



THE UNIVERSITY
of ADELAIDE

Managing Conflict in the Developing World

Essays from Emerging Scholars

Volume II



**MANAGING CONFLICT IN THE
DEVELOPING WORLD
ESSAYS FROM EMERGING SCHOLARS
VOLUME II**

EDITOR

MICHAEL CORNISH

EDITING, PROOFING AND DESIGN

ROB MCNAIR

PUBLISHED BY

THE SCHOOL OF SOCIAL SCIENCES, THE UNIVERSITY OF ADELAIDE

DECEMBER 2014, ADELAIDE, AUSTRALIA

THE CONTENT OF EACH ESSAY IS THE WORK OF ITS RESPECTIVE AUTHOR

CONTENTS

FOREWORD	4
<i>Michael Cornish</i>	
CONFLICT MANAGEMENT AND INTERNATIONAL AID	5
<i>Brendan Garrett</i>	
DEVELOPMENT OF THE INTERNATIONAL CRIMINAL COURT'S PRE-EMPTIVE CAPACITY	18
<i>Sarah Jenkin-Hall</i>	
SEXUAL VIOLENCE IN THE DEMOCRATIC REPUBLIC OF THE CONGO.....	32
<i>Corinne Langman</i>	
AN ANALYSIS OF PEACEBUILDING	38
<i>Kristian Le Gallou</i>	
THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA	49
<i>Megan Lowe</i>	
THE SYRIAN CIVIL WAR.....	63
<i>Lara Miles</i>	
AFGHANISTAN POST-2014 WITHDRAW OF TROOPS: POSSIBLE APPROACHES TO PROMOTE LASTING PEACE	74
<i>Nicole Tape</i>	

FOREWORD

Prophecies of the long-term decline of violent conflict in our world appear to have been put on hold this past year. Civil war now rages in western Ukraine, and Islamic State has made dramatic advances deep into Iraq. Other major conflicts continue to drag on in South Sudan, Syria, the Central African Republic, Afghanistan, in the eastern Democratic Republic of Congo, and elsewhere around the world, inflicting a litany of human rights abuses and suffering upon ordinary people and soldiers alike. And yet, if we can take anything from such human failure and despair, it is that it reinforces the importance of trying to learn about why and how widespread violence occurs, and, most importantly, how to stop it and prevent it from occurring in the future.

This year's top students from *Managing Conflict in the Developing World* – emerging scholars all – have set their minds to exactly that task, analysing the complexity of a variety of conflicts and approaches to resolving conflict.

Some have focused on specific and current arenas of violence: Nicole Tape looks at Afghanistan and the prospects for the country once the international force has left, concluding that negotiating with the Taliban will be unavoidable if lasting peace is to be obtained; Lara Miles unpicks the troubled attempts at a mediation process in the Syrian civil war, a process that cannot but be even more fraught with the spillover of conflict into Iraq; Megan Lowe looks at the advantages and disadvantages that flowed from adopting an International Criminal Tribunal for Rwanda after the Rwandan genocide; and Corinne Langman explains the twisted sociological underpinnings to the horror that is sexual violence in the Democratic Republic of Congo.

Others of our emerging scholars have adopted a more cross-cutting approach: Brendan Garrett contemplates the role of aid – a Gordian knot in and of itself – in conflict resolution; Sarah Jenkin-Hall highlights the scope for the International Criminal Court to develop its pre-emptive and preventive capacities; and Kristian Le Gallou analyses peacebuilding as an approach to conflict resolution, using the case study of the Central African Republic to demonstrate how the efficacy of peacebuilding can be improved in practice.

I commend this year's top students from *Managing Conflict in the Developing World* on their essays, and also commend their work to you. These students have continued the tradition established by the good work of last year's emerging scholars. To improve our ability to avert the pervasive torment that civil war brings, we continue to need new ideas from fresh minds. The demand for work by emerging scholars such as Nicole, Lara, Megan, Corinne, Brendan, Sarah and Kristian is thus both pressing and important. I thank them for their valuable contributions and hope that their insights can, in their own modest way, help us to understand how we can make the world a better place.

Continuing to strive together –



Michael Cornish, December 2014

CONFLICT MANAGEMENT AND INTERNATIONAL AID

by Brendan Garrett

INTRODUCTION

The current international response to conflict is complex in nature, and involves many different types of institutions, mandates, rules of engagement, decision-making structures and capabilities.¹ The aim of this paper is to look at the role international aid plays in conflict management and to seek to understand to what extent it can be an effective tool in reducing conflict in the developing world. This will be undertaken firstly through a brief discussion of the nature of conflict and aid. Next, an analysis of the particular strengths and weaknesses of international aid will be provided, leading towards an examination of how it may be combined with other conflict management techniques in order to increase its effectiveness. Additionally, this paper will then discuss the potential of implementing such an approach in a conflict scenario – in this case, the Federal Republic of Somalia – as a way to demonstrate the possibility for its practical implementation.

THE NATURE OF CONFLICT AND AID

Aid can take on different forms such as complex, long-term rehabilitation programs, relief operations for those whose lives are directly threatened, operations aimed at preventing violations of human rights, and limited, one-time operations.² Thus, before discussing how effective aid is in regards to conflict management, it is important to first define what ‘aid’ means in this context and what it includes. Considering such differentiation, it seems most useful to retain a broad definition, and one that is less restrictive; thus, this paper will define ‘aid’ as “transfers from one or more governments to another for the purpose of economic, social, and political development”.³

Before understanding how effective aid can be in managing conflict, it is helpful to also gain a better understanding of the nature of conflict, as well as the nature of aid. This is imperative, as the actual

¹ P. Aall, 2000, “NGOs, conflict management and peacekeeping”, *International Peacekeeping* 7(1): 121-141.

² P. Perrin, 1998, “The impact of humanitarian aid on conflict development”, *International Review of the Red Cross* 38(323): 319-333.

³ R. A. Nielsen et al., 2011, “Foreign aid shocks as a cause of violent armed conflict”, *American Journal of Political Science* 55(2): 219-232.

understanding of conflict inevitably shapes the response. In other words, if there is a poor or limited understanding, then there will most likely also be a poor or limited response. Whereas most conflicts a century ago were *between* states, most conflicts today take place *within* states, with the nature of conflict fragmented, dispersed, and context-specific (highlighted later in this paper through the example of Somalia).⁴ As Picciotto pointed out, it is also useful to recognise that contrary to past wars that arguably strengthened the state, the new wars aim to undermine it.⁵

In the developing world of today, activities funded with aid from foreign governments and international organisations are widespread and commonplace. They range from enormous, billion-dollar reconstruction projects in conflict zones in Iraq and Afghanistan to small-scale loans of 50 USD or less to women in Bangladesh and El Salvador. The objectives of aid, however, are varied and have changed over time along with the shifting priorities of the international community regarding the ultimate goals of 'development' and the means of achieving them.⁶ Such a variation of the ends and the means inevitably exposes strengths in some areas and weaknesses in others.

STRENGTHS AND WEAKNESSES OF AID IN CONFLICT MANAGEMENT

International aid has been hugely beneficial to the lives of many, especially in cases of those living in continued conflict. By providing care and treatment for the wounded, as well as food supplies and sanitation, aid helps to alleviate the 'silent forms of violence' that are present in armed conflict, such as hunger, thirst and disease.⁷ It is argued by Nielsen *et al.* that reductions in aid significantly increase the probability of armed conflict commencing in vulnerable regions.⁸ Nielsen *et al.* provide an example of such an outcome with the argument that although there were many underlying causes, foreign aid did in fact play a direct role in the outbreak of violence in Mali in the 1990s.⁹ They argue that this is demonstrated by the state's dependence on foreign aid (more than 30% of its budget for many years) after it was faced with desertification and severe droughts in the previous two decades, particularly

⁴ R. Picciotto, 2004, "Aid and conflict: the policy coherence challenge", *Conflict, Security & Development* 4(3): 545.

⁵ *Ibid.*

⁶ S. Fukuda-Parr and J. Greenstein, 2010, "How should MDG implementation be measured: faster progress or meeting targets?" (working paper, International Policy Centre for Inclusive Growth, United Nations Development Centre).

⁷ Perrin, "The impact of humanitarian aid", 319-333.

⁸ Nielsen *et al.*, "Foreign aid shocks", 219-232.

⁹ *Ibid.*

affecting the Tuareg populations, who were heavily dependent on livestock.¹⁰ In the early 90s, however, when the flow of aid to Mali saw a severe reduction, they propose that the government was substantially weakened and no longer able to provide the same level of assistance to Tuareg groups at the time or into the future.¹¹ Thus, with foreign aid previously keeping conflict at bay, this reduction in aid affected the power balance between the (the state and the Tuaregs), and facilitated the outbreak of violence.

Continuing under this line of thinking, it could be said that aid indirectly decreases the likelihood of civil war. Collier and Hoeffler contend furthermore that aid has the potential to prevent the outbreak of civil war by stimulating economic growth, reducing the reliance on commodity exports, and increasing security through increased capacity of the government's military and security forces.¹²

The linkage of aid with domestic security has also found increasing popularity, particularly as a response to the September 11 attacks in the United States. This linkage is evidenced in Australia's foreign aid goals,¹³ in which there is overwhelming emphasis put on linking national security with foreign aid and poverty reduction. There is a general consensus that it is sensible policy for states to offer preventative measures, through tied aid to fund counter-terrorism, specifically to countries where transnational terrorist organisations reside or have influence. Some find evidence that increased assistance does lead to a reduction of terror-related events originating from these countries.¹⁴

However, reducing aid to a domestic security tool does not provide a comprehensive approach towards conflict management. The COIN (Counter-Insurgency) approach in Afghanistan provides a compelling example of such limitation; it would be difficult to argue that this approach has been effective at reducing conflict. A key reason for this is that aid, and the way it has been utilised in this case, falls short of addressing the main causes of insurgency, particularly in the most insecure regions of Afghanistan.¹⁵

¹⁰ Nielsen et al., "Foreign aid shocks", 219-232.

¹¹ *Ibid.*

¹² P. Collier and A Hoeffler, 2007, "Unintended Consequences: Does Aid Promote Arms Race?", *Oxford Bulletin of Economics and Statistics* 69(1): 1-27.

¹³ "An Effective Aid Program for Australia: Making a Real Difference – Delivering Real Results", Department of Foreign Affairs and Trade (DFAT), accessed 01/07/2014, http://aid.dfat.gov.au/publications/Pages/5621_9774_1073_3040_2380.aspx.

¹⁴ P. Lis, 2013, "Armed conflict, terrorism, and the allocation of foreign aid", *Economics of Peace and Security Journal* 8(1): 12-17.

¹⁵ E. Thompson, 2010, "Winning 'Hearts and Minds' in Afghanistan: Assessing the Effectiveness of Development Aid in COIN Operations", in *Report on Wilton Park Conference 1022*, 11-14.

This approach also works on several assumptions: that the key drivers of insecurity are poverty, unemployment, or radical Islam; and that economic development and 'modernisation' provide stability, particularly when complemented with aid projects that 'win hearts and minds' and help to legitimise the government.¹⁶

It is important to recognise that there are always inherent dangers involved when making assumptions in any context. Of particular concern here is the assumption about 'modernisation', raising the question as to which vision of progress this represents. This assumption posits humanity as moving forward along a linear path, with some societies ahead and others behind, but with all attempting to achieve the same goal.¹⁷ In this way it is thought of as an unavoidable and irreversible progress that can be universally applied, as evidenced by an Australian Policy Document from 2011, 'An Effective Aid Program for Australia: Making a Real Difference – Delivering Real Results',¹⁸ which champions economic growth and free trade as key goals for development and modernisation. Economic growth is undoubtedly an important factor in poverty alleviation and conflict management, but it needs to be recognised that an approach that seemingly pushes the agenda of a neo-liberal free market system can also circumstantially be a contributing factor to poverty and thus conflict.^{19;20;21} An assumption that does not take this into account is in danger of appearing ethnocentric and very narrow in its scope, inevitably limiting its success in conflict management.

While the above example provides a critique of the underlying reasons for providing aid, there are also other weaknesses that come about in the relationship between aid and conflict management. For instance, there is a danger that aid resources may be seen as a good 'prize' for rebels to capture, providing them with further incentive to instigate or continue conflict, thus arguably feeding instability.²² Furthermore, it is thought that foreign aid amplifies the government's access to financial

¹⁶ Thompson, "Winning 'Hearts and Minds'".

¹⁷ N. Hällström, 2013, "What is Development?", What Next Forum.

¹⁸ Accessed 01/07/2014, <http://aid.dfat.gov.au/publications/Pages/5621_9774_1073_3040_2380.aspx>.

¹⁹ I. Ezeonu, 2008, "Crimes of Globalization: Health Care, HIV and the Poverty of Neoliberalism in Sub-Saharan Africa," *International Journal of Social Inquiry* 1(2): 113-134.

²⁰ P. Kilby, 2007, "The Australian aid program: dealing with poverty?", *Australian Journal of International Affairs* 61(1): 114-129.

²¹ J. E. Stiglitz, 2007, *Making Globalization Work* (W.W. Norton & Company).

²² J. De Ree and E. Nillesen, 2009, "Aiding violence or peace? The impact of foreign aid on the risk of civil conflict in sub-Saharan Africa", *Journal of Development Economics* 88(2): 301-313.

capital, thus bringing about 'rent-seeking' behaviour by rebel groups (Ree and Nillesen, 2009).²³ This argument proposes that the inflow of foreign aid can have a destabilising effect on current and pre-existing tensions, and may in fact increase the risk of conflict.

Thinking back to the failures of aid in Afghanistan, it could be argued that donor governments, in expecting aid to support peacebuilding processes in this region are, according to Goodhand, "expecting a child to do the job of an adult".²⁴ In other words, it is important to understand that aid alone is usually limited in its capacity to address the complex and varied dynamics of violent conflict and its underlying causes. It is also important to recognise that when weighed against the range of pressures and interests coming from international, national, and local actors, external aid is often quite weak.²⁵ According to Uvin, this is in large part due to the fact that the impact of aid on the dynamics of conflict in recipient countries "takes place within the broader, often volatile environment of the relations between the country and the international community".²⁶ Essentially, not all forces and contributions to conflict can be addressed through foreign aid.

Stopping all forms of aid to prevent any undesirable effects it may facilitate, however, would have even more disastrous consequences for the victims of conflict: no more food, no more medical care, and no more humanitarian presence that may be giving hope to those affected (Perrin, 1998).²⁷ It is increasingly evident that to effectively manage or reduce conflict, it is necessary to combine aid with other approaches. A more comprehensive undertaking that makes it possible to reduce the negative effects of aid is one potential idea towards more effective conflict management.

AID AND PROGRESSIVE DEVELOPMENT (APD)

As has been discussed, there are a variety of strengths and weaknesses in the ability of international aid to effectively manage conflict. This demonstrates that while aid cannot and should not be the sole

²³ De Ree and Nillesen, "Aiding violence or peace?".

²⁴ J. Goodhand, 2002, "Aiding violence or building peace? The role of international aid in Afghanistan", *Third World Quarterly* 23(5): 840.

²⁵ P. Uvin, 1999, *The Influence of Aid in Situations of Violent Conflict* (Paris: OECD).

²⁶ *Ibid*, 4.

²⁷ Perrin, "The impact of humanitarian aid".

approach in the attempt to achieve peace, it may play an important role in facilitating a fragile peace,²⁸ and when combined with what the remainder of this paper will define as ‘progressive development’, it can be an effective tool in helping to manage conflict.

It is widely acknowledged that poverty is a major (but not the sole) contributor to the likelihood of civil war and conflict in the developing world, with war also a major cause of poverty in the first place.^{29,30,31} Thus, for aid to be truly effective in conflict management, it is important that it is partnered with a progressive form of development. Such a form of development should include a more holistic approach that increases the capacity of peacebuilding through humanitarian assistance, poverty alleviation, and sustainable development.³² Linking aid with medium- and long-term development is also a key aspect of such an approach.

Progressive ‘development’ is not limited to raising economic growth under a ‘western’ paradigm as discussed previously (page 3). Aid and progressive development (APD) should retain a focus upon improving the general economic and social climate in receiving countries, which would help to support measures to strengthen the legitimacy and effectiveness of the state while aiding the emergence of an empowered civil society.³³ This would mean that development aid should be directed at different levels, particularly the community level, including local government institutions and NGOs, while accounting for the overall context of the conflict.³⁴ An APD approach can be most effective through working to support NGOs, community-based organisations, and local government, essentially working from the ground up, which would ideally help these institutions to become more capable and responsible to those whom they are created to benefit: the public.

The inclusion of NGOs in this approach is important, as they can and do make significant contributions to conflict management. As pointed out by Aall:

²⁸ Goodhand, “Aiding violence or building peace?”.

²⁹ S. Browne, ed., 2006, *Aid and Influence: Do Donors Help or Hinder?* (London: Routledge), 68.

³⁰ J. Goodhand, 2001, “Violent conflict, poverty and chronic poverty”, *Chronic Poverty Research Centre Working Paper 6*.

³¹ P. Collier, 2007, *The Bottom Billion: Why the Poorest Countries are Failing and What Can Be Done About It* (Oxford: Oxford University Press), 18-21.

³² C. Bigdon and B. Korf, 2004, “The role of development aid in conflict transformation: Facilitating empowerment processes and community building”, in *Transforming Ethnopolitical Conflict*, eds. A. Austin, M. Fischer, and N. Ropers (VS Verlag für Sozialwissenschaften), 341-370.

³³ *Ibid.*

³⁴ *Ibid.*

They can provide early warning of impending conflict, provide good offices, act as a mediator among groups in conflict, galvanise the international community into action, and mobilise vital resources for post-conflict societal reconstruction and reconciliation.³⁵

It is important to note, however, that NGOs are generally dependent upon the tolerance of their host country, meaning they lack political and military influence. In a rapidly deteriorating situation, this can leave them vulnerable and ineffective, and can potentially result in actions that may lead to further conflict rather than conflict management.³⁶ There is also a need for the state and its institutions to be actively involved in the conflict management process, particularly in relation to security, justice, and job creation.

An additional method to increasing the effectiveness of aid is to combine it with a multisectoral approach that strengthens the institutions of the state. An example of such an approach is evidenced in rapidly urbanising areas of Latin America and the United States.³⁷ According to The World Bank, by addressing security, justice, and jobs in these areas, this approach has generated encouraging results, and:

[Where] gang and drug-related violence have previously resisted 'hard' policing efforts, there has been over time a gradual shift toward multisectoral programs of prevention at the community level'.³⁸

Building trust between civil society and the military is also an important method in the management of conflict. This would inevitably need to entail a commitment by the military to improvements in accountability and human rights. However, without this, forces deployed into intensified operations may end up preying on civilians – as seen in the Democratic Republic of Congo – subsequently undermining the legitimacy of the state.³⁹

³⁵ Aall, "NGOs, conflict management and peacekeeping", 132-133.

³⁶ Ibid.

³⁷ The World Bank, 2011, "Transforming institutions to deliver security, justice, and jobs", *World Development Report 2011: Conflict, Security and Development*, chapter 5.

³⁸ Ibid, 148.

³⁹ Ibid.

PRACTICAL IMPLEMENTATION – AID AND PROGRESSIVE DEVELOPMENT (APD) IN SOMALIA

According to the Global Peace Index, Somalia is placed 158th out of 162 countries, ranking it as one of the most conflict-ridden countries in the world (Global Peace Index). Descending into conflict following the collapse of the Siad Barre regime (1969-1991), which was overthrown by opposing clans, clan warfare ensued in Somalia with no government or parliament able to be agreed upon until as late as 2004. More recently, there has been an Islamist insurgency led by Jihadi group 'Al Shabab', which, for a time, gained control over the southern part of the country, including the capital Mogadishu, leading to fighting between them and government forces with the help of foreign intervention. Eventually, Al Shabab was pushed out of the capital but to this day continues its attacks as ethnic clashes increase.

Although the paragraph above is merely a brief summary of recent conflict in Somalia, it nonetheless demonstrates that such a history of conflict in the country has facilitated a vast array of grievances and fragmentation of control. Given the history of the region, there is a danger that the involvement of external forces (foreign intervention) is likely to be associated with historical attacks on Islam and is linked with strongly entrenched social conservatism in many areas. Al Shabab has enacted a campaign of threats and alleged assassinations against any and all Somalis working for or thought to be collaborating with the UN and Western NGOs.⁴⁰ In fact, there has been an increasing incidence of foreign workers killed or abducted in recent times.^{41,42} It is integral to the Somali context that horizontal inequalities are adequately addressed, for reducing such inequalities is paramount to eliminating a major source of conflict.⁴³ Development that addresses this must include policies that are introduced cautiously, for – as demonstrated in Sri Lanka – any action to correct these inequalities can also provoke conflict by the group whose privileged position is being weakened.⁴⁴ Thus, a 'ground-up' approach to conflict management that entails APD – one that takes into account the dangers and risks of foreign presence in the country – is of particular importance.

⁴⁰ K. Menkhaus, 2009, "Somalia: 'They created a desert and called it peace (building)'", *Review of African Political Economy* 36(120), 223-233.

⁴¹ M. Ibrahim, 2009, March 17, "4 Aid Workers Abducted in Somalia", *The New York Times*.

⁴² G. York, 2013, August 14, "MSF withdraws from Somalia, accuses government of complicity of attacks on aid workers", *The Globe and Mail*.

⁴³ F. Stewart, 2002, "Root Causes of Violent Conflict in Developing Countries", *BMJ: British Medical Journal* (7333), 342-345.

⁴⁴ Ibid.

Considering the fragility of the situation in Somalia, APD would need to allow for and strengthen the autonomy of local institutions, facilitating the inclusion of previously marginalised groups, while at the same time strengthening the effectiveness of the government. NGOs would play a key role in facilitating local clan dialogue, which would benefit from reconciliation efforts enacted by the government. Mediation efforts funded with international aid could be employed in an attempt to resolve conflicts and past grievances between clans, with the aim of bringing about alternative outlets for political expression than those currently used. Given such fragility, however, it is undoubtedly expected that the majority of these efforts would be faced with severe difficulties in their implementation.

Considering that over 70% of Somalia's population is under 30,⁴⁵ opportunities for young people would need to be a central focus of an APD approach in Somalia. Particular importance should be placed upon the creation of viable education and employment opportunities in order to combat the disempowerment felt by many across all regions of the country as outlined in the 'Somalia Human Development Report 2012'.⁴⁶ This is all the more necessary, as the jihadist group Al Shabab is currently able to attract followers with its generous soldier salaries, which have been a key incentive for those facing economic hardship.⁴⁷ International aid can play a key role in this approach by seeking to improve educational facilities, ensure adequate wages for educators, and provide start-up scholarships and grants for those facing particular hardships. However, aid funding needs to be carefully distributed; expenditure needs to be transparent and any claims of corruption thoroughly investigated.

While advocating for certain measures to be enacted is one approach, actually implementing them into a conflict zone is another. An APD approach to conflict management should be open and adaptable to change. It needs to be acknowledged that this approach should not be seen as an attempt to find the silver bullet to managing conflict in Somalia; it should merely provide a potential framework with which to understand the potential for practical implementation into a conflict scenario.

⁴⁵ The World Bank, *Data – Somalia*, accessed 18 July 2014, <<http://data.worldbank.org/country/somalia>>.

⁴⁶ United Nations, "Somalia Human Development Report 2012", accessed 9 August 2014, <http://hdr.undp.org/sites/default/files/reports/242/somalia_report_2012.pdf>.

⁴⁷ J. C. Amble and A. Meleagrou-Hitchens, 2014, "Jihadist Radicalization in East Africa: Two Case Studies", *Studies in Conflict & Terrorism* 37(6): 523-540.

CONCLUSION

Conflict will always exist and can even be a transformative process; however, it is how to deal with it and resolve it that is important. This paper has shown that while international aid has clear benefits and is relied upon by many in the developing world, it also suffers from certain drawbacks in relation to the management of conflict. Instead, this paper has suggested that aid be combined with other approaches to form an 'Aid and Progressive Development' (APD) approach that more effectively seeks to enable a holistic position to conflict management in the developing world, addressing horizontal inequalities, economic growth, security, and aiming to affect positive change at all levels.

Using the example of the conflict in Somalia, this paper demonstrated the potential for implementation in a practical context and provided a framework for a path of aid and progressive development, including what such an approach would need to contain to be most effective. Although this also brought to light the realisation that actual implementation of this approach in a conflict with such longevity, fragmentation, and fragility would be an incredibly difficult undertaking, it nonetheless showed that when aid is combined with development, there is potential for effective conflict management.

BIBLIOGRAPHY

- Aall, P. 2000. "NGOs, conflict management and peacekeeping". *International Peacekeeping* 7(1): 121-141.
- Amble, J. C. and A. Meleagrou-Hitchens. 2014. "Jihadist Radicalization in East Africa: Two Case Studies". *Studies in Conflict & Terrorism* 37(6): 523-540.
- Bigdon, C. and B. Korf. 2004. "The role of development aid in conflict transformation: Facilitating empowerment processes and community building". In *Transforming Ethnopolitical Conflict: The Berghof Handbook*, edited by A. Austin, M. Fischer, and N. Ropers, 341-370. VS Verlag für Sozialwissenschaften.
- Browne, S., ed. 2006. *Aid and influence: do donors help or hinder?*. London: Routledge.
- Collier, P. 2007. *The Bottom Billion: Why the Poorest Countries are Failing and What Can Be Done About It*. Oxford: Oxford University Press.
- Collier, P. and A Hoeffler. 2007. "Unintended Consequences: Does Aid Promote Arms Races?", *Oxford Bulletin of Economics and Statistics* 69(1): 1-27.
- De Ree, J. and E. Nillesen. 2009. "Aiding violence or peace? The impact of foreign aid on the risk of civil conflict in sub-Saharan Africa". *Journal of Development Economics* 88(2): 301-313.
- Department of Foreign Affairs and Trade. 2011. "An Effective Aid Program for Australia: Making a Real Difference – Delivering Real Results". Accessed 1 July, 2014.
<http://aid.dfat.gov.au/publications/Pages/5621_9774_1073_3040_2380.aspx>.
- Ezeonu, I. 2008. "Crimes of Globalization: Health Care, HIV and the Poverty of Neoliberalism in Sub-Saharan Africa". *International Journal of Social Inquiry* 1(2): 113-134.
- Fukuda-Parr, S. and J. Greenstein. 2010. "How should MDG implementation be measured: faster progress or meeting targets?". Working paper, International Policy Centre for Inclusive Growth, United Nations Development Programme.
- Global Peace Index. *Vision of Humanity*. Accessed 9 August 2014.
<<http://www.visionofhumanity.org/#/page/indexes/global-peace-index>>.

- Goodhand, J. 2002. "Aiding violence or building peace? The role of international aid in Afghanistan". *Third World Quarterly* 23(5): 837-859.
- Goodhand, J. 2001. "Violent conflict, poverty and chronic poverty". *Chronic Poverty Research Centre Working Paper* 6.
- Hällström, N. 2013. *What is Development?*. What Next Forum.
- Ibrahim, M. 2009, March 17. "4 Aid Workers Abducted in Somalia". *The New York Times*.
- Kilby, P. 2007. "The Australian aid program: dealing with poverty?". *Australian Journal Of International Affairs* 61(1): 114-129.
- Lis, P. 2013. "Armed conflict, terrorism, and the allocation of foreign aid". *Economics of Peace and Security Journal* 8(1): 12-17.
- Menkhaus, K. 2009. "Somalia: 'They created a desert and called it peace (building)'"'. *Review of African Political Economy* 36(120): 223-233.
- Nielsen, R. A., M. G. Findley, Z. S. Davis, T. Candland, and D. L. Nielson. 2011. "Foreign aid shocks as a cause of violent armed conflict". *American Journal of Political Science* 55(2): 219-232.
- Perrin, P. 1998. "The impact of humanitarian aid on conflict development". *International Review of the Red Cross* 38(323): 319-333.
- Picciotto, R. 2004. "Aid and conflict: the policy coherence challenge". *Conflict, Security & Development* 4(3): 543-562.
- Stewart, F. 2002. "Root Causes of Violent Conflict In Developing Countries". *BMJ: British Medical Journal* 7333: 342-345.
- Stiglitz, J. E. 2007. *Making globalization work*. WW Norton & Company.
- The World Bank. 2011. *World Development Report: Conflict, Security and Development*, Chapter 5.
- The World Bank. *Data – Somalia*. Accessed 18 July 2014. <<http://data.worldbank.org/country/somalia>>.
- Thompson, E. 2010. "Winning 'Hearts and Minds' in Afghanistan: Assessing the Effectiveness of Development Aid in COIN Operations". In *Report on Wilton Park Conference* 1022: 11-14.

United Nations. 2012. "Somalia Human Development Report 2012". Accessed 9 August 2014.

<http://hdr.undp.org/sites/default/files/reports/242/somalia_report_2012.pdf>.

Uvin, P. 1999. *The influence of aid in situations of violent conflict*. Paris: OECD.

York, G. 2013, August 14. "MSF withdraws from Somalia, accuses government of complicity of attacks on aid workers". *The Globe and Mail*. Accessed 9 August 2014.

<<http://www.theglobeandmail.com/news/world/doctors-without-borders-pulls-out-of-somalia/article13751931/>>.

DEVELOPMENT OF THE INTERNATIONAL CRIMINAL COURT'S PRE-EMPTIVE CAPACITY

by Sarah Jenkin-Hall

Ghanaian diplomat and seventh Secretary-General to the United Nations, Kofi Annan, once professed, "It is the idea that the behaviour of states and the relations between them shall be governed by one law, equal and applicable to all"⁴⁸. The formation of a permanent jurisdictional tribunal to prosecute perpetrators of human rights violations was essential to this overarching ideal of a central rule of law. Arraigning offenders of war crimes, genocide, crimes of aggression and crimes against humanity, the Rome Statute-generated International Criminal Court (ICC) is an independent jurisdictional body that governs international transgression⁴⁹. Numerous structural and behavioural inadequacies minimise the credibility of the court as a source of managing conflict. The following discussion will include jurisdictional loopholes, patterns of prosecution, and relationships with other bodies governed by international law. To achieve further credibility, the ICC must adapt and encompass other approaches to conflict management shown to be practical in the developing world. A policy proposal will be put forward, positively developing the strengths of the ICC and improving upon shortcomings with application in two current conflicts. Through persuasive analysis, one can postulate that creative adaptations to the ICC in its current form will increase its authority as a method of controlling conflict and, more importantly, preventing it.

FORMATION OF THE ICC

A diplomatic conference held by the United Nations in July 1998 aimed to codify an already desired Statute for the creation of a permanent legal entity to prosecute pursuant to an overarching international rule of law⁵⁰. Discrepancies about the judicial credibility of the proposed court were highlighted by the United States, which led other state parties in a discussion about the negative

⁴⁸ Kofi Annan, 1997, "International Criminal Court Promises Universal Justice, Secretary-General Tells International Bar Association", United Nations Department of Public Information.

⁴⁹ A. Cassese, P. Gaeta, and J. Jones, 2002, *The Rome Statute of the International Criminal Court: a commentary*, vol 2, 18.

⁵⁰ *Ibid.*

impacts to state-based sovereignty^{51,52}. Both India and the United States proposed an amendment that limited prior consent requirements in situations involving “acts of officials or agents of a state in the course of official duties acknowledged by the state as such”. This resulted in acceptance based on agreement to the consensually selected method of jurisdiction⁵³.

Further developments since then resulted in the controversial prosecution of “crimes of aggression”⁵⁴, adopted at the Kampala Review Conference in 2010 by a consensus of ratifying parties under Article 121.5. President of the World Federalist Movement Warren Allmand stated, “The capacity to prosecute aggression strengthens the ICC as an important instrument for international peace and security”⁵⁵. The court will have jurisdiction for crimes of aggression after 1 January 2017 and for crimes committed one year after acceptance by 30 state parties of the previously mentioned amendments⁵⁶.

ANALYSIS: WEAKNESSES, IMPROVEMENTS AND RECOMMENDATIONS

The ICC creates a rules-based international system, which acts as a deterrent against the crimes pursuant to the Rome Statute provisions and the violation of basic human rights. The process provides for positive pressure in the international community at a significantly lower cost than other domestic alternatives⁵⁷. While acknowledging that the ICC strengthens the global movement against violent conflict, analysis of its prosecutorial style demonstrates that the court is not an ideal construct for conflict management.

⁵¹ B. S. Brown, 1999, “U.S. Objections to the Statute of the International Criminal Court: A Brief Response”, *New York University International Law and Politics Journal* 31: 855.

⁵² Cassese, Gaeta, and Jones, *The Rome Statute*, 19.

⁵³ Brown, “U.S. Objections”, 857.

⁵⁴ Roger S. Clark, 2009, “Negotiating Provisions Defining the Crime of Aggression, its Elements and the Conditions for ICC Exercise of Jurisdiction Over It”, *European Journal of International Law* 20(4): 1109.

⁵⁵ World Federalism Movement, 2010, “International Criminal Court: Breakthrough on Crime of Aggression”, World Day for International Justice Media Advisory Conference, 2.

⁵⁶ Clark, “Negotiating Provisions Defining the Crime of Aggression”, 1110.

⁵⁷ Marlies Glasius, 2002, “Expertise in the cause of justice: global civil society influence on the statute for an International Criminal Court”, in *Global Civil Society Yearbook 2002*, eds. Marlies Glasius, Mary Kaldor, and Helmut Anheier (Oxford: Oxford University Press), 139.

The Rome Statute – Article 124

An overwhelming majority of states have accepted jurisdiction over genocide as a responsibility with automatic authority. However, key power holders such as Germany, France and the United States have withheld their support. Lengthy debate led to an agreement that states may ‘opt out’ of the ICC’s war crime jurisdiction for a seven-year period, whilst permanently agreeing to crimes against humanity and genocide⁵⁸. This concept has attracted substantive criticism⁵⁹. Interpretations have resulted in a consensus that states whose leaders are involved with or have the intention to commit war crimes are allowed to sign and ratify the Statute, yet ignore the jurisdiction where it is most convenient to their situation⁶⁰. This loophole is widened further where offenders charged with war crimes also have the ability to be prosecuted under the Crimes against Humanity heading. The Rome Statute includes definitions for ‘torture’, ‘wilful killing’ and ‘murder’ under both headings⁶¹. If a state chooses to opt out of jurisdiction of war crimes, the possibility exists that they may avoid prosecution of crimes against humanity⁶².

The Rome Statute – Article 12

Richard Dicker of the ICC Campaign of Human Rights Watch believes that the Rome Statute provides for individuals wanted for violation of human rights to travel freely without fear of prosecution⁶³. This ‘lack of universality’ can also be described as ‘selective justice’. Other authors see the possibility that a breach of international law has occurred in the removal of a custodial state⁶⁴. It should be noted that individual states have the power to try perpetrators of crimes outlined specifically in the Statute under international jurisdiction in domestic courts⁶⁵. This concept has influenced the theory that the crimes

⁵⁸ Melissa K. Marler, 1999, “The International Criminal Court: Assessing the Jurisdictional Loopholes in the Rome Statute”, *Duke Law Journal* 49(3): 832.

⁵⁹ Shana Tabak, 2009, “Article 124, War Crimes, and the Development of the Rome Statute”, *Georgetown Journal of International Law* 40: 1069.

⁶⁰ Marler, “Jurisdictional Loopholes in the Rome Statute”, 833.

⁶¹ Tabak, “Article 124”, 1072.

⁶² Chandra Lekha Sriram, 2010, “ICC hypocrisy over war crimes”, *The Guardian Political Forum*.

⁶³ Glasius, “Expertise in the cause of justice”, 140.

⁶⁴ Young Sok Kim, 1999, “Preconditions to the Exercise of the Jurisdiction of the International Criminal Court: With Focus on Article 12 of the Rome Statute”, *Michigan State University – DCL Journal of International Law* 8: 47.

⁶⁵ *Ibid.*

outlined by the ICC are so severe that they are indirectly crimes “against the entire world”; perpetrators should thus fear some form of prosecution no matter their international route⁶⁶.

Discriminatory Enforcement

Defined by Kenyan President Uhuru Kenyatta as a tool of Western imperialism, the ICC has been accused of prioritising the prosecution of leaders from weaker states over the global “elite”⁶⁷. The eight significant cases considered by the ICC have been against African leaders, such as Kenyan Deputy President William Ruto⁶⁸. An extension of judicial emphasis beyond African states is essential to the development of the ICC’s credibility. Those countries subject to ‘intensive analysis’, such as Colombia and Afghanistan, have not been dealt with as efficiently or effectively as those African nations in which the international community has witnessed swift prosecution⁶⁹. In 2010, the UN High Commissioner (Human Rights) identified civilian attacks by the Revolutionary Armed Forces and United Self-defence Forces of Colombia as a war crime and crimes of aggression⁷⁰. Further demonstrating this are charges of undue “collateral damage” and considered targeting of civilians by the Taliban in Afghanistan, as well as the ‘warlord’ status of numerous Afghani government officials⁷¹. Despite the severity of these accusations, allegations have been deemed as ‘under analysis’ and ICC prosecutors have taken no further publically acknowledged action.

Offender Prosecution Inconsistencies

Using the principles of domestic analysis in Neoclassical Realism theory, attention should be directed to those in positions of power to attain court integrity⁷², providing deterrence to other states⁷³. Legitimation through their prosecution will create greater deterrence than singular cases against small-scale criminals. The international community needs to find reassurance under the statutory protection

⁶⁶ Glasius, “Expertise in the cause of justice”, 139.

⁶⁷ Abdullahi Boru Halakhe, 2014, “Does the ICC have an Africa problem?”, Aljazeera America, accessed 23 July 2014, <<http://america.aljazeera.com/opinions/2014/2/kenya-trials-keytoiccafrelations.html>>.

⁶⁸ Ibid.

⁶⁹ Jack Goldsmith, 2003, “The Self-Defeating International Criminal Court”, *The University of Chicago Law Review* 70(1): 94.

⁷⁰ United Nations Human Rights Council, 2010, “Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia”, United Nations General Assembly, 13th Session, Agenda Item 2, 8.

⁷¹ Goldsmith, “The Self-Defeating International Criminal Court”, p. 95

⁷² Steve Smith, Amelia Hadfield, and Tim Dunne, 2010, *Foreign Policy: Theories, Actors and Cases*, Second Edition (Oxford: Oxford University Press), 32.

⁷³ Ibid.

of the ICC, which they have developed with the aid of ‘persecution cases’ such as Charles Taylor’s involvement in the civil Sierra-Leone conflict⁷⁴.

Lack of Direction

Clarity of the ICC’s future objectives in signatory countries is crucial in adapting to the current international political climate. This includes the strategies of particular prosecutors in the development of domestic judicial capacity and internal state structure⁷⁵. This lack of facilitation of regional development is evident in the recent Ituri case between the pastoralist Hema and agronomist Lendu ethnic groups of the Democratic People’s Republic of the Congo⁷⁶. Although suspects had been detained, no effort has been made to facilitate the stabilisation of the region’s government, showing a lack of strategic structural council and support⁷⁷. The ICC should direct attention to those states that are yet to translate their rhetoric into visible support of the court’s formation. This has been evident in European states’ adoption of a ‘Western attitude’ of disinterest in Sudan’s defiance of the authority of the court⁷⁸.

Relations with the United Nations Security Council

Despite a division of international opinion about the legitimacy and fairness of the United Nations Security Council (UNSC), it is arguably one of the more influential political entities in evoking change and influence over conflict management⁷⁹. The ICC is generally independent from the UN, unlike the similar institution, the International Court of Justice. There are, however, constraints of practical independence bestowed by the Rome Statute upon the UNSC, including limited judicial referral powers. Evident in Article 13 of the Statute, cases can be referred to the ICC by the UNSC in situations that lie outside of the court’s official jurisdiction⁸⁰. The UNSC’s interest was sparked by both the violent response to the Libyan

⁷⁴ Richard Falk, 2012, “Opening the Other Eye: Charles Taylor and Selective Accountability”, Global Policy Forum, accessed 19 July 2014, <<https://www.globalpolicy.org/us-un-and-international-law-8-24/us-opposition-to-the-icc-8-29/51549-opening-the-other-eye-charles-taylor-and-selective-accountability.html>>.

⁷⁵ Kim, “Jurisdiction of the International Criminal Court”, 8.

⁷⁶ Lee A. Casey and David B. Rivkin, 2005, “The Dangerous Myth of Universal Jurisdiction”, in *A Country I Do Not Recognise*, ed. Robert H. Bork (Stanford: Hoover Institution Press), 138.

⁷⁷ Ibid.

⁷⁸ Rosanna Lipscomb, 2006, “Restructuring the ICC Framework to Advance Transitional Justice: A Search for a Permanent Solution in Sudan”, *Columbia Law Review* 106(1): 190.

⁷⁹ Ian Hurd, 2007, *After Anarchy: Legitimacy and Power in the United Nations Security Council* (Princeton: Princeton University Press), 8.

⁸⁰ Leonie von Braun and Annelen Micus, 2012, “Judicial Independence at Risk: Critical Issues regarding the Crime of Aggression Raised by Selected Human Rights Organizations”, *Journal of International Criminal Justice* 10(1): 113.

Civil War by the Libyan Government in 2011 and also the 2005 recognition of the longstanding situation in Darfur⁸¹. These parties are not signatories to the Statute yet have had to accept judicial interference from the ICC.

The relationship between the UNSC and the ICC aids in the expansion of a universal form of legal rule yet creates the risk of conflicting political interests between the entities. Article 16 gives the Security Council authority over the deferral of ICC investigations⁸². Although generally spanning twelve months, this period may be renewed indefinitely, depending on the current political concerns of the Council. Although this advantage increases the ICC's ability to dabble in the enforcement capabilities of the UNSC, the risk of involvement with the political interest of the Council increases⁸³. Critics of the Court argue that there are "insufficient checks and balances on the authority of the ICC prosecutor and judges" and "insufficient protection against politicised prosecutions or other abuses"⁸⁴.

ADAPTION TO INCREASE PREVENTATIVE ABILITY

The UN has a pre-existing avenue of peace development through the scope for regional settlement of disputes outlined in Article 33, Chapter VI of the UN Charter⁸⁵. There lacks, however, an ability to improve specific regional environments through constitutionalism and integration of international and regional architecture. Additionally, international arbitration would provide a useful system of conflict management rather than simply prosecution. The ICC in its current capacity is far from an ideal body of international judicial authority. Developments and adaptations to the current system would not only increase its functionality as an approach to conflict management, but also advance its authority.

Constitutionalism involves institutionalised power mechanisms controlled and developed to protect not only the interests of minority groups, but also the rights and liberties of the regional citizenry⁸⁶. This method focuses on the development of state systems to strengthen government control of the

⁸¹ Lipscomb, "Restructuring the ICC Framework", 191.

⁸² Hurd, *After Anarchy*, 9.

⁸³ Von Braun and Micus, "Judicial Independence at Risk", 114.

⁸⁴ US Department of State, 2003, "Frequently Asked Questions About the U.S. Government's Policy Regarding the International Criminal Court (ICC)".

⁸⁵ United Nations, 1945, "Pacific Settlement of Disputes", Article 33, Chapter VI, Charter of the United Nations.

⁸⁶ Anthony J. Regan and Yash Ghai, 2009, "Autonomy and Conflict Resolution in Bougainville, Papua New Guinea", in *The Case for Non-Sovereignty*, eds. Godfrey Baldacchio and David Milne (London: Routledge Publishers), 103.

populace, stabilise the economic, political and social environment of the state and importantly, prevent further conflict through legitimacy of power⁸⁷. Similarly, the ICC has the ability to improve regional and international architecture by developing regional organisation capabilities in dispute resolution⁸⁸. Arbitration is also a viable option in which participating parties engage with personally or externally selected arbitrators. They often choose this over other options due to the arbitrator's expertise, freedom to develop their personal procedures of arbitration, increased confidentiality and a relatively high degree of enforceability⁸⁹.

The ability to prevent and deter future violence resulting from both horizontal and vertical inequalities in a necessity. An institution that is home to many of the most advanced legal minds in international law should be utilised in a preventative manner. This advice should aid in advancing states that are driven to make positive, transformative changes to prevent future conflict. Seventh president of Ireland Mary Robinson once avowed, "The world needs lawyers more than [it] is willing to admit"⁹⁰. This shift to proactivity could revolutionise the concept of an international rule of law.

POLICY RECOMMENDATION

The following proposal is that of a *prototype*. It is understood that the process of statute amendment may be met with resistance from various UN bodies, perceived as a further infringement on their already 'compromised' state sovereignty. It should also be noted that issues of funding and detailed implementation strategies are beyond what can be achieved in this short analysis. In an ideal world, this would be the recommended direction as advised from previous persuasive arguments.

1: - Proposed removal of both Article 124 and Article 12 of the Rome Statute of the ICC, to increase deterrence of future crimes and a closing of the 'opt-out' jurisdictional loophole (discussed above). This will be done through the United Nations General Assembly and require a majority consensus.

2: -

⁸⁷ Regan and Ghai, "Autonomy and Conflict Resolution in Bougainville", 103.

⁸⁸ Mauro Rubino-Sammartano, 2001, *International Arbitration Law and Practice* (Kluwer Law International), 17.

⁸⁹ *Ibid.*

⁹⁰ Kofi Annan, 1997, "Advocating for an International Criminal Court", *Fordham International Law Journal* 21(2).

1. The ICC will create the following relevant organs under the guidance of the UN interpretation of the Rome Statute. The construction will:
 - (a) allow for construction over an indefinite period of time*
 - (b) be reviewed by the UNSC at 5 year intervals, taking into account feedback from states who have been privy to the legal services/aid
 - (c) It will do this in two capacities:
 - (i) states have been negatively impacted upon by political, economic or civil unrest that has led to instability of state processes
 - (ii) states can show evidence of instability that has the *potential* to lead to political, economic or civil unrest
 - (d) It will supply aid through:
 - (i) the provision of impartial legal advisors specialising in policy development and analysis, commercial legislative processes and international legal theory
2. The ILAB will oversee an Arbitration Council (ILABAC) that will be of service when and only when states can show that they have:
 - (a) been or are currently impacted upon by political, economic or civil unrest, or
 - (b) been unsuccessful in previous attempts at conflict resolution, or
 - (c) can demonstrate attempts at peaceful negotiation**
3. The ILABAC will perform internationally recognised and accredited arbitration procedures, as agreed upon by such acts as the Australian International Arbitration Act (Cth) 1974
4. States will have access to the services outlined in 2(b) and (4) if they:
 - (a) are signatory to the Rome Statute of the International Criminal Court, or
 - (b) have ratified the Rome Statute of the International Criminal Court, or
 - (c) have made a compelling argument as to why the services are needed. This evidence-based argument is to be analysed by an executive branch of the ILAB in the determination of provision of services.

** In the process of amendment, this time frame will be decided upon by a majority consensus by signatory states.*

*** These attempts will be analysed by an executive branch of the ILAB in an impartial and fair capacity.*

REAL WORLD APPLICATION

Gaza-Israeli conflict

The ongoing conflict involving southern Israel, Palestine and the Gaza Strip has resulted from the lack of certainty of land occupation, with further clashes between Palestinian militants and the Israel Defence Forces (IDF)⁹¹. The international community has condemned the Israeli infiltration, with Secretary General Ban Ki-Moon stating that the “suffering and death of civilians caught up in this conflict is intolerable”⁹².

Currently, the actions of the ICC are severely limited in this conflict. Although specific perpetrators have been identified, the destruction is occurring on such a massive scale that prosecution of *groups* would not be legitimate or particularly constructive⁹³. This would do nothing for the credibility or legitimacy of the court and its ability to *manage* conflict.

Practical proposal

The proposal has the ability to be implemented in the Gaza-Israeli conflict, as both Israel and Palestine have been part to the Rome Statute since December 2000 and January 2009 respectively⁹⁴. Focus on the Gaza-Israeli issue would help to lessen accusations of discriminatory enforcement against African nations. The Middle East would be a good area to analyse in this capacity. This also differentiates from the *Responsibility to Protect*, as it encourages states themselves to seek help outside of their own borders⁹⁵.

The ILAB would determine who, under international law, has legal property rights to the territory* and the arbitration services outlined in sections (3) and (4) of the above proposition could aid in providing an avenue of debate and relatively peaceful negotiation based on legal opinion. Evidently, the ILAB would

⁹¹ James L. Gelvin, 2014, *The Israel-Palestine Conflict: One Hundred Years of War*, Third Edition (Cambridge: Cambridge University Press), 5.

⁹² Ban Ki-moon, 2014, “Statement attributable to the Spokesman for the Secretary-General on situation in Gaza”, New York, United Nations General Assembly Statement Archives.

⁹³ Gelvin, *The Israel-Palestine Conflict*, 189.

⁹⁴ ICC Archives, 2013, “Chronological List of Signatory Parties to the Rome Statute of the International Criminal Court”.

⁹⁵ Mark Kersten, 2014, “R2P Isn’t a Useful Framework for Gaza – Or Anything”, Justice In Conflict Online, accessed 1 August 2014, <<http://justiceinconflict.org/2014/07/25/r2p-isnt-a-useful-framework-for-gaza-or-anything/>>.

look to aiding the redevelopment of the Palestinian state as the ICC investigates potential human rights violations.

** It is understood that the history of this land division is not one to be treated lightly. The likelihood of this issue being resolved in the near future is unlikely. In a utopian situation, all parties would rely solely on the rule of law in settlement.*

Syria

The 'Syrian Uprising' has been significant on the world stage since the nationwide upheaval against the reign of president Bashar al-Assad and the Syrian Government in 2011. Protests were met with violent resistance, providing a catalyst to armed rebellion stemming from relatively peaceful protesting⁹⁶. Since that time, various militia and rebel groups have formed, the most notable being the Islamic Front and the Free Syrian Army⁹⁷. This conflict is of great importance to the international community, not just for its violation of Article 13 but also the spill-out effect into surrounding states⁹⁸.

Practical proposal

The proposal has the ability to be implemented in the Syrian Uprising, as Syria has been part to the Rome Statue since December 2000⁹⁹.

Due to the sheer number of rebel groups present in the Syrian conflict, this proposal would work well under application. Arbitration may provide an enforceable avenue for groups to uncover the essence of their insurgence and, in lieu of this, highlight what specific change they desire. The ILAB would then have the capacity to work towards securing common desires outlined in arbitration, leaving the prosecution arm of the ICC to prosecute offending leaders.

Rebel and militant groups who identify as active participants in the conflict, *and* can identify their motives, would nominate a spokesperson that would represent them within the new structure of the ICC. Any concerns arising from the arbitration process regarding government structure and policy would

⁹⁶ Dan Smith, 2013, *The State of the Middle East: An Atlas of Conflict and Resolution*, Second Edition (Earthscan Publishing House), 67.

⁹⁷ Ibid.

⁹⁸ Suheil Damouny and Emily Benammar, 2014, "Syria opposition parties: explained", ABC News Online, accessed 20 July 2014, <<http://www.abc.net.au/news/2013-08-29/syria-opposition-parties/4913162>>.

⁹⁹ ICC Archives, "Chronological List of Signatory Parties".

be linked to the legal advisory body (ILAB) to increase credibility and positive action. The direction this would lead the conflict is uncertain, but it is predicted that governmental reform would be prioritised.

CONCLUSION

The policy recommendations outlined in this paper provide for a transformative approach to the ability of the ICC to improve its authority in a setting of significant global change through conflict prevention. The intention of the International Criminal Court is an honourable one: a united rule of law to govern, develop and deter the nature of conflict resolution. In its current capacity, however, the ICC is far from an ideal body of international judicial authority. Developments made to the current system will modernise conflict management and advance the authority of the court. The practicality of a new approach regarding the developing world will succeed if it is tailored to the multi-faceted, ongoing and historically rooted conflicts that occur here specifically. Variations on the pattern and future direction of prosecution and jurisdictional inconsistencies will improve the court. A transformative approach is required if the ICC is to remain a credible, influential and fully operational method of managing and preventing conflict in the developing corners of the world.

BIBLIOGRAPHY

- Annan, Kofi. 1997. "Advocating for an International Criminal Court". *Fordham International Law Journal* 21(2): Article 2.
- Annan, Kofi. 1997, June 12. "International Criminal Court Promises Universal Justice, Secretary-General Tells International Bar Association". United Nations Department of Public Information.
- Balasco, Lauren Marie. 2013. "The International Criminal Court as a Human Security Agent". *PRAXIS: Fletcher Journal of Human Security* 28.
- Brown, B. S. 1999. "U.S. Objections to the Statute of the International Criminal Court: A Brief Response". *New York University International Law and Politics Journal* 31: 855-857.
- Casey, Lee A., and David B. Rivkin. 2005. "The Dangerous Myth of Universal Jurisdiction". In *A Country I Do Not Recognise*, edited by Robert H. Bork. Stanford: Hoover Institution Press.
- Cassese, Antonio, Paola Gaeta, and John Jones. 2002. *The Rome Statute of the International Criminal Court: a commentary*, Vol 2. Oxford: Oxford University Press.
- Clark, Roger S. 2009. "Negotiating Provisions Defining the Crime of Aggression, its Elements and the Conditions for ICC Exercise of Jurisdiction Over It". *European Journal of International Law* 20(4): 1104-1110.
- Damouny, Suheil and Emily Benammar. 2014, June 10. "Syria opposition parties: explained". ABC News Online. Accessed 20 July, 2014. <<http://www.abc.net.au/news/2013-08-29/syria-opposition-parties/4913162>>.
- Falk, Richard. 2012, May 1. "Opening the other Eye: Charles Taylor and Selective Accountability". Global Policy Forum. Accessed 19 July, 2014. <<https://www.globalpolicy.org/us-un-and-international-law-8-24/us-opposition-to-the-icc-8-29/51549-opening-the-other-eye-charles-taylor-and-selective-accountability.html>>.
- Gelvin, James L. 2014. *The Israel-Palestine Conflict: One Hundred Years of War*, Third Edition. Cambridge: Cambridge University Press.

- Gladius, Marlies. 2002. "Expertise in the cause of justice: global civil society influence on the statute for an International Criminal Court". In *Global Civil Society Yearbook 2002*, edited by Marlies Gladius, Mary Kaldor, and Helmut Anheier, 137-157. Oxford: Oxford University Press.
- Goldsmith, Jack. 2003. "The Self-Defeating International Criminal Court". *The University of Chicago Law Review* 70(1): 92-99.
- Halakhe, Abdullahi Boru. 2014, February 7. "Does the ICC have an Africa problem?". Aljazeera America. Accessed 23 July, 2014. <<http://america.aljazeera.com/opinions/2014/2/kenya-trials-keytoiccafricarelations.html>>.
- Hurd, Ian. 2007. *After Anarchy: Legitimacy and Power in the United Nations Security Council*. Princeton: Princeton University Press.
- International Criminal Court Archives. "Chronological List of Signatory Parties to the Rome Statute of the International Criminal Court". Updated 2013, March 15.
- Kaye, David, B. Hance, M. Hanna, S. Hwang, E. Levin, G. Lo, E. Yoo, X. Zhang. 2013. *The Council and the Court: Improving Security Council Support of the International Criminal Court*. Irvine: University of California, School of Law.
- Kersten, Mark. 2014, July 25. "R2P Isn't a Useful Framework for Gaza – Or Anything". Justice In Conflict Online. Accessed 1 August, 2014. <<http://justiceinconflict.org/2014/07/25/r2p-isnt-a-useful-framework-for-gaza-or-anything/>>.
- Ki-moon, Ban. 2014, August 8. "Statement attributable to the Spokesman for the Secretary-General on situation in Gaza". New York, United Nations General Assembly Statement Archives.
- Kim, Young Sok. 1999. "Preconditions to the Exercise of the Jurisdiction of the International Criminal Court: With Focus on Article 12 of the Rome Statute". *Michigan State University – DCL Journal of International Law* 8: 47-49.
- Lipscomb, Rosanna. 2006, January. "Restructuring the ICC Framework to Advance Transitional Justice: A Search for a Permanent Solution in Sudan". *Columbia Law Review* 106(1): 189-93.
- Marler, Melissa K. 1999, December. "The International Criminal Court: Assessing the Jurisdictional Loopholes in the Rome Statute". *Duke Law Journal* 49(3): 830-38

Regan, Anthony J. and Yash Ghai. 2009. "Autonomy and Conflict Resolution in Bougainville, Papua New Guinea". In *The Case for Non-Sovereignty*, edited by Godfrey Baldacchio and David Milne, 102-103. London: Routledge Publishers.

Rubino-Sammartano, Mauro. 2001. *International Arbitration Law and Practice*. Kluwer Law International.

Smith, Dan. 2013. *The State of the Middle East: An Atlas of Conflict and Resolution*, Second Edition. Earthscan Publishing House.

Smith, Steve, Amelia Hadfield, and Tim Dunne. 2012. *Foreign Policy: Theories, Actors and Cases*, Second Edition. Oxford: Oxford University Press, 32-33.

Sriram, Chandra Lekha. 2010, June 22. "ICC hypocrisy over war crimes". The Guardian Political Forum.

Tabak, Shana. 2009. "Article 124, War Crimes, and the Development of the Rome Statute". *Georgetown Journal of International Law* 40: 1069-73.

United Nations. 1945, June 26. "Pacific Settlement of Disputes". Article 33, Chapter VI, Charter of the United Nations.

United Nations Human Rights Council. 2010, March 4. "Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia". United Nations General Assembly, 13th Session, Agenda Item 2, 8-10.

US Department of State, 2003, July 30. "Frequently Asked Questions About the U.S. Government's Policy Regarding the International Criminal Court (ICC)".

Von Braun, Leonie and Annelen Micus. 2012. "Judicial Independence at Risk: Critical Issues regarding the Crime of Aggression Raised by Selected Human Rights Organizations". *Journal of International Criminal Justice* 10(1): 112-8.

World Federalism Movement. 2010, July 17. "International Criminal Court: Breakthrough on Crime of Aggression". World Day for International Justice Media Advisory Conference, 2-4.

SEXUAL VIOLENCE IN THE DEMOCRATIC REPUBLIC OF THE CONGO

by Corinne Langman

THE PREVALENCE AND NATURE OF SEXUAL VIOLENCE IN THE DRC

Conflict in Eastern DRC has adduced more reports of war-related sexual violence than any other known conflict.¹⁰⁰ Reliable estimates of sexual violence in the DRC do not exist,¹⁰¹ but it is conservatively estimated that there are 48 rapes every hour. Sexual violence in the DRC takes many forms, including rape, gang rape, sexual slavery, genital mutilation, forced participation of family members to have sexual intercourse, rape in presence of spouses and children, and rape using objects such as knives or guns.^{102,103} Sexual violence has been so characteristically brutal that rape in the DRC has led to the creation of a new pathology – ‘rape with extreme violence’ – because of the coupling of penile rape and the violent destruction of genitalia and reproductive organs that is occurring. In addition to the unprecedented reports of genital mutilation, reports of gang rape have been exceptionally high. A 2011 study indicated that 59.3% of rape victims had experienced gang rape, and the mean number of assailants per sexual attack is 2.5, with a range of 1 to 15.¹⁰⁴ Another study suggested the average number of attackers per victim is 4.5.¹⁰⁵

A distinctive factor of sexual violence in the DRC is the number of women being assaulted in their homes. In most other conflicts, women are attacked outside the home; for example, in Darfur, 82% of sexual assaults occurred when women were outside their home villages.¹⁰⁶ In the aforementioned 2011

¹⁰⁰ S. Meger, 2011, “Rape in Contemporary Warfare: The Role of Globalization in Wartime Sexual Violence”, *African Conflict & Peacebuilding Review* 1(1): 125.

¹⁰¹ A. Peterman, T. Palermo, and C. Bredenkamp, 2011, “Estimates and Determinants of Sexual Violence Against Women in the Democratic Republic of Congo”, *American Journal of Public Health* 101(6): 1060.

¹⁰² Ibid.

¹⁰³ B. Le Goff, 2010, “Ending Sexual Violence in the Democratic Republic of the Congo”, *Fletcher Forum of World Affairs* 34(1): 16.

¹⁰⁴ S. Bartels et al., 2010, “Patterns of Sexual Violence in Eastern Democratic Republic of Congo: reports from survivors presenting to Panzi Hospital in 2006”, *Conflict and Health* 4(9): 3.

¹⁰⁵ Meger, “Rape in Contemporary Warfare”, 117.

¹⁰⁶ Bartels et al., “Patterns of Sexual Violence”, 7.

DRC study, it was found that 56.5% of women were assaulted within their own homes, often while they were sleeping next to their family members.¹⁰⁷

Women do not appear to be more vulnerable to sexual violence based on demographic differences;¹⁰⁸ rather, it “affects young, old, single, married, divorced, and widowed women... [the] educated and the uneducated, as well as women of different occupations and different ethnicities”.¹⁰⁹ Sexual violence in the DRC is therefore unprecedented, brutal and indiscriminate.

FACTORS THAT CONTRIBUTE TO THE HIGH INCIDENCE OF RAPE IN THE DRC

Current and historical societal beliefs and practices

There are a number of underlying social factors within the DRC that contribute to the high incidence of sexual violence.¹¹⁰ There are several customs, practices and commonly held beliefs that contribute to gender inequality and misogyny. Many of these beliefs centre on the morality of sexuality and marriage, and are exacerbated by harmful gender constructions.¹¹¹ For example, rape is often understood only as sexual offences against women who are virgins.¹¹² This contributes to the idea that non-virgins are already ‘defiled’, and the distinction between rape and consensual intercourse becomes blurry or inconsequential. An outcome of this belief is that society does not view early marriage as a negative endeavour, and forced sexual intercourse within marriage is not widely opposed (nor is it illegal).¹¹³

Another commonly held belief is that male honour is “reflected in the chastity of his associated women”.¹¹⁴ When a woman is raped, while it is still viewed as harmful to the woman,¹¹⁵ it is largely

¹⁰⁷ Bartels et al., “Patterns of Sexual Violence”, 3.

¹⁰⁸ Peterman, Palermo, and Bredenkamp, “Estimates and Determinants”, 1065.

¹⁰⁹ Bartels et al., “Patterns of Sexual Violence”, 5.

¹¹⁰ Le Goff, “Ending Sexual Violence”, 18.

¹¹¹ J. Trenholm et al., 2012, “Constructing Soldiers from Boys in Eastern Democratic Republic of Congo”, *Men and Masculinities* 16(2): 203.

¹¹² Le Goff, “Ending Sexual Violence”, 18.

¹¹³ Ibid.

¹¹⁴ J. Trenholm, P. Olsson, and B. M. Ahlberg, 2009, “Battle on women’s bodies: war, rape and traumatising in Eastern Democratic Republic of Congo”, *Global Public Health* 6(2): 203.

¹¹⁵ Le Goff, “Ending Sexual Violence”, 18.

perceived as an offence against the family as a whole.^{116,117} Resultantly, rape in a non-war context is often repaired by the offender paying the family financial compensation, or by marrying the girl who was raped.¹¹⁸ Rape is, therefore, not seen as an offence against the individual woman, but an offence to the men around her and to the community. This idea could very well explain the overwhelming number of sexual violence cases in the Eastern DRC conflict; rape is being used as a tool not necessarily to harm individual people, but to bring dishonour and humiliation on families and communities as a whole.

There are other widespread societal practices and beliefs that contribute to the dehumanisation of women in the DRC, and to flawed perceptions of consent and autonomy. There is an ongoing practice in the DRC called *lévirat*, which requires a widow to marry her husband's brother.¹¹⁹ Given the social status of women and the complexities of providing for oneself as an older woman, this practice can be viewed positively in that the widow continues to be provided for. However, this practice perpetuates the notion that women are property of men. It also opens the door for 'legal' rape to occur in the new marriage. In addition to this, there is some level of belief in witchcraft in the DRC that fuels harmful practices, particularly my militia members. As an example, many Mayi-Mayi fighters believe that raping virgin girls, breast-feeding women or pregnant women will protect them.¹²⁰ Other militia members in Katanga believed certain sexual body parts would protect them in war, and would cut off these body parts to wear around their necks in battle.¹²¹ Still other Rassemblement Congolais pour la Démocratie (RCD) soldiers believed that raping pygmy women would cure certain ailments, such as back pain.¹²²

All of these beliefs, customs and practices contribute to a higher level of sexual violence both in non-war times and during war, as well as a widespread acceptance of violence against women. A 2010 study concluded that the high prevalence of gang rape, especially gang rape by non-military offenders, indicated the overarching tolerance of sexual violence towards women.¹²³ This acceptance is also indicated by the soaring number of reports of intimate partner sexual violence (IPSV) in the DRC. A 2011 study found that reports of IPSV were 1.8 times that of reports of rape in the region. The study also

¹¹⁶ Le Goff, "Ending Sexual Violence", 31.

¹¹⁷ Trenholm, Olsson, and Ahlberg, "Battle on women's bodies", 140.

¹¹⁸ Le Goff, "Ending Sexual Violence", 18 & 31.

¹¹⁹ Ibid, 18.

¹²⁰ Ibid.

¹²¹ Ibid.

¹²² Ibid.

¹²³ Bartels et al., "Patterns of Sexual Violence", 8.

demonstrated that 35% of women in the DRC reported having experienced IPSV, while neighbouring countries experienced far less: 12% in Rwanda, 13% in Malawi and 15% in Kenya.¹²⁴

It is clear that in the DRC, there is a tendency for women to be viewed as the property of men, there is a widespread acceptance of sexual violence towards women, and rape is seen as an offence committed against a community, not necessarily the individual woman. It is also clear that there exist a number of harmful customs that perpetuate the acceptance of sexual violence. Many of these factors existed pre-conflict and thus were exacerbated when conflict occurred. “Violence against women does not originate with war and conflict; it emerges from prior social... and cultural discriminations that fuel sexual violence when a conflict erupts”.¹²⁵

The history and institutionalisation of gender inequality

It is clear that gender inequality is rampant in the DRC, particularly within societal beliefs and practices. However, this gender inequality not only exists on a social level but has been institutionalised and legalised. According to the United Nations Gender Inequality Index (GII), the DRC is ranked 186 out of 187 countries for gender inequality. The only country below the DRC is Niger.¹²⁶ This index includes a variety of factors, including adolescent birth rate, seats in parliament, maternal mortality rate and population with secondary education. Women in the DRC are discriminated against through certain laws and customs, relating to everything from marriage, sexuality and personal autonomy.¹²⁷ Family law in the DRC considers married women as minors for the purposes of the law in that their contractual, civil and work-related matters are all entirely subject to the agreement of their husbands.¹²⁸ This law means that a woman’s assets belong to her husband. Widows are also not entitled to inheritance.¹²⁹

Some DRC laws reference gender equality and have attempted to curtail certain practices. For example, the Congolese constitution mentions that all Congolese citizens are equal before the law¹³⁰, and that public authorities are to ensure the elimination of discrimination against and violence towards

¹²⁴ Peterman, Palermo, and Bredenkamp, “Estimates and Determinants”, 1065.

¹²⁵ Le Goff, “Ending Sexual Violence”, 17.

¹²⁶ “Table 4: Gender Inequality Index”, United Nations, accessed 13 August, 2014, <hdr.undp.org/en/content/table-4-gender-inequality-index>.

¹²⁷ Le Goff, “Ending Sexual Violence”, 17.

¹²⁸ Ibid, 18 & 31.

¹²⁹ Ibid, 31.

¹³⁰ *The Constitution of the Democratic Republic of the Congo 2005*, Article 12.

women.¹³¹ A law was recently instituted that banned “transactional penalties”,¹³² such as the aforementioned notion of paying financial compensation as punishment for rape. Despite the intentions of these laws, the effects have not been fruitful. Transactional penalties are still common, and sexual violence on an institutional level continues.

Institutionalised sexual violence has a strong history in the DRC. Military officials in the Mobutu Government committed sexual violence; the army and police in particular committed sexual violence against the female relatives and wives of the political opposition.¹³³ This in and of itself demonstrates that rape as a form of punishment of the opposition has deep historical roots within the country, which has influenced the current trend of raping women to destroy a community. Prison guards also forced female inmates to perform sexual service in order to attain basic needs.¹³⁴ As Kabila’s army advanced in 1997, both sides raped and abducted women. As time continued, all tribal, national and regional parties committed sexual violence against women.¹³⁵ As a very simple statement, sexual violence was the foundation of taunting the opposition and gaining power; this foundation has therefore been the *modus operandi* for all continuing conflict.

¹³¹ *The Constitution of the Democratic Republic of the Congo 2005*, Article 14.

¹³² Le Goff, “Ending Sexual Violence”, 18.

¹³³ *Ibid.*, 14.

¹³⁴ *Ibid.*

¹³⁵ *Ibid.*, 15.

BIBLIOGRAPHY

United Nations, 2014. *Table 4: Gender Inequality Index*. Accessed 13 August, 2014.

<hdr.undp.org/en/content/table-4-gender-inequality-index>.

Bartels, S., Scott, J., Mukwege, D., Lipton, R., VanRooyen M., and Leaning, J., 2010. "Patterns of Sexual Violence in Eastern Democratic Republic of Congo: reports from survivors presenting to Panzi Hospital in 2006". *Conflict and Health* 4(9): 1-10.

Le Goff, B., 2010. "Ending Sexual Violence in the Democratic Republic of the Congo". *Fletcher Forum of World Affairs* 34(1): 13-40.

Meger, S., 2011. "Rape in Contemporary Warfare: The Role of Globalization in Wartime Sexual Violence". *African Conflict & Peacebuilding Review* 1(1): 100-132.

Peterman, A., Palermo, T., and Bredenkamp, C., 2011. "Estimates and Determinants of Sexual Violence Against Women in the Democratic Republic of Congo". *American Journal of Public Health* 101(6): 1060-1067.

The Constitution of the Democratic Republic of the Congo 2005.

Trenholm, J., Olsson, P., and Ahlberg, B. M., 2009. "Battle on women's bodies: war, rape and traumatisation in Eastern Democratic Republic of Congo". *Global Public Health* 6(2): 139-152.

Trenholm, J., Olsson, P., Blomqvist M., and Ahlberg, B. M., 2012. "Constructing Soldiers from Boys in Eastern Democratic Republic of Congo". *Men and Masculinities* 16(2): 203-227.

AN ANALYSIS OF PEACEBUILDING

by Kristian Le Gallou

With the increase in the number of intrastate conflicts following the end of the cold war and the daily stream of media coverage broadcasting violence and unrest, peace in countries experiencing long-term or recurring conflict can seem unattainable. Paul Collier goes as far as to suggest that peace in states emerging from civil war has only a fifty percent chance of lasting a decade.¹³⁶ Despite the complexities of conflict, and especially civil war, there exists a range of mechanisms that look to aid the resolution of conflict and attempt to construct a lasting peace. Peacebuilding is one such method, and is the focus of this essay. After defining the term, some of the strengths and weaknesses of this approach to secure peace post-civil war will be discussed in order to show that, whilst imperfect, peacebuilding is necessary. Following this, it will be shown how peacebuilding can be combined with other conflict management techniques to make it more effective. Finally, this previous discussion will then be applied to the context of the Central African Republic to explore how peacebuilding could be implemented in order to secure a sustainable peace.

Peacebuilding has a somewhat elusive and fluid definition; it is dependent on who is defining it and their political purposes. It has also become somewhat integrated and associated with other practices, including peacekeeping, peacemaking and state-building, meaning a narrow definition is difficult to establish.¹³⁷ However, there are general definitions that capture the overall idea behind peacebuilding and what it seeks to achieve. Gareth Evans understands peacebuilding to be a “long-term preventative strategy” that looks to address causes of insecurity.¹³⁸ Along the same vein, the United Nations’ (UN) definition has evolved and consists of targeted measures that strengthen national capacities to manage conflict at all levels in order to reduce the risk of countries falling into or re-entering conflict, creating the foundations for sustainable peace and development.¹³⁹ What this looks like in practice is unique to each conflict, but the common aims are to provide assistance involving “military, security, socio-economic development, humanitarian relief, elections and human rights protection” that compliment and work towards the construction or reconstruction of “physical, political, governance, economic and

¹³⁶ P. Collier, 2007, *The Bottom Billion* (Oxford: Oxford University Press), 34.

¹³⁷ United Nations, 2010, *UN Peacebuilding: an Orientation*, United Nations Peacebuilding Support Office, 5.

¹³⁸ G. Evans, 1994, “Cooperative Security and Intrastate Conflict”, *Foreign Policy* 96: 3-20.

¹³⁹ United Nations, *UN Peacebuilding*, 5.

development infrastructures and institutions”.¹⁴⁰ Therefore, peacebuilding is not only about providing military and physical security to reduce and avert violence but also transforming structures and relationships at all levels of society to strengthen that society.¹⁴¹

Timing is a crucial issue when discussing peacebuilding; it is not a short-term goal. The two years following the end of the main conflict in a country is seen as the vital window to begin the implementation of peacebuilding activities; it is when peace is tenuous and needs are often greatest.¹⁴² Moreover, this two-year post-conflict window is also the greatest opportunity to set in motion effective and long-term processes that, if successful, significantly increase the chance for a lasting peace.¹⁴³

STRENGTHS

Whilst critics attack peacebuilding as neo-imperialist or colonialist, it can be widely agreed that, whilst peacebuilding missions are not strictly altruistic (the strategic interests, foreign security and economic priorities of international actors can come into play), there is genuine desire to create a peace that allows the redevelopment of a sustainable state.¹⁴⁴ However, intent is not enough to give validity to peacebuilding alone.

Civil war is a fundamentally complex situation, caused by myriad factors. However, despite this complexity, peacebuilding looks to wade into the issues and redress them in order to sustain peace. This is the major strength of peacebuilding: it looks to the root causes of conflict and ways in which they can be addressed and resolved. But what are these root causes? Paul Collier looks to economic factors to explain the onset of civil war: low income, slow economic growth and the relationship this often has with the weakness of the state.¹⁴⁵ Karen Ballentine, however, acknowledges that economic factors are not the sole cause of civil war, but that a complex mix of economic, political, ethnic and security

¹⁴⁰ D. Francis, 2012, “When War Ends: Building Peace in Divided Communities – Core Issues”, in *When War Ends: Building Peace in Divided Communities*, ed. D Francis (Surrey: Ashgate Publishing), 1-26.

¹⁴¹ L. Schirch and M. Sewak, 2008, *The Role of Women in Peacebuilding*, Global Partnership for the Prevention of Armed Conflict, 4-5.

¹⁴² United Nations, 2009, *Report of the Secretary-General on Peacebuilding in the Immediate Aftermath of Conflict*, General Assembly Security Council, 3.

¹⁴³ Ibid.

¹⁴⁴ R. Paris, 2012, “Saving Liberal Peacebuilding””, in *When War Ends: Building Peace in Divided Communities*, ed. D Francis (Surrey: Ashgate Publishing), 27-58.

¹⁴⁵ Collier, *The Bottom Billion*, 19-20.

dynamics exists.¹⁴⁶ Another hypothesis is the idea of inequality (economic, social, political and cultural) between identity groups as the cause of conflict, known as horizontal inequalities.¹⁴⁷ Regardless of one's academic persuasion to the cause of civil war, peacebuilding broadly caters for these many factors. Policies and activities that focus on enhancing equitable "economic development and distributive justice, encourage rule of law, protect fundamental human rights, and foster growth of democratic institutions" are mutually reinforcing and make contributions to security.¹⁴⁸ Peacebuilding does not just focus on one area; it looks at a wide range of reforms to strengthen the state to better represent and serve its citizens.

Who is involved in peacebuilding activities is also a key element of the process. First and foremost is the importance of national actors; any peacebuilding program needs to be primarily owned by national actors, or it loses much of its effectiveness and legitimacy.¹⁴⁹ National ownership, through engaging with local and traditional authorities as well as minorities, is the only way to ensure meeting the short- and long-term goals in a sustainable way and create a broad base of support.¹⁵⁰ Secondly, the international community also has a role to play, which is frequently requested, as the tasks facing national actors following conflict is immense and requires large-scale coordination, investment of funds and expertise.¹⁵¹ However, as will be shown later, the diversity of actors involved can also be detrimental to peacebuilding and can weaken its effects.

The diverse and integrative approach of peacebuilding is also strengthened by the commitment by the United Nations to continue learning lessons from previous missions and work towards greater processes.¹⁵² The acknowledgement that there is no universal template for peacebuilding and to continually build upon experience whilst also "maintaining flexibility and adaptability" to be able to respond to the "fluid and complex situations" of post-conflict situations highlights the positive and

¹⁴⁶ K. Ballentine, 2003, "Beyond Greed and Grievance: reconsidering the economic dynamics of armed conflict", in *The Political Economy of Armed Conflict: Beyond Greed and Grievance*, eds. K. Ballentine and J. Sherman (Boulder: Lynne Rienner Publishers), 259-283.

¹⁴⁷ A. Langer and F. Stewart, 2014, "Horizontal Inequalities and Violent Conflict", in *Routledge Handbook of Civil Wars*, eds. E. Newman and K. DeRouen (Oxon: Routledge), 104-118.

¹⁴⁸ Evans, "Cooperative Security", 11.

¹⁴⁹ United Nations, *Report of the Secretary-General*, 3-4.

¹⁵⁰ *Ibid*, 4-5.

¹⁵¹ *Ibid*, 6.

¹⁵² United Nations, *UN Peacebuilding*, 1.

evolving nature of peacebuilding.¹⁵³ Naturally, there have been steep learning curves in the history of peacebuilding, and there is a certain disparity between the ideal and reality. As Roland Paris argues, there appears to be no real alternative to peacebuilding. That does not mean, though, that it cannot undergo constant scrutiny and reform to improve practices.¹⁵⁴

WEAKNESSES

Unsurprisingly, peacebuilding is not the silver bullet that will guarantee the avoidance of future conflict. Similarly to all approaches to conflict management, there are weaknesses within peacebuilding that can impact on its success.

A large and complex operation such as peacebuilding requires a strong degree of coordination. However, the lack of coordination between national or international actors can be a common problem. At the national level, issues found within transitional power-sharing arrangements, weak communications systems, a politicised civil society and media and a weak civil service make it difficult for governments to coordinate the international response.¹⁵⁵ At the international level, the wide range of actors involved (the UN, international financial institutions, regional states, bilateral donors, non-government organisations) can create challenges in uniting behind a common strategy for peacebuilding and effectively dividing the roles and responsibilities.¹⁵⁶ The inability to resolve coordination between actors can derail a peacebuilding operation and hide the negative effects that the intervention may have in reinvigorating or exacerbating conflict and violence.¹⁵⁷

As has been discussed, national and local ownership of the peacebuilding process is important, and a lack of it can severely weaken operations. David Francis emphasises the questions of legitimacy that can plague post-conflict governments if they are not permitted or empowered by external actors to “win the hearts and minds” of the local populace to support reconstruction and redevelop a common national identity.¹⁵⁸ The actions of international actors – often characterised by altering levels of cooperation,

¹⁵³ United Nations, *Report of the Secretary-General*, 8.

¹⁵⁴ Paris, “Saving Liberal Peacebuilding”, 55.

¹⁵⁵ United Nations, *Report of the Secretary-General*, 17.

¹⁵⁶ United Nations, *UN Peacebuilding*, 17-19 & 29.

¹⁵⁷ Francis, “When War Ends”, 10.

¹⁵⁸ *Ibid.*

consensus and occasionally coercion – can create a “phantom state” that is accountable to international agents instead rebuilding the state accountable to the locals.^{159,160} This in turn erodes the confidence of the citizens in the state. A lack of ownership is therefore strongly linked with the lack of consultation of locals, understanding of needs and an uncoordinated strategy by external actors, all of which can severely undermine the peacebuilding process.¹⁶¹

As previously mentioned, timing is a key component of peacebuilding; poor timing can derail the entire process. For example, holding elections at the right time is vital. When it is appropriate to hold elections is different for each situation, but the United Nations identifies that elections can create tensions and renew conflict if “inadequate attention is paid to technical constraints, the need to strengthen and nurture nascent political processes and community participation and civil society is ignored”.¹⁶² Post-election violence was seen in countries such as Zimbabwe, Kenya and Guinea, threatening a return to civil war.¹⁶³ The importance of timing, therefore, is inextricably dependent on the unity of international actors and avoiding fragmented approaches when working with national actors to secure hard fought gains, based on an understanding of the needs and dynamics of the population.¹⁶⁴

SUPPORTING APPROACHES

It is evident that peacebuilding can be favourably coupled with other conflict management techniques to enhance its capacity. Already, there is a blurred distinction and often overlapping goals between the approaches such as peacekeeping, peacemaking and peacebuilding, but there are other approaches that can also be combined with peacebuilding.¹⁶⁵

¹⁵⁹ Francis, “When War Ends”, 10.

¹⁶⁰ O. Mateos, 2012, “Post-Conflict Peacebuilding in Africa: Between Virtual Peace and the Search for Legitimacy”, in *When War Ends: Building Peace in Divided Communities*, ed. D Francis (Surrey: Ashgate Publishing), 77-102.

¹⁶¹ Francis, “When War Ends”, 10.

¹⁶² United Nations, *Report of the Secretary-General*, 7.

¹⁶³ Francis, “When War Ends”, 11.

¹⁶⁴ United Nations, *UN Peacebuilding*, 14.

¹⁶⁵ *Ibid*, 8.

Firstly, for peacebuilding to be implemented successfully, there needs to be “a basic level of political will, commitment and consensus among the main national protagonists”.¹⁶⁶ A robust mediation process preceding the implementation of peacebuilding activities is one way that peacebuilding can be enhanced. Mediation, a process of negotiation led by an external third party that looks to facilitate a solution, is inherently valuable to facilitating peacebuilding. Virginia Fortna’s research found that peace is more difficult to maintain when no decisive victory is achieved, leaving both sides fully capable of reigniting hostilities and neither side completely satisfied with the outcome.¹⁶⁷ The inability to secure a peace agreement between warring parties or outline an agenda to address the causes of the conflict seriously diminishes the potential of peacebuilding measures, to the extent of rendering any action ineffectual.¹⁶⁸ Therefore, mediation can be used as the tool to secure consensus and take steps toward the construction of a lasting peace.

Secondly, comparatively to interstate wars, intrastate conflict bitterly divides societies, creating immense challenges to sustaining peace.¹⁶⁹ Consequently, another complimentary method of post-conflict management to enhance peacebuilding is the implementation of an inclusive reconciliation process. Peacebuilding has been criticised for its focus on state reconstruction and bringing justice rather than looking to consolidate peace.¹⁷⁰ Reconciliation is therefore vital, as whilst there may be political peace following conflict, social peace is not guaranteed.¹⁷¹ The road to reconciliation is neither short nor easy. It does not mean forgetting the past; rather, there is the need to understand what has taken place while at the same time undergoing reform to improve the daily lives of citizens, so they are not subjected to the same conditions under which they suffered grievously.¹⁷² To reconcile a society requires the active participation of all sides of the conflict and for there to be some degree of truth,

¹⁶⁶ United Nations, *Report of the Secretary-General*, 4.

¹⁶⁷ V. Fortna, 2004, “Does Peacekeeping Keep Peace? International Intervention and the Duration of Peace after Civil War”, *International Studies Quarterly* 48(2): 269-292.

¹⁶⁸ United Nations, *Report of the Secretary-General*, 4-5.

¹⁶⁹ W. Verkoren and G. Junne, 2012, “Economic Aspects of Post-conflict Development”, in *When War Ends: Building Peace in Divided Communities*, ed. D Francis (Surrey: Ashgate Publishing), 59-76.

¹⁷⁰ Francis, “When War Ends”, 11.

¹⁷¹ Collier, *The Bottom Billion*, 34.

¹⁷² A. Rigby, 2001, *Justice and Reconciliation: After the Violence* (Boulder: Lynne Rienner Publishers), 12.

forgiveness and justice.¹⁷³ It is then that the journey towards realising a shared future can take place and dilute the fermentation of hatred and the desire for revenge.¹⁷⁴

PRACTICAL APPLICATION

Peacebuilding is not just an academic concept but one that is actively applied throughout the world. The Central African Republic (CAR) is one such country in which peacebuilding will have a role to play when conflict ends.

To understand why and how peacebuilding will be needed, it is important to understand the conflict that is currently taking place in the CAR, and the recent history that has played into the crisis. With the overthrow of the government in March of 2013 by the predominantly Muslim 'Seleka' coalition, retaliatory violence erupted between the Seleka and the largely Christian 'anti-Balaka' fighters. What has now emerged is a largely religious conflict pitting Muslims and Christians against each other, which has displaced 600,000 people, created food insecurity for 1.7 million and left 878,000 needing immediate medical attention.¹⁷⁵ As always, however, there are underlying issues that highlight where peacebuilding will be needed.

The CAR has been described not only as a failed state, but a phantom state with a limited institutional capacity for nearly half a century.¹⁷⁶ Governance has been the major issue, with prevalent and incessant looting of state resources and control of illicit economic networks by successive governments and national actors predominantly creating cause for conflict.¹⁷⁷ This corruption has led to an economic collapse that has seen the near complete disappearance of the formal economy and reliance on non-governmental organisations and churches to provide social services.¹⁷⁸ Responses to previous crises

¹⁷³ Reaching this balance of truth, forgiveness and justice is another field of literature. See: E. Hughes, W. Schabas, and R. Thakur (eds), 2007, *Atrocities and International Accountability: Beyond Transitional Justice*, (Tokyo: United Nations University Press).

¹⁷⁴ Rigby, *Justice and Reconciliation*, 13.

¹⁷⁵ T. Vircoulon and T. Lesueur, 2014, *The CAR Crisis: Thinking Beyond Traditional Peacekeeping*, International Crisis Group, accessed 5 August, 2014, <<http://www.crisisgroup.org/en/regions/africa/central-africa/central-african-republic/ops-eds/2014/vircoulon-lesueur-central-african-republic-the-CAR-crisis-thinking-beyond-traditional-peacekeeping.aspx>>.

¹⁷⁶ International Crisis Group, 2007, *Central African Republic: Anatomy of a Phantom State*, Africa Report 136.

¹⁷⁷ International Crisis Group, 2014, *The Central African Crisis: From Predation to Stabilisation*, Africa Report 219.

¹⁷⁸ Vircoulon and Lesueur, *The CAR Crisis*.

have followed the lines of military presence, humanitarian aid and budgetary support, but it is clear that this will not be enough to break the cycle of violence.¹⁷⁹

In September 2014, an 11,800-strong peacekeeping force (MINUSCA) will be deployed to the CAR in an effort to stabilise the country.¹⁸⁰ It is at this time that there is great potential to implement an inclusive peacebuilding agenda if the violence can be controlled and immediate humanitarian needs can begin to be met. The following recommendations are only a brief snapshot of the work that needs to be done in the CAR and only scratch the surface of what will be a lengthy process towards peace and reconstruction. As with all peacebuilding operations, timing and sequencing are major issues, with many demands needing to be met at once.¹⁸¹ Hence, there will be no suggestions of timing, merely highlighting of some of the processes that need to take place.

The economy is a vital aspect of any recovery process for the CAR and will help to legitimise the transitional government. It is also an area wherein actions must be balanced. The transitional government must work alongside international donors in order to create jobs – an important aspect of the process not only for the general population but also for those involved in direct military combat.¹⁸² The need to rebuild infrastructure and revitalise agriculture is an area that can work in tandem with a gradual process of disarmament, demobilisation and reintegration, giving people the means to support themselves. Another economic aspect important for stabilisation is the recovery of natural resource sites (gold and diamonds) throughout the country as well as combatting illegal economic networks. This process could initially be facilitated and enacted by part of the peacekeeping delegation (to provide security and administration) and be source to help fund reconstruction projects.¹⁸³

As a major source of grievance, economic management in the CAR needs serious reform to avoid repeat conflict. Whilst being mindful of the need to empower nationals, international technical assistance can be provided at this stage to undergo reform of the taxation and financial monitoring systems and

¹⁷⁹ International Crisis Group, *The Central African Crisis*, 17.

¹⁸⁰ *Ibid*, i.

¹⁸¹ United Nations, *UN Peacebuilding*, 12-13.

¹⁸² International Crisis Group, *The Central African Crisis*, ii.

¹⁸³ *Ibid*, iii.

strengthen checks and balances.¹⁸⁴ There is also opportunity to provide training to civil servants in both the administration and finance sectors to help fight the history of corruption.

Finally, it is important to strengthen an impartial judicial system, not only in the capital of Bangui but also in other major towns. The International Crisis Group notes that the UNDP and EU are already working towards this, but notes that further technical assistance is required by the CAR Government for there to be a “reconstituted police force, prosecution service and judiciary”.¹⁸⁵ The need for justice, however, will need to be balanced with the need for reconciliation. As a country that has been deeply divided by a conflict polarising Christians and Muslims, it is vital that a comprehensive reconciliation process take place in order to allow the country to operate once again and avoid the recurrence of violence. It is here that the example of the Gacaca courts in Rwanda could prove beneficial for the CAR, inspiring community-based courts that deliver a more practical approach to truth, justice and healing for communities.

CONCLUSION

Attempting to avert the relapse of violence and to foster conditions that facilitate the transformation of the state and society to make a long-term peaceful transition possible is highly commendable. Peacebuilding’s strategic outlook – which is to direct efforts in confronting the root causes of conflict and to honour the importance of national ownership whilst still providing adequate long-term international support – lends it great strength as a method of conflict management. Granted, there are issues associated with peacebuilding that can easily destroy a fragile peace and relaunch the country into conflict. Once the costs and benefits are weighed up, however, it becomes evident that whilst “peacebuilding is tremendously complex and prone to unanticipated consequences”, it is “also too important to lose or abandon”.¹⁸⁶ This is what has been argued in the Central African Republic case study. The international community can intervene and attempt to end the violence, but simply maintaining security whilst leaving the country with the structural problems that have plagued it for decades will only mean yet another return to conflict later on. Therefore, whilst peacebuilding is not perfect, it is necessary.

¹⁸⁴ International Crisis Group, *The Central African Crisis*, 21.

¹⁸⁵ *Ibid*, 24.

¹⁸⁶ Paris, “Saving Liberal Peacebuilding”, 58.

BIBLIOGRAPHY

- Ballentine, K., 2003. "Beyond Greed and Grievance: reconsidering the economic dynamics of armed conflict". In *The Political Economy of Armed Conflict: Beyond Greed and Grievance*, edited by K. Ballentine and J. Sherman, 259-283. Boulder: Lynne Rienner Publishers.
- Collier, P., 2007. *The Bottom Billion: why the poorest countries are failing and what can be done about it*. Oxford: Oxford University Press.
- Evans, G., 1994. "Cooperative Security and Intrastate Conflict". *Foreign Policy* 96: 3-20.
- Fortna, V., 2004. "Does Peacekeeping Keep Peace? International Intervention and the Duration of Peace after Civil War". *International Studies Quarterly*, 48(2): 269-292.
- Francis, D., 2012. "When War Ends: Building Peace in Divided Communities – Core Issues". In *When War Ends: Building Peace in Divided Communities*, edited by D. Francis, 1-26. Surrey: Ashgate Publishing.
- International Crisis Group, 2007. *Central African Republic: Anatomy of a Phantom State*, Africa Report 136.
- International Crisis Group, 2014. *The Central African Crisis: From Predation to Stabilisation*, Africa Report 219.
- Langer, A. and Stewart, F., 2014. "Horizontal Inequalities and Violent Conflict". In *Routledge Handbook of Civil Wars*, edited by E. Newman and K. DeRouen, 104-118. Oxon: Routledge.
- Mateos, O., 2012. "Post-Conflict Peacebuilding in Africa: Between Virtual Peace and the Search for Legitimacy". In *When War Ends: Building Peace in Divided Communities*, edited by D. Francis, 77-102. Surrey: Ashgate Publishing.
- Paris, R., 2012. "Saving Liberal Peacebuilding". In *When War Ends: Building Peace in Divided Communities*, edited by D. Francis, 27-58. Surrey: Ashgate Publishing.
- Rigby, A., 2001. *Justice and Reconciliation: After the Violence*. Boulder: Lynne Rienner Publishers.
- Schirch, L. and Sewak, M., 2008. *The Role of Women in Peacebuilding*. Global Partnership for the Prevention of Armed Conflict.

United Nations, 2009. *Report of the Secretary-General on Peacebuilding in the Immediate Aftermath of Conflict*. General Assembly Security Council.

United Nations, 2010. *UN Peacebuilding: an Orientation*. United Nations Peacebuilding Support Office.

Verkoren, W. and Junne, G., 2012. "Economic Aspects of Post-conflict Development". In *When War Ends: Building Peace in Divided Communities*, edited by D. Francis, 59-76. Surrey: Ashgate Publishing.

Vircoulon, T. and Lesueur, T., 2014. *The CAR Crisis: Thinking Beyond Traditional Peacekeeping*.

International Crisis Group. Accessed 5 August, 2014.

<<http://www.crisisgroup.org/en/regions/africa/central-africa/central-african-republic/oped/2014/vircoulon-lesueur-central-african-republic-the-CAR-crisis-thinking-beyond-traditional-peacekeeping.aspx>>.

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

by Megan Lowe

INTRODUCTION

Success cannot merely be measured quantitatively. The success of the International Criminal Tribunal for Rwanda (ICTR) cannot be measured by the total number of cases (75), nor the total number of convictions (52).¹⁸⁷ Rather, indicia of the success of the ICTR can be gleaned from analysis spanning multiple disciplines, particularly anthropology, psychology, law and politics. Few would disagree that securing the convictions of heads of state,¹⁸⁸ leaders of media,¹⁸⁹ and the apparent ‘mastermind’ of the entire genocide¹⁹⁰ has significantly contributed to retributive justice. Further, the landmark case of *Prosecutor v Akayesu*¹⁹¹ broke international normative ground in its dealing with sexual violence, assisting in constructing a clearer narrative of the genocide. Regardless, flaws such as geographical dispersal, susceptibility to political manipulation, questions of legitimacy and lack of local ownership have significantly detracted from both the retributive and restorative qualities of the Tribunal. When considering alternatives, however, including the Gacaca courts, a Hybrid Court (as per the Special Court for Sierra Leone), or a Truth and Reconciliation Commission (as seen in South Africa), due credence must be paid to the idiosyncratic conditions that distinguish the various cases, and ask the question: was the ICTR the best response to the worst conditions?

THE ICTR: ITS SUCCESSES

A similar sentiment to that of the International Criminal Court can be shared with the ICTR: its mere existence is in many ways an achievement in itself. That, however, does not equate to a successful post-justice mechanism, but rather a feat of international cooperation. Regardless, the ICTR has been

¹⁸⁷ International Criminal Tribunal for Rwanda, *Status of Cases*, accessed 12 August 2014, <<http://www.unictr.org/Cases/tabid/204/Default.aspx>>.

¹⁸⁸ *Kambanda v. Prosecutor*, Case No. ICTR-97-23, Appeal Judgement.

¹⁸⁹ *Prosecutor v. Nahimana*, Case No. ICTR-99-52, Judgement.

¹⁹⁰ *Prosecutor v. Bagosora*, Case No. ICTR-96-7, Judgement.

¹⁹¹ *Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, Judgement.

successful in holding the chief leaders of the Genocide accountable.¹⁹² In prosecuting only such high level persons, this prosecutorial practice emphasises an appreciation of the need for reintegration and reconciliation of low-level genocidaires (handled by the Gacaca courts), whilst appreciating that genocide “is one of those human rights violations that simply demands prosecution”.¹⁹³ Such landmark cases as those that are heard before the ICTR have likewise assisted with prosecution in the Rwandan domestic courts by interpreting and applying the abstract crime of genocide to individual criminal responsibility,¹⁹⁴ and by finding that sexual violence could constitute a crime against humanity or even genocide.¹⁹⁵ Likewise, establishing that the Tutsi were a distinct ethnic group (and therefore that the crime of Genocide was applicable) was not as straightforward as one would expect because they shared a language, religion and culture with the Hutu.¹⁹⁶ In finding this in the case of *Prosecutor v Akayesu*,¹⁹⁷ the ICTR contributed to the narrative that would assist in discrediting those ‘genocide deniers’ and undermine a resurgence of Hutu racial extremism. The principle of individual criminal responsibility clearly attributes blame to individuals rather than ethnic groups generally, further undermining ethnic divides. Similarly, the case of *Kambanda v Prosecutor*¹⁹⁸ was a direct blow to “state-actor impunity by convicting the Prime Minister of genocide and sentencing him to life imprisonment”. Finally, the “Media Case”¹⁹⁹ found radio presenters and newspaper journalists guilty of inciting genocide. There is no doubt that such key convictions assisted the process of achieving justice in the aftermath of the genocide.

Further, the ICTR had powers far exceeding that of the domestic courts, via rules such as Rule 40bis, which enables the Prosecutor to demand that a suspect be transferred to Arusha, regardless of their current location.²⁰⁰ This power arises solely from the fact that the ICTR was created by a series of Security Council Resolutions that are binding upon all states. It is highly unlikely that Rwanda would have ever received such cooperation from neighbouring states such as Kenya or the DRC, who were

¹⁹² Parker Patterson, 2011, “Partial Justice: Successes and Failures of the International Criminal Tribunal for Rwanda in Ending Impunity for Violations of International Criminal Law”, *Tul Journal of International and Comparative Law* 19: 392.

¹⁹³ Stephan Landsman, 1996, “Alternative Responses to Serious Human Rights Abuses – Of Prosecutions and Truth Commissions”, *Law and Contemporary Problems* 59(4): 90.

¹⁹⁴ Kingsley Chiedu Moghalu, 2005, *Rwanda’s Genocide: Politics of Global Justice* (Sydney: Palgrave Macmillan), 79.

¹⁹⁵ *Prosecutor v Akayesu*.

¹⁹⁶ Patterson, “Partial Justice”, 126.

¹⁹⁷ *Prosecutor v. Akayesu*.

¹⁹⁸ *Kambanda v. Prosecutor*.

¹⁹⁹ *Prosecutor v. Nahimana*.

²⁰⁰ Cécile Aptel, 1997, “The International Criminal Tribunal for Rwanda”, *International Review of the Red Cross* 37: 681.

largely sympathetic to the genocidaires. This power was expressly used with regard to Kenya in 1997 and resulted in Kambanda's arrest.²⁰¹ More generally, Security Council Resolution 955 predicated complete cooperation with the ICTR.

Although unfortunately not of any direct benefit to the Rwandan people, perhaps the greatest legacy of the ICTR is the contribution to international criminal jurisprudence it made.²⁰² a sort of 'best practices guidelines' for the next time that "never again became wherever again".²⁰³

Cultural Relativism and the ICTR

The ICTR correctly adopted a mild cultural relativist approach in its dealing with war crimes. Acknowledging that "our judicial systems, with their peculiar rights and remedies, are products and reflections of our unique political and cultural notions",²⁰⁴ the ICTR considered cultural differences when evaluating witness testimony and considering sentencing practices, amongst other things. One particular issue, as noted in *Prosecutor v Akayesu*, was that "syntax and everyday modes of expression in the Kinyarwanda language are complex and difficult to translate".²⁰⁵ Broader cultural considerations were also relevant, such as the tendency in Rwandan culture to avoid answering questions straightforwardly if the answer is a sensitive one.²⁰⁶ Therefore, judges "did not draw any adverse conclusions regarding the credibility of witnesses based on this".²⁰⁷ Thus, although hybrid courts such as the SCSL may have been more proficient at understanding cultural idiosyncrasies,²⁰⁸ this was handled well by the ICTR.

²⁰¹ Aptel, "The International Criminal Tribunal for Rwanda", 679.

²⁰² Timothy Gallimore, 2008, "The Legacy of the International Criminal Tribunal for Rwanda (ICTR) and Its Contributions to Reconciliation in Rwanda", *New England International and Comparative Law Journal* 14: 239.

²⁰³ Paul Kagame, 2002, quoted in Nicholas Mirzoeff, "The Empire of Camps", *Situation Analysis* 1: 32.

²⁰⁴ Patricia M. Wald, 2001, "The International Criminal Tribunal for the Former Yugoslavia Comes of Age: Some Observations on Day-to-Day Dilemmas of an International Court", *Washington University Journal of Law and Politics* 5(87): 60.

²⁰⁵ *Prosecutor v Akayesu*, 145.

²⁰⁶ Ida L. Bostian, 2013, "Cultural relativism in international war crimes prosecutions: the international criminal tribunal for Rwanda", *ILSA Journal of International and Comparative Law* 12(1): 242.

²⁰⁷ *Prosecutor v Akayesu*, 156.

²⁰⁸ Ivana Nizich, 2001, "International Tribunals and Their Ability to Provide Adequate Justice: Lessons from the Yugoslav Tribunal", *ILSA Journal of International and Comparative Law* 7(353).

Domestic Judicial Reforms

It is suggested that the establishment of the ICTR encouraged domestic judicial reform to some extent.²⁰⁹ For example, a Dutch-funded prison was constructed in 2004, with the government attempting to ensure it complies with international standards.²¹⁰ Similarly, the death penalty was abolished in 2007, and in 2008 they acceded to the UN Convention Against Torture. Perhaps most importantly, 2009 legislative amendments mean that a witness can no longer be charged with genocide ideology, or be threatened or punished for in-court testimony given.²¹¹ Whilst these changes are undoubtedly improvements, they have unfortunately not yet been sufficient to improve local confidence in the judicial system.²¹²

SHORTCOMINGS OF THE ICTR

Geographical Dispersal

When the ICTR was initially set up, it was linked to the International Criminal Tribunal for the former Yugoslavia. As such, it shared the same Chief Prosecutor and Appeals Chamber, both of which were based in The Hague. Similarly, in the interests of ensuring independence, the location of the tribunal was chosen to be Arusha, Tanzania. It is therefore unsurprising that such dispersal “[encumbered] the activities of the Tribunal for Rwanda and [complicated] communication and coordination between the different offices and organs”.²¹³ This has significantly reduced both the legitimacy and effectiveness of the institution in terms of local involvement:

The main sentiment in Rwanda regarding the ICTR may well be massive ignorance: ordinary people know or understand next to nothing about the tribunal’s work, proceedings, or results.²¹⁴

Although these complications arose, and although Rwanda was undoubtedly not happy with the Tribunal being in Arusha, the need for expediency in its establishment— in tandem with the chaos and

²⁰⁹ Leslie Haskell and Lars Waldorf, 2011, “The Impunity Gap of the International Criminal Tribunal for Rwanda: Causes and Consequences”, *Hastings International & Comparative Law Review* 34(1): 49.

²¹⁰ James Karuhanga, 2009, November 2, “ICTR Under Spotlight as Sierra Leone Convicts Arrive”, *The New Times*, <<http://www.newtimes.co.rw/index.php?issue=14067&article=21952>>.

²¹¹ Haskell and Waldorf, “The Impunity Gap”, 49.

²¹² Human Rights Watch, 2008, *Law and Reality: Progress in Judicial Reform in Rwanda*.

²¹³ Aptel, “The International Criminal Tribunal for Rwanda”, 682.

²¹⁴ Peter Uvin and Charles Mironko, 2003, “Western and Local Approaches to Justice in Rwanda”, *Global Governance* 9: 221.

vast lack of infrastructure in Kigali at the time – meant that it was simply impractical for the Tribunal to be based in Rwanda. Further, there have since been consistent attempts by the RPF to control the Tribunal, and as such its concerns about remaining independent appear well founded.²¹⁵ It is therefore unclear if a more appropriate alternative existed.

Victor's Justice?

It is clear that the political climate that prefaced the establishment of the ICTR is an extremely fragile one,²¹⁶ thought to be “largely at the mercy of the international actors that created it”.²¹⁷ However, by far the larger issue is the way in which it can be manipulated by Kagame and the current government in order to avoid liability for RPF committed crimes. Although the crimes were on a much smaller scale than those committed by the RGF and the *Interahamwe*, it is widely accepted that the RPF committed crimes on a systematic and sustained level.^{218,219,220} However, the Tribunal simply cannot function without the support of the government, which leaves it extremely vulnerable. This is highlighted very clearly by the events that followed then-Chief Prosecutor Carla Del Ponte’s announcement of her intentions to prosecute RPF crimes. The government then ceased to cooperate with the ICTR, launching a campaign to have her removed, which ultimately proved successful.²²¹ Highlighting just how dependent the ICTR is upon the government, Kagame then issued a travel ban, preventing witnesses from testifying in Arusha²²² and essentially blackmailing the ICTR into ceasing investigations into RPF crimes. It is additionally acknowledged that prosecuting members of the current government, such as Kagame, would cause significant instability in the region.²²³ This failure to prosecute, however, has significantly reduced the legitimacy of the institution, particularly in light of continued International

²¹⁵ Patterson, “Partial Justice”, 321.

²¹⁶ Aptel, “The International Criminal Tribunal for Rwanda”, 677.

²¹⁷ Moghalu, *Rwanda’s Genocide*, 46.

²¹⁸ Amnesty International, 1994, October 14, “Rwanda: Reports of Killing and Abductions by the Rwandese Patriotic Army”, <<http://www.amnesty.org/en/library/info/AFR47/016/1994>>.

²¹⁹ Alison Des Forges, 1999, *Leave None to Tell the Story* (Human Rights Watch).

²²⁰ Haskell and Waldorf, “The Impunity Gap”, 49.

²²¹ Luc Reydam, 2005, “The ICTR Ten Years On: Back to the Nuremberg Paradigm?”, *Journal of International Criminal Justice* 3: 979.

²²² Victor Peskin, 2008, *International Justice in Rwanda and the Balkans: Virtual Trials and the Struggle for State Cooperation* (Cambridge: Cambridge University Press), 212.

²²³ Okechuckwu Oko, 2008, “The Challenges of International Criminal Prosecutions in Africa”, *Fordham International Law Journal* 31: 25.

Humanitarian Law abuses by the RPF in the Democratic Republic of Congo.²²⁴ Further, it opens the door to revisionism, enabling Kagame and the RPF to effectively change history, reinforcing their control over Rwanda.²²⁵

One way the ICTR has attempted to overcome this significant dilemma is by deferring investigations of RPF crimes to domestic prosecution,²²⁶ but this has merely reinforced the ‘victor’s justice’ complex. Only 32 RPF fighters have been prosecuted, representing no more than 100 deaths²²⁷ out of the estimated 35,000 that were the responsibility of the RPF.²²⁸ In what was essentially the test case for deferral to the Rwandan Military Courts, it is widely thought that the case was a sham trial that ignored crucial evidence in order for senior RPF officials to avoid responsibility.²²⁹ In the case, both officials were acquitted whilst the common soldiers were convicted of the murders of over ten people, yet only sentenced to 5 years’ imprisonment each.²³⁰ Crucial witnesses for the prosecution were never called, and the prosecution merely supported the defence’s version of the case. For example, the prosecution agreed that the clergy asked to be moved to a new location away from international scrutiny, ignoring the evidence that the RPF intentionally moved them to such a location with the intent of killing them.²³¹ Regardless of all this, the ICTR review claimed that it was a fair and competent trial.

Generally speaking, such ‘victor’s justice’ can easily lead to renewed cycles of violence “by implicitly permitting unlawful acts and by creating an atmosphere of distrust and revenge”.²³² Although this is a significant shortcoming of the ICTR, it is understandable that there were limited alternatives, given the political climate at the time.

²²⁴ Martin Meredith, 2005, *The Fate of Africa: From the Hopes of Freedom to the Heart of Despair: A History of Fifty Years of Independence* (New York: Public Affairs), 540.

²²⁵ Haskell and Waldorf, “The Impunity Gap”, 49.

²²⁶ Ibid.

²²⁷ Human Rights Watch, *Law and Reality*.

²²⁸ Ibid.

²²⁹ Haskell and Waldorf, “The Impunity Gap”, 49

²³⁰ *Prosecutor v. Wilson Gumisiriza*, 2009, February 25, Case No. RPA 0062/08/HCM, Appeals Judgment, Rwandan Military High Court, Nyarugunga, Kigali.

²³¹ Ibid.

²³² Human Rights Watch, 2009, *Selling Justice Short: Why Accountability Matters*, <<http://www.hrw.org/node/84264>>.

Local Ownership and the ICTR

Local ownership is often highlighted as an important element of restorative justice, and in increasing the legitimacy of institutions.²³³ Although less widely acknowledged, local ownership can also play an important role in retributive justice if members of the community can see perpetrators being punished. Important to striking a balance between “vindication of rights and the prevention and punishment of wrongs”²³⁴ is the involvement of communities to ensure that the best approach to transitional justice is taken. The ICTR, however, had virtually no local participation.²³⁵ Although a symbol of local ownership is the Rwandan Government’s involvement in drafting the Security Council resolution, the government had a number of failings in terms of representative qualities such as coming off of the back of a war and being unelected.²³⁶ Therefore, whilst more direct local ownership would have been ideal, the question remains: was greater local ownership possible at the time of the establishment of the ICTR? Given the need for rapid establishment of the Tribunal,²³⁷ it is understandable that local community consultations were not carried out. Additionally, funding from international stakeholders can be impacted by local ownership. However, the ICTR was less susceptible to this than the Special Court for Sierra Leone, which relied entirely on voluntary funding.²³⁸ Regardless, this was relevant in discussions as to whether the death penalty should be allowed.²³⁹ If there were greater local ownership, a stronger consensus in favour of the death penalty would have made it difficult for the Security Council to deny it, though it could very well have affected international support for the ICTR.

There are a number of ways the absence of local ownership reduced the Tribunal’s restorative abilities. Whilst it may be logical to believe that “guilty pleas, combined with expressions of remorse, contribute to reconciliation,”²⁴⁰ there was more the ICTR could have done for restorative justice. The vast majority

²³³ Matthew Saul, 2012, “Local Ownership of the International Criminal Tribunal for Rwanda: Restorative and Retributive Effects”, *International Criminal Law Review* 12: 432.

²³⁴ UN Security Council, 2004, “The rule of law and transitional justice in conflict and post-conflict societies”, Report of the Secretary General, UN Doc. S/2004/616, 4.

²³⁵ Saul, “Local Ownership of the International Criminal Tribunal for Rwanda”, 433.

²³⁶ *Ibid*, 432.

²³⁷ Timothy Longman, Phoung Pham, and Harvey M. Weinstein, 2004, “Connecting Justice to Human Experience: attitudes toward accountability and reconciliation in Rwanda”, in *My Neighbor, My Enemy: Justice and Community in the Aftermath of Mass Atrocity*, eds. Eric Stover and Harvey M. Weinstein (Cambridge: Cambridge University Press), 206.

²³⁸ S. Kendall, 2011, “Donors’ Justice: Recasting International Criminal Accountability”, *Leiden Journal of International Law* 24: 589.

²³⁹ Saul, “Local Ownership of the International Criminal Tribunal for Rwanda”, 447.

²⁴⁰ Erik Mose, 2005, “The ICTR Contribution to National Reconciliation”, *Journal of International Criminal Justice* 3: 945.

of Rwandans knew little about the ICTR or its work, and although an outreach programme was eventually introduced, it was not until years later.²⁴¹ If there were greater local ownership from the beginning, the population would have been less swayed by negative publicity.²⁴² Regardless, those who were aware of the work of the tribunal were still dissatisfied with certain aspects of it, including the absence of compensation,²⁴³ absence of the death penalty,²⁴⁴ and emphasis on defendants' rights at the expense of victims.²⁴⁵ Broader consultations with the community, as opposed to merely the government, would have highlighted just how pressing these issues were for the population. Further issues that damage the perceived legitimacy of the ICTR in the eyes of the population include the perception that its high burden of proof results in rough handling of victims of sexual violence, and the 'Arusha Hilton' detention facilities.²⁴⁶ These factors combined marginalise the relevance of the ICTR to the people, diminishing its contributions to the process of reconciliation that it could make. Thus, although these issues seem logical for Western notions of justice, the full restorative impact of the ICTR was nonetheless diminished.

COMPARISONS WITH OTHER POST-CONFLICT JUSTICE MECHANISMS

The South African Truth and Reconciliation Commission ('SATRC')

Many different South African stakeholders advocate for the SATRC for various reasons. Very much in line with the idea that "without a minimal peace, no other values can exist",²⁴⁷ its pragmatic realism grants amnesty in exchange for full disclosure. From a healing perspective, it emphasises the importance of victims reliving the past and having the opportunity to speak out about their suffering. This is in stark contrast to legal proceedings, which "[chop] the stories into digestible parts... and [sort] and [refine]

²⁴¹ Peskin, *International Justice in Rwanda and the Balkans*, 178.

²⁴² Saul, "Local Ownership of the International Criminal Tribunal for Rwanda", 452.

²⁴³ Emily Haslam, 2007, "Law, Civil Society and Contested Justice at the International Criminal Tribunal for Rwanda", in *Paths to International Justice: Social and Legal Perspectives*, eds. Toby Kelly and Marie-Benedicte Dembour (Cambridge: Cambridge University Press), 66.

²⁴⁴ Rosemary Nagy, 2009, "Traditional Justice and Legal Pluralism in Transitional Context: The Case of Rwanda's Gacaca Courts", in *Reconciliation(s): Transitional Justice in Post-conflict Societies*, ed. Joanna R. Quinn (Ontario: McGill-Queen's University Press), 92.

²⁴⁵ Moghalu, *Rwanda's Genocide*.

²⁴⁶ *Ibid.*, 43.

²⁴⁷ Hedley Bull, 1977, *The Anarchical Society: A Study of World Politics* (New York: Columbia University Press), 77-98.

them to create a new narrative".²⁴⁸ This respects the dignity of the victims, which is a concern that many have highlighted with the ICTR. There are, however, issues that suggest a TRC may not have been effective in Rwanda like it was in South Africa. For example, some suggest that the significance of Mandela as a moral and political leader cannot be underestimated.²⁴⁹ This is in contrast to Kagame and the atrocities that the RPF committed under his leadership. Additionally, some feel that genocide – in contrast to apartheid – simply makes reconciliation unthinkable.²⁵⁰ Finally, in South Africa religion was considered integral to the TRC. In Rwanda, religion was intertwined with the state, and religious leaders were widely identified as inciting and perpetrating acts of genocide.²⁵¹ This, for obvious reasons, actively discredited religion as a tool to encourage reconciliation. Thus, although TRCs offer clear benefits to criminal tribunals, it is unlikely that a mechanism similar to that in South Africa would have succeeded in the Rwandan context.

The Gacaca Courts and the ICTR

In contrast to the ICTR, the Gacaca courts are acknowledged to place a greater emphasis on restorative justice.²⁵² Gacaca encourages confessions by allowing sentence reductions for those who confess,²⁵³ assisting in building an accurate narrative and providing a basis for reconciliation. Further, in contrast to the ICTR, where trials cost roughly \$25 million each and take a considerable length of time, the Gacaca courts are expedient and cost effective. In addition, reducing sentences reduces both the financial burden and the social drain of prison populations by reintegrating individuals into society more rapidly.²⁵⁴ Sociologically speaking, the criminals dealt with by the Gacaca are not social deviants, but rather remorseful individuals who want to be forgiven and accepted back into society.²⁵⁵ Finally, in contrast to the common conceptions Rwandan's have about the ICTR, the population is comfortable

²⁴⁸ Julie Mertus, 1997, "The War Crimes Tribunal: Triumph of the 'International Community,' Pain of the Survivors", *Mind and Human Interaction* 8(1): 51.

²⁴⁹ Lyn Graybill, 2001, "To Punish or Pardon: A Comparison of the International Criminal Tribunal for Rwanda and the South African Truth and Reconciliation Commission", *Human Right Review* 2(4): 3.

²⁵⁰ Landsman, "Of Prosecutions and Truth Commissions", 90.

²⁵¹ Graybill, "To Punish or Pardon", 3.

²⁵² Saul, "Local Ownership of the International Criminal Tribunal for Rwanda", 427-455.

²⁵³ Nagy, "Traditional Justice and Legal Pluralism", 94.

²⁵⁴ Bert Ingelaere, 2008, "The Gacaca Courts in Rwanda", in *Transitional Justice and Reconciliation after Violent Conflict: Learning from African Experiences*, eds. Luc Huyse and Mark Salter (Stockholm: Idea), 33.

²⁵⁵ Anne Aghion, 2002, *Gacaca: Living Together Again in Rwanda?*, Dominant 7 and Gacaca Productions.

with the Gacaca. Reconciliation is taught in schools in an attempt to prevent hatred from being passed from generation to generation.²⁵⁶

There are, however, flaws in the operation of the Gacaca, with it being considered “popular punishment”.²⁵⁷ Although the absence of lawyers in the proceedings is more cost effective, it means that rights to due process are virtually non-existent.²⁵⁸ Further, it is easy for individuals to flee justice, as the courts do not have the same Security Council mandate as the ICTR. There have been serious questions raised as to the courts’ legitimacy after a number of individuals appointed as ‘Inyangamugayo’ (Gacaca judges) were later recognised as genocidaires, and the extremely basic legal training that such judges have.²⁵⁹ Additionally, the Gacaca are even more vulnerable to governmental interference, with Kagame accused of bringing false charges against political opponents for his own interests.²⁶⁰ Although the Gacaca have handled more than 1 million cases (compared to the ICTR’s 75), it is evident that neither the ICTR nor the Gacaca is clearly superior to the other. In fact, it may well be argued that the ICTR, regardless of its flaws, serves a purpose in prosecuting the top tier of perpetrators, who would not be reintegrated into society regardless.

CONCLUSION

Two concluding remarks are immediately evident: it is important that the perpetrators of the genocide be held to account, and the ICTR is not without its flaws. What is less clear, however, is how the ICTR could be improved as a post-conflict justice mechanism. Whilst it is simple to point to such flaws, it is much less simple to suggest a viable alternative. Thus, the ICTR must be credited with convicting perpetrators amid an undoubtedly tumultuous set of circumstances.

²⁵⁶ Anne Aghion, 2004, *In Rwanda We Say... the Family that Does Not Speak Dies*, Dominant 7/Gacaca Productions (documentary) (2004).

²⁵⁷ Christopher J. Le Mon, 2007, “Rwanda’s Troubled Gacaca Courts”, *Human Rights Brief* 14: 19.

²⁵⁸ Megan M. Westberg, 2010, “Rwanda’s Use of Transitional Justice After Genocide: The Gacaca Courts and the ICTR”, *University of Kansas Law Review* 59(331): 331.

²⁵⁹ Sheenah Kaliisa, 2001, October 25, “Kigali Begins Training Judges for New Justice System in December”, *Internews (Arusha)*.

²⁶⁰ Haskell and Waldorf, “The Impunity Gap”, 42.

BIBLIOGRAPHY

- Aghion, Anne. 2002. *Gacaca: Living Together Again in Rwanda?*. Dominant 7 and Gacaca Productions.
- Aghion, Anne. 2004. *In Rwanda We Say... the Family that Does Not Speak Dies*. Dominant 7 and Gacaca Productions.
- Amnesty International. 1994, October 14. "Rwanda: Reports of Killing and Abductions by the Rwandese Patriotic Army". <<http://www.amnesty.org/en/library/info/AFR47/016/1994>>.
- Aptel, Cécile. 1997. "The International Criminal Tribunal for Rwanda". *International Review of the Red Cross* 37: 675-683.
- Bostian, Ida L. "Cultural relativism in international war crimes prosecutions: the international criminal tribunal for Rwanda". *ILSA Journal of International and Comparative Law* 12(1).
- Bull, Hedley. *The Anarchical Society: A Study of World Politics*. New York: Columbia University Press, 77-98.
- Des Forges, Alison. 1999. *Leave None to Tell the Story*. Human Rights Watch.
- Gallimore, Timothy. 2008. "The Legacy of the International Criminal Tribunal for Rwanda (ICTR) and Its Contributions to Reconciliation in Rwanda". *New England International and Comparative Law Journal* 14: 239.
- Graybill, Lyn. 2001. "To Punish or Pardon: A Comparison of the International Criminal Tribunal for Rwanda and the South African Truth and Reconciliation Commission". *Human Right Review* 2(4): 3-18.
- Haskell, Leslie and Lars Waldorf. 2011. "The Impunity Gap of the International Criminal Tribunal for Rwanda: Causes and Consequences". *Hastings International & Comparative Law Review* 34(1).
- Haslam, Emily. 2007. "Law, Civil Society and Contested Justice at the International Criminal Tribunal for Rwanda". In *Paths to International Justice: Social and Legal Perspectives*, edited by Toby Kelly and Marie-Benedicte Dembour. Cambridge: Cambridge University Press.
- Human Rights Watch. 2008. *Law and Reality: Progress in Judicial Reform in Rwanda*.
- Human Rights Watch. 2009. *Selling Justice Short: Why Accountability Matters*. <<http://www.hrw.org/node/84264>>.

- Ingelaere, Bert. 2008. "The Gacaca Courts in Rwanda". In *Transitional Justice and Reconciliation after Violent Conflict: Learning from African Experiences*, edited by Luc Huyse and Mark Salter. Stockholm: Idea.
- International Criminal Tribunal for Rwanda. *Status of Cases*. Accessed 12 August, 2014.
<<http://www.unictr.org/Cases/tabid/204/Default.aspx>>.
- Kaliisa, Sheenah. 2001, October 25. "Kigali Begins Training Judges for New Justice System in December". *Internews (Arusha)*.
- Karuhanga, James. 2009, November 2. "ICTR Under Spotlight as Sierra Leone Convicts Arrive". *The New Times*. <<http://www.newtimes.co.rw/index.php?issue=14067&article=21952>>.
- Kendall, S. 2011. "Donors' Justice: Recasting International Criminal Accountability". *Leiden Journal of International Law* 24: 585-606.
- Landsman, Stephan. 1996. "Alternative Responses to Serious Human Rights Abuses – Of Prosecutions and Truth Commissions". *Law and Contemporary Problems* 59(4).
- Le Mon, Christopher J. 2007. "Rwanda's Troubled Gacaca Courts". *Human Rights Brief* 14: 16-20.
- Longman, Timothy, Phoung Pham, and Harvey M. Weinstein. 2004. "Connecting Justice to Human Experience: attitudes toward accountability and reconciliation in Rwanda". In *My Neighbor, My Enemy: Justice and Community in the Aftermath of Mass Atrocity*, edited by Eric Stover and Harvey M. Weinstein. Cambridge: Cambridge University Press.
- Meredith, Martin. 2005. *The Fate of Africa: From the Hopes of Freedom to the Heart of Despair: A History of Fifty Years of Independence*. New York: Public Affairs.
- Mertus, Julie. 1997. "The War Crimes Tribunal: Triumph of the 'International Community,' Pain of the Survivors". *Mind and Human Interaction* 8(1).
- Mirzoeff, Nicholas. 2002. "The Empire of Camps". *Situation Analysis* 1.
- Moghalu, Kingsley Chiedu. 2005. *Rwanda's Genocide: Politics of Global Justice*. Sydney: Palgrave Macmillan.
- Mose, Erik. 2005. "The ICTR Contribution to National Reconciliation". *Journal of International Criminal Justice* 3: 944-949.

- Nagy, Rosemary. 2009. "Traditional Justice and Legal Pluralism in Transitional Context: The Case of Rwanda's Gacaca Courts". In *Reconciliation(s): Transitional Justice in Postconflict Societies*, edited by Joanna R. Quinn. Ontario: McGill-Queen's University Press, 86-115.
- Nizich, Ivana. 2001. "International Tribunals and Their Ability to Provide Adequate Justice: Lessons from the Yugoslav Tribunal". *ILSA Journal of International and Comparative Law* 7(353).
- Oko, Okechuckwu. 2008. "The Challenges of International Criminal Prosecutions in Africa". *Fordham International Law Journal* 31.
- Peskin, Victor. 2008. *International Justice in Rwanda and the Balkans: Virtual Trials and the Struggle for State Cooperation*. Cambridge: Cambridge University Press.
- Patterson, Parker. 2011. "Partial Justice: Successes and Failures of the International Criminal Tribunal for Rwanda in Ending Impunity for Violations of International Criminal Law". *Tul Journal of International and Comparative Law* 19.
- Reydams, Luc. 2005. "The ICTR Ten Years On: Back to the Nuremburg Paradigm?". *Journal of International Criminal Justice* 3.
- Saul, Matthew. 2012. "Local Ownership of the International Criminal Tribunal for Rwanda: Restorative and Retributive Effects". *International Criminal Law Review* 12: 427-455.
- UN Security Council. 2004. "The rule of law and transitional justice in conflict and post-conflict societies". Report of the Secretary General. UN Doc. S/2004/616.
- Uvin, Peter and Charles Mironko. 2003. "Western and Local Approaches to Justice in Rwanda". *Global Governance* 9.
- Waldorf, Lars. 2006. "Mass Justice for Mass Atrocity: Rethinking Local Justice as Transitional Justice". *Temple Law Review* 79.
- Westberg, Megan M. 2010. "Rwanda's Use of Transitional Justice After Genocide: The Gacaca Courts and the ICTR". *University of Kansas Law Review* 59(331).
- Wald, Patricia M. 2001. "The International Criminal Tribunal for the Former Yugoslavia Comes of Age: Some Observations on Day-to-Day Dilemmas of an International Court". *Washington University Journal of Law and Politics* 5(87).

Kambanda v Prosecutor. Case No. ICTR-97-23. Appeal Judgement.

Prosecutor v Akayesu. Case No. ICTR-96-4-T. Judgement.

Prosecutor v Bagosora. Case No. ICTR-96-7. Judgement.

Prosecutor v Nahimana. Case No. ICTR-99-52. Judgement.

Prosecutor v. Wilson Gumisiriza. 2009, February 25. Case No. RPA 0062/08/HCM. Appeals Judgment.

Rwandan Military High Court, Nyarugunga, Kigali.

THE SYRIAN CIVIL WAR

by Lara Miles

INTRODUCTION

The Syrian civil war remains in a state of protracted conflict with no sign of resolution. Efforts at mediation thus far have failed to bring about successful peace, which can be attributed in part to the complexities of the multiple parties to the conflict, and a lack of political will both internally and externally. The solution lies in a revised approach to mediation whereby non-veto players are excluded from negotiations, the Syrian rebel forces are encouraged to adopt a more united position, and the international community acts as a third part guarantor – with particular concessions from the US and Russia. Only by addressing the particular challenges of the Syrian context can a peaceful and diplomatic resolution be reached.

In 2011, liberal activism in Egypt and Tunisia sparked protests in Syria against the Bashar al-Assad regime. The Assad government responded with extreme and violent measures to suppress the uprisings, which quickly escalated into civil war. While there are multiple parties to the conflict, the primary combatants are the Syrian Government (the Assad regime) and the rebel forces – grouped collectively as the Syrian National Coalition (SNC) and their military force, the Free Syrian Army (FSA).²⁶¹ The Arab Spring promised to bring about positive change and new beginnings; however, for Syria, it has thus far resulted in protracted conflict with an estimated 125,000 Syrian deaths as of January 2014, significant refugee flows, and threats to regional stability.²⁶²

A variety of sources have been attributed to the conflict, both economic and cultural; Paul Miller cites corruption, stagnation, and autocracy in Syria as the original drivers of protests. However, it is now recognised that the conflict has taken on an increasingly sectarian tinge through clashes between the rebelling majority Sunni population and the minority Alawite sect government.²⁶³ Ted Carpenter identifies Syria as a “fragile ethnoreligious tapestry that could easily unravel”, with an ethnically diverse

²⁶¹ B. M. Jenkins, 2014, *The Dynamics of Syria's Civil War* (RAND Corporation), 4.

²⁶² Ibid.

²⁶³ P. D. Miller, 2014, *Getting to Negotiations in Syria* (RAND Corporation), 2.

population littered with histories of grievances.²⁶⁴ Thus, Carpenter argues that a primary driver of conflict has been the Sunni Arab population's attempt to overthrow Assad's 'coalition of minorities' regime, a claim supported by emerging evidence that the majority of participants in the SNC and FSA are Sunni citizens, and similarly, that Assad's military is primarily dominated by Alawites.²⁶⁵ These ethnic and sectarian drivers of conflict should be of particular concern, given that conditions and dynamics in Syria reflect those present during the drawn-out sectarian conflict that plagued Lebanon during the 1970s and 1980s, and the situation that exists in Iraq today.²⁶⁶

Third-party attempts to curbe the Syrian conflict thus far have included the dispatch of peace envoys and a UN monitoring force; sanctions imposed by the United States, regional powers, and certain members of the Arab League and the European Union;²⁶⁷ and mediation and peace talks that have been conducted since the start of the conflict – the most recent being the Geneva II talks in early 2014.

The benefits of mediation as a means of conflict resolution are well documented, and it is recognised as the "most common form of peaceful third-party intervention in international conflicts". In fact, a 1996 statistical assessment of conflict management techniques praised it as the most consistently effective approach in preventing escalation of conflict and promoting peaceful settlements.²⁶⁸ Bernd Beber defines mediation as "the non-coercive intervention by a third party in a dispute between two or more political entities for the stated purpose of effecting a settlement of the dispute".²⁶⁹ The immediate benefit derived from this definition is the objective, unobtrusive, and peaceful nature of mediation – but additionally, it is championed by the UN for offering a cheap method of conflict resolution both in human and economic costs, and is subsequently more likely to receive international funding and support.²⁷⁰ However, mediation is not without its flaws; it has not always succeeded in producing a peaceful resolution. Its capabilities are limited when addressing complexity and in overcoming hesitancy

²⁶⁴ T. G. Carpenter, 2013, "Tangled Web: The Syrian Civil War and its Implications", *Mediterranean Quarterly* 24(1): 1.

²⁶⁵ Carpenter, "Tangled Web", 2.

²⁶⁶ Ibid.

²⁶⁷ J. M. Grieg, 2013, "Intractable Syria? Insights from the Scholarly Literature on the Failure of Mediation", *Penn State Journal of Law & International Affairs* 2(1): 48-49.

²⁶⁸ B. Beber, 2012, "International Mediation, Selection Effects, and the Question of Bias", *Conflict Management and Peace Science* 29(4): 397-398.

²⁶⁹ Ibid, 400.

²⁷⁰ United Nations, "United Nations Mediation: Experiences and Reflections from the Field", accessed 9 August 2014, <http://peacemaker.un.org/sites/peacemaker.un.org/files/GA_SummaryInformalMeetingonMediation_Nov2011.pdf>, 1.

over uncertain futures.²⁷¹ There is the risk of so-called ‘mediator shopping’, where intermediaries are played off against one another by the parties involved to optimise individual interest,²⁷² and the impact of the mediator’s own invested interests in the dispute on the mediation’s proceedings and outcomes must also be considered.²⁷³ Finally, there is the difficulty in the inclusion and exclusion of parties to the conflict – especially when dealing with armed and extremist groups – that complicates communication and the likelihood of a successful outcome.²⁷⁴

The difficulties of mediation are evidenced in the Syrian conflict, where a primary attempt at enacting peace failed in the six-point peace plan devised by the United Nations and Arab League’s envoy for Syria, Kofi Annan. Released on March 16, 2012, this initiative sought to enact an inclusive Syrian-led political process predicated on a ceasefire, and stressed themes of humanitarian assistance, justice, and freedom.²⁷⁵ However, the continuing conflict in Syria today is evidence of the peace plan’s failure, and it has been criticised for being a quick fix rather than a sustainable solution, and that it may have actually worsened the situation by not taking a hard-line on the Syrian Government – instead allowing Assad the opportunity to consolidate his position and subsequently prolong the war.²⁷⁶

Yet despite mediation’s shortcomings, alternative methods of conflict resolution do not appear to offer a better solution. It has been suggested that a limited US military and NATO intervention, with the objective of reducing Assad’s military capability, could change the dynamics of the conflict in favour of the rebels and thus hasten Assad’s downfall.²⁷⁷ However, this approach would not guarantee success, and is likely to carry significant consequences if it were to fail. Firstly, the complex nature of the conflict, with fast-changing variables, and uncertain numbers and loyalties, means that it is difficult to make the reliable assessments needed for effective intervention. Secondly, measured air strikes launched by the US in the past in Iran, Iraq, Serbia, Sudan, and Afghanistan were unable to bring down regimes alone;

²⁷¹ T. Böhmelt, 2013, “Failing to succeed? The cumulative impact of international mediation revisited”, *Conflict Management and Peace Science* 30(3): 200.

²⁷² United Nations Security Council, “Report of the Secretary-General on enhancing mediation and its support activities”, accessed 8 August 2014, <<http://www.refworld.org/docid/49e6f2880.html>>, 6.

²⁷³ Beber, “International Mediation”, 403.

²⁷⁴ United Nations, “United Nations Mediation”, 6.

²⁷⁵ R. Gowan, 2013, “Kofi Annan, Syria and the Uses of Uncertainty in Mediation”, *Stability* 2(1): 1.

²⁷⁶ *Ibid*, 2.

²⁷⁷ Jenkins, *The Dynamics of Syria’s Civil War*, 14.

this has required a greater military investment and involvement, and the bitter legacy of US involvement in Iraq and Afghanistan has discouraged this level of commitment.²⁷⁸

Thus, despite the previous failure of mediation in Syria, it is still considered a more preferable means of conflict resolution than military intervention, especially when considering the lower human and economic risks than its intervention alternative. Furthermore, Tobias Böhmelt argues a number of consecutive efforts of mediation over the course of a dispute have a greater chance of reaching a peaceful resolution.²⁷⁹ This is because the feedback from previous mediation sessions facilitates a process of learning, experience, trust, and understanding, for both the mediator and the parties to the conflict. Thus, Böhmelt expects that a positive, linear relationship would result between the culmination of mediations and mediation success.²⁸⁰ Following this logic, it is plausible to suggest that despite the failure of Annan's six-point plan, further mediation attempts may result in a peaceful settlement for Syria. A revised approach is necessary, where imaginative but practical solutions are adopted in the mediation process to address the particular challenges of the Syrian context – namely, the multiple parties to the conflict, and the lack of political will internally and externally to submit to negotiations and compromise.

With Annan's resignation as special envoy to Syria, he warned that "without serious, purposeful and united international pressure, including from the powers of the region, it is impossible for me, or anyone, to compel the Syrian government in the first place, and also the opposition, to take the steps necessary to begin a political process".²⁸¹ This is a crucial point of failure in the mediation process thus far; successful negotiations are dependent on the participation and cooperation not just of domestic parties, but external parties to the conflict.

A particular challenge of the Syrian context is the sheer number of parties to the conflict. On the side of the belligerents, there is of course the Syrian Government, which is well armed and has the additional use of local militias; foreign support from Russia and Iran, who provide financial and military support, as well as Russia's veto status on the UN Security Council; and finally, there is the support of Hezbollah, a

²⁷⁸ Ibid, 15.

²⁷⁹ Böhmelt, "Failing to Succeed?", 200.

²⁸⁰ Ibid.

²⁸¹ Grieg, "Intractable Syria?", 49.

Shi'a Islamist militant group based in Lebanon, who are recruited to fight on behalf of Assad and defend Syria's Shi'a religious sites.²⁸² The opposition forces consist of the SNC and FSA; another rebel grouping called the Islamic Front, which consists of a number of modestly sized Salafist groups who believe in the literal transcription of the Quran, and seek the imposition of strict Islamic law; the Kurds, who view themselves as primarily neutral in the conflict, and have adopted a defensive position; regional support from Saudi Arabia and Qatar, who provide funding for rebel arms purchases; international support, provided primarily by the US, in the form of nonlethal and humanitarian assistance, and suspected limited military and arms support to the more moderate opposition forces in the wake of the Ghouta attack in August 2013; and finally, there is the growing importance of the jihadists, some of whom have links with Al-Qaeda.²⁸³

The fractured nature of the SNC has proved problematic for mediation. While the rebel coalition groups of the SNC and FSA have essentially acted as an umbrella group for the disparate rebel groups, a source of legitimacy, and a means of mobilising international support, they are "at best, a very loose collection of militia groups with minimal coordination among one another".²⁸⁴ This disunity is to be expected when considering the systemic suppression and denial of opportunity afforded to opposition by the four decades of rule by the Assad father and son duo, but it poses challenges to presenting a coordinated, united rebel negotiating position.²⁸⁵ The US and Russia further complicate the situation; accused of protracting the conflict, they remain deadlocked on UN Security Council resolutions concerning the Syrian conflict. Both states have been unwilling to compromise on matters of Assad's resignation, which has given little incentive for their Syrian allies to cooperate in negotiation.²⁸⁶

In fact, Böhmelt states that uncertainty and complexity in conflict – such as multiple and changing parties – is a primary contributor to mediation failure.²⁸⁷ Furthermore, Michael Grieg argues that there is a correlation between the number of parties involved in the conflict and the prospect for successful

²⁸² Jenkins, *The Dynamics of Syria's Civil War*, 9.

²⁸³ *Ibid*, 11.

²⁸⁴ Grieg, "Intractable Syria?", 51.

²⁸⁵ International Crisis Group, "Anything but Politics: The State of Syria's Political Opposition", accessed 8 August 2014, <[http://www.crisisgroup.org/~media/Files/Middle East North Africa/Iraq Syria Lebanon/Syria/146-anything-but-politics-the-state-of-syrias-political-opposition.pdf](http://www.crisisgroup.org/~/media/Files/Middle East North Africa/Iraq Syria Lebanon/Syria/146-anything-but-politics-the-state-of-syrias-political-opposition.pdf)>, 1.

²⁸⁶ International Crisis Group, "Syria's Metastasising Conflicts", accessed 8 August 2014, <<http://www.crisisgroup.org/~media/Files/Middle East North Africa/Iraq Syria Lebanon/Syria/143-syrias-metastasising-conflicts.pdf>>, iii.

²⁸⁷ Böhmelt, "Failing to Succeed?", 214.

mediation: firstly, as the number of parties grows, it complicates communication, as coordination becomes tougher and misunderstandings more likely; secondly, an increased number of parties raises the risk of the process being spoiled due to competing interests and subsequent vetos; thirdly, it increases the likelihood of commitment problems to a settlement, especially as a lack of enforcement results in low confidence levels.²⁸⁸

David Cunningham proposes two rules to guide the question of participation in mediation: to simply include all veto players to the conflict, and exclude all non-veto players.²⁸⁹ Given the complex bargaining dynamics that accompany a multi-party conflict, Cunningham maintains that veto players – those with “the capability to unilaterally block settlement of a civil war” – should be prioritised as opposed to those players who are party to the conflict, but are too weak or lack the capacity to spoil an agreement or block an end to the conflict.²⁹⁰ Including veto players is crucial; otherwise, their grievances and demands will go unsatisfied, and the conflict will be likely to continue regardless of any agreements between other parties. Cunningham suggests two strategies to incentivise participation by veto players: to declare the negotiations open whether that party participates or not, or to attempt piecemeal negotiations, whereby governments negotiate with rebel groups individually and produce a series of bilateral agreements.²⁹¹ The logic of excluding non-veto players is to reduce competing interests and unnecessary concessions; if a player is included in negotiations, their participation almost guarantees that their interests will be reflected in the settlement. However, concessions given to non-veto players reduce the incentives available to induce veto players to settle.²⁹²

Applying this logic to Syria, it is not immediately apparent which parties can be classified as veto players. Obviously, the Assad government must be present in all negotiations, and so must some representation of the rebel forces, provided the SNC can present a united front. Additionally, there’s the question of regional and international players. Cunningham suggests that the significant involvement and invested interest of the US and Russia in the conflict may render them veto players, and subsequently, it may be

²⁸⁸ Grieg, “Intractable Syria?”, 50.

²⁸⁹ D. E. Cunningham, 2013, “Who Should Be at the Table?: Veto Players and Peace Processes in Civil War”, *Penn State Journal of Law & International Affairs* 2(1).

²⁹⁰ *Ibid*, 41.

²⁹¹ *Ibid*, 43.

²⁹² *Ibid*, 45.

necessary for the UN Security Council to be party to a Syrian resolution. All other parties should be excluded.²⁹³

Beyond the issue of multiple parties, Miller suggests that the reason for the failure of Syrian peace talks lies with a lack of political will.²⁹⁴ Ultimately, the willingness of combatants to participate in negotiations is weighed through a cost-benefit analysis, whereby their participation is dependent on their perception that there would be less to gain from continued fighting. Thus, veto players need to be pushed to the negotiating table through incentives and expectations. The question is when the Syrian context will reach the dynamics and conditions necessary for the parties involved to see negotiation as a legitimate alternative to war.²⁹⁵ A prime determinant of this is the perception of the likely outcome of the conflict held by the combatants, a view termed by Miller as the “shadow of the future” – the estimations of costs and benefits of fighting, as well as the expectations of behaviour from the opponent.²⁹⁶

The International Crisis Group (ICG) identified a dissonance between the expectations of the Syrian opposition forces and those of the international community, and suggests that this confusion contributed to inaction by both parties.²⁹⁷ The ICG argues that the Syrian rebel coalition viewed themselves as essentially the democratic expression of the uprising – as opposed to a legitimate opposing force to the Assad regime – with the expectation that the West would follow the 2011 Libyan precedent and intervene when conflict escalated.²⁹⁸ As previously mentioned, however, the US lacks the necessary political will to engage in another full scale military intervention, and furthermore, there is a reluctance in the international community to use the Responsibility to Protect doctrine (R2P) following the controversy over Libya. When R2P was enacted in Libya, the UN forces were accused of overstepping their mandate by undertaking offensive air support to the National Transitional Council of Libya, and as consequence, the international community – particularly Russia and China – fear that R2P

²⁹³ D. E. Cunningham, 2014, February 12, Veto Players and Civil War in Syria”, *Project on Middle East Political Science*, accessed 9 August 2014, <<http://pomeps.org/2014/02/12/veto-players-and-civil-war-in-syria/>>.

²⁹⁴ Miller, *Getting to Negotiations in Syria*, 1.

²⁹⁵ Ibid.

²⁹⁶ Ibid, 9.

²⁹⁷ International Crisis Group, “Syria’s Metastasising Conflicts”, i.

²⁹⁸ Ibid, ii.

effectively sanctions US-led military interventions into other states' sovereign affairs.²⁹⁹ Adding to unfulfilled expectations, the credibility of the international community was undermined when no action was taken after the Ghouta chemical attack, despite US President Obama's declaration of a so-called 'red line' on Assad's use of chemical weapons.³⁰⁰ Such instances cultivate a culture of mistrust, and thus, "the gulf between Western intent and opposition expectation prompted a cycle of pressure and frustration", and while it was in the interest of both the Syrian political opposition and their international allies to realise an Assad-free Syria, there was not the necessary political will to meaningfully pursue this outcome.³⁰¹

This is where the international community can play a positive role in the mediation proceedings. Combatants to a conflict are more likely to cooperate and negotiate as their expectations for the future solidify, and by showing a commitment to post-war Syria, the international community can decisively influence and shine light on the future.³⁰² The ICG argues that a negotiated solution in Syria is dependent on concessions from the US and Russia – that Moscow would have to push for a transformation of the Syrian power structure, and that Washington would need to move from its implicit position on regime change to an explicit position on power sharing.³⁰³ Miller predicts that if the international community is able to act as a guarantor on a negotiated solution and commit to peace and the provision of resources for reconstruction, then it is able to assure the Syrian factions, and show that they have more to gain from negotiations than conflict.³⁰⁴

CONCLUSION

The international community is divided on how to address the conflict in Syria. Efforts thus far at peacekeeping and mediation have failed to produce any lasting peace, and the failure of Annan's six-point peace plan casts doubt on the likelihood of a democratic resolution. However, despite its lack of success up until this point, mediation presents itself as the most effective means of conflict resolution

²⁹⁹ R. Shanahan, 2011, "R2P: Seeking Perfection in an Imperfect World", in *The Responsibility to Protect: challenges & opportunities in light of the Libyan intervention*, ed. A. Stark, 27.

³⁰⁰ P. Baker et al., 2013, "Off-the-cuff Obama Line Put U.S. in Bind on Syria", *The New York Times*, accessed 8 August 2014, <<http://www.nytimes.com/2013/05/05/world/middleeast/obamas-vow-on-chemical-weapons-puts-him-in-tough-spot.html>>.

³⁰¹ International Crisis Group, "Anything but Politics", 16.

³⁰² Miller, *Getting to Negotiations in Syria*, 10.

³⁰³ International Crisis Group, "Syria's Metastasising Conflicts", iii.

³⁰⁴ Miller, *Getting to Negotiations in Syria*, 9.

for Syria. Its cumulative effects of trust and experience for the negotiating parties promises to breed a culture of predictability and security, wherein the veto players of the Assad government and a united rebel opposition have the potential to negotiate – depending on the assurance of the international community acting as a third-party guarantor. By adopting an approach that pragmatically addresses the challenges of the fractured SNC, the US and Russian deadlock, and the lack of internal and external political will, mediation can offer an effective and peaceful method of resolution for the conflict in Syria.

BIBLIOGRAPHY

- International Crisis Group. 2013. "Anything but Politics: The State of Syria's Political Opposition". Accessed 8 August 2014. <<http://www.crisisgroup.org/~media/Files/Middle East North Africa/Iraq Syria Lebanon/Syria/146-anything-but-politics-the-state-of-syrias-political-opposition.pdf>>.
- Baker, P., M. Landler, D. E. Sanger, and A. Barnard. 2013. "Off-the-Cuff Obama Line Put U.S. in Bind on Syria". *The New York Times*. Accessed 8 August 2014. <<http://www.nytimes.com/2013/05/05/world/middleeast/obamas-vow-on-chemical-weapons-puts-him-in-tough-spot.html>>.
- Beber, B. 2012. "International Mediation, Selection Effects, and the Question of Bias". *Conflict Management and Peace Science* 29(4): 397-424.
- Böhmelt, T. 2013. "Failing to succeed? The cumulative impact of international mediation revisited". *Conflict Management and Peace Science* 30(3): 199-219.
- Carpenter, T. G. 2013. "Tangled Web: The Syrian Civil War and its Implications". *Mediterranean Quarterly* 24(1): 1-11.
- Cunningham, D. E. 2013. "Who Should Be at the Table?: Veto Players and Peace Processes in Civil War". *Penn State Journal of Law & International Affairs* 2(1): 38-47.
- Cunningham, D. E. 2014, February 12. "Veto Players and Civil War in Syria". *Project on Middle East Political Science*. Accessed 9 August 2014. <<http://pomeps.org/2014/02/12/veto-players-and-civil-war-in-syria/>>.
- Gowan, R. 2013. "Kofi Annan, Syria and the Uses of Uncertainty in Mediation", *Stability* 2(1): 1-6.
- Greig, J. M. 2013. "Intractable Syria? Insights from the Scholarly Literature on the Failure of Mediation". *Penn State Journal of Law & International Affairs* 2(1): 48-56.
- Jenkins, B. M. 2014. *The Dynamics of Syria's Civil War*. RAND Corporation.
- Miller, P. D. 2014. *Getting to Negotiations in Syria*. RAND Corporation.
- United Nations Security Council. 2009. "Report of the Secretary-General on enhancing mediation and its support activities." Accessed 8 August 2014. <<http://www.refworld.org/docid/49e6f2880.html>>.

Shanahan, R. 2011. "R2P: Seeking Perfection in an Imperfect World". In *The Responsibility to Protect: challenges & opportunities in light of the Libyan intervention*, edited by A. Stark, 26-27.

International Crisis Group. 2013. "Syria's Metastasising Conflicts". Accessed 8 August 2014.

<<http://www.crisisgroup.org/~media/Files/Middle East North Africa/Iraq Syria Lebanon/Syria/143-syrias-metastasising-conflicts.pdf>>.

United Nations General Assembly. 2011. "United Nations Mediation: Experiences and Reflections from the Field". Accessed 9 August 2014.

<http://peacemaker.un.org/sites/peacemaker.un.org/files/GA_SummaryInformalMeetingonMediation_Nov2011.pdf>.

AFGHANISTAN POST-2014 WITHDRAW OF TROOPS: POSSIBLE APPROACHES TO PROMOTE LASTING PEACE

by Nicole Tape

By the end of 2014, the International Security Assistance Force (ISAF), if the timetable has not changed, will have withdrawn from Afghanistan. After a period of transition, which has already begun, full responsibility for security of the country will be transferred to the Afghan National Security Force (ANSF), even though the Taliban insurgency still exists, and the ANSF are neither sufficiently trained nor manned to be able to defeat the Taliban.³⁰⁵

Several states have a key interest in Afghanistan: America's goal is to eliminate al-Qaeda and ensure the country does not become a base for training terrorist groups; Pakistan wants to limit the role of its long-standing enemy, India; Iran desires the removal of the American presence and is concerned about the inflow of opium and Afghan refugees; India has economic interests in Afghanistan and wants to reduce Pakistan's influence; and Central Asian states are concerned about the possible spillover effects of yet another breakdown of its troubled neighbour.³⁰⁶ With so many countries and conflicting interests, it is little wonder that a successful peace process has so far been unobtainable.

HISTORY OF WAR

Afghanistan has a long history of war. Over the past 170 years, the country has experienced four direct interventions by Western powers: two Anglo-Afghan Wars (1839–42, 1878–80), a Soviet occupation (1979–89) and an American-led invasion from 2001–present.³⁰⁷

Each Western power had varying motives for taking a military presence in the country. The Soviet Union intervened in support of a failing client regime, fearful it would appear weak if it did nothing to prevent the new revolutionary Afghan socialist government from collapsing.³⁰⁸ This war is still fresh in people's

³⁰⁵ H. Lackenbauer, 2012, "Afghanistan After 2014: Five Scenarios", accessed 22 July 2014, <http://www.academia.edu/3488447/Afghanistan_After_2014_Five_Scenarios>.

³⁰⁶ Ibid.

³⁰⁷ T. Barfield, 2012, "What History Can Teach Us About Contemporary Afghanistan", *Education Asia* 17(2): 6-9.

³⁰⁸ Ibid.

minds and is a contributing factor to neighbouring countries having a keen interest and being fearful of the outcome of the 2014 US withdrawal. The destructive legacy of the decade-long Soviet invasion led to the deaths of a million Afghans and sent at least four million refugees fleeing to neighbouring Pakistan and Iran. This humanitarian issue cannot be underestimated when trying to understand the complexity of key countries' interest in the current war.³⁰⁹

Until 1997, the US viewed the Taliban as potential peacemakers in Afghanistan and supported them, as did Pakistan and Saudi Arabia. Iran, India and Russia were strongly opposed to the type of Sunni extremist rule that the Taliban represented, and supported those elements that later became the Northern Alliance.³¹⁰ Following the attacks on the US during September 11, 2001, the US invaded Afghanistan to not only destroy the al-Qaeda safe haven, ensuring it was no longer a base for terrorist activities, but to also ensure that chaos in Afghanistan did not destabilise its neighbours, especially Pakistan.³¹¹

Whatever the driving force behind both invasions, both the Soviet Union and America tried to implement strikingly similar policies once they had established themselves in the country. The Soviet Union immediately restructured the Kabul government and security services to better resemble those they had used in other Soviet client states, installed representatives in all Afghan ministries to ensure government officials carried out planned reforms, and set about training a new army.³¹² After the Soviets' initial expectation of transforming Afghanistan's political structure and its people proved unrealistic, they became more open to letting the Afghans do things their own way, and redefined their benchmark for success downward, settling for finding an Afghan leader who could keep control of the country with only 'over the horizon' assistance.³¹³ In hindsight, this can be regarded as a conflict management policy failure, as the civil war that resulted in the fall of the Communist regime in 1992 led to the rise of the Taliban in 1995.

³⁰⁹ Barfield, "What History Can Teach Us".

³¹⁰ Lackenbauer, "Afghanistan After 2014".

³¹¹ S. Biddle, 2013, "War Termination in Afghanistan", accessed 22 July 2014, <<http://www.cfr.org/afghanistan/war-termination-afghanistan/p31742>>.

³¹² Barfield, "What History Can Teach Us".

³¹³ Ibid.

Mikhail Gorbachev, who made the decision to withdraw in 1985, felt the war had become an expensive stalemate, and the Soviet Union opted to base its exit strategy on diplomacy and the idea that the Afghan Government should pursue peace talks with its armed opponents.³¹⁴ This differs from the US policy, which focuses on combat duties and responsibility for security of the country being transitioned from ISAF to the newly trained Afghans of the ANSF.

For the past ten years, the US pursued a policy of Afghan nation-building in the hope of creating a highly centralised government with a robust security force, democratic political system and a strong economy whilst also attempting to bring social Afghan norms in line with international values.³¹⁵ This mirrors the Soviet Union's initial expectation before they realised it was unrealistic and abandoned it. After the Soviets withdrew in the 1990s, the country collapsed back into civil war due to a lack of international aid. The international community needs to reflect on this as it prepares to withdraw once again and give serious thought into how long-term assistance to the country will continue to ensure history does not repeat itself.

The main motivation for both countries to withdraw has been cited as war-weariness, with the Soviet withdrawal in particular motivated by an assessment that the war could not be won.³¹⁶ As American and North Atlantic Treaty Organisation (NATO) troops prepare to withdraw at the end of 2014, the Soviet Union's withdrawal should be examined by the international community to ensure past mistakes are not replicated.

POSSIBLE OPTIONS TO LASTING PEACE

Problems regarding Afghanistan are abundant, including rampant government corruption at both the national and provincial levels, an economic base dependent on foreign aid for survival, and a security force that lacks the skills and strength required for the country to have any chance of maintaining order.³¹⁷ Widespread corruption is hardly surprising, given the country's wealth originates primarily from an illegal drug economy and a vast, sudden influx of external transfers from aid agencies, which

³¹⁴ J. Steele, 2013, "A Tale of Two Retreats: Afghan Transition in Historical Perspective", *Central Asian Survey* 32(3): 306-317.

³¹⁵ Barfield, "What History Can Teach Us".

³¹⁶ Steele, "A Tale of Two Retreats".

³¹⁷ Lackenbauer, "Afghanistan After 2014".

simply overwhelmed the country's institutional capacities to deal with them in a legally and socially acceptable manner.³¹⁸

The following three recommendations are put forward for consideration by both the Afghan Government and the international community in response to ending the conflict. They should be considered with an implementation timeframe of three to five years for change to be apparent. They would hopefully ensure a peaceful and stable country is left behind beyond the 2014 withdrawal of troops and the return to domestic rule.

Peace Agreement

First and foremost, a peace agreement settled on and signed by all major parties, in particular Pakistan, is critical in this process. The key stakeholders in any such agreement must be the Afghan Government, the Taliban, the US, NATO, India, and Pakistan. A UN-mandated mediation team should be appointed to oversee this process. The mediation team's role, as an impartial third party, is to assist two or more adversarial groups to resolve a conflict. This small team of mediators must be mutually agreed upon by all of the major parties for it to have credibility. The team's aim would be to ensure that the abovementioned critical stakeholders are fully consulted and will remain engaged throughout the negotiation process.³¹⁹ For mediation to be successful, all parties must have a common interest to resolve the conflict and a genuine interest to see the dispute resolved. Furthermore, the timing is imperative: the appointment of this team needs to occur well before the security transition and withdrawal of troops at the end of 2014. The team must consist of negotiators with demonstrated expertise in national and international affairs and needs to reflect the country's diversity – linguistically, ethnically, religiously and otherwise.³²⁰ The mediators should not impose a solution onto the parties, but can offer suggestions. Possible suggestions may include the Taliban holding a share of government if the international community fully withdraws from Afghan soil, or the possibility of redefining the country's borders. The North could be incorporated into bordering Turkmenistan, Uzbekistan and Tajikistan, with easy integration, as the majority of the population speak Uzbek or Farsi. It could be suggested to the stakeholders that conflict may reduce if the country was divided along agreed religious boundaries. It

³¹⁸ A. Suhrke, 2013, "Statebuilding in Afghanistan: A Contradictory Engagement", *Central Asian Survey* 32(3), 271-278.

³¹⁹ "Talking About Talks: Toward a Political Settlement in Afghanistan", ICG, accessed 26 July 2014, <<http://www.crisisgroup.org/en/regions/asia/south-asia/afghanistan/221-talking-about-talks-toward-a-political-settlement-in-afghanistan.aspx>>.

³²⁰ Ibid.

must be accepted that the mediation process can lead to imperfect trade-offs, so open-mindedness would be necessary by all parties to find creative options to achieve lasting stability.

Taliban hold a share of Government

The international community may need to reconsider its goals and face the possibility that defeating the Taliban may not occur, especially before the 2014 withdrawal of troops. Negotiating with the Taliban to produce a peaceful settlement should be seriously considered, and may include giving them the share in government they so desperately desire. As it has become clear to the Taliban that they will not be able to take full control of the government and rule by military means alone, they have changed their narrative, with their primary goal now being to free the country of foreign troops.³²¹ The problem with this scenario is that the US would need a guarantee from the Taliban that if they withdraw, the country will not become a safe haven for terrorists, and they would respect human rights and gender equality, as Islam in its most extreme version is not compatible with democracy and human rights.³²² The US would have to accept an unpalatable compromise with the Taliban, as they represent an ideology contrary to deeply held American values.³²³ This would entail America staying committed to Afghanistan in both a financial and military sense while the Taliban and neighbouring countries negotiate and accept this peace deal and establish a new government. It would also require the UN remaining in Afghanistan to monitor any human rights abuses and ensure perpetrators are punished, thereby sending a message that it will not be tolerated.

Funding the ANSF

If the stability of Afghanistan following the 2014 withdrawal of troops is to be maintained by the ANSF, the US and international community must continue to provide funding for the foreseeable future, as it is heavily dependent on aid to pay salaries and purchase equipment. Without substantial financial assistance, the Afghan Government will not be able to fund the ANSF nor provide basic services for its citizens.³²⁴ The ANSF could probably maintain a military stalemate indefinitely against the Taliban, but only if they receive large-scale financial support from the West.³²⁵ If the International community cuts aid to Afghanistan, and Pakistan continues to support the Taliban, the country may revert to civil war,

³²¹ Lackenbauer, "Afghanistan After 2014".

³²² Ibid.

³²³ Biddle, "War Termination in Afghanistan".

³²⁴ Suhrke, "Statebuilding in Afghanistan".

³²⁵ Biddle, "War Termination in Afghanistan".

something the ANSF would not be able to control. Currently, the Taliban are unlikely to be able to fully defeat the ANSF if it remains funded, but the ANSF is unlikely to ever be able to drive them from their strongholds in the South and East of the country, funded or not. This results in a deadlock that the ANSF can probably sustain, but only as long as the US pays the multibillion-dollar annual bills needed to keep them fighting, and hence the war is likely to become a battle of stamina between the US and the Taliban.³²⁶ Furthermore, the recruitment processes into the ANSF need to be reviewed to ensure a more equitable intake across ethnicities to change the domination of Tajiks in its ranks. Its imbalanced representation of ethnicities, especially among the officers, and low rates of recruitment among Pashtuns represents two significant challenges that must be addressed.³²⁷

CONCLUSION

During the two and a half years between the Soviet Union's decision to leave Afghanistan and the start of the withdrawal, the Soviet Union did what it could to build up and train Afghan forces. There are some similarities with the current NATO strategy, but the big difference is that the Soviet leadership never made this so-called transition the cornerstone of its policy, as NATO governments are doing.³²⁸ The current withdrawal is likely to differ from that of the Soviet Union, as in Moscow, when their army's retreat was over, almost every Russian politician accepted that it had been a disaster to use ground troops in a foreign country's civil war.³²⁹ It is unlikely the same concession will ever be made by the Americans.

A solution based purely on politics will not end this conflict. It will take negotiation on all sides, as unless the US is willing to fund a much larger, longer war effort, the best alternative is compromise. In any negotiation or mediation process, not every party will achieve everything they want, but all parties will get a little of something they want, and this case will be no different. The chief difficulty facing the

³²⁶ Biddle, "War Termination in Afghanistan".

³²⁷ Lackenbauer, "Afghanistan After 2014".

³²⁸ Steele, "A Tale of Two Retreats".

³²⁹ Ibid.

international community will be finding a multilateral formula to advance the interests of every participating state, even though that formula may not always benefit all participants equally.³³⁰

At a minimum, the US would expect the Taliban to abandon violence, disassociate from al-Qaeda, and abide by Afghan law. This would at least preserve the two vital US national interests at stake: that Afghan soil not become a base for terrorists to attack the West, and that it not become a base for destabilising Afghanistan's neighbours.³³¹ In exchange, the Taliban would expect to become a legalised political party, receive seats in parliament, and a guarantee that any remaining foreign forces would withdraw from Afghan soil. The Taliban would still consider a peace agreement that guarantees all military forces withdraw from their soil as a victory to them.

Of course, a deal with the Taliban would need to ensure the hard-won rights of Afghan women, basic human rights, and that democracy is protected. It would also raise the question of whether the liberal West could consent to such a deal, since respect for human rights and gender equality have never been trademarks of Taliban rule.³³² Although violence should decrease, a deal such as this may cause just as many serious human rights violations. It is therefore recommended that a UN monitoring force be sent to Afghanistan immediately, if this deal is brokered, to ensure human rights and gender equality are maintained.

The international community is obliged to the citizens of Afghanistan, who, after having endured countless years of conflict, are left with a country in a better state than before. A carefully shaped post-2014 policy by the international community could influence the course of history and make peace in Afghanistan an achievable goal.

³³⁰ F. Kukeeva, 2013, "The US Troop Withdrawal from Afghanistan and Regional Security in Central Asia", *Russian Politics and Law* 51(1): 49-58.

³³¹ Biddle, "War Termination in Afghanistan".

³³² Lackenbauer, "Afghanistan After 2014".

BIBLIOGRAPHY

- Barfield, T. 2012. "What History Can Teach Us About Contemporary Afghanistan". *Education Asia* 17(2): 6-9.
- Biddle, S. 2013. "War Termination in Afghanistan". Accessed 22 July, 2014.
<<http://www.cfr.org/afghanistan/war-termination-afghanistan/p31742>>.
- ICG. 2012. "Talking About Talks: Toward A Political Settlement in Afghanistan". Accessed 26 July, 2014.
<<http://www.crisisgroup.org/en/regions/asia/south-asia/afghanistan/221-talking-about-talks-toward-a-political-settlement-in-afghanistan.aspx>>.
- Kukeeva, F. 2013. "The US Troop Withdrawal from Afghanistan and Regional Security in Central Asia". *Russian Politics and Law* 51(1): 49-58.
- Lackenbauer, H. 2012. "Afghanistan After 2014: Five Scenarios". Accessed 22 July, 2014.
<http://www.academia.edu/3488447/Afghanistan_After_2014_Five_Scenarios>.
- Steele, J. 2013. "A Tale of Two Retreats: Afghan Transition in Historical Perspective". *Central Asian Survey* 32(3): 306-317.
- Suhrke, A. 2013. "Statebuilding in Afghanistan: A Contradictory Engagement". *Central Asian Survey* 32(3): 271-278.



THE UNIVERSITY
of ADELAIDE

