sup> "Paradoxically, therefore, climate change is projected to increase the frequency of both flooding and drought"<sup>18</sup>, albeit in different parts of the continent. Areas that

already get a lot of rain, such as the equatorial and sub polar rain belts will get more, and areas that get little rain, the subtropical dry zones, will get less.<sup>19</sup>

##### Drought and Desertification

Of the 19 countries in the world that are classified as "water stressed", more are in Africa than in any other continent.<sup>20</sup> With 14 African countries listed under this heading and 11 more expected to join their ranks by 2030, drought poses a serious threat to the continent. By 1995, water availability across Africa was 2.8 times less than it had been in 1970,<sup>21</sup> and throughout the 1970s in the Sahel, 300,000 people died during drought which is believed to have been caused by changes in ocean temperatures stemming from climate change.<sup>22</sup> A number of examples demonstrate how these occurrences of drought and water stress are expected to be the rule and not the exception in the years to come. The Nile River, for example, is the longest river in the world, and has ten countries that share its river basin. It is the primary source of water for three of these countries, one of them being Egypt, which relies on the Nile for 95 percent of its freshwater needs. With most of its population located in high concentrations around the Nile, there is a clear and "critical dependence on this narrow lifeline".<sup>23</sup> It is estimated that river flow of the Nile will decrease by more than 75 percent by 2100, which poses an enormous problem as even a reduction in river flow of 20 percent would seriously threaten normal irrigation systems and practices.<sup>24</sup>

By 2050, rainfall in southern Africa and the Horn is expected to fall by 10 percent.<sup>25</sup> In Darfur, decreased rainfall has already led to the desertification of large amounts of farmland and grasslands, while about 1,350 square miles of

<sup>13</sup> Basher, Reid and Sálvano Briceño. 2005. "Climate and disaster risk reduction in Africa." In *Africa and Climate Change*, ed. Pak Sum Low. Cambridge: Cambridge University Press. (271)

<sup>14</sup> Fields, Scott. 2005.

<sup>15</sup> WGCCD, 2005. (13)

<sup>16</sup> Challinor, Andrew, Tim Wheeler, Chris Garforth, Peter Craufurd, and Amir Kassam. 2007. "Assessing the vulnerability of food crop systems in Africa." *Climatic Change* 83: 381-399.

<sup>17</sup> Smith, D. Mark. 2006. *Just One Planet: Poverty, Justice and Climate Change*. Rugby: Intermediate Technology Publications Ltd.

<sup>18</sup> Smith, D. Mark. 2006. (13)

<sup>19</sup> Fields, Scott. 2005.

<sup>20</sup> Justice, Christopher O., David Wilkie, Francis E. Putz, and Jake Brunner. 2005.

<sup>21</sup> WGCCD, 2005.

<sup>22</sup> Fields, Scott. 2005.

<sup>23</sup> Organisation for Economic Co-operation and Development. 2008. *Bridge Over Troubled Waters: Linking Climate Change and Development*. Paris: OECD Publishing. (101)

<sup>24</sup> WGCCD, 2005.

<sup>25</sup> Ibid.

Nigeria turns into desert each and every year.<sup>26</sup> This century has witnessed the “shocking advance of the Sahara and Kalahari deserts”<sup>27</sup>, as well as, since the 1980s, a drastic decrease in rain during the transition period between the dry and rainy seasons in the

Volga delta. According to the German Institute for Meteorology and Climate Research, up to 70 percent of the delta’s precipitation is lost during certain years, while its rainy season has often been shortened by up to 30 days.<sup>28</sup> The evidence, therefore, is clear – climate change has already affected, and will continue to ravage the African continent with drought, desertification, and all of the implications they bring. Water shortages will affect the provision of drinking water, the stability of the agricultural sector, as well as sanitation and health practices for Africans.

#### Sea-level Rise, Flooding, and Natural Disasters

Coastal areas are also at risk to be negatively impacted by climate change. Not only are these areas already facing enormous pressures as a result of population growth, but these issues will be aggravated by the threat of sea-level rise and flooding.<sup>29</sup> Predictions range from a rise in sea-levels by 25 centimetres come 2050<sup>30</sup> to a worst-case scenario predicted of an 88 centimetre rise by 2100.<sup>31</sup> There are fears that Tanzania’s 800

“With weather events expected to be much more extreme and much more difficult to predict, African governments will be left scrambling to prevent, adapt, and react to these changes. Many African governments, however, lack the technical skills, infrastructure, and fiscal ability to predict, plan and respond to climate change.”

kilometre coastline will be submerged within the next 100 years<sup>32</sup>, while Lagos, the capital city of Nigeria, is slated to be at risk from sea-level rise by 2015.<sup>33</sup> “More than direct land loss due to seas rising, indirect factors are generally listed as the main difficulties

associated with [sea-level rise]”.<sup>34</sup> These consequences include issues such as soil erosion, damage to coastal infrastructure, salt contamination of wells, sewage system breakdowns, loss of ecosystems and natural resources, decrease in agricultural productivity, increase in human migration<sup>35</sup>, as well as a decrease in water quality, increase in water contamination and an increase in the proliferation of algae and other bacteria due to flooding.<sup>36</sup>

“One of the most compelling concerns about climate change is the fact that it will lead to an increase in damaging weather events and disasters, especially for the least-developed countries, many of which are in Africa”.<sup>37</sup> The likelihood of such coastal/natural disasters is expected to increase, with the west coast of Africa being particularly exposed to and at risk of storm surges.<sup>38</sup> The costs of protecting African coastlines remain very high and usually out of reach for most African governments<sup>39</sup>, meaning that governments and citizens are left to bear the impossible costs of dealing with the repercussions of such disasters.

<sup>26</sup> Podesta, John and Peter Ogden. 2007. “The Security Implications of Climate Change.” *The Washington Quarterly* 31: 115-138.

<sup>27</sup> Iringe-Koko, Naphtali. 2009. “Countdown to Copenhagen – Africa and Concerns for Success.” *The Daily Trust* (Nigeria), November 16. <http://allafrica.com/stories/200911170145.html> (November 22, 2009).

<sup>28</sup> Godoy, Julio. 2009. “Climate Change Likely To Increase African Hunger Woes.” *Inter Press Service*, November 18. <http://allafrica.com/stories/200911190077.html> (November 22, 2009).

<sup>29</sup> See Justice et al. & Working Group on Climate Change and Development.

<sup>30</sup> WGCCD, 2005.

<sup>31</sup> Gommès, René, Jacques du Guerny, Freddy O. Nachtergaele, and Robert Brinkman. 2005. “Potential impacts of sea-level rise on

populations and agriculture.” In *Africa and Climate Change*, ed. Pak Sum Low. Cambridge: Cambridge University Press.

<sup>32</sup> Citizen, The. 2009. “The Rich Cheating the Continent on Climate.” *The Citizen* (Tanzania), September 4. <http://allafrica.com/stories/200909040708.html> (November 22, 2009)

<sup>33</sup> Podesta, John and Peter Ogden. 2007.

<sup>34</sup> Gommès et al. (17)

<sup>35</sup> Ibid.

<sup>36</sup> Smith, D. Mark. 2006.

<sup>37</sup> Basher, Reid and Salvano Briceño. 2005. (274)

<sup>38</sup> See Gommès et al. & WGCCD.

<sup>39</sup> Gommès et al.

These repercussions will expose and exacerbate the already crippling problems faced by the continent, its governments and citizens. "Africa has suffered badly from floods and droughts over the last few decades. Mind-numbing numbers of people have been killed or affected, largely because of the region's severe underlying vulnerabilities, arising from poverty, HIV/AIDS impacts, and not-infrequent failures of governance".<sup>40</sup> It is these underlying problems and predisposed vulnerabilities that leave Africa to be so drastically and devastatingly affected by climate change and its water-related implications.

### Agriculture and Climate Change

"On any continent crop failure means trouble, but in Africa it's a catastrophe".<sup>41</sup> On a continent where a larger percentage of the population lives below the poverty line than not and where approximately 80 percent of the population earns a living through agricultural practices<sup>42</sup>, climate change threatens to "jeopardize the livelihoods of millions of people and the economic capacity"<sup>43</sup> of Africa. Climate change will primarily affect the food supply of the continent through changing rain patterns. Such changes in weather patterns will have dramatic consequences for agriculture, such as flooding and droughts destroying crops, seeds, and fields, and abnormal weather causing farmers to alter their planting schedules and routines.<sup>44</sup> Africa's agriculture is extremely dependent on rainfall<sup>45</sup> with 89 percent of cereals, for example, being rain-fed.<sup>46</sup> "With [this] overwhelming dependence on rain-fed agriculture, the fate of [Africa's] people is exceptionally sensitive to disruptions of the hydrological cycle".<sup>47</sup>

Drought is already known to have impacted significant portions of Africa's population and territory, with the UN Office for the Coordination of Humanitarian Affairs citing a 3.3 million tonne food shortage during the drought of 2002-2003. An estimated 14.4 million people were left in need of assistance across Africa, particularly those in already marginalized agricultural areas.<sup>48</sup> Approximately two thirds of Africa is already desert or arid land and by 2080, it is estimated that as much as one fifth of Africa's remaining farmland will be severely stressed.<sup>49</sup> By 2050, the International Food Policy Research Institute predicts that crop yields in Africa will decrease by a dangerous 30 percent.<sup>50</sup> With business as usual, climate change could put an additional 80-120 million people at risk of hunger, with 70-80 percent of these people living in Africa.<sup>51</sup>

Farmers are actually feeling the beginnings of these climate change consequences today. "Such changes are confirmed already both by farmers in Africa, and by researchers in the industrialised world"<sup>52</sup>, as well as by individuals like Namanga Ngongi, a farmer from the Cameroon and president of the Alliance for a Green Revolution for Africa. He stated that "global warming is already destroying African agriculture. There are more and more frequent droughts, more frequent floods, and also more destruction"<sup>53</sup>. According to the World Hunger Index, measured by the Washington-based International Food Policy Research Institute, hunger has increased dramatically in nine African countries since 1990. Climate change, along with war and incorrect policy tools, were cited as the primary causes of these increases in hunger statistics.<sup>54</sup>

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<sup>40</sup> Basher, Reid and Sálvano Briceño. 2005. (217)

<sup>41</sup> Fields, Scott. 2005. (A536)

<sup>42</sup> Podesta, John and Peter Ogden. 2007.

<sup>43</sup> Ibid. (119)

<sup>44</sup> Godoy, Julio. 2009. "Climate Change Likely To Increase African Hunger Woes." *Inter Press Service*, November 18.

<http://allafrica.com/stories/200911190077.html> (November 22, 2009).

<sup>45</sup> WGCCD, 2005.

<sup>46</sup> Challinor, Andrew, Tim Wheeler, Chris Garforth, Peter Craufurd, and Amir Kassam. 2007. "Assessing the vulnerability of food crop systems in Africa." *Climatic Change* 83: 381-399.

<sup>47</sup> WGCCD, 2005. (13)

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<sup>48</sup> Ibid.

<sup>49</sup> Economist, The. 2009a. "A bad climate for development; Developing countries and global warming." *The Economist*, September 19.

<sup>50</sup> Van Den Bosch, Servaas. 2009. "Jockeying for Position in Copenhagen." *Inter Press Service*, November 2.

<http://allafrica.com/stories/200911021490.html> (November 22, 2009).

<sup>51</sup> WGCCD, 2005.

<sup>52</sup> Godoy, Julio. 2009.

<sup>53</sup> Ibid.

<sup>54</sup> Ibid.

Food shortages threaten to affect Africans in more indirect ways, such as through the rise of food prices. Some claim that should we fail to take action, food prices will double as a result of the consequences of climate change by 2050.<sup>55</sup> “Most studies indicate that food prices would rise globally with increases in global average temperature of a few degrees or more because of the slowing in the expansion of global food supply relative to population growth”.<sup>56</sup> This will inevitably reduce the income of poor urban consumers and small farmers, particularly those growing in the most marginal of areas.<sup>57</sup> Those with little income and already mediocre prospects have little room in which to manoeuvre should food prices increase or their ability to plant seeds and grow food become compromised. “Climate change adds stress and uncertainty to crop production in Africa, where many regions are already vulnerable to climate variability. Crop production in such regions is therefore expected to become increasingly risky”<sup>58</sup> and exceedingly difficult, as unlike most agricultural producers, Africans do not have the economic, physical, agricultural or technological resources to adapt to climate change. “Agriculture provides food, income, power, stability and resilience to rural livelihoods”.<sup>59</sup> When it becomes threatened, the very foundation of Africa’s economies, societies, and livelihoods are put at risk.

### Health and Climate Change

How climate change threatens to affect human health is often neglected when considering the issues and potential outcomes of climate change.<sup>60</sup> Climate change can negatively impact human health in more commonly considered and direct ways, such as through heat stress, increases in the number of heat waves, more air pollution, and lower air quality.<sup>61</sup> For Africa in particular, however, the consequences that climate change

could bring about are more serious and threatening. With respect to food, we have already seen how water and its availability threaten to cut food production and distribution across the continent. Therefore, malnutrition and hunger are very realistic consequences which will be borne by the African people, consequences which lead to physically and psychologically stunted development, as well as more general health problems and often, death.<sup>62</sup>

The availability of water also threatens human health in Africa when considering the important role which water plays in sanitation and the spreading of infectious diseases. With less water available to some areas of the continent plagued by drought, conservation strategies will be in effect, which may produce unhealthy sanitation strategies, or a lack thereof.<sup>63</sup> Meningitis is also thought to become more prevalent in drought-stricken areas<sup>64</sup>, and such speculations have been proven to be the case in north-east Uganda.<sup>65</sup> In other areas of the continent, however, water will be in abundance as a result of natural disasters, though not in a productive form. This water will be easily and likely contaminated, giving rise to a dramatic increase in water-borne, infectious disease epidemics such as cholera.<sup>66</sup> Uganda’s Minister of Environment, Maria Mutagamba, has already been witness this type of occurrence, noting that “water-borne diseases were thriving because of the environmental destruction resulting from the changing climate”.<sup>67</sup>

The majority of research that has been done concerning how climate change will affect human health in Africa has focused on the likelihood of its causing an increased number of malaria outbreaks. Annually there are between 300-500 million cases of malaria worldwide, a high proportion of these

<sup>55</sup> Van Den Bosch, Servaas. 2009.

<sup>56</sup> Smith, D. Mark. 2006. (22)

<sup>57</sup> See Fields, Scott. 2005. & Smith, D. Mark. 2006.

<sup>58</sup> Challinor, Andrew, Tim Wheeler, Chris Garforth, Peter Craufurd, and Amir Kassam. 2007. (382)

<sup>59</sup> Ibid. (382)

<sup>60</sup> WGCCD, 2005.

<sup>61</sup> See Ibid & Smith, D. Mark.

<sup>62</sup> See Smith, D. Mark & Justice et al.

<sup>63</sup> Smith, D. Mark 2005.

<sup>64</sup> The Economist, 2009a

<sup>65</sup> Tenywa, Gerald. 2009. “Climate Change Affecting Devt.” *The New Vision* (Uganda), May 12. <http://allafrica.com/stories/200905130373.html> (November 22, 2009).

<sup>66</sup> See Justice et al., 2005 & Smith, 2006

<sup>67</sup> Tenywa, 2009

occurring within Africa. There are between 1.5-2.7 million deaths resulting from malaria per year, with more than 90 percent of these being children under the age of five.<sup>68</sup> A disease which is thought to slow economic growth on in Africa by 1.3 percent every year<sup>69</sup>, attempts to limit the number of new cases of malaria in Africa have been the focus of the international community for decades. Climate change and its consequences, however, threaten to undo the progress made in this area in two ways: (1) by causing higher temperatures, and (2) through the occurrence of natural disasters, which leave large amounts of stagnant water in their wake.

Increases in temperature not only make it easier for mosquitoes to breed in areas where they are normally found, but it enables them to breed in new locations at higher altitudes<sup>70</sup>, “spreading the disease that is already the biggest killer in Africa.”<sup>71</sup> These areas have never been exposed to malaria and its residents have therefore never built up immunity to help fight against it, leading to drastically higher mortality rates.<sup>72</sup> In 1987, one highland area of Rwanda experienced a 337 percent increase in cases of malaria and 80 percent of this increase could be accounted for by changes in temperature and rainfall levels resulting from climate change.<sup>73</sup> These higher rainfall levels, as well as natural disasters, leave large amounts of stagnant water behind, creating environments that are ideal for the breeding of mosquitoes that carry the virus.<sup>74</sup> As a result, flooding in South Africa, for example, has doubled the area that is suitable for malaria-carrying mosquitoes to breed, putting some 7.2 million people at risk of contracting the disease.<sup>75</sup> Through both increases in temperature and sources of stagnant water, more than 90 million people could be exposed to malaria by 2030<sup>76</sup>, with the number of people exposed to

malaria per month expected to rise by 16-28 percent by 2100.<sup>77</sup>

### What this Means for Africa

This section of the paper has demonstrated the devastating and increasingly threatening consequences that climate change poses for the African continent. As a result of the intimate relationship and reliance that Africa and its citizens, societies, and economies have with the environment, the costs that climate change can impose upon the continent are enormously high. “[M]ore than any other region of the world, the human toll of global climate change is liable to be most severe in ... Africa”<sup>78</sup>, particularly with, as we have seen, respect to issues concerning water, agriculture, and human health.

In light of the evidence presented, this paper has made it clear that Africa has a lot to lose as a result of climate change and therefore has a lot to gain at the upcoming United Nations Climate Change Conference in Copenhagen. Consequently, the continent ought to be in the process of preparing a strong, united, and demanding position to put forth at the Conference. The facts speak to the need for the international community, particularly the industrialized countries, to react favourably and quickly to Africa’s position and demands. This second section of the paper will comment on these issues, concluding with how one might realistically predict the outcome and implications of the 2009 United Nations Climate Change Conference.

## PAVING THE WAY TO COPENHAGEN

### The 2009 United Nations Climate Change Conference

From December 7 to December 18, 2009, 193 national delegations will descend upon the Danish capital of Copenhagen in an attempt to negotiate a post-Kyoto climate change agreement for the entire planet.<sup>79</sup> Thought by some to be the most

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<sup>68</sup> WGCCD, 2005

<sup>69</sup> Ibid.

<sup>70</sup> Ibid.

<sup>71</sup> Economist, The. 2009a.

<sup>72</sup> Fields, Scott. 2005.

<sup>73</sup> WGCCD, 2005.

<sup>74</sup> Smith, 2006.

<sup>75</sup> WGCCD, 2005.

<sup>76</sup> The Economist, 2009a.

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<sup>77</sup> Smith, 2006.

<sup>78</sup> Justice et al., 2005 (176)

<sup>79</sup> Earth Policy Institute. 2009. “The Copenhagen Conference on Food Security.” *allAfrica.com*, November 10. <http://allafrica.com/stories/200911100937.html> (November 21, 2009).

important world conference since the end of the Second World War<sup>80</sup>, the Copenhagen Conference “will be an event characterized by apprehension, anxiety, enthusiasm, and serious politicking”.<sup>81</sup> According to former UN Secretary General Kofi Annan, “the decisions taken or ducked at the climate conference will have the most profound impact on our world and our future generations”,<sup>82</sup> making it a conference upon which many have placed their most sincere hopes and aspirations.

### What Africa Needs to Do

Going into a conference the magnitude of the UN Climate Change Conference as a country or continent that is traditionally viewed as a minor or even insignificant power is never easy. In the case of African countries, their governments are concerned with a number of factors and potential issues:

- 1) They feel as though they lack the technical knowledge to participate effectively in the debates, as well as the political power to influence them in a significant way.
- 2) They worry that signing an agreement concerning emission level cuts will negatively constrain their economic growth and social development.
- 3) They believe they lack the professionals to analyze data and make predictions, which is required in order to launch intervention and mitigation efforts.
- 4) They are committed to the idea that the dire impacts that climate change will have on their countries means that economic development and climate policies must go hand in hand.<sup>83</sup>

In order to satisfy these legitimate concerns, African leaders must take active steps in order to prepare for the Conference. These steps must include debate, discussion, consolidation of

opinion, determination of the key issues, and consensus regarding a plan of action and position.

Fortunately, it has been made clear that African states are taking charge of the crucial pre-Copenhagen discussions and debates being held within their continent, and are keen to avoid making the Copenhagen conference a repeat of the 1992 Earth Summit in Rio de Janeiro. At this conference, “[t]he continent suffered marginalization within the world body because of its failure to prepare and organize effectively before the summit”<sup>84</sup>; funding for the resulting Agenda 21 was slashed, little of what remained was directed towards Africa, and only one percent of these funds were earmarked for projects combating drought and desertification, two of Africa’s most troubling problems. It is believe that Africans failed in to maximize their bargaining position, emerging “as supplicants rather than negotiating partners”.<sup>85</sup> At “a conference where it faced some of the world’s most sophisticated and experienced lobbyists”<sup>86</sup>, Africa failed to aggressively campaign for its own cause, issues and concerns. “Reaching the final agreements in favour of Africa at the upcoming conference of parties will require a very high level of preparedness during these difficult negotiations”<sup>87</sup>, a feat that African states are making a valiant effort to achieve. With time running short and consequences continually growing more serious, failing to take a strong and well-thought out stance at Copenhagen is simply not an option for Africa.

### What Africa’s Position Will Be

“Copenhagen is our date with destiny”<sup>88</sup>, said Mr. Mohamed Nasheen, President of Maldives. While

<sup>80</sup> UKAID, 2009.

<sup>81</sup> Ibanga, Victoria. 2009. “Climate Change – Leaders Urge Global Engagement to Save the World.” *The Daily Champion* (Nigeria), November 8, 2009. <http://allafrica.com/stories/200911090832.html> (November 22, 2009).

<sup>82</sup> Ibanga, 2009

<sup>83</sup> Justice et al., 2005

<sup>84</sup> Iringe-Koko, Naphtali. 2009. “Countdown to Copenhagen – Africa and Concerns for Success.” *The Daily Trust* (Nigeria), November 16. <http://allafrica.com/stories/200911170145.html> (November 22, 2009).

<sup>85</sup> Iringe-Koko, 2009

<sup>86</sup> Iringe-Koko, 2009

<sup>87</sup> Jobe, Alhagie. 2009. “SOS Cham Opens ECOWAS Climate Change Forum.” *The Daily Observer* (The Gambia), March 5. <http://allafrica.com/stories/200903060517.html> (November 22, 2009).

<sup>88</sup> Okenwa, Stan. 2009. “Copenhagen – Developing Countries Ambush West, China in Negotiations.” *The Daily Champion* (Nigeria), November 19. <http://allafrica.com/stories/200911190217.html> (November 22, 2009).

Maldives may not be an African country, President Nasheen was calling upon all developing countries, African states certainly included, to take a stand at the Copenhagen Conference. It is heartening to see then, that for the first time in history, Africa will send a single delegation to negotiate a global treaty on behalf of the entire continent. This delegation will be led by Ethiopian Prime Minister Meles Zenawi, and such a development is an enormous step in the right direction for Africa's attempt at having a stronger voice in international climate negotiations.<sup>89</sup> "We have decided to speak with one voice," said Jean Ping, chairman of the African Union commission; "[we] will demand reparation and damages".<sup>90</sup>

Africa's position will be characterized by a "shared vision [that] calls for a fair, inclusive, effective and equitable new agreement in Copenhagen that will benefit the climate and vulnerable countries and be undertaken in the context of poverty eradication, sustainable development and the need for gender equity".<sup>91</sup> Its position will acknowledge the fact that Africa is in dire need of assistance in adapting to and mitigating climate change, but it will stress that its priority is to ensure cuts in global emissions, particularly from industrialized countries.<sup>92</sup> "Our interest is to prevent [climate change and its impacts] from happening in the first place. That is our primary interest precisely because Africa's ecosystems are amongst the most fragile in the world"<sup>93</sup>, said Zenawi.

As a result, Africa will insist that developed countries reduce their emissions by 40 percent below 1990 levels by 2020, and by 80 to 95 percent by 2050.<sup>94</sup> They will also request that 1.5 percent of

their GDP be given to support climate change mitigation and adaptation strategies and programmes on the continent.<sup>95</sup> This translates into a demand for billions of dollars from rich polluting countries stemming from the damages they have inflicted and will continue to

inflict upon Africa as a result of their greenhouse gas emissions.<sup>96</sup> The exact figure demanded by African countries varies from \$62 billion<sup>97</sup>, to \$65 billion<sup>98</sup>, to \$67 billion per year by the African Ministerial Conference on the Environment.<sup>99</sup> While it remains unclear how this money would be allocated between the African governments who would be responsible for managing and administering it<sup>100</sup>, one thing is certain – that African countries see the climate change problem as one that is rooted in ideas of fairness of history.<sup>101</sup>

Africa's position at the Copenhagen Conference will be founded upon the idea that responsibility and vulnerability regarding climate change are fundamentally unequal among the players.<sup>102</sup> "Though all of humanity must play a role in reversing the grave global threat, the developed

"African countries see the climate change problem as one that is rooted in ideas of fairness of history...Africa will insist that developed countries reduce their emissions by 40 percent below 1990 levels by 2020, and by 80 to 95 percent by 2050."

<sup>89</sup> UKAID, 2009

<sup>90</sup> Parayre, Christophe. 2009. "Africa wants polluters to pay for climate change." *Agence France-Presse*, October 11. <http://www.google.com/hostednews/afp/article/ALeqM5gg29gPgSmlNulN17ZSb0Kbmxc2cQ> (November 21, 2009).

<sup>91</sup> Butunyi, Cosmas. 2009. "Continent Rejects New Climate Change Pact." *Business Daily* (Kenya), October 27. <http://allafrica.com/stories/200910271049.html> (November 22, 2009).

<sup>92</sup> UKAID, 2009

<sup>93</sup> Ibid.

<sup>94</sup> Andersen, Morten. 2009. "African leaders abandon "ostrich" attitude." *United Nations Climate Change Conference News*, October 16. <http://en.cop15.dk/news/view+news?newsid=2374> (November 21, 2009).

<sup>95</sup> Ibid.

<sup>96</sup> Parayre, 2009.

<sup>97</sup> Economist, The. 2009b. "A green ransom; Africa and climate change." *The Economist*, September 5.

<sup>98</sup> Parayre, 2009.

<sup>99</sup> Van Den Bosch, 2009.

<sup>100</sup> The Economist, 2009b.

<sup>101</sup> The Economist, 2009a.

<sup>102</sup> Barnett, Jon. 2006. "Climate Change, Insecurity, and Injustice." In *Fairness in Adaptation to Climate Change*, eds. W. Neil Adger, Jouni Paavola, Saleemul Huq, and M. J. Mace. Cambridge, MA: MIT Press.

countries must be held responsible for their actions ... [and] must realise that they have an obligation to other nations, which are sharing the burden of their polluting development process".<sup>103</sup> There is a firm belief on the part of African countries that whatever comes out of the Conference must "be based on the principle of common but differentiated responsibilities and respective capabilities"<sup>104</sup>, as well as the principle of equity. It is this idea of equity which must play a primary role in the characterization of the discussions at Copenhagen, providing recognition of Africa's historically low levels of greenhouse gas emissions<sup>105</sup>, as well as the fact that unjust policies will bring about unfair outcomes for Africa.

### How Will it All Play Out?

Throughout the research process for this paper, an enormous variety of media and academic sources were consulted in hopes of finding commentary with respect to how the industrialized countries were reacting or might be expected to react to the position adopted by African negotiators. However, little information was found. The majority of the discourse focused on the position of the United States and how Obama was bound to be constrained by Congress and Senate; on the attitudes of Canada, bound to reflect disengagement and a lack of commitment; on the stances of China and India, and who might be expected to make what declarations or demands; and even worse, on the fact that a large number of world leaders have resigned themselves to the fact that Copenhagen "will be a way station, not the end point, in the so-far elusive search for a new worldwide treaty to tackle global warming".<sup>106</sup> It is this silence, this lack of mention when it comes to the case and position of Africa that is reason for

concern. While European Union member states may have agreed to pay "their fair share"<sup>107</sup> into a global fund designed to help developing countries cut their emissions and adapt to climate change, this is hardly the outpour of support and commitment so desperately needed by Africa. "What is needed most now is that Africans are supported in their efforts"<sup>108</sup>, but, using the United States as an example, "[e]conomic nationalism has trumped any ideals of justice and development in [their] position".<sup>109</sup> This seems to be the case for other developed countries as well.

"Africa wants the outcome of the Copenhagen convention to provide new, additional, sustainable, accessible and predictable finance to support a comprehensive international programme on adaptation [and mitigation] that reduces vulnerability and increases resilience".<sup>110</sup> In order for this to happen, industrialized states must first open their ears, minds, and hearts to the people of Africa, and listen to, think about, and empathize with their concerns and demands. If world leaders paid any mind to the realities of climate change's implications for Africa, then it would be acknowledged that we have a responsibility to recognize that a global climate treaty must never and can never occur at the expense of Africa's development, security, and survival. "The Copenhagen meeting aims to negotiate a deal on climate change, including emissions cuts to limit global warming and finance to help developing countries cope with climate change".<sup>111</sup> Though it doesn't appear as though this will be the actual outcome of the Conference, we must still somehow believe that there is reason to hope.

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<sup>103</sup> Citizen, The. 2009. "The Rich Cheating the Continent on Climate." *The Citizen* (Tanzania), September 4.

<http://allafrica.com/stories/200909040708.html> (November 22, 2009).

<sup>104</sup> Butunyi, Cosmas. 2009. "Continent Rejects New Climate Change Pact." *Business Daily* (Kenya), October 27.

<http://allafrica.com/stories/200910271049.html> (November 22, 2009).

<sup>105</sup> Smith, 2006

<sup>106</sup> CBC. 2009b. "Global climate treaty unlikely." *CBC News Online*, November 14.

<http://license.icopyright.net/user/viewFreeUse.act?uid=NTgmNDY1MQ==> (November 22, 2009).

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<sup>107</sup> CBC, 2009a

<sup>108</sup> WGCCD, 2005 (1)

<sup>109</sup> Smith, 2006 (87)

<sup>110</sup> Butunyi, 2009.

<sup>111</sup> UKAID, 2009.

## Short Essay:

# Are Afghan women really better-off post invasion?

Louise Cockram

The NATO-led invasion of Afghanistan in 2001 sought primarily to stop Islamic fundamentalism but also freed ordinary Afghans from the repressive Taliban government that had been in place since 1996. It is questionable whether or not these objectives have been fulfilled; Islamic fundamentalism is still on the rise and even though the Taliban do not formally control the central government in Kabul, most Afghans do not enjoy the security or standard of living that had been promised when the NATO allies invaded. Throughout this period in Afghanistan's bloody history women have been the most disadvantaged group in society and their situation has not improved much post-invasion.

This paper will discuss how women's well-being and security have been both enhanced and impeded by the invasion, the reasons for past and continuing gender inequalities and what steps the international community is taking to improve women's rights as well as the actions of home-grown civil organizations. It will also explore the new challenges that Afghan women face in the post-Taliban era, such as a lack of physical security.

NATO forces have attempted to set up a stable government, headed by Hamad Karzai, but its influence has been limited<sup>1</sup>. Karzai's government has taken some steps to improve women's rights by creating a special ministry of women's affairs and outlawing cruel tribal traditions like Badal marriages<sup>2</sup>, two strides that were unthinkable during the harmful reign of the Taliban. International NGOs like Canadian women for

Women in Afghanistan (CW4WAfghan) and Home-grown civil organizations, such as the Afghan Independent Human Rights Commission (AIHRC) have also tried to foster a more secure environment for Afghan women. CW4WAfghan funds education centres for women, giving them the skills they need to become economically independent. The AIHRC highlights human rights abuses in Afghanistan and tries to bring violators of human rights to justice. Domestic violence is one such human rights abuse that the AIHRC tries to prevent, an estimated 50% of Afghan women suffer from this in some form<sup>3</sup>.

In 2001 the likes of Laura Bush touted the NATO invasion as a triumph for women's rights because women were not longer forced to wear the burqa (a long veil that covers a woman's face) as they had been under Taliban rule, and were permitted to wear make-up and western clothes. The suppression women faced during the Taliban era and from which they are still suffering today are more deep-seated than aesthetics.

The Taliban believed that a women's role was strictly a maternal and domestic one. When they took power in 1996 the "Department for Enforcement of Right Islamic Way and Prevention of Evils" issued a set of edicts that banned women from leaving the house without a male relative, from working and also from speaking to a male who was not a relative<sup>4</sup>. These measures had a devastating impact on Afghan women who were no longer able to work to support their families<sup>5</sup>. Widows, all too common in war-torn Afghanistan, were also impacted negatively without any close male relatives. They had less access to shelter, food, health care, lawyers or projects that generate income<sup>6</sup>. Their position is still similar today.

<sup>3</sup> AIHRC, *Evaluation Report on general situation of women*, [http://www.aihrc.org.af/rep\\_eng\\_wom\\_situation\\_8\\_march.htm](http://www.aihrc.org.af/rep_eng_wom_situation_8_march.htm)

<sup>4</sup> Sally Armstrong, *Veiled Threat: The hidden power of the women of Afghanistan* (New York: Four Walls Eight Windows, 2002), pg 12

<sup>5</sup> Armstrong, 2

<sup>6</sup> Carol J. Riphpenburg, "Post-Taliban Afghanistan: a changed outlook for women?" *Asian Survey* 44:3 (Jan-June 2004): 408

<sup>1</sup> British Broadcasting Corporation, *Quick Guide: Afghanistan*, [http://news.bbc.co.uk/2/hi/south\\_asia/5140380.stm](http://news.bbc.co.uk/2/hi/south_asia/5140380.stm)

<sup>2</sup> Badal marriages are marriages in which girls are 'sold' to pay a debt or as compensation to a family who her family has wronged.

Sectors that had been traditionally dominated by women such as education also took a hit under the Taliban as most of the workforce disappeared overnight. Some 70% of teaching posts, 50% of government jobs and 40% of medical positions were held by women<sup>7</sup>. Many scholars have pointed out that as women gain greater equality development indicators such as income and life expectancy increase<sup>8</sup>. Increasing gender equality will be a crucial step towards ending the decades-long strife in Afghanistan.

This gender inequality exists primarily because of the lack of education among Afghans, making many susceptible to Taliban indoctrination. The literacy rate is one of the lowest in the world with only 28.1% of the population over the age of 15 able to read<sup>9</sup>. Most educational institutions crumbled under two decades of warfare and were forbidden to women during the Taliban era. The Taliban did not put much emphasis on women's education as they believe that women are inferior under Islam; an incorrect doctrine that several Islamic scholars have condemned<sup>10</sup>, yet this was preached throughout the 5 years of Taliban rule.

The idea that women are second-class citizens entered other areas of public life as maternal hospitals became dilapidated due to a lack of funding; leading to the neglect of women's healthcare. As a result Afghanistan has the second highest maternal mortality rate in the world after Sierra Leone<sup>11</sup>.

Tribal law also comes into play. Even though there is a central government in Kabul that claims to promote women's rights, settlements outside of

Kabul and Kandahar have a law unto themselves, with jirgas (councils of respected village elders) still deciding the fate of some legal cases, including domestic disputes. Jirgas usually sanctify badal marriages and refuse to prosecute the perpetrators of crimes against women such as rape and domestic violence. The Taliban still hold onto certain areas of Afghanistan, and have a huge influence on some of the jirgas outdated thinking.

Not only do the Taliban have control of some areas of Afghanistan, there are former members in the parliament as well; 133 out of 249 seats in the Wolesi Jirga (the elected lower parliament) and 34 seats out of 102 in the Mesharano Jirga (Upper House, appointed by the provincial councils and

the president of Afghanistan) are Taliban. This makes it harder for women parliamentarians and other female public figures to gain legitimacy due to influence of the Taliban members. Women do make up a significant proportion of the non-Taliban members of the Afghan parliament and some are even members of the

“Even though there is a central government in Kabul that claims to promote women's rights, settlements outside of Kabul and Kandahar have a law unto themselves, with jirgas still deciding the fate of some legal cases, including domestic disputes”

cabinet. This increase in female politicians does indicate improved gender equality but they are sometimes undermined by the objections of the Taliban members of parliament and the hate mail and death threats they receive from those who object to their presence in government. Women are also subject to draconian elements of the law itself as was exemplified in the case of Sayed Perwiz Kambakhsh, who was jailed for 20 years after downloading an article about women's rights and Islam<sup>12</sup>. Even though she was pardoned, the very

<sup>7</sup> Saba Gul Khattak, “Afghan women: bombed to be liberated?” *Middle East Report* 222 (Spring, 2002): 19

<sup>8</sup> Rippenburg, 403

<sup>9</sup> The CIA World Factbook, *Afghanistan*, <http://www.cia.gov/library/publications/the-world-factbook/geos/af.html>

<sup>10</sup> <http://www.washingtontimes.com/news/2009/may/12/muslim-leaders-unite-against-the-taliban/> Muslim leaders unite against the Taliban and also Armstrong, 206

<sup>11</sup> Martin Patience, *The struggle to save Afghan mothers*, British Broadcasting Corporation, <http://news.bbc.co.uk/2/hi/health/7646821.stm> <http://news.bbc.co.uk/2/hi/health/7646821.stm>

<sup>12</sup> “Afghan journalist jailed for downloading women's rights article pardoned,” *Sydney Morning Herald*, 8 September 2009,

fact that this case was brought to trial shows that these fundamentalist ideas still pervade.

Some also complained that the Bonn conference, held to discuss Afghanistan's post-invasion reconstruction, was also a male-dominated affair. Of the 60 delegates only 3 were women; considering that the years of bloodshed heavily impacted women as well as men they should have been given a much larger voice<sup>13</sup>.

Geography also plays a big part in gender inequality; some 80% of Afghan women live in rural areas<sup>14</sup>. These women seldom have the same educational or employment opportunities that women in larger urban centres have access to. They are also cut-off from ideas of gender equality and are often forced to accept their subordinate position in the family. They also have less access to the reproductive services they need, creating a higher risk of infant mortality and deaths during childbirth. NGOs, the Kabul-based government and home-grown civil institutions have yet to establish the networks or means needed to give these women a voice and an opportunity to become economically and socially independent<sup>15</sup>.

Opponents of women's rights in Afghanistan often speak of this trend as a domination of 'western' ideals and accuse NGOs, who try to promote women's rights or even aid women in need, of applying Western ideals of women hood to Afghans. The Taliban were very tough when it came to preventing a "Westernization" of Afghan women hood and often took drastic steps to force women to conform to their standard of Islam, even removing the finger-tips of girls with painted nails<sup>16</sup>. Even when NGOs try to help foster a better reproductive health system for women the Taliban consider it 'un-Islamic.' As these ideas spread it

becomes harder for NGOs and Civil organizations to help women.

Women in Afghanistan do not enjoy the same degree of comfort and security that was promised to them after the NATO allies invaded and attempted to establish a democratic government. Most of the prevailing problems, like gender discrimination in the village jirgas, lack of access to education and adequate natal care still persist. As it has become more acceptable for women to enter public life, new issues have arisen, such as the fear of prominent women, including parliamentarians that they will be killed or their families harmed; this undermines the positive impact that female figures could have on public life. Furthermore there is a prevailing fear that fostering women's rights is 'unAfghan' which hampers development efforts.

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<http://www.smh.com.au/world/afghan-journalist-jailed-for-downloading-womens-rights-article-pardoned-20090908-fen2.html>

<sup>13</sup> Judy Aita, *Afghan women look for a place in a new Afghanistan*, Women for Afghan Women,

<http://www.womenforafghanwomen.org/press/usembassy.html>

<sup>14</sup> Riphpenburg, 401

<sup>15</sup> Patience

<sup>16</sup> Armstrong, 4

