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Rémy M. Mauduit, Editor  
*Air and Space Power Journal–Africa and Francophonie*  
Maxwell AFB, Alabama

# Regulating Group-Related Rivalries in Highly Polarized Communities

JOHAN D. VAN DER VYVER, PhD\*

In May 2011, I and 10 other so-called international experts accepted an invitation to Kathmandu to address problems encountered by the Constitutional Assembly of Nepal in the drafting of a new constitution for that country. Since its creation in 1768 as a unified state and until not so long ago, Nepal was proclaimed a Hindu state, constitutionally structured as a monarchy. The country's very first meaningful constitution, adopted in 1990, formally endorsed this state of affairs. Dissatisfaction with the constitution prompted a Maoist insurgency which plunged the country into a decade-long civil war that brought about approximately 17,500 casualties. The adversaries concluded a 12-point peace agreement in 2005, an interim constitution took effect, and the king abdicated in 2008 (he now lives in the country as an ordinary citizen, and his palace has become a museum). The first president, Dr. Ram Baran Yadav, took office on 23 July 2008 under the current interim constitution. A Constitutional Assembly was established to draft a final constitution that would address—and seek to overcome—the causes of unrest in the country.

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This article is an updated version of the author's special public lecture delivered in 2011 at North-West University in Potchefstroom, South Africa, published in *PER/PEJL*, that university's electronic journal (see [http://www.nwu.ac.za/webfm\\_send4737](http://www.nwu.ac.za/webfm_send4737)).

A major cause of concern in Nepal involves the polarization of its diverse ethnic and religious population. Although the vast majority of the country is Hindu, influential Buddhist and Muslim minorities exist, and the ethnic composition of the population reflects no fewer than 91 different language groups. One of the issues that the assembly asked the “international experts” to address was a proposal—one with wide support among politicians—to apply a federal system of government, based on the ethnic composition of the Nepalese population, as a means of securing internal peace in the years to come. It might be noted that the Maoists most recently proposed 10 federal states for the country while others favor 12 or 14. We cautioned against ethnically defined federal states as a proposed “solution” for the country’s group-related tensions. Complete territorial segregation of ethnic varieties in any political community is almost impossible to orchestrate, and consigning regional powers of government to cultural, religious, or linguistic factions could become a recipe for disaster. We know from the gruesome experiences in the former Yugoslavia that attempts to create religiously or ethnically homogeneous states could lead to profound animosity toward others in one’s midst and might culminate in a policy of “ethnic cleansing” that could include brutal acts of genocide.

The territorial seclusion and political empowerment of rival ethnic groups are not confined to Nepal. Orthodox Judaism, for example, also favors the segregation of conflicting groups within a particular political domain. Orthodox Judaism does not believe in turning the other cheek—a decree to do that comes from the New Testament. Instead, the Talmud makes the maintenance of peace and security conditional upon the construction of a fence that would separate those who belong from their enemies.

Of course, other constitutional devices have been proposed to maintain peace and security in highly polarized plural communities. Attempts to avoid group-related conflicts in group-conscious communities include a political strategy for the promotion of homogeneity within the body politic. As far as member states of the European community are concerned, one can single out France, Greece, and Turkey (an associate member of the European Union) as countries not favorably disposed to accommodating ethnic, religious, or linguistic diversity within their respective borders. On 15 March 2004, French president Jacques Chirac signed into law an amendment to the French Code of Education that now prohibits, as a principle of the separation of church and state, “the wearing of symbols or garb which shows religious affiliation in public primary and secondary schools.”<sup>1</sup> A French law entered into force on 11 April 2011 banning the covering of



one's face in public, clearly intended to outlaw the wearing of a burqa by Muslim women. Greece is particularly unaccommodating of the claim to a distinct identity by people of Macedonian extraction in Florina (northern Greece). A Turkish law banned the wearing of a (Muslim) head scarf in all universities and official government buildings, basing the proscription on the fact that Turkey is a secular state. The Grand Chamber of the European Court of Human Rights—the court of final instance in the European system of human rights protection—upheld the legality of the Turkish law since, in its opinion, the head scarf ban was based on the constitutional principles of secularism and equality; consequently, it did not constitute a violation of the *European Convention for the Protection of Human Rights and Fundamental Freedoms*.<sup>2</sup>

Article 15(3)(c) of the Nigerian constitution reflects a trend toward promoting homogeneity, placing an obligation on the state to encourage intermarriages between members of different religious and tribal communities for the purpose of “promoting national integration.”<sup>3</sup> The truth of the matter, though, is that the Nigerian people are as divided today as they ever were—perhaps even more so.

In 2002 several predominantly Muslim states in northern Nigeria formally adopted Islamic law, including Islamic criminal law, as part of their legal system. As of 2012, nine states have instituted Sharia law (Zamfara, Kano, Sokoto, Katsina, Bauchi, Borno, Jigawa, Kebbi, and Yobe). The imposition of Sharia penalties, which by international standards include cruel and inhuman punishments, attracted media attention (and condemnation) from many parts of the world when in March 2002, a Sharia court sentenced a 30-year-old woman, Amina Lawal, to death by stoning because she was expecting a child out of wedlock. Indeed, in 2004 the Sharia Court of Appeal set aside the sentence, based on the rule against retroactive criminal sanctions because the law incorporating Islamic law was enacted after she became pregnant. However, the case generated wide publicity as a reminder of both unbecoming (and in Nigeria, in fact, unconstitutional) penalties and the sharp divide between the northern Islamic communities and the predominantly Christian population of Nigeria. Religious violence orchestrated by a radical Muslim group, the Boko Haram, has disrupted the country for several months, costing several hundreds of Nigerians their lives and leaving more than 10,000 people displaced. The violence has also caused severe damage to (Christian) places of worship and government buildings.

The postapartheid dispensation of South Africa represents a further constitutional strategy for coping with group-related tensions within a

single state. The “new South Africa” abandoned territorial segregation as a supposed recipe for the peaceful coexistence of racial and ethnic groups and did not attempt to promote the homogeneity of its nation. It opted instead for a system designed to promote national unity on the basis of the internationally acclaimed right to self-determination of peoples.

Accordingly, the South African constitution of 1996 encourages maintenance of and pride in the ethnic, religious, and linguistic group identities of the country’s diverse population. The constitutional preamble thus expresses the belief that all who live in South Africa are “united by our diversity.”<sup>4</sup> In its substantive provisions, the constitution proclaims 11 official languages, calls on the state “to take practical and positive measures to elevate the status and advance the use of . . . [the indigenous languages of our people,]” and affords to everyone “the right to use the language and to participate in the cultural life of their choice.”<sup>5</sup> The constitution expressly guarantees the right to self-determination of cultural, religious, and linguistic communities in accordance with international directives that apply in this regard.<sup>6</sup>

### The Right to Self-Determination: Historical Perspective

In the early twentieth century, proponents of socialism confronted a challenging problem. According to the teachings of Karl Marx and Friedrich Engels, the entire world would in due course be subjected, through a revolution of the proletariat, to a particular economic dispensation known as communism. The subjection of the entire world community to this economic dispensation would not be negotiable, but what status would nation-states have within the overarching and universal structures of communism? In 1913 Joseph Stalin published a treatise on *Marxism and the National Question*, followed in 1916 by Vladimir Lenin’s more elaborate theses on *The Socialist Revolution and the Right of Nations to Self-Determination*. Both authors proclaimed that nation-states will retain the right to self-determination. According to Antonio Cassese, Lenin’s *Socialist Revolution* constituted “the first compelling enunciation of the principle” of self-determination of peoples at the international level.<sup>7</sup>

The special prominence of the right to self-determination in international law has been attributed to the American president Woodrow Wilson. Robert Friedlander thus accredited President Wilson’s “Fourteen Points Address” of 8 January 1918 as “transforming self-determination into a universal right.”<sup>8</sup> Wilson included in those 14 points one that proclaimed a “free, open-minded, and absolutely impartial adjustment of all colonial

claims, based upon a strict observance of the principle that in determining all such questions of sovereignty the interests of the population concerned must have equal weight with the equitable claims of government whose title is to be determined.”<sup>9</sup> In the “Fourteen Points Address,” President Wilson never really used the word *self-determination*. It became part of his vocabulary only in an address to a joint session of the two houses of Congress delivered on 11 February 1918, when he proclaimed that “national aspirations must be respected; peoples may now be dominated and governed only by their own consent. ‘Self-determination’ is not a mere phrase. It is an imperative principle of action, which statesmen will henceforth ignore at their peril.”<sup>10</sup>

The above citation from the “Fourteen Points Address” has come to be regarded as the basis of the League of Nations policy for dealing with the future dispensation of nation-states that were part of the world empires defeated and dissolved through World War I.<sup>11</sup> The right to self-determination of those nation-states was conditioned by the so-called mandate system of the League of Nations, in terms of which a designated mandatory state would prepare the conquered nations for political independence—or in the case of Southwest Africa (Namibia), for eventual incorporation into the Union of South Africa as a fifth province of that country.<sup>12</sup>

In its infancy, when World War I was drawing to a close, the idea of self-determination emerged to legitimize the disintegration of the Ottoman, German, Russian, and Austro-Hungarian empires.<sup>13</sup> Within that context, self-determination vested in “ethnic communities, nations or nationalities primarily defined by language or culture” and afforded justification to such communities to disrupt existing states.<sup>14</sup> Self-determination here denoted the right of “peoples” in the sense of (territorially defined) nations to political independence.<sup>15</sup> But it did not end here. Over time, the concept acquired different shades of meaning, depending in each instance on the nature and disposition of the peoples claiming that right.<sup>16</sup>

Following World War II, the emphasis of the concept of self-determination shifted to the principle “of bringing all colonial situations to a speedy end.”<sup>17</sup> The repositories of the concerned right in this sense were colonized peoples, and the substance of their right denoted the political independence “of peoples that do not govern themselves, particularly peoples dominated by geographically distant colonial powers.”<sup>18</sup>

In the 1960s, yet another category of “peoples” came to be identified as repositories of a right to self-determination—namely those subject to racist regimes. Here the concept substantively signified the right of such peoples

to participate in the structures of government within the countries to which they belong.<sup>19</sup> The “self” in self-determination was no longer perceived as territorially defined sections of the population in multinational empires. It not only comprised peoples under colonial rule or foreign domination but also became identified with the entire community of a territory where the social, economic, and constitutional system was structured on institutionally sanctioned racial discrimination.<sup>20</sup>

Finally, the right to self-determination has been extended to a political community’s national or ethnic, religious, and linguistic minorities whose particular entitlements center upon a right to regulate their lives according to the traditions and customs of the concerned group. South Africa has come to accept this final meaning of a right to self-determination as a means for addressing sectional interests within the body politic.

### The Right to Self-Determination of Ethnic, Religious, and Linguistic Communities Defined

One must not confuse the right to self-determination of ethnic, religious, and linguistic communities with the comparable right of colonized countries or of peoples subject to a racist regime. In terms of the *International Covenant on Civil and Political Rights*, the self-determination of ethnic, religious, and linguistic communities entails the following basic directive: “In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.”<sup>21</sup> Similarly, the *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities* speaks of “the right [of national or ethnic, religious, and linguistic minorities] to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination.”<sup>22</sup>

But there is more to the self-determination of such communities. In giving practical effect to the right to self-determination, governments, through their respective constitutional and legal systems, must secure the interests of distinct sections of the population that constitute minorities in the above sense. The *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities* clearly spells out that obligation: protect and encourage the creation of conditions for the promotion of the group identities of minorities under the jurisdiction of the duty-bound

state; afford to minorities the special competence to participate effectively in decisions pertinent to the group to which they belong; do not discriminate in any way against any person on the basis of his/her group identity; and in fact take action to secure their equal treatment by and before the law.<sup>23</sup> The declaration further provides that “states shall take measures to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards.”<sup>24</sup>

The Council of Europe’s *Framework Convention for the Protection of National Minorities* specifies minority rights in much the same vein. It guarantees equality before the law and equal protection of the laws.<sup>25</sup> States parties promise to provide “the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage.”<sup>26</sup> States parties recognize the right of a person belonging to a national minority “to manifest his or her religion or belief and to establish religious institutions, organisations and associations.”<sup>27</sup> Finally, the framework convention guarantees the use of “minority language[s], in private and in public, orally and in writing.”<sup>28</sup>

The South African constitution is quite explicit in upholding these directives of international law. Section 31 provides that

- (1) Persons belonging to a cultural, religious or linguistic community may not be denied the right, with other members of that community
  - (a) to enjoy their culture, practise their religion and use their language; and
  - (b) to form, join and maintain cultural, religious and linguistic associations and other organs of civil society.
- (2) The rights in subsection (1) may not be exercised in a manner inconsistent with any provision of the Bill of Rights.<sup>29</sup>

The drafters of the constitution were also sensitive to the duty of the state to promote cultural, religious, and linguistic diversity in South Africa. The constitution thus makes provision for a Commission for the Promotion and Protection of the Rights of Cultural, Religious, and Linguistic Communities.<sup>30</sup> It also envisions the establishment, by means of national legislation, of a Pan South African Language Board charged inter alia with promot-

ing and ensuring respect for “Arabic, Hebrew, Sanskrit and other languages used for religious purposes in South Africa.”<sup>31</sup> One must note that the right of self-determination of ethnic, religious, and linguistic groups (a) is not an unlimited right and (b) does not include a right to political independence.

### ***Limitations of the Right to Self-Determination***

The *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities* excluded from the right to self-determination specific practices of an ethnic, religious, or linguistic community that violate the national laws of a country and run contrary to international standards.<sup>32</sup> The international-standards criterion conditions the national-law limitation, presupposing municipal regulation that remains within the confines of international standards and does not place undue restrictions upon the group interests of minorities.

Current state practice does not uphold to the letter the limitations inherent in the right to self-determination of ethnic, religious, or linguistic communities dictated by the international-standards criterion. For example, almost all of the international human rights conventions and covenants condemn gender discrimination, yet religious institutions that discriminate against women on gender grounds have—thus far, successfully—claimed a sovereign right to conduct their affairs within the sphere of their internal household according to the dictates of their faith. And perhaps rightly so! Does one really want the state to compel the Roman Catholic Church, Greek Orthodox Church, Orthodox Judaism, and others to ordain women as priests or as part of their clergy?

However, one cannot justify practices such as female genital mutilation on the basis of the right to self-determination of peoples. Such a practice amounts to sexually defined physical mutilation of extreme severity and with irreversible consequences. Almost exclusively inspired by male interests (the prolonged sexual pleasure of the male partner), it constitutes sex- and gender-based discrimination of the worst kind. Since this mutilation usually occurs while the victim is an infant, it also implicates the rights of the child. The United Nations *Declaration on the Elimination of Violence against Women* (1993) describes female genital mutilation as an instance of “violence against women.”<sup>33</sup>

This raises the question as to an appropriate criterion for separating those violations of “international standards” that do—and those that do not—exceed the limits of the right to self-determination of ethnic, reli-

gious, or linguistic communities. There are no clear answers to this question. It would seem, though, that those customs and traditions that threaten the life or violate the physical integrity of members of an ethnic, religious, or linguistic group clearly exceed the permissible confines of the right to self-determination of the group. Applying these norms in a South African setting is particularly problematic since cultural or ethnic traditions in many African communities include practices incompatible with the human rights ideology of our time and are therefore intolerable.

From a certain perspective, one can divide the systems of human rights protection in the world today into two main categories: those that have grown from the bottom up and those imposed from the top down. In countries belonging to the former category, the values embodied in a Bill of Rights were based upon and kept track with an existing and evolving public ethos. Drafters and law-creating agencies simply endorsed moral perceptions entertained by a cross section of the peoples comprising the nation. The American system of human rights protection offers an example of this state of affairs.

South Africa, though, belongs to that category of political communities that have imposed Bill of Rights decrees from the top down. That is to say, the rights and freedoms protected by the constitution have been dictated by internationally recognized norms of right and wrong, which in many instances do not conform with the moral perceptions and customary practices of large sections of the South African population. From time to time, some of the laws drafted to implement the principles of human rights provoke strong voices of protest from groups within the country whose age-old customs may fall prey to the particular legal-reform measures. In many instances, the lives they live and the customs they observe are far removed from the nice-sounding ideologies written into the constitution and specificities reflected in judgments of the courts. In one of the early judgments of the Constitutional Court, Justice Yvonne Mokgoro referred to the "delicate and complex" task of accommodating African customary law to the values embodied in the Bill of Rights, noting that "this harmonisation will demand a great deal of judicious care and sensitivity."<sup>34</sup>

Effective implementation of the human-rights-based laws and judgments within the entire country will in the final analysis be conditioned by cultivation of a human-rights ethos as the stronghold of all of the peoples and in all of the tribal communities of South Africa. In this respect, that nation still has many more miles to run.

### ***Self-Determination and a Right to Secession***

The failure of national systems to provide protection to the sectional interests of the peoples within their area of jurisdiction—or merely the perception of being marginalized—represents an important contributing cause of the tireless aspirations toward the establishment of homogeneous states for sections of the political community with a strong group consciousness. These include the Muslim community of Kashmir and in Kosovo, the Basques in Northern Spain, the Hindu factions in Sri Lanka, the Catholic minority in Northern Ireland, the Kurds in Iraq and Turkey, people of Macedonian extraction in Florina (northern Greece), the peoples of Somaliland in Somalia, the northern provinces of Georgia, the Maoists in Nepal, and many others.

One must emphasize, though, that the right of ethnic, religious, and linguistic communities to self-determination does not include a right to secession—not even in instances where the powers that be act in breach of a minority's legitimate expectations.<sup>35</sup> Three compelling arguments prove decisive in this regard:

- The right to self-determination is almost invariably mentioned in conjunction with the territorial integrity of states.<sup>36</sup> Reconciling the two principles in question necessarily means that one must take self-determination to denote something less than secession.
- The right to self-determination vests in a people; essentially, a new state created through secession is territorially defined.<sup>37</sup> A defined territory, not a people, secedes from an existing state.<sup>38</sup>
- The right to self-determination is the right of a collective group (members of the concerned group, either individually or collectively, can exercise entitlements included in that right), but a right to secede is a right of an institutional group (where permissible, a representative organ of the territorially defined group, acting on behalf of the group as a whole, must make a decision to secede).

Therefore, one should not view general definitions of the right to self-determination as a general sanction of a right to political independence (one finds such a general definition in the *Declaration on the Granting of Independence to Colonial Countries and Peoples* proclaiming the right of peoples to “freely determine their political status” and the right to “freely pursue their economic, social, and cultural development”).<sup>39</sup> Rather, they must be limited and understood in the context of the subject matter of the



document from which they derive. Peoples subject to colonial rule or foreign domination do have a right to political independence—ethnic, religious, and linguistic minorities in an existing state do not. Similarly, the definition of self-determination in international instruments, including in that concept the right of peoples “freely [to] determine their political status and freely [to] pursue their economic, social and cultural development,” did not intend to undermine the rule of international law proclaiming the territorial integrity of states.<sup>40</sup>

The United Nations’ (UN) *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities* reiterated that one must not take its provisions to contradict the principles of the UN pertaining inter alia to “sovereign equality, territorial integrity and political independence of States.”<sup>41</sup> In the *Framework Convention for the Protection of National Minorities*, the Council of Europe also proclaimed that “nothing in the present framework Convention shall be interpreted as implying any right to engage in any activity or perform any act contrary to the fundamental principles of international law and in particular of the sovereign equality, territorial integrity and political independence of States.”<sup>42</sup>

The UN’s *Declaration on the Rights of Indigenous Peoples* of 2007 also proclaims, somewhat inadvertently, that indigenous peoples are entitled to “freely determine their political status and freely pursue their economic, social and cultural development.”<sup>43</sup> Lest someone construe this as a right to political independence, the declaration goes on to emphasise that it must not be interpreted as “authorising or encouraging any action that would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.”<sup>44</sup>

International law has quite adamantly proclaimed the sanctity of post-World War II national borders and has censured attempts at secession in instances such as Katanga, Biafra, and the Turkish Republic of Northern Cyprus.<sup>45</sup> As explained by Vernon van Dyke, “The United Nations would be in an extremely difficult position if it were to interpret the right to self-determination in such a way as to invite or justify attacks on the territorial integrity of its own members.”<sup>46</sup> The Organization of African Unity (now the African Union), sensitive to the chaotic situation that might emerge from any effort to redraw the (quite irrational) national borders established by colonial powers in Africa, played a leading role in emphasizing the salience of the existing frontiers. Its charter of 1963 prompted member states to “solemnly affirm and declare” their “respect for the sovereignty and territorial integrity of each State and for its inalienable right to independent

existence.”<sup>47</sup> A resolution of the Assembly of Heads of State and Government adopted at its first ordinary session held in Cairo in 1964 called on all member states “to respect the borders existing on their achievement of national independence.”<sup>48</sup>

The Supreme Court of Canada issued a judgment pertaining to the legality of the province of Quebec’s seceding from Canada (should a majority of the residents of that province through a referendum seek to effect the severance of that territory from Canada?). It summarized as follows the distinction between self-determination (referred to in the judgment as “internal self-determination”) and secession (referred to in the judgment as “external self-determination”):

The recognized sources of international law establish that the right to self-determination of a people is normally fulfilled through *internal* self-determination—a people’s pursuit of its political, economic, social and cultural development within the framework of an existing state. A right to *external* self-determination (which in this case potentially takes the form of a right to unilateral secession) arises in only the most extreme of cases and, even then, under carefully defined circumstances.<sup>49</sup> (emphases in original)

Secession is indeed sanctioned by international law—not under the rubric of a right to self-determination but as a permissible political strategy in its own right. The restructuring of national borders is sanctioned by international law in two instances only:

- (a) If a decision to secede is “freely determined by a people”—that is, a cross section of the entire population of the state to be divided and not only inhabitants of the region wishing to secede.<sup>50</sup>
- (b) If, following an armed conflict, national boundaries are redrawn as part of a peace treaty.<sup>51</sup>

The reunification of Germany, the breakup of the Soviet Union, the parting of the constitutional ways of the Czech Republic and Slovakia, and the recent secession of southern Sudan were in that sense “freely determined by the people.”<sup>52</sup> The secession of Eritrea from Ethiopia, though, was sanctioned by a peace accord. The disintegration of the former Yugoslavia represents a complicated conglomeration of both principles.<sup>53</sup>

On 17 February 2008, a substantial majority of the Assembly of Kosovo adopted a unilateral declaration of independence from Serbia. The General Assembly responded by requesting an advisory opinion of the International Court of Justice. The court noted that the request did not call upon the court “to take a position on whether international law conferred a positive entitlement on Kosovo unilaterally to declare its independence or, a fortiori,

on whether international law generally confers an entitlement on entities situated within a State unilaterally to break away from it.”<sup>54</sup> Instead, the court concluded that this declaration of independence was not precluded by the Security Council resolution that authorized the secretary-general to establish an interim administration for Kosovo with a view, *inter alia*, to oversee “the development of provisional self-governing institutions.”<sup>55</sup> It also concluded, somewhat obscurely, that the declaration of independence did not violate general international law.<sup>56</sup>

One body of opinion suggests that “remedial secession” might be permissible under the rules of international law in instances where an ethnic, religious, or linguistic community within an existing state is subjected to unbecoming human rights violations.<sup>57</sup> Some years ago, the African Commission on Human and People’s Rights suggested by way of *obiter dictum* that Katanga would have been entitled to secede from Zaire if “concrete evidence [existed] of violations of human rights to the point that the territorial integrity of Zaire should be called to question and . . . that the people of Katanga are denied the right to participate in government as guaranteed by article 13(1) of the African Charter.”<sup>58</sup> In its declaration on self-determination, the UN World Conference on Human Rights of 1993 reiterated that this right “shall not be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.” Seemingly it made this assertion applicable only to states “conducting themselves in compliance with the principles of equal rights and self-determination of peoples and thus possessed of a Government representing the whole people belonging to the territory without distinction of any kind.”<sup>59</sup> The fallacy of this reasoning is that the right to self-determination belongs to a people while statehood is based on a territory foundation. In the final analysis, secession must be sanctioned by general agreement or a peace treaty. Of course it is quite possible that gross violations of human rights could culminate in a referendum or an armed conflict that would eventually constitute the basis for secession. However, the legality of secession of a defined territory will depend on the referendum or peace treaty and not on the human rights violations *per se*—at least not within the current confines of international law and state sovereignty.

For many compelling reasons, one should avoid at all costs the destruction of existing political communities harboring a plural society:

- A multiplicity of economically nonviable states will further contribute to a decline of living standards in the world community.
- The perception that people sharing a common culture, religion, or language would necessarily also enjoy political compatibility is clearly a myth, and disillusionment after the event might provoke profound resentment and further conflict.
- The movement of people within plural societies across territorial divides has greatly destroyed ethnic, cultural, or religious homogeneity in regions where it might have existed in earlier times. Consequently the demarcation of borders that would include the sectional demography that secessionists seek to establish is in most cases quite impossible.
- Affording political relevance to ethnic, cultural, or religious affiliation carries within itself the potential of the repression of minority groups within the nation. Moreover, it affords no political standing whatsoever to persons who, on account of mixed parentage or marriage, cannot be identified with any particular faction of the group-conscious community or to those who—for whatever reason—do not wish to be identified under any particular ethnic, cultural, or religious label.
- In consequence of the above, an ethnically, culturally, or religiously defined state will more often than not create its own “minorities problem.” Because of the ethnical, cultural, or religious incentive for the establishment of the secession state, this “problem” would almost invariably result in profound discrimination against those who do not belong or, worse still, a strategy of ethnic cleansing.

### Concluding Observations

South Africa comprises perhaps the most diverse plural composition in the entire world; furthermore, it is known for the polarization of factions of the population.<sup>60</sup> Group rivalries are still rife in South Africa as a feature of the country’s demographic divides. Dealing with such rivalries and orchestrating reconciliation are central to social engineering within that troubled land.

The drafters of the South African constitution rejected the segregation of rival ethnic, religious, and linguistic communities as well as the promotion of cultural, religious, or linguistic homogeneity within the nation as a means of counteracting group-related tensions in the country’s social construct. Instead,

they opted for creating—in the celebrated words of Archbishop Desmond Tutu—“a rainbow nation.” Accordingly, the new constitutional dispensation seeks to promote pride in one’s group identities: Be proud of being an Afrikaner or being a member of any of the rich variety of “peoples” within the African, Indian, and colored communities. Be faithful to your membership in the Catholic, Methodist, Dutch Reformed, or Zion Christian Church—or to your membership in the Muslim, Hindu, or Buddhist communities. Find comfort in speaking the language of your cultural extraction, whether Afrikaans, English, Greek, Portuguese, Tswana, Xhosa, or Zulu. The European Court of Human Rights has also singled out tolerance and broad-mindedness as indispensable components of a democratic society.<sup>61</sup>

Pride in one’s particular ethnic, religious, or linguistic identity does not elevate one to a superior status in the community. The respect of others for one’s cultural values, religious persuasions, or linguistic preferences demands full respect for the culture, religion, and language of others. The constitutional principle that applies in this regard has been reduced to perhaps the most basic moral directive for a “new South Africa,” one that finds expression in the concept of *ubuntu* or *botho* (“an idea based on deep respect for the [inner] humanity of another”).<sup>62</sup> *Ubuntu* translates into “humaneness” and constitutes “part of our *rainbow* heritage.”<sup>63</sup> It stands in sharp contrast to “dehumanising and degrading the individual.”<sup>64</sup> Justice Albie Sachs on occasion referred to *ubunthu-batho* in the sense of “civility” as “a precondition for the good functioning of contemporary democratic societies.” He noted that “civility in a constitutional sense involves more than just courtesy and good manners. . . . It presupposes tolerance for those with whom one disagrees and respect for the dignity of those with whom one is in dispute.”<sup>65</sup>

The constitution therefore subjects the freedom of expression to limitations, which include a prohibition of the “advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.”<sup>66</sup> Under the Promotion of Equality and Prevention of Unfair Discrimination Act, “no person may publish, propagate, advocate or communicate words . . . against any person, that could reasonably be construed to demonstrate a clear intention to (a) be hurtful; (b) be harmful or to incite harm; (c) promote or propagate hatred.”<sup>67</sup> One must note that South African law does not uphold the almost incontestable sanctity of freedom of speech, as does the American constitutional system. In South African law, “certain expressions do not deserve constitutional protection because they have the potential to impinge adversely on the dignity of others and cause harm.”<sup>68</sup> In South Africa, “the right to freedom of expression is not a pre-eminent

freedom ranking above all others.”<sup>69</sup> In this respect, it “differs fundamentally from the balance struck in the United States,” where freedom of speech constitutes the basic norm—a *Grundnorm*—of the entire rights regime.<sup>70</sup>

Instead, the “new South Africa” is founded on zero tolerance for words and conduct offensive to others. Depicting members of particular population groups as “hotnot,” “kaffir,” “rooinek,” “boer,” or “coolie” is therefore strictly forbidden since such names “have for decades been used to bring people of different races into contempt.”<sup>71</sup> Refusing to serve a Muslim client wearing a fez in a business enterprise open to the public constitutes unbecoming discrimination based on religion.<sup>72</sup> The media are under legal constraint not to publish cartoons depicting the Prophet Mohammed as a terrorist (as did those that first appeared in a Danish newspaper) because they “advocate hatred and stereotyping of Muslims.”<sup>73</sup> A newspaper report that likens homosexuality to bestiality cannot be tolerated under freedom of the press because it promotes hatred against the gay and lesbian communities.<sup>74</sup> The chanting of a “freedom song” that includes the phrase *dibulu iBhunu* (shoot the Boer) is offensive to the Afrikaans-speaking section of the South African nation and as such violates the proscription of offensive language.<sup>75</sup>

As noted by Chief Justice Pius Lange in 2009, “The process of reconciliation is an ongoing one which requires give and take from all sides.”<sup>76</sup> “Our democracy is still fragile,” said Judge Eberhard Bertelsmann, adding that “participants in the political and socio-political discourse must remain sensitive to the feelings and perceptions of other South Africans when words were used that were common during the struggle days, but may be experienced as harmful by fellow inhabitants of South Africa today.”<sup>77</sup>

## Notes

1. Loi no. 2004-228 du 15 mars 2004 (encadrant, en application du principe de laïcité, le port de signes ou de tenues manifestant une appartenance religieuse dans les écoles, collèges et lycées publics) [formulating, in application of the principle of secularism, the wearing of signs or dress manifesting a religious affiliation in schools and public primary and high schools].

2. Leyla Şahin v. Turkey (Application no. 44774/98), *European Court of Human Rights (Judgments and Decisions)* 2005-XI (11 October 2005): 173. See also Kurtulmuş v. Turkey (Application no. 65500/01), *European Court of Human Rights (Judgments and Decisions)* 2006-II (24 January 2006): 297; and Köse and Others v. Turkey (Application no. 26625/02), *European Court of Human Rights (Judgments and Decisions)* 2006-II (24 January 2006): 339.

3. Art. 15(3)(c), Constitution of the Federal Republic of Nigeria, 1999.

4. Preamble, Constitution of the Republic of South Africa, Act 108, 1996 (hereafter “1996 S. A. Const.”).

5. *Ibid.*, secs. 8(1), 8(2), and 30.

6. *Ibid.*, sec. 31; see also sec. 235.

7. Antonio Cassese, *Self-Determination of Peoples: A Legal Appraisal* (Cambridge, UK: Cambridge University Press, 1995), 15.

8. Robert Friedlander, "Self-Determination: A Legal-Political Inquiry," *Detroit College of Law Review* 1 (1975): 71, 73.

9. "Fourteen Points Address Delivered on 8 January 1918 to a Joint Session of Congress by President Woodrow Wilson," point 5, in R. S. Baker and W. E. Dodd, eds., *Public Papers of Woodrow Wilson*, vol. 1, *War and Peace* (New York: Harper and Brothers, 1927), 155–59.

10. Woodrow Wilson, "Address to Congress," 11 February 1918, in *A Compilation of Messages and Papers of the President*, vol. 18 (New York: Bureau of National Literature, 1921), 8450. See also the address of President Wilson delivered in Baltimore, MD, on 6 April 1918 on the occasion of the first anniversary of America's participation in the European War and the third inauguration of the Third Liberty Loan, in which he referred to "our ideals, the ideals of justice and humanity and liberty, the principle of the free self-determination of nations, upon which all the modern world insists." *Ibid.*, 8483.

11. Vernon Van Dyke, *Human Rights, the United States, and World Community* (New York: Oxford University Press, 1970), 86.

12. The mandate system was the brainchild of Jan Christian Smuts (1870–1950) of South Africa, a general in the Anglo-Boer War (1899–1902) and a Cambridge graduate, invited by Great Britain to be part of its delegation to the Paris Peace Conference where the Peace Treaty of Versailles (1919) was drafted. In December 1918, Smuts outlined the mandate system in a League of Nations plan under the heading "A Practical Suggestion," which President Woodrow Wilson included in his second draft of the League of Nations Covenant.

13. See Antonio Cassese, *International Law in a Divided World* (Oxford, UK: Clarendon Press, 1986), 131–34, par. 80; Rupert Emerson, "Self-Determination," *American Journal of International Law* 66 (1971): 459, 463; and Friedlander, "Self-Determination," 71.

14. Nathaniel Berman, "Sovereignty in Abeyance: Self-Determination in International Law," *Wisconsin International Law Journal* 7 (1988): 51, 86–87.

15. One should note, though, that even then, secession from existing empires was not a right in itself. The advisory opinion of the International Committee of Jurists in the Aaland Islands Case pointed out that "the right of disposing of national territory is essentially an attribute of the sovereignty of every State. Positive International Law does not recognise the right of national groups, as such, to separate themselves from the State of which they form part by the simple expression of a wish, any more than it recognises the right of other States to claim such a separation." "Report of the International Committee of Jurists Entrusted by the Council of the League of Nations with the Task of Giving an Advisory Opinion upon the Legal Aspects of the Aaland Islands Question," *League of Nations Official Journal*, supp. 3 (October 1920): [3], <http://www.ilsa.org/jessup/jessup10/basicmats/aaland1.pdf>. It was only when "the formation, transformation and dismemberment of States as a result of revolutions and wars create situations of fact which, to a large extent, cannot be met by the application of the normal rules of positive law" that "peoples" may either decide to form an independent state or choose between two existing ones (*ibid.*, [4]). In such circumstances, when sovereignty has been disrupted, "the principle of self-determination of peoples may be called into play. New aspirations of certain sections of a nation, which are sometimes based on old traditions or on a common language and civilisation, may come to the surface and produce effects which must be taken into account in the interests of the internal and external peace of nations" (*ibid.*).

16. See Johan D. van der Vyver, "Sovereignty and Human Rights in Constitutional and International Law," *Emory International Law Review* 5 (1991): 321, 395–416; van der Vyver, "Self-Determination and the Peoples of Quebec under International Law," *Journal of Transnational Law and Policy* 10, no. 1 (2000): 14–19; van der Vyver, "Self-Determination and the Right to Secession of Religious Minorities under International Law," in *Protecting the Human Rights of Religious Minorities in Eastern Europe*, ed. Peter G. Danchin and Elizabeth A. Cole (New York: Columbia University Press, 2002), 251, 258–61; and van der Vyver, "Cultural Identity as a Constitutional Right in South Africa," *Stellenbosch Law Review* 14 (2003): 51, 53–56, 58.

17. Western Sahara (Advisory Opinion of 22 May 1975), International Court of Justice (1975), 1, 31. See also Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970) (Advisory Opinion of 21 June 1971) International Court of Justice (1971), 16, 31. (The court held that the right to self-determination was applicable to "territories under colonial rule" and that it "embraces all peoples and territories which 'have not yet attained independence.'")

18. Berman, "Sovereignty in Abeyance," 54. See also Cassese, *International Law in a Divided World*, 76, par. 43; Van Dyke, *Human Rights*, 87; L. Berat, "The Evolution of Self-Determination in International Law: South Africa and Namibia, and the Case of Walvis Bay," *Emory International Law Review* 4 (1990): 251, 283 (referring to self-determination and the equal right of peoples as "twin aspects of decolonization"); Emerson, "Self-Determination," 463; O. Schachter, "The United Nations and Internal Conflict," in *Law and Civil War in the Modern World*, ed. John Norton Moore (Baltimore: Johns Hopkins University Press, 1974), 401, 406–7; and Gebre Tesfagiorgis, "Self-Determination: Its Evolution and Practice by the United Nations and Its Application in the Case of Eritrea," *Wisconsin International Law Journal* 6 (1987): 75, 78–80.

19. The link within the confines of the right to self-determination of systems of institutionalized racism and colonialism or foreign domination may be traced to the United Nations (UN) General Assembly's *Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty* of 1965, in which the UN demanded that all states respect "the right to self-determination and independence of peoples and nations, to be freely exercised without any foreign pressure, and with absolute respect for human rights and fundamental freedoms." To this end, it proclaimed that "all States shall contribute to the complete elimination of racial discrimination and colonialism in all its forms and manifestations" (par. 6).

20. This development was probably prompted by the claim of South Africa that the establishment of independent tribal homelands as part of the apartheid policy constituted a manifestation of the right to self-determination of the different ethnic groups within the country's African population. Not so, responded the international community. The tribal homelands were a creation of the minority (white) regime and did not emerge from the wishes or political self-determination of the denationalized peoples themselves.

21. *International Covenant on Civil and Political Rights*, art. 1, General Assembly Resolution 2200 (XXI), 16 December 1966, 21 UN GAOR Supp. (no. 16), 27, UN Doc. A/6316, 999 UN Treaty Series 171. See in general Felix Ermacora, "The Protection of Minorities before the United Nations," *Recueil des Cours* 4 (1983): 246.

22. *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, art. 2.1, General Assembly Resolution 47/136, 18 December 1992, 47 UN General Assembly Official Records Supp. (no. 49), 210, UN Doc. A/Res/47/135, 1992.

23. *Ibid.*, arts. 1.1 and 4.2, 2.3, 3, and 4.1.

24. *Ibid.*, art. 4.2.

25. *European Framework Convention for the Protection of National Minorities*, art. 4.1., European Treaty Series 1995, 157 (reprinted in *International Legal Materials* 34 [1995]: 35).

26. *Ibid.*, art. 5.1.

27. *Ibid.*, art. 8.

28. *Ibid.*, art. 10.1. See also the *European Charter for Regional Minority Languages*, Strasbourg, 1992, <http://conventions.coe.int/Treaty/en/Treaties/Html/148.htm>.

29. 1996 S. A. Const., sec. 31.

30. *Ibid.*, secs. 181(1)(c) and 185–86. See also the Commission for the Promotion and Protection of the Rights of Cultural, Religious, and Linguistic Communities, Act 19, 2002.

31. 1996 S. A. Const., sec. 6(5)(b)(ii).

32. See the text associated with note 24.

33. *Declaration on the Elimination of Violence against Women*, art. 2(a), General Assembly Resolution 48/104, 20 December 1993, UN General Assembly Official Records, 48th sess., Supp. (no. 49), vol. 1, 217, UN Doc. A/48/49, 1994.

34. *Du Plessis v. De Klerk*, 1996 (5) S.A. 658 (CC) (South Africa).

35. See Van Dyke, *Human Rights*, 88; Berman, "Sovereignty in Abeyance," 87; and Emerson, "Self-Determination," 464–65.

36. See *Final Act of the Conference on Security and Co-operation in Europe*, for example, par. IV (territorial integrity) and par. VIII (equal rights and self-determination of peoples), *International Legal Materials* 14 (1975): 1292.

37. According to Hermann Mosler, "States are constituted by a people, living in a territory and organized by a government which exercises territorial and personal jurisdiction." Mosler, "Subjects of International Law," in *Encyclopedia of Public International Law*, vol. 7, ed. Rudolph Bernhardt (Amsterdam: North-Holland,



1984), 442, 449. Karl Doehring defines a state in international law as “an entity having exclusive jurisdiction with regard to its territory and personal jurisdiction in view of its nationals.” Doehring, “State,” in Bernhardt, *Encyclopedia of Public International Law*, vol. 10 (1987), 423. Herman Dooyeweerd defined the foundational function of a state in terms of “an internal monopolistic organization of the power of the sword over a particular cultural area within territorial boundaries.” Dooyeweerd, *A New Critique of Theoretical Thought*, vol. 3, trans. David H. Freeman (Ontario: Paideia Press, 1969), 414. He further maintained that the leading or qualifying function of the state finds expression in a public, legal relationship that unifies the government, the people, and the territory constituting the political community into a politico-juridical whole (ibid., 433ff).

38. See Yoram Dinstein, “Collective Human Rights of Peoples and Minorities,” *International and Comparative Law Quarterly* 25, no. 1 (January 1976): 102, 109. He notes that peoples seeking secession must be located in a well-defined territorial area in which they form a majority.

39. *Declaration on the Granting of Independence to Colonial Countries and Peoples*, General Assembly Resolution 1514, 14 December 1960, 15 UN General Assembly Official Records Supp. (no. 16) 66, UN Doc. A/4684, 1960.

40. See *International Covenant on Economic, Social and Cultural Rights*, art. 1(1), General Assembly Resolution 2200A (XXI), 16 December 1966, 21 UN General Assembly Official Records Supp. (no. 16), 49, UN Doc. A/6316 (1966), 993 UN Treaty Series 3; *International Covenant on Civil and Political Rights*, art. 1(1); and *Declaration on the Granting of Independence to Colonial Countries and Peoples*, art. 2. See also the first paragraph under the heading “The Principle of Equal Rights and Self-Determination of Peoples,” in the *Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations*, General Assembly Resolution 2625, 24 October 1970, 25 UN General Assembly Official Records Supp. (no. 28), 121, UN Doc. A/8028 (1970); *Declaration on the Inadmissibility of Intervention into the Domestic Affairs of States and the Protection of Their Independence and Sovereignty*, par. 5, General Assembly Resolution 2131, 21 December 1965, 20 UN General Assembly Official Records Supp. (no. 14), 11–12, UN Doc. A/6014 (1965); and *Final Act of the Conference on Security and Co-operation in Europe*, par. VIII.

41. *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, art. 8.4.

42. *European Framework Convention*, art. 21.

43. General Assembly Resolution 61/295, 13 September 2007. The declaration was adopted with only Australia, Canada, New Zealand, and the United States opposing.

44. Ibid., art. 46(1).

45. Regarding the sanctity of national borders, see Rosalyn Higgins, *The Development of International Law through the Political Organs of the United Nations* (London: Oxford University Press, 1963), 104–5; and, for example, *Final Act of the Conference on Security and Co-operation in Europe*, par. III. Regarding attempts at secession, see van der Vyver, “Sovereignty and Human Rights,” 403–7; and in greater detail, James Crawford, *The Creation of States in International Law* (Oxford: Clarendon Press, 1979), 235–36 (Katanga) and 265 (Biafra); John Dugard, *Recognition and the United Nations* (Cambridge: Grotius, 1987), 86–90 (Katanga), 84–85 (Biafra), and 108–11 (Turkish Republic of Northern Cyprus); and Johan D. van der Vyver, “Statehood in International Law,” *Emory International Law Review* 5, no. 9 (1991): 35–37 (Katanga) and 42–44 (Turkish Republic of Northern Cyprus).

46. Van Dyke, *Human Rights*, 102.

47. *Charter of the Organization of African Unity*, 1963, art. III.3, reprinted in *International Legal Materials* 2 (1963): 766.

48. AHG/Res. 16(I), par. 2, Organization of African Unity, Resolutions Adopted by the First Ordinary Session of the Assembly of Heads of State and Government Held in Cairo, United Arab Republic, 17–21 July 1964.

49. *Reference Re Secession of Quebec*, 1998, 2 S.C.R. 217, par. 126, <http://www.canlii.org/en/ca/scc/doc/1998/1998canlii793/1998canlii793.pdf>. See also van der Vyver, “Peoples of Quebec,” 14–19.

50. *Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States*. Under the heading “The Principle of Equal Rights and Self-Determination of Peoples,” the declaration provides “the establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitute modes of implementing the right to self-determination by that people.”

51. See Cassese, *International Law in a Divided World*, 359–63.

52. One should specially note that Article 72 of the *Konstitutsiya SSSR* (USSR constitution) expressly guaranteed the right of each republic to secede from the union. *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, International Court of Justice General List no. 141, 22 July 2010. The referendum that sanctioned the secession of southern Sudan was confined to residents of that region but sanctioned by legislation of Sudan that authorized the referendum. Regarding elements for legitimizing secession in any given case, Lee Buchheit specifies that the section of a community seeking partition should possess a distinct group identity with reference, for example, to cultural, racial, linguistic, historical, or religious considerations. Those making a separatist claim must be capable of an independent existence, including economic viability (but bearing in mind international aid programs that might help a newly established political entity over its teething problems). Further, the secession must serve to promote general international harmony or at least not be disruptive of international harmony or disrupt it more than the status quo is likely to do. Buchheit, *Secession: The Legitimacy of Self-Determination* (New Haven, CT: Yale University Press, 1978), 228–38.

53. Art. 1 of the Constitution of the Federal People's Republic of Yugoslavia (1946) authorized secession of its constituent republics. See also the Constitution of the Federal People's Republic of Yugoslavia (1963), par. I of the Introductory Part (Basic Principles) (depicting Yugoslavia as “a federal republic of free and equal peoples and nationalities” united “on the basis of the right to self-determination, including the right of secession”), as well as art. 1; and the Constitution of the Socialist Federal Republic of Yugoslavia (1974), par. I of the Introductory Part (Basic Principles) (referring to “the right of every nation to self-determination” and “the brotherhood and unity of nations and nationalities”). However, the disintegration of the federation did not occur in accordance with the procedures prescribed for the exercise of the constitutional right to secession and furthermore included territorial gains through conquest and ethnic cleansing.

54. *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, International Court of Justice General List no. 141, par. 56, 22 July 2010 (hereafter “Kosovo Case”).

55. *Ibid.*, pars. 114, 119. Security Council Resolution 1244 (1999), 10 June 1999, par. 10.

56. Kosovo Case, par. 122.

57. See Ernest Duga Titanji, “The Right of Indigenous Peoples to Self-Determination versus Secession: One Coin, Two Faces?,” *African Human Rights Law Journal* 9, no. 1 (2009): 52, 68–72, 73–74.

58. Katangese People's Congress v. Zaire, 2000, African Human Rights Law Report 72, par. 6 (African Commission on Human and People's Rights, 1995).

59. “This [definition of self-determination] shall not be construed as authorising or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principles of equal rights and self-determination of peoples and thus possessed of a Government representing the whole people belonging to the territory without distinction of any kind.” World Conference on Human Rights, *Vienna Declaration and Programme of Action*, 25 June 1993, art. 1.2, UN Doc. A/Conf. 157/24, 25 June 1993, reprinted in *International Legal Materials* 32 (1993): 1661, 1665.

60. See *S v. Makwanyane and Another*, 1995 (3) SA 391, par. 308 (CC) (South Africa) (Justice Mokgoro referring to South Africans having “a history of deep division characterised by strife and conflict”); and *Du Toit v. Minister for Safety and Security and Another*, 2009 (6) SA 128, 2009 12 *Butterworths Constitutional Law Reports* 1171, par. 17 (CC) (South Africa) (Chief Justice Lange stating that “the South African nation was for decades a deeply divided society characterised by gross violations of fundamental human rights”).

61. *Handyside v. the United Kingdom* [1976] 1 European Court of Human Rights 737, 754. See *Islamic Unity Convention v. Independent Broadcasting Authority and Others*, 2002 (4) SA 295, par. 28 (CC) (South Africa).

62. *Dikoko v. Mokhatla*, 2006 (6) SA 235, 2007 1 *Butterworths Constitutional Law Reports* 1, par. 68 (CC) (South Africa). See also *ibid.*, par. 69.

63. *S v. Makwanyane*, 1995 (3) SA 391, par. 308 (CC) (South Africa) (per Justice Mokgoro).

64. *Ibid.*, par. 250 (per Justice Lange).

65. *Masetlha v. President of the RSA and Another*, 2008 (1) SA 566, 2008 1 *Butterworths Constitutional Law Reports* 1, par. 238 (CC) (South Africa).

66. 1996 S. A. Const, sec. 16(2)(c).
67. Promotion of Equality and Prevention of Unfair Discrimination Act 4, 2000, sec. 10(1).
68. Du Toit v. Minister for Safety and Security, 2009 (6) SA 128, par. 32 (CC) (South Africa).
69. S v. Mamabolo (E TV Seven Others Intervening), 2001 (3) SA 409, 2001 5 *Butterworths Constitutional Law Reports* 449, par. 41 (CC) (South Africa).
70. Ibid., par. 40; Johan D. van der Vyver, "Constitutional Protection of Children and Young Persons," in *The Law of Children and Young Persons in South Africa*, ed. J. A. Robinson (Durban, South Africa: Butterworths, 1997), 265, 282; and van der Vyver, "Limitations of Freedom of Religion or Belief: International Law Perspectives," *Emory International Law Review* 19 (2005): 499, 508.
71. Decision of the Broadcasting Complaints Commission in P Johnson v. 94.7 Highveld Stereo, case no. 07/2002, 14 February 2002 (South Africa).
72. Woodways CC v. Moosa Vallie, case no. A251/05 (H. C. Western Cape), 31 August 2009 (South Africa).
73. Jamait-Ul-Ulama of Transvaal v. Johncom Media Investment Ltd. and Others, case no. 1127/06 (W.L.D.), 3 February 2006 (South Africa).
74. In South African Human Rights Commission v. Jon Qwulane, case no. 44/EQJHB (31 May 2011) (South Africa), the Equality Court at the Johannesburg Magistrate's Court demanded an unqualified public apology to the gay and lesbian community from—and imposed a fine of R 100,000 to be paid by—Jon Qwulane (currently the South African ambassador in Uganda) for a newspaper article he wrote under the heading "Call Me Names, but Gay Is NOT OK," in which he compared homosexuality with bestiality.
75. Agriforum and Another v. Malema and Another, 2011 (6) SA 240 (EqC) (South Africa). The matter was taken on appeal by Malema and the African National Conference but was settled on the basis of the appellants agreeing "that certain words in certain freedom songs may be experienced as hurtful by members of minority communities" and "to act with restraint to avoid the experience of such hurt." The settlement was made an order of court. Malema JS and Another v. Agriforum and Others, Case no. 20968/10 (2 November 2012).
76. Du Toit v. Minister of Safety and Security, 2009 (6) SA 128, par. 28 (CC) (South Africa). See also Agriforum and Another v. Malema and Another, par. 11.
77. Agriforum v. Malema, 2010 (5) SA 235 (GNP) (South Africa).

# Sharpening Our Plowshares

## Applying the Lessons of Counterinsurgency to Development and Humanitarian Aid

SOLOMON MAJOR, PhD\*

Since the 1980s, encouraging social, political, and economic development and dispensing humanitarian assistance have become high-priority missions for both national policy makers and international and nongovernmental organizations (NGO). During the Cold War, donor nations often competed among themselves for influence and reputational rewards or from a simple desire to do good in the developing world. This focus on dispensing developmental and humanitarian aid has only accelerated since the fall of the Berlin Wall.<sup>1</sup>

In 2005 President George W. Bush promulgated National Security Presidential Directive 44, Management of Interagency Efforts Concerning Reconstruction and Stabilization, which underscored America's commitment to providing humanitarian assistance and reconstruction aid to populations in need.<sup>2</sup> Later, during the Obama administration, Secretary of Defense Robert Gates argued that "where possible, U.S. strategy is to employ indirect approaches—primarily through building the capacity of partner governments and their security forces—to prevent festering problems from turning into crises that require costly and controversial direct military intervention."<sup>3</sup> More recently, Secretary of State Hillary Clinton argued that the United States must "elevate development as a core pillar of American power" as part of a strategy of exercising "smart power" internationally.<sup>4</sup>

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Humanitarian relief and successful development, however, are not the sole preserve of international organizations and American foreign policy organizations. National militaries, particularly America's, have become more directly involved in "engagement" and humanitarian assistance.<sup>5</sup> Although the US Army, which will likely take the lead in future humanitarian operations, has been most proactive in integrating humanitarian assistance / disaster relief missions into its tactical tasks, the other forces have followed suit.<sup>6</sup> For example, *A Cooperative Strategy for 21st Century Seapower*—the principal joint strategic document of the Navy, Marine Corps, and Coast Guard—has broken with tradition by designating humanitarian assistance and disaster relief as a core maritime competency.<sup>7</sup>

Similarly, the nongovernmental sector—long engaged on these issues—has redoubled its humanitarian and developmental efforts.<sup>8</sup> Although less concerned with the ties that bind humanitarian assistance and defense, NGOs unsurprisingly hold many concerns in common with those articulated by official aid givers. For example, World Vision—the largest American humanitarian NGO—claims that it is "dedicated to working with children, families and communities to overcome poverty and injustice . . . [and to] working with the poor and oppressed to promote human transformation, seek justice, and bear witness to the good news of the Kingdom of God."<sup>9</sup>

In spite of this renewed commitment to development and stability, whether multilateral intergovernmental organizations (IGO) (e.g., the United Nations), humanitarian NGOs (e.g., Oxfam) or organs of the United States or other governments (e.g., the US Agency for International Development [USAID] or the military) have distributed the aid, the results have been disappointing.<sup>10</sup> Individual projects have sometimes flourished and some "colors" or types of aid monies have proved relatively less ineffective than others, but the overall development program has generally foundered.<sup>11</sup> In light of development aid's inability to realize its promise for whatever reasons, many IGOs and NGOs have recently and aggressively expanded their portfolios to include operations in humanitarian aid.<sup>12</sup>

Unfortunately, humanitarian operations have experienced similarly disappointing results. Although humanitarian organizations have often shifted much of the responsibility for these failures onto the fecklessness of their donors (primarily nation-states and IGOs), some of the blame must still rest with the humanitarians themselves.<sup>13</sup> In most of these cases of

failure, a certain lack of proficiency on behalf of the aid givers often lies at or near the center of these problems. As argued by Peter Hoffman and Thomas Weiss,

for too long humanitarians have talked about becoming more professional but have been unwilling to accept the discipline and costs that necessarily would accompany such changes. Far too much [stabilization and development] work is still driven by anecdote and angst, not evidence and strategy. Although humanitarians will undoubtedly bristle at the comparison, *professional militaries—unlike professional humanitarians—have a culture that values learning, and they invest substantial sums in the institutional infrastructure to assemble and act on lessons*. Military academies epitomize how this works; previous and ongoing operations are analyzed, new procedures are tried and tested, and student soldiers are educated about best practices and adapting tactics to field specifics.<sup>14</sup> (emphasis added)

This article follows on a small but growing literature that seeks to take up Hoffman and Weiss's challenge: to begin to lay the intellectual foundation for a better "human-capital infrastructure" for proactive civilian, NGO, and IGO development, peacekeeping, peace building, and stabilization.<sup>15</sup> Given the increasing stabilization and peace consolidation role undertaken by American combatant commands, these lessons may be equally applied to militaries fighting the wars of the new century.

Beyond emphasizing the process of "learning" writ large, we might further mine military doctrine and practice to conceptualize how aid givers can confront an amorphous enemy as well as incapacitated host-country clients and partners in conditions of great strategic and tactical ambiguity. In fact the US Army has confronted similar problems (and opportunities) in a counterinsurgency (COIN) environment in Iraq and Afghanistan for the past several years—experiences and lessons learned now codified in Army Field Manual 3-24 / Marine Corps Warfighting Publication 3-33.5, *Counterinsurgency* (FM 3-24/MCWP 3-33.5).<sup>16</sup> This article thus takes a novel approach to aid giving, whether by civilians or their military counterparts, by explicitly considering the parallels between COIN and civilian- and military-led stability operations—and the lessons that the former might take from the latter.

One must appreciate that asking humanitarians to draw lessons from their military opposites will prove controversial, a point addressed below. Consequently, one must note at the onset that this article does not advocate the militarization of aid or aid givers—an ongoing *strategic* concern for

many members of the aid community.<sup>17</sup> Rather, it seeks to encourage aid givers to draw upon those military lessons learned when—and to the extent to which—they assist humanitarians and development specialists in most effectively and efficiently dispensing with the *tactical* and *operational* aspects of their important work.

Toward that end, the article first considers why humanitarian and stabilization efforts are so central to America's and the developed world's foreign policies that they merit our considering a "war" against instability. It then addresses the challenges of foreign development and humanitarian aid as well as the poor record of success that they have experienced thus far. Next, it turns to developing a COIN-inspired strategy for development assistance and stabilization operations, explicitly drawing, again, on FM 3-24/MCWP 3-33.5 in doing so. The article concludes by considering the lessons that we thus might learn and avenues for future research and practice.

### A New Kind of War: Why Development, Why Now?

We have fought wars against drugs, poverty, cancer, and terror. In those actions, in which military force remained secondary to social, financial, informational, and diplomatic instruments, the term *war* conveyed the gravity of the challenge and the totality of power and resources employed in the pursuit of victory.<sup>18</sup> The war metaphor unintentionally illuminates one additional aspect of these contests—they can be lost. Indeed, the history of warfare instructs us that even great powers' efforts may falter when employed without a comprehensive strategy for victory. The war metaphor serves as a reminder that wars are won (and lost) not only by the quantity and quality of the forces deployed but also by the skill with which they are employed.

Although America's military and civilian leadership has principally directed its attention to the prosecution of the two kinetic wars in Iraq and Afghanistan, as those conflicts wind down, forward-thinking leaders have begun to consider a new, metaphorical war that entails shaping the globalized environment in ways that will avoid future shooting wars before they start.<sup>19</sup> This strategy is predicated on the idea that preempting and avoiding *prospective* crises will prove less costly than resolving them by force of arms or dint of diplomacy after they have become manifest.

The principal axes of conflict in this new war on global instability are the fronts of economic and social development, democratization, and the

development of civil society. Development strategy has been informed by the belief that poverty and the disintegration of traditional social, cultural, and familial networks are real and daunting adversaries. A dawning consensus among students of development aid, however, holds that some of the greatest impediments to the delivery of humanitarian aid, stability, and long-term peace often reside in the very governments of the recipient countries themselves.<sup>20</sup>

Although partner governments' failings often concern an inability to perform their obligations to their constituents, such weakness enables others to undermine the peace or legitimacy of those governments, even without the commission of violent or disruptive acts. Rather, corruption, simple incompetence, or a lack of administrative capacity proves that, like a cancer, an "enemy" need not be malicious to be malignant. Against such a foe, we must bring to bear new and unconventional tools with which to fight an unconventional war—one in which effective local partnerships, proactive diplomacy, and, most importantly, capacity building stand in for ever-greater aid budgets, larger peacekeeping forces, or more military advisers.

### Development and Humanitarian Aid Thus Far: Promises Unfulfilled

The United States, other wealthy nations, IGOs, and private actors like NGOs and "superempowered" individuals such as Bill and Melinda Gates have long sought to redress the extreme poverty and other depredations believed to contribute to instability in the developing world.<sup>21</sup> Unfortunately, in spite of this commitment to development and relief, the record for economic assistance has been disappointing. A number of empirical studies have shown that higher gross quantities of aid have failed to improve the performance of recipient countries.<sup>22</sup> As David Rieff notes, "bureaucratic ineptitude, poor planning, paternalism, financial mismanagement, a lack of any system of accountability, and a smug, self-regarding, and self-perpetuating culture [have] . . . become the hallmarks of the development enterprise in the poor world."<sup>23</sup>

Yet, even though greater quantities of aid giving may not be a panacea, a better quality of aid, given to well-governed countries or capable and robust local development organizations, may improve the prospects for economic development and humanitarian relief.<sup>24</sup> One humanitarian aid giver, for instance, has advocated an overtly "social or political contract



dedicated to famine prevention [that] constitutes an attempt to infuse social and economic rights into civil liberties,” an approach to aid that stresses the bond between a competent and democratic government and those it seeks to represent.<sup>25</sup>

These insights have directed more attention to the importance of the quality of the recipient (and donor) governments as opposed to ever-larger aid budgets or ambitious humanitarianism.<sup>26</sup> Governments and international-development NGOs have articulated an increased willingness to shape their aid policies to better reflect more efficient and safer practice as well as the recipient countries’ actual needs (even if, unfortunately, donors’ practice has often lagged their public commitments).<sup>27</sup> Furthermore, as shown by the charter of the US Millennium Challenge Corporation, for example, donors too are showing a parallel interest in partnering with well-run and well-governed recipients.<sup>28</sup> This new political perspective is consistent with (some) members of the NGO community who have, in effect, argued that “there are no humanitarian [or development] solutions to humanitarian problems.”<sup>29</sup>

## Two Communities, Common Lessons

The development community has not been alone in learning the very costly lesson about the importance of effective local partnerships to stabilization and development. Since 2006 the US military has also experienced a sea change in its operational and tactical doctrine: the foundation of the Army’s COIN doctrine, applied with success in Iraq in 2007, and the more recent “surge” in Afghanistan both emphasize the central importance of setting up and working with effective local partners.

Indeed, the importance of local politics and partners has as yet failed to fully gain purchase with the development community, but military “buy-in” for the new COIN strategies has proved significant—particularly given the difficulty of reorienting large bureaucracies like the US Department of Defense and the military services.<sup>30</sup> Perhaps this has proceeded from the modern American military’s demonstrated willingness to institutionalize lessons-learned processes.

### ***Lessons of Domestic Partnerships from Army Counterinsurgency***

It is true that COIN operations in the distant past may have relied on overwhelming force and civilian reprisals, perhaps best exemplified by the British Army's long and difficult—but ultimately successful—campaign in South Africa during the Boer War. However, in the 24-hour news cycle, one of the lessons that one must take from more recent COIN operations is that even though outside powers cannot ultimately *win* such operations (without Boer-like civilian depredations), they can establish and support local partners and proxies that will. As noted in a perceptive paper by Nori Katagiri, the “gold standard” of COIN operations to date—Great Britain's successful suppression of the communist insurgency during the Malayan Emergency (1948–60)—held a hidden cost. That is, although the British “won” the war, they did so only after they established a credible local Malaysian government partner domestically strong enough that, after the emergency had passed, the Malaysians successfully wrested control of the country from their former colonial masters.<sup>31</sup>

Although the United States did not hold similar colonial aspirations in Iraq, it is notable that in spite of its great material advantages, America's COIN strategy and surge bore fruit only after it produced a reasonably competent set of local partners and only after they had become sufficiently committed to denying safe haven to and, ultimately, defeating the insurgency. Without the Sunni Awakening and that population's direct action against al-Qaeda and the maturation of Iraqi governance from the *nahiya* (city), to province, to national level, the surge may have failed. It is a most significant but often overlooked fact that the Mahdi army and Shiite militias were cleared from Basra and other southern strongholds by the Iraqi army, as ordered by Prime Minister Nouri al-Maliki—not by the more materially capable US armed forces.

### ***Lessons Learned: FM 3-24/MCWP 3-33.5, Counterinsurgency***

One finds many of these lessons on successful COIN, civil-military, and military/host-nation (HN) partnerships codified in FM 3-24/MCWP 3-33.5. Many of the lessons learned by Gen David Petraeus and the other authors of this document should have great resonance with the humanitarian and development communities. By drawing upon FM 3-24/MCWP 3-33.5 and the collective lessons of Army and Marine units, NGOs, IGOs, and

national organizations (civilian and military) will be better able to realize their worthy goals and to develop, shape, and stabilize heretofore restive developing regions. The following examines and expands upon a number of such lessons.

**Of necessity, stabilization efforts must stress “unity of effort” and interagency operations.** Many organizations involved in the development and distribution of aid—particularly humanitarian NGOs—are inimical to working with governmental organizations generally and the military in particular, for several reasons.<sup>32</sup> On the one hand, humanitarian organizations assert that associating with ongoing military organizations reduces their perceived neutrality in these conflicts, thus increasing the likelihood that combatants will target them, which reduces their capacity to reach people who need assistance. For example, one of the most outspokenly independent humanitarian organizations—Doctors without Borders / Médecins Sans Frontières—has argued that “the US government’s strategy of combining relief and military operations increased the vulnerability of humanitarian aid workers, whose work was perceived as a component of the military effort,” while the director of CARE “deplores the increasing trend . . . to ‘use and co-opt humanitarian assistance as an integral part of warfighting.’”<sup>33</sup>

On the other hand, the military has had less of a problem with the “nexus” between military adventurism and humanitarianism. FM 3-24/MCWP 3-33.5 stresses that

NGOs often play an important role at the local level. Many such agencies resist being overtly involved with military forces; however, efforts to establish some kind of liaison are needed. The most important connections are those with joint, interagency, multinational, and [HN] organizations. The goal of these connections is to ensure that, as much as possible, objectives are shared and actions and messages synchronized. Achieving this synergy is essential.

Almost everything in COIN is interagency. Everything from policing to intelligence to civil-military operations . . . to trash collection involves working with interagency and host-nation . . . partners. These agencies are not under military control, but their success is essential to accomplishing the mission.<sup>34</sup>

The US government’s perspective is echoed in a recent study on the intersection of humanitarianism and military operations: “Neutrality is an ideal, not a reality. When aid workers operate in close proximity to Western military forces, all sides will inevitably view the aid workers as political actors.”<sup>35</sup> Similarly, a recent World Bank study urges us to “use a conflict

lens” since “all choices in governance affect power relationships.”<sup>36</sup> Each case underscores an appreciation for the necessity of whole-of-government and whole-of-*nation* approaches, as reflected in National Security Presidential Directive 44 and more recent US government documents.

This stands in stark contrast to the perspectives of aid givers—particularly NGOs, which are quick to reassert their independence and impartiality, in keeping with the principles of humanitarianism.<sup>37</sup> Yet, as long as certain subject populations remain of interest to US government organs, as well as humanitarian and development NGOs, this overlap is inevitable. Thus, although arguing in favor of a perfectly neutral “humanitarian space” and a purity of purpose may suit the NGOs’ and development agencies’ desire to emphasize the “intrinsic worth” and “dignity” of those they serve, it is unrealistic in practice. In fact, developing frontiers remain dangerous places for aid workers, no matter their neutrality or provenance.<sup>38</sup> Idealism dictates further separation from entangling military operations, but events on the ground argue in favor of greater cooperation and integration between the two.<sup>39</sup> As argued by Sarah Lischer, development cannot stand in for security; rather, security, which militaries and nation-states have a comparative advantage in providing, is essential for development to succeed.<sup>40</sup> This element of security, as outlined in FM 3-24/MCWP 3-33.5 and as practiced in Iraq and Afghanistan, is the first element necessary for the successful prosecution of COIN and the resulting opportunities for sustained development.

On the one hand, as long as developmental and humanitarian organizations wish to fulfill their mission of bringing assistance and development to those in need, they will be best served by working with governments, professionalizing and recognizing the inevitability of military interaction. Indeed, whether they approve or not, this has been an ongoing process within the humanitarian field for the past decade.<sup>41</sup> On the other hand, military and government organizations must become more fully aware of the additional stresses and dangers that the “securitization” of humanitarian and development relief brings to those who have long operated in this field. FM 3-24/MCWP 3-33.5 recognizes these realities, asserting that

there is no such thing as impartial humanitarian assistance. . . . Whenever someone is helped, someone else is hurt, not least the insurgents. So civil and humanitarian assistance personnel often become targets. Protecting them is a matter not only of providing a close-in defense, but also of creating a secure environment by co-opting local beneficiaries of aid and their leaders.<sup>42</sup>

**Do more than deliver (security or humanitarian) goods: Build capacity.**

It is crucial that providers of development assistance not become overly concerned with the narrow, technical aspects of aid (although technical competence, clearly, is also important).<sup>43</sup> FM 3-24/MCWP 3-33.5 argues that a stabilization “effort cannot achieve lasting success without the HN government achieving legitimacy. . . . [Therefore,] the primary objective of any . . . [stabilization/development] operation is to foster development of effective governance by a legitimate government. . . . [International custodians must] achieve this objective by the balanced application of both military and non-military means.”<sup>44</sup>

Indeed, in the end, *host government capacity*, rather than the availability of large quantities of aid material, is crucial for long-term stability and development. Thus, although substantial aid budgets are surely important for winning wars against underdevelopment, just as adequate surge forces are for winning COINs, neither is as important as the means by which they are employed. Flooding aid into recipient countries without proper consideration of the ends it should achieve is the development equivalent of the military’s previous unhealthy focus on body counts and destruction of the enemy’s force during COIN operations.<sup>45</sup>

To this end, attempting to do *too much* can impede HN capacity building. This can take place in a number of ways. The aid literature, for example, has argued that in their rush to acquire high-quality local workers, aid organizations have often “bought up” the best local talent for their own field offices at wages against which local institutions cannot compete. In so doing, these organizations leave the HN government with a shallow talent pool with which to undertake the very difficult task of building up its own operations—often from scratch.

Beyond personnel issues, another problem outlined in FM 3-24/MCWP 3-33.5 deals with the conduct of operations that may be of concern to aid givers. It maintains that in order for development and stabilization efforts to not just succeed but take hold for the long term,

the host nation has to win on its own. . . . U.S. forces and agencies can help, but HN elements must accept responsibilities to achieve real victory. While it may be easier for U.S. military units to conduct operations themselves, it is better to work to strengthen local forces and institutions and then assist them. . . .

... T. E. Lawrence [observed] while leading the Arab Revolt against the Ottoman Empire in 1917: “Do not try to do too much with your own hands. Better the Arabs do it tolerably than that you do it perfectly.”<sup>46</sup>

FM 3-24/MCWP 3-33.5 notes, however, that *building* capacity is not the same thing as having a capacity *built*. Until a genuine HN capacity exists, a premature turnover of responsibility in the name of forging that capacity may prove highly counterproductive. The manual thus continues by arguing that “a key word in Lawrence’s advice is ‘tolerably.’ If the host nation cannot perform tolerably, counterinsurgents supporting it may have to act. Experience, knowledge of the AO [area of operations], and cultural sensitivity are essential to deciding when such action is necessary.”<sup>47</sup>

As noted above, it is therefore crucial for custodians (governmental, military, IGO, and NGO alike) to remember that it is not enough to simply ensure that local institutions have the competent talent necessary to “win on their own”—they must have the opportunity to do so. Again, though, this occurs only *after* prior institution building by foreign partners has facilitated their success.

**A focus on institutions.** Relatedly, FM 3-24/MCWP 3-33.5 argues in favor of standing up and building capacity in the institutions having the potential for lasting stability and development: “U.S. forces committed to ... [development and stabilization] effort[s] are there to assist an HN government. The long-term goal is to leave a government able to stand by itself.” To that end, “Soldiers and Marines help establish HN institutions that sustain ... [a] legal regime, including police forces, court systems, and penal facilities.”<sup>48</sup> In a separate article on COIN operations, General Petraeus emphasizes this point, writing that custodians must ultimately “help to build institutions, not just units.”<sup>49</sup>

Likewise, one can best realize development goals with a similar commitment to institution building. Too often, humanitarian and development organizations see the giving of aid or the individual project upon which they are working as the end toward which their efforts draw. In so doing, they fail to appreciate the fundamentally social and political aspects of successful aid and development strategies.<sup>50</sup> Worse, a desire for expediency—getting things done with the *easiest* partners at hand rather than the *best*—can have counterproductive effects if it ultimately undermines critical HN institutions. Although ad hoc and informal partners can sometimes be

effective, as was the case with the Sons of Iraq / Sunni militias in Iraq, one must be particularly cautious when allying with such actors. Thus, some argue that “helping to build the capacity of the informal/non-state governance institutions to complement formal/state functions” can be an effective shortcut when state institutions are incapacitated, corrupt, or nonexistent.<sup>51</sup> However, one must take care not to undermine nascent national institutions and should act only with considerable understanding of the local context.

Fortunately, interest in capacity building has increased, at least in the military and security dimensions.<sup>52</sup> One hopes that civilian and civil society programs will follow this good example. Perhaps the largely successful democratization programs undertaken in Eastern Europe after the end of the Cold War might prove a further, helpful template for these sorts of programs. Ultimately, military and civilian organizations alike will likely be best served by making self-sustaining local organizational capacity a key aspect of future aid efforts. In the end, a successful exit strategy for both aid and COIN operations will depend upon the ability of these organizations to succeed in building local institutions up to the point at which they can stand on their own.

**Attain buy-in from the HN and, most importantly, its people.** According to FM 3-24/MCWP 3-33.5, “Killing insurgents—while necessary, especially with respect to extremists—by itself cannot defeat an insurgency.”<sup>53</sup> Similarly, as noted by Clark Gibson, Krister Anderson, Elinor Ostrom, and Sujai Shivakumar, the distribution of aid, while necessary, cannot catalyze development by itself.<sup>54</sup> In both cases, it is fundamentally important that one build peace, stability, and development upon the solid foundation of the local populace—and not on the efforts of foreign aid or military personnel who, ultimately, will depart.

Buy-in has two aspects: the populace must support the operations of custodians in the immediate term and then must grant legitimacy to the HN’s civil, legal, and security institutions over the long term. Unsurprisingly, FM 3-24/MCWP 3-33.5 considers how custodians might realize these goals from a purely military perspective:

Gaining and retaining the initiative requires counterinsurgents to address the insurgency’s causes through stability operations as well. This initially involves securing and controlling the local populace and providing for essential services. As security improves, military resources contribute to supporting government reforms and recon-

struction projects. As counterinsurgents gain the initiative, offensive operations focus on eliminating the insurgent cadre, while defensive operations focus on protecting the populace and infrastructure from direct attacks. As counterinsurgents establish military ascendancy, stability operations expand across the area of operations (AO) and eventually predominate.<sup>55</sup>

Notwithstanding the focus on the martial aspect of security, such observations still offer a useful guide for aid givers, particularly the comment that “victory is achieved when the populace consents to the government’s legitimacy and stops actively and passively supporting” spoilers of any type that continue to sow instability and pursue rent seeking for their own narrow ends.<sup>56</sup>

This goal is consistent with the argument—prevalent in the aid and stabilization literatures—that international actors must be accountable to those they serve.<sup>57</sup> Yet, even when one undertakes to be held locally accountable, the assumption is that it represents “an opportunity to widen the conversation about the politics, power, and ethics that define humanitarian space.”<sup>58</sup> However, accountability has received far too little consideration to the degree that one sees it as a vehicle for building the sort of local buy-in that ultimately makes these programs self-sustaining and, if successful, bestow valuable legitimacy on the HN government.

Again, the guidance from counterinsurgents, who explicitly seek to empower local agents as part of their war-fighting and exit strategies, might serve as a model for governmental aid givers in their own aid strategies. FM 3-24/MCWP 3-33.5 observes that

as the HN government increases its legitimacy, the populace begins to assist it more actively. Eventually, the people marginalize and stigmatize insurgents [e.g., man-made and circumstantial threats to peace, stability and development in the case of aid]. . . . However, victory is gained not when this isolation is achieved, but when the victory is permanently maintained by and with the people’s active support.<sup>59</sup>

To the extent that aid givers’ goals coincide with the counterinsurgents’ on these points, these observations on success will serve them in good stead as they seek to design more effective stabilization and development programs.

When developing these programs, both the counterinsurgent and the aid giver want to shoot for the moon—to design, in the words of former secretary of defense Gates, “exquisite” programs.<sup>60</sup> Although clearly desirable, such programs are difficult to see through to success in the face of donors’ limited resources. They are harder still for even more resource-constrained local governments in desperate need of quick legitimacy-building



successes. Exquisiteness demands that ever more of the onus be put on foreign custodians, forgetting T. E. Lawrence's advice that it is better that the locals "do it tolerably than that you do it perfectly."

Thus, when designing programs *with local input*, FM 3-24/MCWP 3-33.5 notes that custodians "do not try to crack the hardest nut first. . . . Instead, start from secure areas and work gradually outwards. Extend influence through the local people's networks. Go with, not against, the grain of the local populace."<sup>61</sup> Army units in Iraq during the summer of 2003 had significant early successes with their local Iraqi populations, often through the simple repair of mechanical wells or irrigation pumps or canal-cleaning projects, all of which had suffered through over a decade of sanctions following Operation Desert Storm. Later, efforts during and after the Iraqi surge of 2007 were more ambitiously tied to the improved efficiency and effectiveness of Iraqi government institutions. For example, during 2007–8, local farmers' co-ops were nested in the Iraqi Ministry of Agriculture, and medical efforts were synchronized with the Ministry of Health and usually focused on inoculations.

**Local knowledge is key.** If counterinsurgents wish to battle guerilla forces effectively, then they must have local knowledge—and of all that knowledge to master, intelligence about the people, among whom both the insurgent and counterinsurgent must move, remains the most fundamental. Indeed, "cultural awareness is a force multiplier. . . . The people are, in many respects, the decisive terrain, and we must study that terrain in the same way that we have always studied the geographic terrain."<sup>62</sup> Further, if the aid giver wishes to promote stability safely and successfully or even distribute triage humanitarian aid effectively, similar local knowledge is of the highest possible importance.<sup>63</sup> With this simple but often overlooked reality in mind, FM 3-24/MCWP 3-33.5 maintains that "an effective counterinsurgent force is a learning organization."<sup>64</sup> General Petraeus writes that "my own pen and notebook were always handy when soldiering in Iraq."<sup>65</sup>

The proximate objectives of COIN as well as development and stabilization programs are not the same, but their long-term goals are much in parallel. It may thus be instructive for the aid giver to consider FM 3-24/MCWP 3-33.5's advice to the company commander (the effective equivalent of an NGO/IGO program manager): "Intelligence and operations are always complementary, especially in COIN operations. COIN operations

are intelligence driven, and units often develop much of their own intelligence. Commanders must organize their assets to do that. Each company may require an intelligence section, including analysts and an individual designated as the ‘S-2’ [intelligence officer].”<sup>66</sup>

This local area knowledge, essential for both COIN’s and aid programs’ success, can be as simple as talking with local civilians or as detailed as conducting polling efforts in metropolitan areas. In either case, it can facilitate early successes/victories for the Soldier or aid giver. For example, experience from Afghanistan and Iraq has led US COIN forces to seek to avoid the trap of dictating civil affairs projects to local groups—a trap that, unfortunately, affects Western militaries and aid workers alike. Coalition COIN forces in Iraq found that their greatest successes came only after they sought local Iraqis’ perspectives—such as asking them where children went to school or what sort of medical care had been available in 2003, before the invasion. This intelligence gave counterinsurgents a crucial benchmark toward which they could strive—as well as local insights into expectations and how they might best be met. Only after having achieved preconflict levels of development and stability did the COIN forces attempt further development efforts, in accordance with local Iraqi priorities and in concert with the Iraqi ministries’ efforts.<sup>67</sup>

Although the last example comes from the perspective of the counterinsurgent, the extent to which it applies to the aid giver is clear. Indeed, as noted by Oxfam’s Tony Vaux, “one of the main lessons from the 1980s ha[s] been that Oxfam’s best emergency work transpired when it acted in a developmental way, consulting local people and concentrating on the longer-term issue of rehabilitation.”<sup>68</sup>

One should also note that although local knowledge is important to the individual operator, it is invaluable to the organization and to the projects/operations it runs. Compiling a collective pool of this knowledge is almost as essential as its initial collection. Indeed, FM 3-24/MCWP 3-33.5 advises that “it is unlikely the insurgency [aid program] will end during a troop’s tour . . . and the relieving unit will need as much knowledge as can be passed to them.”<sup>69</sup> One of the benefits of corporate organizations—whether the military, Department of State, IGOs or NGOs—is that they need not limit their local knowledge to a particular individual. “Corporate knowledge,” a

reserve of lessons learned and best practices, is among the benefits of operating large organizations.

Although members of the Department of State or NGO project managers may have the luxury of longer tour lengths than Soldiers in a COIN theater, their terms in-country are similarly time-constrained. Like their COIN counterpart, they should realize that the benefits of corporate knowledge are neither inevitable nor automatic and that they must begin getting ready for their handover from day one. FM 3-24/MCWP 3-33.5 advises that field units start

handover folders . . . immediately upon arrival, if they are not available from the unit being relieved . . . [and that these] folders should include lessons learned, details about the populace, village and patrol reports, updated maps, and photographs—anything that will help newcomers master the environment. . . . Keeping this information current is boring, tedious work. But it is essential to both short- and long-term success.<sup>70</sup>

**Strategic communication is key.** Ultimately, all aid organizations must have access to the resources that allow them to carry out their mandates. American governmental organizations like the Department of State and USAID must maintain the support of Congress, which controls their purse strings. FM 3-24/MCWP 3-33.5 points out that “gaining and maintaining U.S. public support for a protracted deployment is critical. Only the most senior military officers are involved in this process at all . . . [because this] is properly a political activity. However, military leaders typically take care to ensure . . . that the conduct of operations neither makes it harder for elected leaders to maintain public support nor undermines public confidence.”<sup>71</sup>

Moreover, aid givers must keep the support of their constituent and donor countries. NGO fund raising is sometimes controversial; cynics often claim that these organizations raise funds on behalf of the needy and media-friendly for their own selfish purposes.<sup>72</sup> They too have no option other than raising funds aggressively (whether from private parties and foundations or, increasingly, governments) in order to continue their work abroad.<sup>73</sup> In addition to currying favor with home-country and global audiences, however, it is at least as important that aid givers manage their message to the recipients of this aid. They must do so to create the buy-in necessary for the success of their own programs as well as to enhance the legitimacy of their HN and local partners—essential to the long-term prospects for stability and development.

To appeal to these diverse audiences, one must master the information environment. Unfortunately, it is often difficult to overcome biases against Western intervention (although, clearly, the problems faced by the military in this regard are significantly greater than those for civilian NGOs). As noted by FM 3-24/MCWP 3-33.5, which relays the experiences of a particular unit in Iraq, “decades of Arab media mischaracterization of U.S. actions had instilled distrust of American motives. The magnitude of that cynicism and distrust highlighted the critical importance of using information operations to influence every situation.”<sup>74</sup>

Just as these informational aspects of humanitarian and development assistance as well as stabilization and capacity-building operations must draw from and remain sensitive to local communities, so can they *shape* those communities. FM 3-24/MCWP 3-33.5 notes that a highly beneficial aspect of strategic communications, both for foreign custodians and the local government institutions to which they will ultimately have to hand off, involves managing expectations: “To limit discontent and build support, the HN government and any counterinsurgents assisting it create and maintain a realistic set of expectations among the populace, friendly military forces, and the international community.”<sup>75</sup> For example, the American military’s humanitarian efforts in Iraq in 2003–4 often highlighted the singular efforts of US units, but any ground-breaking or opening ceremonies after 2007 have emphasized the importance and significance of Iraqi leadership and participation, reinforcing the sovereignty of the young government.

This is not to propose a manipulative or propagandistic campaign on behalf of aid givers but to urge that they manage the message for their activities. As their interactions and cooperation with state governments and even militaries grow, this essential task likely will become increasingly important.

NGOs in particular have proved (controversially) adept at managing their brand and image for the consumption of their donors at home, a lesson that the US military would do well to learn. Indeed, as noted by one observer, “better branding and commercial skill bec[o]me essential for institutional survival and renewal. . . . The parameters to brand recognition—ethically acceptable partners and practices—are just as crucial for firms such as Borders or Apple or Nike” as they are to aid organizations.<sup>76</sup> However, strategic communications with the *target* government, institutions, and

people must be foremost in mind as this represents both a threat and an opportunity for aid givers. Managing expectations, building buy-in by local partners and people, and limiting push-back by local and foreign forces that might seek to undermine development and stabilization operations make this aspect of development assistance and humanitarian relief essential. But in the end, actions (aid) speak louder than words or web pages to local constituents.

**Realize that, like counterinsurgency, development is for the long term.** State building is a long-term vocation that can cause at least two sorts of problems for the aid giver. Firstly, it means that valuable individual and corporate knowledge may be lost due to the passage of time. Additionally, valuable forward momentum enjoyed by successful projects may disappear, or prospectively successful projects will not live long enough to get a chance to get off the ground.

For these reasons, FM 3-24/MCWP 3-33.5 stresses the importance of knowledge diffusion and long-term planning by headquarters echelons. Secondly, individuals' or organizations' desire to realize "wins" during their relatively short term of service in the field on a particular project may overshadow longer-term goals sought by the organizations' leaders. This temporal mismatch and the lack of persistence that underlies it infect both civilian and military stabilization operations. We consider each of these problems in turn.

The emphasis that the military places on passing on and diffusing corporate knowledge is driven, in part, by the high pace at which COIN operators rotate through their area of operations (the average length of a combat tour in Iraq was 12–15 months for Army personnel and seven months for Marines). In principle, personnel with the Department of State and USAID are not limited by fixed rotations and tours, but in practice in Iraq and Afghanistan, they have served tours similar in duration to those of their Marine and Army counterparts—indeed, "hardship" assignments for State employees (e.g., those in unstable countries are limited to about two years). NGO personnel, however, can stay as long as necessary. That said, given the length of both COIN and state-building operations—many lasting decades—even the most persistent humanitarians may lose focus (either their own or that of their donors). This is unfortunate because many pro-

grams may pay off if one manages expectations and makes preparations for the long haul.

FM 3-24/MCWP 3-33.5 again underscores duration and persistence operations. Although the manual emphasizes COIN operations, its observations once again offer great insights for aid-giving operations as well:

Insurgencies are protracted by nature. Thus, COIN operations always demand considerable expenditures of time and resources. . . . People do not actively support a government unless they are convinced that the counterinsurgents have the means, ability, stamina, and will to win. . . . U.S. support [and that of other foreign custodians] can be crucial to building public faith in that government's viability. The populace must have confidence in the staying power of both the counterinsurgents and the HN government. . . . Constant reaffirmations of commitment, backed by deeds, can overcome . . . [suspicion] and bolster faith in the steadfastness of U.S. support. But even the strongest U.S. commitment will not succeed if the populace does not perceive the HN government as having similar will and stamina. U.S. forces must help create that capacity and sustain that impression.<sup>77</sup>

This process, which can take a substantial amount of time, must be planned and budgeted at the *onset* of an operation, rather than after the aid-giving agencies' resources and/or will begins to flag under the unforeseen weight of a long and ambitious deployment.

Operationally, FM 3-24/MCWP 3-33.5 carries this theme forward as it advises detailers and budget planners to prepare

for a protracted COIN effort [which] requires establishing headquarters and support structures designed for long-term operations. Planning and commitments should be based on sustainable operating tempo and personnel tempo limits for the various components of the force. . . . Even in situations where the U.S. goal is reducing its military force levels as quickly as possible, some support for HN institutions usually remains for a long time.<sup>78</sup>

These observations on the importance of persistence strongly serve to underscore that aid givers and international custodians, like their military counterparts, must be committed to their respective development and stabilization programs for the long term. Although the triage function played by emergency operations does, in some special cases, dictate a certain benign myopia, it remains important to recognize that addressing the fundamental political problems which create these crises can take a very long time.

Individual aid-givers' desire for tangible wins with which to burnish their resume; lobby for more and future donations, contracts, and budgets; and validate their self-sacrifice can have a deleterious effect on development and stabilization projects—particularly those designed to last into the dis-

tant term. Unfortunately, these organizations and programs are often judged by measures of performance such as tons of food delivered, wells dug, refugees housed, and the like—none of which address the less *pressing* but more *fundamental* problems that are engaged by measures of effectiveness, such as those that concern the building of self-sufficiency into recipient populations.<sup>79</sup>

## Conclusion

This article does not advocate making aid “go military”—indeed, it advocates sharpening one’s plowshares rather than turning them back into swords. Aid givers, whether from the nongovernmental, intergovernmental, or military services, play a vital role in shaping a more equitable and stable world—a role that the force of arms cannot play. That said, as argued above, aid givers can learn certain *lessons* and draw upon a pool of experience from those who conduct military actions—especially COIN operations.

This is particularly true when the lessons concern standing up and working with local partners (e.g., capacity building) and when corporate knowledge is at a premium. The author hopes that this article is a first step in a process toward a useful cross-fertilization of lessons, ideas, and experiences between two groups that rarely speak but that, ironically, increasingly face overlapping problems within each of their traditional areas of expertise and operations. One hopes that as these groups gain more experience in the difficult environments in which they function—and as the two communities have more opportunities to work with and talk to one another while they are there—there will be more opportunities for an exchange of ideas for best practices, *useful* measures and metrics of success, and effective means by which the aid giver and the war fighter can share the burden more efficiently.

## Notes

1. On the proliferation of official aid, see Michael Barnett and Jack Snyder, “The Grand Strategies of Humanitarianism,” in *Humanitarianism in Question: Politics, Power, Ethics*, ed. Michael Barnett and Thomas G. Weiss (Ithaca, NY: Cornell University Press, 2008), 143–71; Michael Barnett, “Humanitarianism Transformed,” *Perspectives on Politics*, December 2005, 723–40; Peter J. Schraeder, Steven W. Hook, and Bruce Taylor, “Clarifying the Foreign Aid Puzzle: A Comparison of American, Japanese, French, and Swedish Aid Flows,” *World Politics*, January 1998, 294–323; and David H. Lumsdaine, *Moral Vision in International Politics: The Foreign Aid Regime, 1949–1989* (Princeton, NJ: Princeton University Press, 1993). On the grand strategy of American aid, see, for example, US Department of State and the US Agency for International Development, *Strategic Plan, Fiscal Years 2007–2012* (Washington, DC: Department of State, 7 May 2007), <http://>

[www.state.gov/documents/organization/86291.pdf](http://www.state.gov/documents/organization/86291.pdf), which seeks to ensure “a more democratic, secure, and prosperous world composed of well-governed states that respond to the needs of their people, reduce widespread poverty, and act responsibly within the international system” (9). In terms of intergovernmental organizations’ commitment to aid, see the mission statement of the United Nations Development Programme, which maintains that its broad and ambitious goals encompass “helping countries build and share solutions to the challenges of: Poverty Reduction and Achievement of the [Millennium Development Goals], Democratic Governance, Crisis Prevention and Recovery, [and] Environment and Energy for Sustainable Development.” “A World of Development Experience,” United Nations Development Programme, accessed 27 November 2012, [http://www.undp.org/content/undp/en/home/operations/about\\_us.html](http://www.undp.org/content/undp/en/home/operations/about_us.html).

2. George W. Bush, “National Security Presidential Directive / NSPD-44: Management of Interagency Efforts Concerning Reconstruction and Stabilization” (Washington, DC: White House, 7 December 2005), <http://www.fas.org/irp/offdocs/nspd/nspd-44.pdf>. See also Department of Defense, *Military Support to Indirect Security and Stability Surge Operations (MISSS): A Study* (Washington, DC: Department of Defense, October 2007), [http://www.dtic.mil/futurejointwarfare/concepts/misss\\_study.pdf](http://www.dtic.mil/futurejointwarfare/concepts/misss_study.pdf).

3. Robert M. Gates, “A Balanced Strategy: Reprogramming the Pentagon for a New Age,” *Foreign Affairs* 88, no. 1 (January/February 2009): 29–30.

4. Secretary of State Hillary Rodham Clinton, “Foreign Policy Address at the Council on Foreign Relations,” Washington, DC, 15 July 2009, <http://www.state.gov/secretary/rm/2009a/july/126071.htm>.

5. On American military efforts for political and developmental engagement, see Anthony Zinni and Tom Clancy, “CENTCOM,” in Tom Clancy with Anthony Zinni and Tony Koltz, *Battle Ready* (New York: G. P. Putnam’s Sons, 2004). See also US Africa Command, *United States Africa Command 2009 Posture Statement* (Stuttgart, Germany: US Africa Command Staff and US Africa Command Public Affairs Office, March 2009), 4, <http://www.africom.mil/pdfFiles/USAFRICOM2009PostureStatement.pdf>.

6. Thomas S. Szayna, Derek Eaton, and Amy Richardson, *Preparing the Army for Stability Operations: Doctrinal and Interagency Issues* (Santa Monica, CA: RAND Corporation, 2007), 3ff, [http://www.rand.org/content/dam/rand/pubs/monographs/2007/RAND\\_MG646.pdf](http://www.rand.org/content/dam/rand/pubs/monographs/2007/RAND_MG646.pdf).

7. GEN James T. Conway, ADM Gary Roughead, and ADM Thad W. Allen, *A Cooperative Strategy for 21st Century Seapower* (Washington, DC: Office of the Chief of Naval Operations, Office of the Commandant of the US Marine Corps, Office of the Commandant of the United States Coast Guard, October 2007), <http://www.navy.mil/maritime/Maritimestrategy.pdf>.

8. James D. Fearon, “The Rise of Emergency Relief Aid,” in Barnett and Weiss, *Humanitarianism in Question*, 67–68; and William Easterly, “Foreign Aid Goes Military!,” *New York Review of Books*, 4 December 2008, <http://www.nybooks.com/articles/archives/2008/dec/04/foreign-aid-goes-military/?pagination=false>.

9. “Our Mission,” World Vision, accessed 4 December 2009, [http://www.worldvision.org/content.nsf/about/our-mission?Open&lpos=lft\\_txt\\_Our-Mission](http://www.worldvision.org/content.nsf/about/our-mission?Open&lpos=lft_txt_Our-Mission).

10. Clark C. Gibson et al., *The Samaritan’s Dilemma: The Political Economy of Development Aid* (London: Oxford University Press, 2005); and William Easterly, *The Elusive Quest for Growth: Economists’ Adventures and Misadventures in the Tropics* (Cambridge, MA: MIT Press, 2001).

11. Within the context of official aid, multilateral aid is considered more effective—and less politicized—than bilateral aid; there is still a great deal of uncertainty with respect to the relative effectiveness of NGOs against government-to-government aid. On the virtues of multilateral aid, see Lumsdaine, *Moral Vision in International Politics*.

12. See Michael Barnett and Thomas G. Weiss, “Humanitarianism: A Brief History of the Present,” in Barnett and Weiss, *Humanitarianism in Question*, 1–48.

13. See, for example, Michael Barnett, *Empire of Humanity: A History of Humanitarianism* (Ithaca, NY: Cornell University Press, 2011); and Sarah Kenyon Lischer, “Collateral Damage: Humanitarian Assistance as a Cause of Conflict,” *International Security* 28, no. 1 (Summer 2003): 79–109.

14. Peter J. Hoffman and Thomas G. Weiss, “Humanitarianism and Practitioners: Social Science Matters,” in Barnett and Weiss, *Humanitarianism in Question*, 285. Although the general argument is true, some preliminary efforts at comprehensive lessons learned have occurred within the aid community, particularly in



terms of humanitarian security. See, for example, the InterAction-Based Security Advisory Group and the Minimum Operating Security Standards protocols promulgated by the United Nations Security Coordinator.

15. See the United States Institute for Peace, *Guiding Principles for Stabilization and Reconstruction*, ed. Beth Cole and Emily Hsu (Washington, DC: United States Institute of Peace Press, 2009). See also Mary B. Anderson, *Do No Harm: How Aid Can Support Peace—or War* (Boulder, CO: Lynne-Rienner Publishers, 1999); and Alex de Waal, *Famine Crimes: Politics & the Disaster Relief Industry in Africa* (Oxford, UK, and Bloomington, IN: James Currey and Indiana University Press, 1997).

16. Field Manual (FM) 3-24 / Marine Corps Warfighting Publication (MCWP) 3-33.5, *Counterinsurgency*, December 2006, [http://armypubs.army.mil/doctrine/DR\\_pubs/dr\\_a/pdf/fm3\\_24.pdf](http://armypubs.army.mil/doctrine/DR_pubs/dr_a/pdf/fm3_24.pdf).

17. Nicolas de Torrente, “Humanitarian NGOs Must Not Ally with Military,” *European Affairs*, Spring/Summer 2006, 2; Easterly, “Foreign Aid Goes Military!”; and Hugo Slim, “A Call to Arms: Humanitarian Action and the Art of War,” *Opinion*, February 2004, 1–17.

18. Some argue that the war metaphor is overused to the point that its significance has diminished. It can be useful in the ways described here: as a marshaling of resources against a known objective or enemy. For the opposed view, however, see Ralph Peters, “Wishful Thinking and Indecisive Wars,” *Journal of International Security Affairs*, no. 16 (Spring 2009), <http://www.securityaffairs.org/issues/2009/16/peters.php>.

19. See, for example, Cole and Hsu, *Guiding Principles*; *The Growth Report: Strategies for Sustained Growth and Inclusive Development* (Washington, DC: World Bank on Behalf of the Commission on Growth and Development, 2008); and Conway, Roughead, and Allen, *Cooperative Strategy*.

20. Sarah L. Henderson, “Selling Civil Society: Western Aid and the Nongovernmental Organization Sector in Russia,” *Comparative Political Studies* 35, no. 2 (2002): 139–67; Steven Knack, “Aid Dependence and Quality of Governance: A Cross-Country Empirical Analysis,” *Southern Economic Journal*, October 2001, 310–29; Jakob Svensson, “Foreign Aid and Rent Seeking,” *Journal of International Economics* 51 (2000): 437–61; Craig Burnside and David Dollar, “Aid, the Incentive Regime, and Poverty Reduction,” Policy Research Working Paper no. WPS 1937 (Washington, DC: World Bank, 1998); Tarhan Feyzioglu, Vinaya Swaroop, and Min Zhu, “A Panel Data Analysis of the Fungibility of Foreign Aid,” *World Bank Economic Review* 12, no. 1 (1998): 29–58; and Michael Maren, *The Road to Hell: The Ravaging Effects of Foreign Aid and International Charity* (New York: Free Press, 1997).

21. The Organisation for Economic Co-operation and Development (OECD) includes the world’s 30 richest countries, which collectively delivered about \$12.5 billion in gross official, government-to-government development assistance in 2008. Total gross overseas development assistance (ODA) from all countries amounted to just under \$120 billion in 2004. Total private aid distributed by NGOs came to about \$4 billion in 2004, discounting the activities of organizations such as the Bill and Melinda Gates Foundation. For data on the OECD, see Development Co-operation Directorate, *Gross Official Development Assistance 2008*, accessed 28 November 2012, <http://www.oecd.org/dataoecd/47/55/42458670.pdf>. For data for ODA and private aid, see Fearon, “Rise of Emergency Relief Aid.” On the historical commitment to global wealth distribution, see Lumsdaine, *Moral Vision in International Politics*. For an interesting discussion on the role of the Bill and Melinda Gates Foundation in development aid, see Barnett and Weiss, “Humanitarianism: A Brief History,” 14.

22. See, for example, David Dollar and Paul Collier, *Aid, Allocation and Poverty Reduction* (Washington, DC: World Bank, 1998); and Peter Boone, *Politics and the Effectiveness of Foreign Aid*, NBER Working Paper no. 5308 (Cambridge, MA: National Bureau of Economic Research, October 1995), [http://www.nber.org/papers/w5308.pdf?new\\_window=1](http://www.nber.org/papers/w5308.pdf?new_window=1).

23. David Rieff, *A Bed for the Night: Humanitarianism in Crisis* (New York: Simon & Schuster, 2002), 102.

24. Craig Burnside and David Dollar, “Aid, Policies, and Growth,” *American Economic Review*, September 2000, 847–68; and Jakob Svensson, “Aid, Growth, and Democracy,” *Economics and Politics*, November 1999, 275–97. See, however, Boone, *Effectiveness of Foreign Aid*; and William Easterly, Ross Levine, and David Roodman, “Aid, Policies, and Growth: Comment,” *American Economic Review*, June 2004, 774–80.

25. De Waal, *Famine Crimes*, 11. De Waal differs in his perspective from more mainstream analysts who advocate political solutions to aid problems, arguing that “a ‘right’ [not to starve] . . . is less real than one that is won through popular struggle” (ibid., 44).

26. For better targeted development aid, see Cole and Hsu, *Guiding Principles*; and *Growth Report*. On the promise and pitfalls of remote management for humanitarian operations, see Abby Stoddard, Adele Harmer, and Katherine Haver, *Providing Aid in Insecure Environments: Trends in Policy and Operations*, Humanitarian Policy Group Report 23 (London: Humanitarian Policy Group, Overseas Development Institute, 2006), <http://www.odl.org.uk/sites/odi.org.uk/files/odi-assets/publications-opinion-files/269.pdf>.

27. See, for example, Sphere Project, *Humanitarian Charter and Minimum Standards in Disaster Response* (Geneva, Switzerland: Sphere Project, 2004), 18, <http://ocw.jhsph.edu/courses/refugeehealthcare/PDFs/SphereProjectHandbook.pdf>.

28. “Selection Indicators,” Millennium Challenge Corporation, accessed 28 November 2012, <http://www.mcc.gov/pages/selection/indicators>.

29. Sadako Ogata, *The Turbulent Decade: Confronting the Refugee Crises of the 1990s* (New York: W. W. Norton, 2005), 25.

30. Alex de Waal admonishes that “the humanitarian international appears to have an extraordinary capacity to absorb criticism, not reform itself, and yet emerge strengthened.” De Waal, *Famine Crimes*, xvi. See also Barry Posen, *The Sources of Military Doctrine: France, Britain, and Germany between the World Wars* (Ithaca, NY: Cornell University Press, 1984); Stephen Van Evera, “The Cult of the Offensive and the Origins of the First World War,” *International Security*, Summer 1984, 58–107; and Jack Snyder, “Civil-Military Relations and the Cult of the Offensive, 1914 and 1984,” *International Security*, Summer 1984, 108–46.

31. Nori Katagiri, “Winning Hearts and Minds to Lose Control: Exploring Various Consequences of Popular Support in Counterinsurgency Missions,” *Small Wars & Insurgencies* 22, no. 1 (March 2011): 170–95.

32. See, for example, Easterly, “Foreign Aid Goes Military!”; Jeffrey Sachs, *The End of Poverty* (New York: Penguin Press, 2005); and de Torrente, “Humanitarian NGOs.”

33. “MSF in Afghanistan,” Doctors without Borders / Médecins Sans Frontières, 2012, <http://doctorswithoutborders.org/events/exhibits/thephotographer/msf-afghanistan.cfm>; and Sarah Kenyon Lischer, “Military Intervention and the Humanitarian ‘Force Multiplier,’” *Global Governance: A Review of Multilateralism and International Organizations* 13, no. 1 (January–March 2007): 100.

34. FM 3-24/MCWP 3-33.5, *Counterinsurgency*, 1-22, A-2.

35. Overseas Development Institute, quoted in Lischer, “Military Intervention,” 99.

36. *Growth Report*, 101.

37. The principles of humanitarianism, as articulated by the International Committee of the Red Cross, are humanity, impartiality, neutrality, independence, voluntary service, unity, and universality. See Barnett and Weiss, “Humanitarianism: A Brief History,” 3.

38. Stoddard, Harmer, and Haver (*Providing Aid in Insecure Environments*, 11ff) show a sharp and secular increase in attacks against aid workers with incidents increasing by a factor of 10 from 1997 to 2005. Although on a per capita basis, the increase has been far less severe (as the number of aid personnel in the field has also grown significantly during that period), NGO workers and other civilians have borne a larger share of these attacks.

39. On the existential dangers to aid workers in marginal areas of responsibility, see Laura Hammond, “The Power of Holding Humanitarianism Hostage and the Myth of Protective Principles,” in Barnett and Weiss, *Humanitarianism in Question*, 172–95.

40. Lischer, “Military Intervention,” 99.

41. Barnett and Weiss, “Humanitarianism: A Brief History.”

42. FM 3-24/MCWP 3-33.5, *Counterinsurgency*, A-7. Further, we urge the interested reader to closely read Stoddard, Harmer, and Haver, *Providing Aid in Insecure Environments*, for a thoroughgoing review of the past and present efforts undertaken by aid givers to see to their own protection in unstable environments as well as the compromises and difficulties that these strategies have inevitably entailed.

43. See de Waal, *Famine Crimes*.

44. FM 3-24/MCWP 3-33.5, *Counterinsurgency*, 1-22, 1-21.
45. Ibid., A-8; and Lewis Sorley, *A Better War: The Unexamined Victories and Final Tragedy of America's Last Years in Vietnam* (Boston: Mariner Books, 2007). On the dangers of too much aid, see Thomas W. Dichter, *Despite Good Intentions: Why Development Assistance to the Third World Has Failed* (Amherst: University of Massachusetts Press, 2003); Maren, *Road to Hell*; and Bruce Wallace, "The Trouble with Aid," *Macleans*, 16 December 1996, 34-37.
46. FM 3-24/MCWP 3-33.5, *Counterinsurgency*, 1-26, 1-28.
47. Ibid., 1-28.
48. Ibid., 1-26, 1-24.
49. Lt Gen David H. Petraeus, "Learning Counterinsurgency: Observations from Soldiering in Iraq," *Military Review*, January-February 2006, 50, [http://usacac.army.mil/CAC2/MilitaryReview/Archives/English/MilitaryReview\\_2006CR1031\\_art010.pdf](http://usacac.army.mil/CAC2/MilitaryReview/Archives/English/MilitaryReview_2006CR1031_art010.pdf).
50. See de Waal, *Famine Crimes*, 4; and Gibson et al., *Samaritan's Dilemma*, 14.
51. *Growth Report*, 99.
52. For example, in military-to-military exchanges in US Africa Command's area of responsibility and in successful counterdrug programs, such as Plan Colombia.
53. FM 3-24/MCWP 3-33.5, *Counterinsurgency*, 1-3.
54. Gibson et al., *Samaritan's Dilemma*, 4.
55. FM 3-24/MCWP 3-33.5, *Counterinsurgency*, 1-3.
56. Ibid. On "spoilers," see Steven J. Stedman, "Spoiler Problems in the Peace Process," *International Security*, Spring 1997, 5-53; and Kelly Greenhill and Solomon Major, "The Perils of Profiling: Civil War Spoilers and the Collapse of Intrastate Peace Accords," *International Security*, Winter 2006/2007, 7-40.
57. Janice Gross Stein, "Humanitarian Organizations: Accountable—Why, to Whom, for What, and How?," in Barnett and Weiss, *Humanitarianism in Question*, 124-42; Sphere Project, *The Sphere Project: Humanitarian Charter and Minimum Standards in Disaster Response*; *Growth Report*; Devesh Kapur, "The IMF: A Cure or a Curse?," *Foreign Policy*, Summer 1998, 114-29; Zanny Minton-Beddoes, "Why the IMF Needs Reform," *Foreign Affairs*, May/June 1995, 123-33; Strom C. Thacker, "The High Politics of IMF Lending," *World Politics*, October 1999, 38-75; and Michael Zürn, "Global Governance and Legitimacy Problems," *Government and Opposition*, March 2004, 260-87. Note, however, that even when aid givers seek to make their projects more closely related to the concerns of the locals whom they wish to help, in practice their efforts on the ground have fallen short. Barnett and Weiss note that "most relief agencies now sheepishly confess that they have largely proceeded without much input from those who are supposed to benefit from their concern." Barnett and Weiss, "Humanitarianism: A Brief History," 47.
58. Stein, "Humanitarian Organizations," 142.
59. FM 3-24/MCWP 3-33.5, *Counterinsurgency*, 1-23.
60. Jim Garamone, "Gates Says People Take Top Priority in Budget Decisions," US Army, 7 April 2009, <http://www.army.mil/-news/2009/04/07/19334-gates-says-people-take-top-priority-in-budget-decisions/>.
61. FM 3-24/MCWP 3-33.5, *Counterinsurgency*, A-5. As with the Sons of Iraq case mentioned above, this might have been a case in which the gamble to work with unofficial partners would have proved worthwhile. Though of equal importance, after 2007 multinational efforts were aggressively pushed through official Iraqi government institutions.
62. Petraeus, "Learning Counterinsurgency," 51. See also the US Army's Human Terrain System Project, catalyzed by much the same appreciation for the decisive impact of the populace in a COIN environment.
63. Stoddard et al., *Providing Aid in Insecure Environments*, 38-39.
64. FM 3-24/MCWP 3-33.5, *Counterinsurgency*, 1-26.
65. Petraeus, "Learning Counterinsurgency," 45.
66. FM 3-24/MCWP 3-33.5, *Counterinsurgency*, A-2.
67. These accounts draw extensively on the experience of COL R. J. Lillibridge, who has had experience in commanding COIN forces at both the company and battalion levels in the Iraq and Afghan theaters.

68. Tony Vaux, *The Selfish Altruist: Relief Work in Famine and War* (London: Earthscan Publications, 2001), 148.
69. FM 3-24/MCWP 3-33.5, *Counterinsurgency*, A-8.
70. Ibid.
71. Ibid., 1-24.
72. See, for example, Maren, *Road to Hell*; Margaret E. Keck and Kathryn Sikkink, *Activists beyond Borders: Advocacy Networks in International Politics* (Ithaca, NY: Cornell University Press, 1998), 2; Robyn Eversole, ed., *Here to Help: NGOs Combating Poverty in Latin America* (Armonk, NY: M. E. Sharpe, 2003); and Graham Hancock, *Lords of Poverty: The Power, Prestige, and Corruption of the International Aid Business* (New York: Atlantic Monthly Press, 1989), 15ff.
73. Fearon, "Rise of Emergency Relief Aid," 68. Büthe, Major, and Souza note that the goals of self-funding and altruism are not necessarily at odds, given that no overseas operations would be possible at all without first meeting administrative costs. The degree to which administration should claim a share of the organization's budget remains a topic of hot debate, however. See Tim Büthe, Solomon Major, and Andre de Mello e Souza, "The Politics of Private Development Aid" (paper presented at the Second Annual Meeting of the International Political Economy Society, Stanford, CA, 9 November 2007), 2.
74. FM 3-24/MCWP 3-33.5, *Counterinsurgency*, 4-8.
75. Ibid., 1-24.
76. Stephen Hopgood, "Saying 'No' to Wal-Mart?," in Barnett and Weiss, *Humanitarianism in Question*, 106, 107.
77. FM 3-24/MCWP 3-33.5, *Counterinsurgency*, 1-24.
78. Ibid.
79. Stein, "Humanitarian Organizations," 124-42

# Human Security as Analytical Contexts of Humanitarian Intervention in Application and Practice

## War for Justice, War for State, or War for People

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SZU-HSIEN LEE

**D**uring the twentieth century, 35 million people died in all civil and international wars, but 150 million were killed by their own governments.<sup>1</sup> After 1945, inspired by the tragedy of the Holocaust, international society greatly expanded its rules on human rights, and the United Nations (UN) codified an increasing number of norms on international society. However, millions still perished at the hands of their own governments, and actions taken to halt atrocities proved inconsistent. In fact, in the late twentieth century, the emergence of international humanitarian intervention reflected a new value in international society. The traditional key criteria—including just cause, right authority, last resort, and proportional means—have been challenged by both proponents and opponents of intervention.<sup>2</sup>

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The North Atlantic Treaty Organization's (NATO) intervention in Kosovo in 1999 brought the controversy to its boiling point.<sup>3</sup> Humanitarian intervention would not be considered a violation of the principle of nonintervention but an act directed towards upholding the nonintervention norm of civil society, which protects the freedom of individuals. Indeed, the contemporary controversy surrounding humanitarian intervention (i.e., the question of when the use of force is right or just) has become one of the more frequent, divisive, and heated discussions in international relations.<sup>4</sup>

To address this debate, the report of the International Commission on Intervention and State Sovereignty, the latter formed in response to Kofi Annan's question of when the international community must intervene for purposes of human protection, introduced the term *responsibility to protect* (R2P) in December 2001.<sup>5</sup> R2P stresses that states have the primary obligation to protect their populations. Further, it emphasizes the responsibility of the international community to take timely, decisive action to prevent and halt genocide, ethnic cleansing, war crimes, and crimes against humanity when a state manifestly fails to protect its population.<sup>6</sup> Humanitarian intervention as advocated by R2P, however, has rightly threatened the traditional rights of sovereigns. A conflict exists between R2P and other norms in the institution of sovereignty, such as noninterference and sovereign equality.<sup>7</sup>

Therefore, this article discusses the normative status of the concept of human security in international law, examining R2P against the backdrop of a wider discourse about the transformation of sovereignty, norms, and the legality of using force. It explains that R2P has become an accepted norm constitutive of the institution of sovereignty. To demonstrate the justifiability of regarding R2P as an emerging norm of international law, the article also examines whether one can regard the concept of human security as analytical contexts of humanitarian intervention in application and practice: war for justice, war for state, or war for people.

### Human Security and International Law

The end of the Cold War and the accelerating pace of globalization have given rise to fundamental changes in many of the paradigms employed in the social sciences. Among the various new ideas that have emerged, *human security* has become something of a buzzword.<sup>8</sup> In the mid-1990s, the concept of human security began to visibly influence and challenge

global politics, institutions, and governance.<sup>9</sup> Security threats and the security environment in this post–Cold War period of globalization and technological advance have clearly changed.<sup>10</sup>

Obviously, the current approach is quite flawed, reflecting the inadequacy of traditional research tools employed in the field of international relations in the post–Cold War era. The belief that power remains the sole determinant of national interests, preferences, and actions is no longer a tenable approach to international politics.<sup>11</sup> Therefore, unlike current policies that emphasize the means of control, the human security approach concentrates on the safety and protection of individuals and communities, in addition to the traditional security concerns of the state. A comprehensive human security strategy would have to address competition over natural resources and improve the capacity of communities and governments to address the root causes of poverty and economic disparity by investing in education, health care, and basic infrastructure.<sup>12</sup> In other words, rather than a top-down approach, a bottom-up type of security becomes necessary—that is, only by ensuring the security of the individual can the state guarantee its own security.

As a matter of fact, in 1994 the United Nations Development Programme's *Human Development Report* presented a new way of thinking about the integration of security issues and globalization, defining human security according to seven dimensions: personal, environmental, economic, political, community, health, and food.<sup>13</sup> Moreover, it adopted a “people-centric” security concept as its focus instead of the traditional state-centered concept.<sup>14</sup> This new emphasis on human security supplements the traditional notion of security and represents the emergence of a new paradigm. Human security accentuates the individual's rights and interests, often ignored by the international community. Real security entails the protection of individuals from such threats as disease, hunger, unemployment, political oppression, and environmental degradation.<sup>15</sup> As a multilevel, wide-ranging concept, it includes both the traditional and nontraditional elements of security, not only serving as a blueprint for solving human problems but also offering solutions that midlevel powers can put into practice.<sup>16</sup> Moreover, human security has been used to define a foreign policy agenda promoted by Japan as freedom from want and by Canada, Norway, and members of the Human Security Network as freedom from fear.<sup>17</sup> Annan has pointed out the three

pillars of this wider concept of human security: freedom from want, freedom from fear, and freedom to live in dignity.<sup>18</sup>

The value of human security was adopted by the International Commission on Intervention and State Sovereignty, whose report noted the context of this concept in international relations and international law.<sup>19</sup> The commission's position on human security became part of the foundation of R2P and the new framework for debates on humanitarian intervention.<sup>20</sup> Even though humanitarian intervention prompts much debate, international law plays an important and beneficial role as a means of human security.<sup>21</sup> One way of approaching the relationship between human security and international law involves examining the use of law as an instrument to further this agenda—establishment of the International Criminal Court, for example. Others can be discerned in several areas of international law—most obviously refugee law, humanitarian law, and human rights.<sup>22</sup>

In terms of human security, the individual has gained greater prominence within the field of international law since the 1990s. Now encountering challenges, the traditional state-centered model of international law is giving way to a more people-centered orientation. In traditional studies, international law has primarily concerned itself with regulating relationships among states and their rights and duties, seemingly to the exclusion of the individual.<sup>23</sup> Only states (and possibly international organizations) are subjects of the law.<sup>24</sup> Therefore, the individual is an “object,” not a “subject.” International law operates on the individual indirectly, through the state, which has international responsibility. Thus, any rights granted by or obligations imposed by international law proceed through exercise of a right held by the state of which the individual is a national.<sup>25</sup>

With the end of the Cold War, though, international society recognized that the individual should be adopted as a juristic entity. In the absence of citizenship, the individual has no legal significance in the international arena. For instance, both the Permanent Court of Justice and the International Court of Justice have adopted this position.<sup>26</sup> Obviously, the cases of humanitarian intervention promote a direct link between individuals and international law.<sup>27</sup> This article argues that although the neorealist/statist view of security insists that “the idea of security is easier to apply to things than to people,” ultimately the key argument holds that



state security is for individual security.<sup>28</sup> In the conception of human security, the primary referent of security is the individual.<sup>29</sup> Similarly, international law reflects acknowledgement of the worth of a person as the essence of all law.<sup>30</sup>

Although it seems that human security reflects the conflict between state sovereignty and the principle of nonintervention, one can best approach it as analytical contexts of humanitarian intervention in application and in practice. Further, it provides us with a coherent framework to rethink the impasse of the current state-centric strategies for preventive conflict through its relevance to people, the state, and war.

### The Evolution of Humanitarian Intervention

Since the sixteenth century, the international community has generally practiced humanitarian intervention. In the first half of the twentieth century, human rights and state sovereignty collided, the latter usually winning the confrontation. After the Cold War, however, a number of humanitarian interventions occurred, including the war in Kosovo, ostensibly fought for humanitarian reasons. Evidently, the contest between individual rights and state sovereignty seems poised to take a new form.<sup>31</sup> UN peacekeeping operations have since occurred in such diverse places as Afghanistan, East Timor, the former Yugoslavia, Liberia, Rwanda, and Somalia. On the one hand, proponents of humanitarian intervention suggest that a new norm of humanitarian intervention is evolving, sometimes attributed to a change in the general consciousness of individuals. On the other hand, opponents and critics argue that humanitarian intervention is subject to political manipulation and that the use of force is always a poor way of promoting long-lasting peace and justice. They assert that states must avoid overintervention with the use of force against the territorial integrity or political independence of any state.<sup>32</sup>

Over the past three centuries, these norms have become clearer and have generated discussion in two areas of international law: a general and consistent practice of states and states of similar international acts over time. Table 1 depicts the evolution of humanitarian intervention.

**Table 1. Key concepts in the evolution of humanitarian intervention**

| <b><i>Evolution of Humanitarian Intervention</i></b> | <b><i>Just War</i></b>                      | <b><i>War for State</i></b>            | <b><i>Humanitarian Interventionism</i></b>                                        | <b><i>War for People</i></b>                                       |
|------------------------------------------------------|---------------------------------------------|----------------------------------------|-----------------------------------------------------------------------------------|--------------------------------------------------------------------|
| Time                                                 | Medieval                                    | 17th–20th Centuries                    | 1990–94                                                                           | 1994–Present                                                       |
| Place                                                | Europe                                      | Colony                                 | Balkans, Africa                                                                   | Global                                                             |
| Executor                                             | Pope                                        | Empire                                 | UN                                                                                | UN                                                                 |
| Call for/Fight for                                   | Justice                                     | National Interests                     | Peacekeeping                                                                      | Responsibility to Prevent/React/ Re-build                          |
| Core Values                                          | Morality                                    | Power/Interests                        | Human Rights                                                                      | Human Security                                                     |
| Purpose                                              | Justice Punishing/ Prevention of Atrocities | Balance of Power Predatory/ Occupation | Peacekeeping                                                                      | Against Genocide and Ethnic Cleansing                              |
| Theoretical Framework                                | Catholicism                                 | Realism                                | Humanitarianism/ Collective Security                                              | Human Security                                                     |
| Way to Intervene                                     | Coalition/Force                             | Depend on Powers                       | Authorizing All Necessary Means to Protect Civilians and Civilian-Populated Areas | Multilateralism                                                    |
| Referent Objects                                     | Catholic Security                           | National Security                      | People's Security                                                                 | Human Security                                                     |
| Right to Intervene/ Right Authority                  | In the Name of the Lord                     | Depend on Powers                       | Authorization from the Security Council                                           | Authorization from the Security Council                            |
| Source of Normative Power                            | Moral Constraints                           | Powers                                 | Media/Public Opinion                                                              | International Legal Norms                                          |
| Cases                                                | Crusades                                    | Greek War of Independence (1829)       | Northern Iraq Operation (1991), Somalia Operation (1992)                          | NATO Air Strikes against Yugoslavia (1999), Libya Operation (2011) |

### ***Humanitarian Intervention–War for Justice***

One can trace the source of humanitarian intervention to the work of the Roman statesman and philosopher Cicero (106–43 BC), who offered the theory of just war, affirming that government is ordained by God to preserve peace and maintain justice.<sup>33</sup> He, along with philosophers Saint Augustine, Saint Thomas Aquinas, Franciscus de Victoria, and Hugo Grotius, insisted that the just war tradition represented a moral and just instrument consisting

of two categories of criteria: *jus ad bellum* and *jus in bello*.<sup>34</sup> Humanitarian intervention serves as a way to prevent atrocities and punish unjust states. Collective action is the most important feature of the traditional just war.<sup>35</sup> Only recognized public authorities have the right to authorize the use of force.<sup>36</sup> Natural law and Catholic thought have strongly influenced the tradition, which describes the collected consensus of Western Christian culture on natural rights empowered in the name of the Lord.<sup>37</sup>

After the holy wars of the seventeenth century (1618–48), Grotius—often referred to as the father of international law—sought to establish secular natural law as a basis for the medieval codes of chivalry. He incorporated *jus in bello* restrictions into just war criteria, believing that natural law undergirded the law of a nation.<sup>38</sup> With the development of the modern state system (1648), the nature of just war embedded a definite state bias, and national interest became increasingly prominent in the concept of justice.<sup>39</sup>

### ***Humanitarian Intervention—War for State***

John Mearsheimer argues that states do not act in accordance with moral concerns, such as humanitarian violations abroad, and that international institutions do not exert significant influence on state behavior.<sup>40</sup> In other words, states emphasize the influence of the international system rather than human nature, claiming that this compels states to adopt a selfish attitude which curtails altruistic action, such as humanitarian intervention.<sup>41</sup> Hence, Hans Morgenthau asserts that one cannot apply universal moral principles to the actions of states because humanitarian operations taken to halt or prevent violations against humans will create difficulties with a state's pursuit of national interests.<sup>42</sup>

Obviously, it follows that a state has the authority to wage war only in pursuit of those interests. Former US secretary of defense Caspar Weinberger stresses that interests, not ethics, should serve as the key motivation behind Western intervention.<sup>43</sup> The cardinal tenets of US force employment are the existence of specific national interests and Cori E. Dauber's so-called threshold test of vital interest or zero casualties.<sup>44</sup> Citizens usually expect their state to act in the national interest and are reluctant to accept military casualties when national interests are not involved.<sup>45</sup>

### ***Humanitarian Intervention—War for People***

Of the 111 conflicts that occurred between the end of the Cold War and the beginning of the twenty-first century, 104 were intrastate wars (95 purely civil wars and nine with foreign intervention); they involved more than 80 states and 200 nongovernmental organizations, as well as two regional organizations.<sup>46</sup> Martha Finnemore insists that since the end of the Cold War, states have felt pressure to intervene and protect their citizens rather than their own interests. Humanitarian action could take place for a variety of reasons. Compared to traditional just war, intervention could be considered a moral factor, but with the abolition of slavery in the nineteenth century and decolonization in the twentieth century, a new set of norms—“humanism”—emerged as a universal value.<sup>47</sup>

The end of the twentieth century marked a shift in the nature of conflict. Large interstate wars were replaced by internal conflicts that produced huge civilian casualties. For example, the genocides in Rwanda, Bosnia, and Cambodia demonstrated colossal failures by the international community to prevent mass atrocities. Thus, near the end of the 1990s, one perceived a recognizable need to shift the debate to crisis prevention and response: the security of the community and the individual, not just the state, must become a priority for national and international policies.<sup>48</sup>

**Case study of war for people: NATO air strikes against Yugoslavia (1999).** The most controversial intervention to date involved NATO air strikes against Yugoslavia in 1999.<sup>49</sup> UN Security Council Resolution 1160, adopted on 31 March 1998 in reference to Kosovo and acting under chapter 7 of the UN Charter, imposed an arms embargo on the Federal Republic of Yugoslavia (FRY). The Security Council deplored the violence that the Serbian police force used against peaceful demonstrators in Kosovo as well as terrorist acts of the Kosovo Liberation Army.<sup>50</sup> Six months later, Security Council Resolution 1199, adopted on 23 September 1998 after the recall of Resolution 1160, demanded that the Kosovar and Yugoslav parties end hostilities in Kosovo and observe a cease-fire. In the meantime, the Security Council decided that, should the parties not comply with the concrete measures demanded by this resolution and its predecessor, it would consider further action and additional measures to maintain or restore peace and stability in the region. Additionally, Security Council Resolution 1203, adopted on 24 October 1998 after the recall of resolutions 1160 and 1199, demanded that

the FRY (Serbia and Montenegro) comply with previous resolutions and cooperate with NATO's and the Organization for Security and Co-operation in Europe's verification missions in Kosovo. Resolution 1203—affirming the possibility of taking action in the event of an emergency to ensure safety and freedom of movement—passed by a margin of 13 to one.<sup>51</sup> China and Russia abstained, neither of them favoring the use of force. China also opposed a resolution that would pressure the internal affairs of the FRY, and Russia noted that the resolution had not taken into account favorable developments in Belgrade.

Afterward, the United States, Canada, and France stressed that the FRY was in violation of legal obligations imposed by Resolutions 1199 and 1203. From 24 March to 10 June 1999, NATO attacked Yugoslavia. In the interim action, at the 3,989th meeting of the Security Council on 26 March 1999, the Russian Federation submitted a draft resolution, demanding that the council reject any insistence on the immediate cessation of the use of force against the FRY and called for the urgent resumption of negotiations. Rather than adopt this draft resolution, the Security Council passed Resolution 1244 on 10 June 1999, after recalling resolutions 1160, 1199, 1203, and 1239. In other words, the council authorized an international civil and military presence in Kosovo (then part of the FRY) and established the UN Interim Administration Mission in Kosovo.<sup>52</sup>

Significantly, NATO's use of force against Yugoslavia in March 1999 marked the first time since the founding of the UN that a group of states had explicitly justified bombing another state in the name of protecting a minority within that state (table 2). Moreover, the action lacked explicit authorization from the Security Council and was condemned by some council members as a legislative flaw and flagrant breach of international law.<sup>53</sup> However, at that time, other members such as Malaysia and Bahrain publicly supported NATO's intervention. Evidently, NATO used the terms *morality* and *genocide* to justify an illegal initiative because the illegal act produced results more in keeping with the intent of the law and morality than no action at all.<sup>54</sup> This view opens up the possibility that action might be warranted but illegal, a position that has been directly invoked to describe NATO's action in Kosovo.<sup>55</sup> With regard to the case of Kosovo, Bruno Simma observes that

“humanitarian interventions” involving the threat or use of armed force and undertaken without the mandate of the authorization of the Security Council will, as a matter of principle, remain in breach of international law. But such a general statement cannot be the last word. Rather, in any instance of humanitarian intervention a careful assessment will have to be made of how heavily such illegality weighs against all the circumstances of a particular concrete case, and of the efforts, if any, undertaken by the parties involved to get “as close to the law” as possible. Such analyses will influence not only the moral but also the legal judgment in such cases.<sup>56</sup>

**Table 2. A new norm of intervention authorized by the Security Council in the 1990s**

| <i><b>Actions</b></i>            | <i><b>NATO Air Strikes against Yugoslavia (1999)</b></i>                                                                                                                                                                                                                |
|----------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| UN Security Council Resolution   | Resolution 1244 adopted on 10 June 1999 after recalling Resolutions 1160, 1199, 1203, and 1239. NATO used Resolution 1199 to advance its internal planning for air strikes.                                                                                             |
| Debate of the Security Council   | The United States, Canada, and France stressed that the FRY was in violation of legal obligations imposed by Resolutions 1199 and 1203.                                                                                                                                 |
| Outcome                          | The council did not adopt Russia’s draft resolution to end the use of force against the FRY.                                                                                                                                                                            |
| Significance for New Norm        | The first time since the founding of the UN that a group of states explicitly justified bombing another state in the name of protecting a minority within that state.                                                                                                   |
| Significance for Humanitarianism | The Kosovo event proves that if a country cannot make an effective defense for its ill behavior—which will lessen its international legitimacy, even in light of the principle of sovereignty—the international community will find it difficult to avoid intervention. |

With respect to NATO’s intervention in Kosovo, Simma argues that the alliance made every effort to remain “close to the law” by scrupulously following and linking its efforts to the resolutions of the Security Council and by stating that the action taken was an urgent measure to prevent a larger humanitarian crisis.<sup>57</sup> Therefore, humanitarian intervention was neither a customary law nor legal norm at the time of NATO’s intervention in Kosovo. Yet, the significant international support afforded to NATO in 1999 suggests that the operation was “a potential harbinger of future legality” or that “norms had clearly changed.”<sup>58</sup>

**Case study of war for people: Libya operation (2011).** Recent practice reflects the international community’s success in preventing atrocities by advocating R2P (table 3). On 26 February 2011, the Security Council put its overwhelming power behind protecting the Libyan people from the murderous regime of Mu‘ammar Gadhafi. Resolution 1970, adopted by a 15-0 vote, condemned the use of force against civilians; deplored the gross,

**Table 3. A new norm of intervention authorized by the Security Council in 2011**

| <b>Actions</b>                   | <b>Libya Operation (2011)</b>                                                                                                                                                                                                                                                | <b>Libya Operation (2011)</b>                                                                                                                                                                           |
|----------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| UN Security Council Resolution   | Resolution 1970, 26 February 2011                                                                                                                                                                                                                                            | Resolution 1973, 17 March 2011                                                                                                                                                                          |
| Outcome                          | The Security Council emphasized the Libyan authorities' responsibility to protect its population.                                                                                                                                                                            | The Security Council authorized member states to take all necessary measures, notwithstanding paragraph 9 of Resolution 1970, to protect civilians under threat of attack in Libya.                     |
| Significance for New Norm        | The first time that the Security Council used the term <i>R2P</i> to intervene by changing the language of intervention from right authority.                                                                                                                                | The first time that the Security Council authorized member states to take all necessary measures, notwithstanding paragraph 9 of Resolution 1970, to protect civilians under threat of attack in Libya. |
| Significance for Humanitarianism | Again, the Libya event proves that if a country cannot make an effective defense for its ill behavior—which will lessen its international legitimacy, even in light of the principle of sovereignty—the international community will find it difficult to avoid intervention | A new interpretation for the relevance of sovereignty and human rights                                                                                                                                  |

systematic violations of human rights; and expressed deep concern at the deaths of civilians and the incitement to hostility by the Libyan government.<sup>59</sup> Thus, for the first time the Security Council used the term *R2P* to intervene by changing the language of intervention from right authority.<sup>60</sup> On 17 March 2011, the council adopted a new resolution—1973—this time with a 10-0 vote and abstentions by Brazil, China, Germany, India, and the Russian Federation, authorizing member states to take all necessary measures (notwithstanding paragraph 9 of Resolution 1970) to protect civilians under threat of attack in Libya.<sup>61</sup> This vote proved much more problematic because the abstentions included two permanent council members and three strong candidates for permanent membership. Again, however, the Libya event reflects a new norm: a country's failure to make an effective defense for its ill behavior will lessen that nation's international legitimacy, even in light of the principle of sovereignty.<sup>62</sup>

## Conclusion

Thus, we see that states do not have an unqualified right to nonintervention by other states; rather, the right is conditioned by the state's meeting its own responsibility to protect its citizens. Failure to do so opens states

to the possibility of intervention; therefore, sovereignty is contingent upon the promotion and protection of human rights and can be suspended.<sup>63</sup> R2P reveals that matters of human rights in the UN system have usually been regarded as the concern of the UN Economic and Social Council, specialized agencies, and subsidiary organs such as the Human Rights Commission. The UN Charter affirms a principle of noninterference in the domestic affairs of a sovereign state; it also offers international cooperation in promoting human rights.<sup>64</sup> But the charter offers no guidance regarding when sovereignty must yield to protection against violations, genocide, ethnic cleansing, and massive abuses of human rights. However, current practice regarding R2P suggests that the Security Council has begun to play an important role in issues dealing with the international protection of human rights.<sup>65</sup>

Considered a “bottom up” approach, human security is more applicable to the security problems we face today.<sup>66</sup> It has become a well-used tool in policy documentation and papers referring to the commitment of governments and organizations to conflict zones and developing countries.<sup>67</sup> Consequently, our central claim runs contrary to the stereotype of human security’s application and practice. This article has briefly charted the evolution of humanitarian intervention from the causes of war: just war, war for state, and war for people. It shows that although the state remains the fundamental purveyor of security, it still fails to fulfill its security obligations—and that is why the international community must shift the referent of security from the state to the individual (human security).<sup>68</sup> Therefore, we can regard the Kosovo and Libya interventions as cases of human security winning out over sovereignty and traditional security. The article has also hinted at a normative change that recognizes human beings as subjects of international law. Further, it suggests that international relations, in some measure, were a response to the changing quality of threats to individual human beings and to the evolving quality of the relationship between the state and the individual.<sup>69</sup>

## Notes

1. Catherine Lu, *Just and Unjust Interventions in World Politics: Public and Private* (Basingstoke, England: Palgrave Macmillan, 2006), 54.

2. Mervyn Frost, “The Ethics of Humanitarian Intervention: Protecting Civilians to Make Democratic Citizenship Possible,” in *Ethics and Foreign Policy*, ed. Karen E. Smith and Margot Light



(Cambridge, UK: Cambridge University Press, 2001), 51; and Aidan Hehir, *Humanitarian Intervention: An Introduction* (Basingstoke, England: Palgrave Macmillan, 2010), 110–11.

3. Hehir, *Humanitarian Intervention*, 1.

4. S. Neil MacFarlane and Yuen Foong Khong, *Human Security and the UN: A Critical History* (Bloomington: Indiana University Press, 2006), 165–68; and Yu-tai Ts'ai, "The Emergence of Human Security: A Constructivist View," *International Journal of Peace Studies* 14, no. 2 (Autumn/Winter 2009): 15, [http://www.gmu.edu/programs/icar/ijps/vol14\\_2/TSAI%20-%2014n2%20IJPS.pdf](http://www.gmu.edu/programs/icar/ijps/vol14_2/TSAI%20-%2014n2%20IJPS.pdf).

5. Kofi Annan, "Two Concepts of Sovereignty," *Economist* 352, no. 8137 (1999): 49. One can trace the development of the notion back to the Genocide Convention of 1948. In that same year, the UN General Assembly adopted the Convention on the Prevention and Punishment of the Crime of Genocide. For more detailed information, see Luke Glanville, "The International Community's Responsibility to Protect," *Global Responsibility to Protect* 2, no. 3 (June 2010): 287–306.

6. For a more extended discussion, see the International Coalition for the Responsibility to Protect, <http://www.responsibilitytoprotect.org/index.php/publications>, or the R2P Coalition, [http://r2pcoalition.org/component/option,com\\_frontpage/Itemid](http://r2pcoalition.org/component/option,com_frontpage/Itemid).

7. Alex Chiang and Yu-tai Ts'ai, "A New Interpretation for the Relevance of Sovereignty and Human Rights: The Case of Responsibility to Protect," *Tamkang Journal of International Affairs* 15, no. 3 (2012): 42–43; and Glanville, "Responsibility to Protect," 287–306.

8. Yu-tai Ts'ai, "Emergence of Human Security," 19–33.

9. Gerd Oberleitner, "Human Security: A Challenge to International Law?," *Global Governance* 11, no. 2 (2005): 186, <http://www.uni-graz.at/gerd.oberleitner/OberleitnerHumanSecurityGlobalGovernance.pdf>.

10. Sabina Alkire, *A Conceptual Framework for Human Security*, Working Paper 2 (Oxford, UK: Centre for Research on Inequality, Human Security and Ethnicity, Queen Elizabeth House, University of Oxford, 2003), 10, <http://economics.ouls.ox.ac.uk/13003/1/workingpaper2.pdf>.

11. Yu-tai Ts'ai, "Emergence of Human Security," 19–33.

12. For more information, see 3P Human Security, "Policy Brief: Defining Human Security" (Washington, DC: 3P Human Security, 2011), [http://3phumansecurity.org/site/images/stories/PolicyBriefs/human\\_security\\_overview.pdf](http://3phumansecurity.org/site/images/stories/PolicyBriefs/human_security_overview.pdf).

13. United Nations Development Programme, *Human Development Report 1994* (Oxford, UK: Oxford University Press, 1994), 24–25, <http://hdr.undp.org/en/reports/global/hdr1994/chapters/>.

14. *Ibid.*, 24–33.

15. See notes 7 and 8.

16. Roland Paris, "Human Security: Paradigm Shift or Hot Air?," *International Security* 26, no. 2 (Fall 2001): 88, <http://aix1.uottawa.ca/~rparis/Paris.2001.IS.Human%20Security.pdf>.

17. The Human Security Network is a group of like-minded countries from all regions of the world that, at the level of foreign ministers, maintains a dialogue on questions pertaining to human security. It was founded in 1999 on the initiative of Canada and Norway. Members of the network include Austria, Canada, Chile, Costa Rica, Greece, Ireland, Jordan, Mali, the Netherlands, Norway, Switzerland, Slovenia, and Thailand, with South Africa as an observer. See Hideaki Shinoda, "Human Security Initiatives of Japan," in *Facing Global Environmental Change: Environmental, Human, Energy, Food, Health and Water Security Concepts*, ed. Oswald Spring et al. (New York: Springer-Verlag, 2007); and Jürgen Dedring, "Human Security and the UN Security Council," in *Globalization and Environmental Challenges: Reconceptualizing Security in the 21st Century*, ed. Oswald Spring et al. (New York: Springer-Verlag, 2008), 605–20.

18. Kofi Annan, *In Larger Freedom: Towards Development, Security and Human Rights for All* (New York: United Nations, 2005), 5–6, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N05/270/78/PDF/N0527078.pdf?OpenElement>.

19. Barbara von Tigerstrom, *Human Security and International Law* (Portland, OR: Hart Publishing, 2007), 23.

20. Ibid., 97; and International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (Ottawa: International Development Research Center of the International Commission on Intervention and State Sovereignty, December 2001), 12–15, <http://responsibilitytoprotect.org/ICISS%20Report.pdf>.

21. Von Tigerstrom, *Human Security and International Law*, 59.

22. Ibid., 60–65.

23. Chiang and Yu-tai Ts'ai, "New Interpretation," 61–62.

24. P. O'Connell, *International Law* (London: Stevens, 1970), 106–7; and Malcolm N. Shaw, *International Law* (Cambridge, UK: Cambridge University Press, 2003), 222.

25. Julie Cassidy, "Emergence of the Individual as an International Juristic Entity: Enforcement of International Human Rights," *Deakin Law Review* 9, no. 2 (2004): 539–40; and Chiang and Yu-tai Ts'ai, "New Interpretation," 62.

26. Some conventions regard the individual as a subject of international law: American Declaration of the Rights and Duties of Man (1948), Convention for the Protection of Human Rights and Fundamental Freedoms (1950), Convention on the Elimination of All Forms of Racial Discrimination (1963), American Convention on Human Rights (1969), Convention on the Elimination of All Forms of Discrimination against Women (1979), African Charter on Human and People's Rights (1981), Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984), and United Nations Convention on the Rights of the Child (1989).

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28. Barry Buzan, *People, States and Fear: An Agenda for International Security Studies in the Post–Cold War Era* (Boulder, CO: Lynne Rienner Publishers, 1991), 35.

29. Kanti Bajpai, *Human Security: Concept and Measurement*, Kroc Institute Occasional Paper, no. 9 (South Bend, IN: Joan B. Kroc Institute for International Peace Studies, 2000), 37.

30. H. J. Steiner and P. Alston, *International Human Rights in Context: Law, Politics, Morals* (Oxford, UK: Oxford University Press, 2000), 147–48.

31. Chris Brown, *Sovereignty, Rights, and Justice: International Political Theory Today* (Cambridge, UK: Polity Press, 2002), 135.

32. For more information, see Robert F. Gorman, "Introduction: Refugee Aid and Development in a Global Context," in *Refugee Aid and Development: Theory and Practice*, ed. Robert F. Gorman (Westport, CT: Greenwood Press, 1993), 1–11; Peter Macalister-Smith, *International Humanitarian Assistance: Disaster Relief Actions in International Law and Organization* (Dordrecht, Netherlands: Martinus Nijhoff, 1985), 15–18; John Prendergast, *Frontline Diplomacy: Humanitarian Aid and Conflict in Africa* (Boulder, CO: Lynne Rienner, 1996), 4–5; John J. Merriam, "Kosovo and the Law of Humanitarian Intervention," *Case Western Reserve Journal of International Law* 33, no. 1 (2001): 111–54; and Steve G. Simon, "The Contemporary Legality of Unilateral Humanitarian Intervention," *California Western International Law Journal* 24 (1993): 117–53.

33. Paul Christopher, *The Ethics of War and Peace: An Introduction to Legal and Moral Issues*, 2nd ed. (Upper Saddle River, NJ: Pearson Education, 1999), 37.

34. Virgil Hawkins, *The Silence of the UN Security Council: Conflict and Peace Enforcement in the 1990s* (Firenze, Italy: European Press Academic Publishing, 2004), 98–99. *Jus ad bellum* pertains to governing the resort to force and *jus in bello* has to do with governing conduct during war.

35. Joseph Boyle, “Traditional Just War Theory and Humanitarian Intervention,” in *Humanitarian Intervention*, ed. Terry Nardin and Melissa S. Williams (New York: New York University Press, 2006), 31–38.

36. Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (New York: Basic Books, 1977), 90–100.

37. Anthony Coates, “Humanitarian Intervention: A Conflict of Traditions,” in Nardin and Williams, *Humanitarian Intervention*, 62–71.

38. Grotius’s criteria for a just war were self-defense, the punishment of wrongdoers, the enforcement of legal rights, reparation of injuries, and situations without any possibility of valid arbitration. Hehir, *Humanitarian Intervention*, 31. See also Eileen P. Flynn, *How Just Is the War on Terror? A Question of Morality* (New York: Paulist Press, 2007), 12; and Larry May, Eric Rovie, and Steve Vine, eds., *The Morality of War* (Upper Saddle River, NJ: Pearson, 2005), 77.

39. Hehir, *Humanitarian Intervention*, 31–32; and M. Evans, *Just War Theory: A Reappraisal* (Edinburgh: Edinburgh University Press, 2005), 4.

40. John J. Mearsheimer, “The False Promise of International Institutions,” *International Security* 19, no. 3 (1994/1995): 5–49.

41. Hehir, *Humanitarian Intervention*, 61.

42. Hans J. Morgenthau, *Politics among Nations: The Struggle for Power and Peace*, 6th ed. (New York: McGraw-Hill, 1985), 9.

43. Nicholas J. Wheeler, “Introduction: The Political and Moral Limits of Western Military Intervention to Protect Civilians in Danger,” in *Dimensions of Western Military Intervention*, ed. Colin McInnes and Nicholas J. Wheeler (London: Frank Cass, 2002), 10.

44. *Ibid.*, 11.

45. For example, regarding the US intervention in Somalia in 1992, people have demonstrated a pronounced unwillingness to accept a military operation when national interests are not involved. David Hendrickson, “In Defense of Realism: A Commentary on Just and Unjust Wars,” *Ethics and International Affairs* 11 (1997): 19–55.

46. Joseph S. Nye, *Understanding International Conflicts: An Introduction to Theory and History* (New York: Longman, 2007), 157–58.

47. Martha Finnemore, “Constructing Norms of Humanitarian Intervention,” in *The Culture of National Security: Norms and Identity in World Politics*, ed. Peter Katzenstein (New York: Columbia University Press), 153–85.

48. “An Introduction to the Responsibility to Protect,” International Coalition for the Responsibility to Protect, accessed 7 January 2013, <http://www.responsibilitytoprotect.org/index.php/about-rtop/learn-about-rtop>.

49. Chiang and Yu-tai Ts’ai, “New Interpretation,” 49.

50. See Security Council Resolution 1160.

51. See Security Council Resolution 1203, par. 9.

52. See Security Council Resolution 1244.

53. Nicholas J. Wheeler, “The Humanitarian Responsibilities of Sovereignty: Explaining the Development of a New Norm of Military Intervention for Humanitarian Purposes in Inter-

national Society," in *Humanitarian Intervention and International Relations*, ed. Jennifer M. Welsh (Oxford, UK: Oxford University Press, 2003), 41–45.

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55. Wheeler, "Humanitarian Responsibilities of Sovereignty," 41–47.

56. Bruno Simma, "NATO, the UN and the Use of Force: Legal Aspects," *European Journal of International Law* 10, no. 1 (1999): 6, <http://ejil.oxfordjournals.org/content/10/1/1.full.pdf>.

57. Ibid. See also A. P. V. Rogers, "Humanitarian Intervention and International Law," *Harvard Journal of Law and Public Policy* 27 (2004): 725–36.

58. Hehir, *Humanitarian Intervention*, 93; N. Rodley and B. Cah, "Kosovo Revisited: Humanitarian Intervention on the Fault Lines of International Law," *Human Rights Law Review* 7, no. 2 (2007): 278; and Nicholas J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford, UK: Oxford University Press, 2000), 286.

59. See Security Council Resolution 1970.

60. Chiang and Yu-tai Ts'ai, "New Interpretation," 59.

61. These measures include demanding an immediate cease-fire, ending violence and all attacks, creating a no-fly zone over Libya, authorizing all necessary means to protect civilians and civilian-populated areas, strengthening the arms embargo, imposing a freeze on assets owned by the Libyan authorities, and establishing a panel of experts to monitor and promote the implementation of sanctions. See Security Council Resolutions 1970 and 1973.

62. Chiang and Yu-tai Ts'ai, "New Interpretation," 58–59.

63. Aidan Hehir, *Humanitarian Intervention after Kosovo: Iraq, Darfur and the Record of Global Civil Society* (New York: Palgrave Macmillan, 2008), 48–52.

64. See Charter of the United Nations, art. 2.7, preamble.

65. Matsukuma, "Emerging Norms," 106–18.

66. This so-called bottom up ("people-centric") approach implies a redirection of traditional security policies. Monica den Boer and Jaap de Wilde, eds., *The Viability of Human Security* (Amsterdam: Amsterdam University Press, 2008), 11.

67. Oliver P. Richmond, "Western Intellectual Roots of Human Security," in *Human Security in East Asia*, ed. Sorpong Peou (London: Routledge, 2009), 39.

68. Commission on Human Security, *Human Security Now* (New York: Commission on Human Security, 2003), 2, <http://reliefweb.int/sites/reliefweb.int/files/resources/91BAEEDBA50C6907C1256D19006A9353-chs-security-may03.pdf>.

69. Yu-tai Ts'ai, "The Study of Diffusion and Practice of International Norms through the 'Human Security': The Case of 'Responsibility to Protect,'" *Asian Social Science* 6, no. 2 (February 2010): 18, <http://ccsenet.org/journal/index.php/ass/article/view/5033/4172>.

# The Tuareg Revolt and the Mali Coup

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## Contextualizing the Current Tuareg Uprising

The latest (2012) Tuareg uprising is not new. One should consider this conflagration a continuation of a half century of conflict-promoting dynamics that, historically, have sullied relations between Tuaregs and various states which attempted to subjugate or delimit their social, political, and economic practices. Understanding the current rebellion necessitates coming to terms with this history, which started long before Mali's independence in 1960.

The following testimony—a snapshot of a rapidly evolving and complex problem set—provides this historical context while shedding light on contemporary Tuareg social, political, and economic dynamics that critically affect security in the Saharan and Sahelian regions of Africa. Of particular interest to US policy making is the complicated relationship between the Tuaregs and al-Qaeda in the Islamic Maghreb (AQIM), al-Qaeda's North African affiliate—a relationship driven by a convergence of interests, not ideology. In the end, it will become evident that those seeking to promote stability in the region and confront violent extremism, including AQIM, should not ignore the Tuaregs, who play an integral role in regional security and economic growth.

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\*This article is based on the author's congressional testimony in 2012 (see House, *Prepared Statement of LtCol (ret) Rudolph Atallah, Senior Fellow, Michael S. Ansari Center, Atlantic Council, and Chief Executive Officer, White Mountain Research LLC, before the United State House of Representatives Committee on Foreign Affairs, Subcommittee on Africa, Global Health, and Human Rights on "The Tuareg Revolt and the Mali Coup," Friday, June 29, 2012, 112th Cong., 2nd sess., <http://foreignaffairs.house.gov/112/HHRG-112-FA16-WState-AtallahR-20120629.pdf>). Between 2001 and 2003, the author spent extensive time with the Tuaregs in northern Mali, especially in Kidal, Tessalit, Timbuktu, Gao, and several other locations across the Sahara. During this period, the first kidnapping of European tourists by an extremist named Abdel Rezak Al Para took place, and in Kidal, Pakistani activists—allegedly from Jamaat al Tabligh—attempted to recruit young Tuaregs for activities abroad, possibly including militancy. A native Arabic speaker, the author had several opportunities to interview Tuareg leaders and local imams about these issues and their perspectives on the attacks of 11 September 2001, terrorism, and tribal beliefs. Subsequent work in the region through the author's company, White Mountain Research, afforded him many contemporary insights into the rapidly evolving security dynamics in this region.*

## The Tuaregs and Decolonization

The Tuaregs, a seminomadic people who live in the Saharan and Sahelian regions of southern Algeria, western Libya, northern Mali, northern Niger, and northeast Burkina Faso, number approximately 1.5 million today although actual census data is unavailable. Their worldview is constructed from a combination of Islam and traditional tribal practices inseparable from their culture. They believe in both Allah and spirits, thus differing from adherents of pure Islam, which teaches belief in a monotheistic God. All Tuaregs belong to one of three classes: the nobles (camel herders), vassals (goat herders), and black African slaves originally from southern ethnic groups (the French outlawed slavery in the early part of the last century).

When decolonization took root across Africa in the 1950s, the people of the Sahara (mainly the Tuaregs) pushed for political autonomy, often sparking conflict.<sup>1</sup> During the colonial era, Tuareg regions were peripheral to, and thus isolated from, influence within the capitals. Over time, colonial powers imposed a series of conventions regulating and limiting nomadic movements to specific territories for each federation, further restricting Tuareg movements and increasing their isolation from centers of power.<sup>2</sup> Tuaregs clashed with French colonialists over these issues but were subdued by French military superiority and tactics of divide and conquer, which turned Tuareg tribes against each another.

The first Tuareg uprising began in 1962, in the postindependence period. Initially, this conflict featured small hit-and-run raids, but these escalated in subsequent years to include sophisticated attacks. However, the overall Tuareg effort lacked unified leadership and a coherent strategy. Nevertheless, the Tuaregs' grievances were poignant enough to encourage some to take up arms. The sum of their concerns involved three main issues:

1. Discrimination from southern ethnic groups, which governed Mali following independence.
2. Fear that land reform would threaten their privileged access to agriculture.
3. Concern that national elites would destroy Tuareg culture under the guise of "modernization."

By 1964 Mali had crushed the rebellion, and the northeastern part of the country became a no-go area ruled by martial law. The fledgling government's heavy-handed approach alienated many Tuaregs who did not support the insurgents.<sup>3</sup>

The 1970s and 1980s, decades of extreme drought and suffering in the region, saw many Tuaregs flee Mali and take refuge in Algeria, Libya, Niger, Mauritania, and Burkina Faso. Overgrazing, combined with drought and a lack of response by the Malian government, caused further, deepening resentment among many Tuaregs. Younger Tuaregs were also lured by jobs in Algeria's and Libya's oil industries and moved there to earn a living. However, the collapse of oil prices in the mid-1980s sent many Tuaregs back to their homes in Mali. Algeria expelled over 10,000, and Libya, which had created specialized military regiments composed of Tuareg recruits, disbanded most of them. These events set the stage for the second Tuareg rebellion, which started in June 1990 and lasted until 1992. Iyad Ag Ghaly, current leader of Ansar Al-Din ("Defenders of the Faith," a violent regional Salafist group linked to AQIM), led the second rebellion.<sup>4</sup> As in the 1960s, the Tuaregs were not united as one insurgent group; this time, however, they enjoyed better organization and equipment.

To his credit, Moussa Traoré, president of Mali at the time, recognized very early after the rebellion began that a military solution was untenable and accepted Algeria's offer of mediation. In 1991, after serious discussions between the government and Tuareg leaders, the principals signed the Accords of Tamanrasset. Unfortunately, not all Tuaregs were represented at the table—especially those from Gao and Timbuktu, who felt betrayed and left out of the deal. The Traoré regime refused to publicize the terms of the accords, fearing that the south would interpret it as a surrender, and even denied on national radio that there would be any "Statut particulier" for the north.<sup>5</sup> This action reflected a chronic lack of trust that remains the impetus behind today's continuing conflict. Key provisions from the accord included the following:

1. A cease-fire and exchange of prisoners.
2. Withdrawal of insurgent forces to cantonments.
3. Reduction of the army presence in the north, especially Kidal.

4. Disengagement of the army from civil administration in the north.
5. Elimination of selected military posts (considered threatening by the Tuareg communities).
6. Integration of insurgent combatants into the Malian army at ranks to be determined.
7. Acceleration of ongoing processes of administrative decentralization in Mali.
8. A guarantee that a fixed proportion of Mali's national infrastructural investment funding (47.3 percent) would be devoted to the north.<sup>6</sup>

As a whole, Tuaregs felt that Mali never fully met most of these provisions, giving them a reason for independence. Two months after the Tamanrasset agreement, a coup abruptly ended President Traoré's 23-year rule. In 1992 national elections took place, and leaders from all of the communities signed a national pact that addressed a wide range of issues, from integration of former insurgents into the Malian military to the allocation of resources for national development.

Significantly, the Tamanrasset Accords prompted the formation of temporary security forces to garrison the north. These forces contained a mixed percentage of Malian army and rebel combatants—both a confidence-building measure and a way to reduce the problem of unemployed, armed Tuareg youths.<sup>7</sup> The government also made promises of material benefits without having the resources in place to fulfill them, resulting in a painfully slow application of the national pact.<sup>8</sup>

Ibrahim Ag Bahanga led the third Tuareg rebellion, which took place in 2006 and lasted until 2009. Algeria once again stepped in to broker peace by restating demands made in the national pact; however, the lack of trust exhibited by all parties kept northeast Mali in a state of uneasy peace. In 2009 Mali dispatched troops to stop Bahanga and exiled him to Libya, where he remained until his return in the summer of 2011. Bahanga's Libyan exile proved an important milestone in the recent Tuareg insurgency.

During his time in Libya, Bahanga contacted Tuaregs from his tribe who served in Mu'ammar Gadhafi's military. One of these was Mohammed



Ag Najm, commander of Gadhafi's elite desert units. In an interview with the newspaper *Al Watan* in 2011, Bahanga said that "Al-Qadhafi's disappearance is good news for all the region's Tuareg. . . . His departure from Libya opens the way to a better future and will make it possible to move forward with our political demands. . . . Now that he is gone, we can forge ahead with our struggle."<sup>9</sup> Although Bahanga died in a mysterious car accident that summer, his desire to spark another uprising and gain control of northern Mali took root among many Tuaregs.

His vision unfolded later that autumn. In September 2011, when it became evident that Gadhafi's regime would collapse, Tuareg fighters began to cross into Mali after emptying several Libyan arms depots.<sup>10</sup> In October 2011, in the oasis settlement of Zakak, Mali, near the border of Algeria, Tuareg youth, intellectuals, Malian army deserters, and Libyan-trained Tuareg soldiers merged two movements—the *Mouvement national de l'Azawad* and the *Mouvement Touareg du Nord Mali*—to form the *Movement National Pour La Liberation de l'Azawad* (MNLA) (Azawad is the name of the Tuareg homeland). The France-based spokesman for the new organization, Hama Ag Sid' Ahmed (Bahanga's father-in-law), elaborated on the significance of this new, more organized approach to Tuareg aspirations: "This year we have all the generations together."<sup>11</sup> He elaborated on this novel Tuareg approach in a subsequent statement on the MNLA's formation:

We talked about where things had gone wrong and tried to agree on a plan and on some common objectives. We created a ruling council, a military *état majeur*, commanded and coordinated by Mohammed Ag Najm and other senior officers. There are about 40 of them. And we also created a political bureau, which set about analysing and considering all the political aspects including how to raise awareness among the international community, especially the regional powers.<sup>12</sup>

Although this new Tuareg approach strengthened military strategy, enhanced tactical war-fighting capabilities, and generally augmented the Tuaregs' political thought, disunity remained their biggest obstacle.

### Recent Developments Contextualizing the Current Tuareg Uprising

From mid-January until early April 2012, the MNLA took control of an area greater than the size of France, calling it *Azawad*, an Arabic corruption of the Berber word *Azawagh*.<sup>13</sup> Geographically, this region straddles Mali, Niger, and Algeria, but in the open press, MNLA carefully defines it

as northern Mali to let neighboring states know that expansion was not in the cards and thus prevent a unified backlash from those states. Unlike the combatants in other tribal conflicts, the Tuaregs are not fighting for resources, fertile land, or geographical expansion of territory but for culture, pride, and self-determination.

When Tuareg youth saw the world rally behind south Sudan's struggle for independence, they hoped the same would happen for their people. However, history shows that the world did not react that way. To de-escalate potential retaliation against its newly formed organization and galvanize support, the MNLA publicly stated that it was not an extremist organization but a secular representation of northern ethnic groups.<sup>14</sup> The executive committee of the MNLA then asked the international community to "recognise, in a spirit of justice and peace, the independent state of Azawad."<sup>15</sup> This plea for support was overshadowed by the coup in Bamako and a list of plaguing questions, not the least of which were, Why now? and How did this happen?

Despite recent successes, the MNLA faces many challenges, primarily the threat of militant Islamist dominance. This threat, however, originates perhaps more from the ultrapragmatic Tuareg desire to play for the "winning team" than it does from a worldview predisposed to violent extremism. According to reports from Timbuktu, some Tuaregs have sons who joined both Ansar Al-Din and the MNLA in hopes of having a family member on a winning side. As one Tuareg said to a colleague, "They are two arms of the same body," a comment representative of wider confusion over these organizational dynamics. However, without Ansar Al-Din putting a Tuareg face on AQIM, there would be more Tuareg resistance to the Salafist presence and broader support for MNLA.

Nevertheless, Tuaregs see flirtation with militant Islamism as temporary. Tuareg society, for example, broadly resents Salafist conceptions of a Sharia ban on soccer, smoking, and unveiled women. Further, even though Timbuktu has a long tradition as a devout Muslim city, residents feel that no one should tell them how to act or practice their faith. Regardless, the grievances that comprise the latest backbone of Tuareg insurgency push some people into Tuareg Islamist factions, which share the same grievances and hatred for regional governments, especially those in Niger and Mali, but tap into a deeper Islamic frame to promote activism.

One contact who met with several Tuareg army officers last summer in Timbuktu described these grievances, which sparked the flow of Tuareg fighters coming in from Libya, and predicted a new rebellion. These officers said that the lack of jobs, economic and infrastructure development, and decent paved roads in northern Mali topped their list. All had family members connected to trade and tourism, and according to most of them, the fact that the only paved road to the north ends in Mopti embodies the government's betrayal of the people. Whether secular pragmatists or Islamists, Tuaregs do not trust the Malian government, which in their eyes has more than once sent forces to "cleanse" them. Tuaregs are quick to point out that since Mali's independence, the outside world has never conducted a full, independent investigation of the atrocities committed against them.

Despite these grievances, Tuaregs in general do not broadly support the Salafists. They see them first as foreign interlopers and second as Arabs or Moors, both of whom have long been their ethnic rivals for supremacy in the Sahara.

### Iyad Ag Ghaly and Militant Islam

The uprising in 2012 saw the return of Iyad Ag Ghaly, a Tuareg leader who led the first rebellion in the early 1990s and started the second three-year rebellion from 2006 to 2009. A seasoned 57-year-old warrior who embraced militant Salafism, the unpredictable and manipulating Ag Ghaly plays a key role in promoting conflict in the Sahel. His manipulative, radical approach—not to mention his Rolodex and connectivity to AQIM—is worthy of serious examination. Ag Ghaly's biography as a militant reflects a clear desire to play for the winners. In 2007, during the middle of the second rebellion, he switched sides, leaving his cause (fighting for Tuareg autonomy) to help negotiate settlements between the Tuaregs and the government of Mali. This move still causes resentment among his tribesmen, many of whom no longer trust him. In 2008 President Amadou Toumani Toure appointed Ag Ghaly consul and sent him to Jeddah, Saudi Arabia, but the Saudi government declared him *persona non grata* for his association with extremist elements tied to al-Qaeda. In October 2011, President Toure asked him to head a delegation and bring Tuareg soldiers returning from the conflict in Libya back into the fold of Malian society.<sup>16</sup> He returned to the north to resume his old role as leader of the Tuaregs, but the

MNLA rejected him. He then formed his own group, Ansar Al-Din, and fought alongside his people until they took the territory of Azawad.

Afterward, Ag Ghaly began to show his cards, agreeing to work with the MNLA but on the condition that Azawad would follow strict Sharia. On 16 June 2012, he rejected MNLA independence and publicly announced that “Ansar Dine wants the unity of all brothers and sisters in Mali around Islam, which is the foundation of our life.”<sup>17</sup> For now, he appears resolute in his long-term goals to capture the Tuareg leadership and institute rigid Salafism as the Tuaregs’ brand of Islam. The MNLA leadership rejected Ag Ghaly’s pronouncement of 16 June and held its claim to secularism. Despite the impasse over the fate of Azawad, some members of the MNLA favorably consider Ag Ghaly and his Ansar Al-Din members Azawadis, a perception not shared about AQIM.

Ag Ghaly has a long history of successfully playing all sides of the Tuareg conflicts. In previous years, he was easily influenced by Algeria and Libya, which successfully “managed” him. However, his patrons, if any, are unknown at this point. In this current stalemate over the fate of Azawad, Ag Ghaly seems to be methodically undermining his MNLA tribesmen—but why? Many unanswered questions remain, especially about the source(s) of his funding. Further, did Ag Ghaly know about the rebellion and plan to undermine it? Is a state, organization, or individual behind his success? Indeed, the MNLA has no money or outside support, other than Tuaregs living abroad who want an independent Azawad. Ansar Al-Din, on the other hand, has funds and equipment, as well as the ethnic and tribal makeup necessary for success. Ag Ghaly, no stranger to the Salafist Group for Preaching and Combat (GSPC)/AQIM because of his initial involvement with the group in 2003, also seems to have the full support of Abdelhamid Abou Zeid, one of AQIM’s leaders in northern Mali.<sup>18</sup> Taken together, Ag Ghaly’s streamlined success does not square.

In sum, against the backdrop of the current crisis, Ag Ghaly has positioned himself very well. He managed to provoke bickering in MNLA and now formally has AQIM’s southern fighters and resources under his command.<sup>19</sup> His approach to undermining Tuareg leaders opposed to his rule began in April, after MNLA declared the independence of Azawad. Looting, rape, and abductions in Gao, Kidal, and Timbuktu broke out, and according to Human Rights Watch reports, MNLA rebels were responsible

for the crimes. However, the organization denied those accusations, blaming escaped prisoners and criminals. Eyewitnesses said that Ansar Al-Din responded by taking protective measures to insulate the population and curb crime. Since then, it has been proselytizing door-to-door and implementing Sharia on the population. Overall, Tuaregs are confused about Ansar Al-Din, but are quickly learning the truth about the organization. On 26 June, a friend conveyed a report from a Tuareg family in Timbuktu:

Ansar Al-Din is recruiting local boys as young as 11–12 years old with promises to give them food and cash if they work in their camp at Fort Bekaye, the old Malian base inside the city. The boys are being told to do odd jobs. One Tuareg man found out that his 13-year-old son had gone to the camp to work, so he went there to talk to his son at the base. He asked him why he had joined Ansar Al-Din, and the boy told his father that he was only supposed to work for one month. So the man went to the Ansar Al-Din leader in charge of the base and said respectfully that he would like his son to leave with him, that he was needed at home. The head of the base told the father that his boy couldn't leave, that he was now permanently part of Ansar Al-Din and that the family could have his body back after he had fulfilled his duty to Allah and that he should be proud of him for bringing Muslim honor to his name.

Evidently this is not an isolated case. Two other families have relayed similar stories. People without money rely on handouts from Ansar Al-Din, which in return demands that they send their sons to newly militarized madrasas (Islamic schools). One man described how his old mosque is now home to one such madrasa where all the boys are forced to dress exactly alike, learn to fire Kalashnikovs, and undergo indoctrination in a harsh interpretation of Islam. In sum, Ag Ghaly's determination seems to be slowly forcing the population to submit to his rule, leaving the future of northern Mali in the hands of extremists and the fate of the Tuaregs in question.

### AQIM in Northern Mali

AQIM remains active in northern Mali, despite a tenuous relationship with the Tuaregs. Algerian nationals run the organization, but its fighter composition includes Mauritanian, Moroccan, Libyan, Malian, and Nigerian nationals. From 2003 until the present, AQIM gradually took advantage of Mali's weak security infrastructure to establish itself in the northern part of the country. This created an economic-development shift in which tribal elements (particularly the Arab tribes and, to a lesser degree, the Tuareg) had no alternative other than do business or join the organization since it is

flush with cash (estimates vary from 70 to 150 million euros in total). This money originates from ransoms paid for the release of kidnapped Westerners.<sup>20</sup> Over the years, the local Arab-Tuareg population has slowly learned to tolerate its presence, in part due to AQIM's ability to develop the local economy and provide basic services in an impoverished region that felt abandoned by its host government. Local leaders forged mutually beneficial business relationships with the organization—relationships cemented through marriages to local women. For example, Mokhtar Belmokhtar, an influential AQIM leader from the southern zone *katiba* (battalion), took a Tuareg wife from Timbuktu.

Although AQIM seems to affect the local population for the better with respect to quality of life, over the long term it exerts a negative influence on the economic development of the region and promotes the growth of organized crime, especially among the Tuareg and Arab people. AQIM is responsible for spreading violent extremism to countries like Nigeria, where the radical organization Boko Haram dramatically stepped up its attacks in 2011 against Christians and government targets. Over the years, the government of Mali's feeble response to AQIM's attacks and kidnappings decimated even the smallest economic developments in the poorest region of a country where 77 percent of the population lives on less than two dollars per day.<sup>21</sup> Violence and insecurity deterred nongovernmental organizations, outside investors, and tourism in critical areas plagued by chronic underdevelopment, drought, and extreme poverty.

Despite AQIM's gains, the Tuaregs remain traditionally moderate, not lured by the Salafist brand of Islam. Their identity lies with their Tamashek language rather than in religion. The autumn of 2006 saw multiple clashes between Tuareg and AQIM fighters, resulting in distrust and animosity between the two sides. Some MNLA members continue to discuss the idea of driving AQIM out of the region because it is considered an outside influence that corrupts the Tuaregs' traditions and way of life. For this reason, Ag Ghaly took center stage and now has AQIM's undivided attention and support. His ethnic makeup as a Tuareg allows AQIM to operate while he manages the negative Tuareg rhetoric. Despite significant differences and a history of animosity towards radical Islam, Tuaregs are opportunists. The allure of money, which would keep them relevant in the region, is their sole attraction to AQIM.

Because of the Tuaregs' vehement opposition to Salafism and the desire to win popular support, Abdelmalek Droukdal, the emir of AQIM, told his followers to gradually impose Sharia on the people of northern Mali and create the first Islamic state in the region.<sup>22</sup> Like Ag Ghaly, he does not want to lose control of the situation. Maintaining a strong grip on northern Mali provides AQIM the resources it needs to remain effective and expand.

### **Conclusion and Recommendations: Implications for the United States**

Although the international community likely would never entertain the idea of Azawadian independence, it should make an effort to support MNLA and Tuaregs who oppose militant Salafists in the region, including AQIM. Tuaregs are masters of their environment; they can play a key role in stabilizing the Sahel by driving out violent extremist groups. They have the will to do so—but not without assistance.

Unfortunately, the present situation in the region is bleak. Time is not on the Tuaregs' side, and northern Mali is becoming a magnet for foreign Islamist fighters who now help train recruits. Further, violent extremists have an ideal environment in which to move weapons, bring in more foreign fighters, and make money from drugs and other contraband, given the large quantities of Gadhafi's arsenal in their possession and control over airstrips near the towns of Gao, Timbuktu, Tessalit, and Kidal. This region is becoming a strategic nightmare for the United States and its European allies.

What is the end game for Ansar Al-Din and AQIM? According to regional experts, Ag Ghaly wants to become the leader of the Tuaregs, and he will use any means necessary to obtain this position. AQIM's long-term goals, though, are different and more in line with al-Qaeda's plans for North Africa. Analysis by West Point's Combating Terrorism Center of the declassified Abbottabad letters shows that al-Qaeda's leadership desires to take advantage of the "Arab Spring" to convert jihadi activities into missionary activities, with the primary objective of regrouping and coming after the United States.<sup>23</sup> To attain this goal, it has to rely on AQIM, its regional affiliate. AQIM, however, has suffered significant setbacks over the last few years and has seen its ability to recruit from North African countries disappear. Internal ideological disagreements that started in 2006 when it swore allegiance to al-Qaeda continue to vex the organization. Furthermore, effective counter-

terrorism measures taken by the United States and its allies have proven very damaging. To survive and remain effective, AQIM needs money and soldiers. The Sahel has become an ideal ground for both, and the Tuaregs function as collateral. In a way, AQIM has hijacked the heart of the great Sahara trade routes—the indispensable lifeblood of economic growth in a vast 3,400-mile region, where goods and commodities move between Europe, the Middle East, and the subcontinent. Left unchallenged, terrorists and drug dealers will exploit these routes for their long-term gains, using the only people who know how to navigate the harsh terrain—the Tuaregs.

Until now, Mali's military has been ineffective—unable to control the north and drive out AQIM. The international community and Mali's neighbors should not support any plan by the current Bamako regime to conduct a military intervention in the north, which would prove counter-productive and alienate local support against Ansar Al-Din and AQIM. Instead, regional governments need to work together to address economic and social needs across the Sahel, thereby protecting livelihoods and creating opportunities that will keep Sahelian communities from falling victim to Salafist groups—especially the Tuaregs.

The best approach to counter the present crisis in northern Mali involves creating a buffer zone around the areas where the Salafists operate. This zone should restrict movement by air or ground of illegal goods entering the area. On a larger scale, a systematic regional approach aimed at targeting illegal drug trafficking, tobacco, and weapons should be addressed to curb terrorists' access to money. A diminishing cash flow will dry up funds to recruit and expand.

Moreover, an effective information operations campaign is indispensable to discrediting AQIM and Ansar Al-Din and to reinforcing local distrust of their motives. Such a campaign should include not only northern Mali but also the Sahel as a whole, disparaging all militant Salafist groups and activities. But direct intervention by Western states will only reinforce the extremists' *raison d'être* and exacerbate the crisis; consequently, regional actors must broker a solution, and regional experts must guide it.

Border control and counterterrorism programs for Niger, Mauritania, Libya, Tunisia, Morocco, and Algeria also require greater support. These states still lack sustainable, effective coordination on these matters, and regional intelligence collection and sharing need significant improvement. Further,



because Sahelian states cannot respond to security threats in remote areas distant from the capitals, Mali's efforts to maintain control of the north have proven ineffective. Although AQIM's southern-zone katiba is no more than 300 strong, the absence of regional state collaboration makes it very difficult to find and target individuals in the vast operational area.

The international community must also address poor governance, corruption, and poverty issues, especially among the Tuaregs and people of the Sahel. Initiatives that improve food and water security, health care, education, and employment will give the population incentive to resist militant Salafist groups and refrain from working with them. In the case of the Tuaregs in northern Mali, better infrastructure and effective security remain at the heart of their grievances. If the international community wishes to support their economy and preserve their way of life—a culture at odds with militant Islam—it must deal with these issues directly. Finally, the community must make a top priority of effective Western and local intelligence sharing and regional coordination to root out Salafist activities and thereby reverse the threat that plagues this region.

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# Establishing a Marketplace of Women in Peacekeeping

## An Analysis of Gender Mainstreaming and Its Viability in United Nations Peacekeeping Operations

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United Nations Security Council Resolution (UNSCR) 1325 took the unprecedented step of recognizing the profound impact of war on women and calling for their increased participation in conflict prevention and resolution. It launched the UN's gender-mainstreaming initiative, and with it came the call to blue helmets for women around the world. Yet, in light of the observation that the top personnel contributors to UN peacekeeping are countries characterized by high levels of gender inequality, the feasibility of gender mainstreaming in peacekeeping remains questionable. This article uses the basic economic principles of supply and demand to discuss the rationale for raising the number of women in peacekeeping. Upon identifying the UN's approach as demand-driven, we turn to data from the UN Department of Peacekeeping Operations (UNDPKO) and the World Economic Forum's Global Gender Gap Index to assess the feasibility of such a top-down approach. The data from this comparison support our argument that the UN approach ignores the gender realities of personnel-contributing countries. We conclude that

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the UN must bolster its call for greater numbers of women in peacekeeping with material incentives that foster greater gender integration within the militaries of troop contributing countries (TCC).

The article first offers an overview of gender mainstreaming, the flawed missions that led to recognition of the need to incorporate gender considerations in UN policies and operations, and the resolutions that constitute its efforts to mainstream gender. It then outlines our theoretical framework and the observable implications of supply- and demand-driven explanations. The third section delves into the feasibility of the UN's demand-driven approach to gender mainstreaming, and the final section connects our assertions to UN policy and improvements for future research.

### **Bringing in Gender: Mainstreaming and UN Peacekeeping**

UN peacekeeping operations are intended to stabilize postconflict regions and monitor the enforcement of peace agreements. Sexual violence and exploitation carried out by UN personnel (serving both military and civilian roles) compromise the legitimacy of the mission, undermine the image of UN peacekeepers as a benign and stabilizing force, present a serious moral and ethical conflict for the UN, and perpetuate the cycle of violence against women and girls in conflict zones. Entrenched assumptions of gender-neutral effects of a UN presence as well as a consistent underestimation of the unequal power dynamics between local civilians and peacekeepers in planning for peacekeeping operations led to unintended consequences for civilians—namely, exploitation of and sexual violence against women by international peacekeepers during many UN missions.

The UN defines sexual exploitation as “any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another.”<sup>1</sup> It defines sexual abuse as “actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions.”<sup>2</sup> The UN set out to address sexual violence and exploitation of women in conflict zones, as well as other gender-based concerns arising in war, through a process of gender mainstreaming—the “process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels . . . to achieve gender equality.”<sup>3</sup>

UNSCR 1325, adopted on 31 October 2000, was the first major attempt to address the issue of sexual violence and exploitation of women and girls in conflict zones and to call for the increased participation of women in peacekeeping. The motivation was clear: women are disproportionately affected by armed conflict, and when they are absent from the peacekeeping process, the ultimate outcome overlooks gender-specific needs in the reconstruction process and potentially contributes to continued instability. For instance, the UN Transitional Authority in Cambodia, launched in 1992 and active until 1993, did not include women peacekeepers. Throughout the operation, Cambodia experienced elevated rates of prostitution, sexually transmitted disease, sexual assault, and (culturally stigmatized) extra-marital romantic relationships between civilians and peacekeepers. The peacekeepers who perpetrated sexual violence or exploitation helped unravel the social and familial structures for some civilians, leaving many Cambodians with the sense that the blue helmets had come only to transform Cambodian women into sex workers.<sup>4</sup> Logistically, the absence of women peacekeepers made it difficult for civilians to report incidents of sexual violence or exploitation perpetrated against them by peacekeepers or combatants, which adversely affected the mission's attempts to address the effects of the conflict zone on women.

UNSCR 1325 takes into account the disproportionate effect of war on women and girls and calls for more participation of women in peacekeeping, as well as a general effort to incorporate gender considerations during the planning and implementation of UN missions. It places primary responsibility for implementation on the Security Council, secretary-general, member states supplying peacekeeping personnel, and parties to current and future armed conflicts. The Security Council and secretary-general consistently professed a commitment to addressing and preventing violence against and exploitation of women in conflict zones. Nevertheless, after the adoption of UNSCR 1325, allegations of exploitation and abuse of vulnerable civilian women by *UN personnel* began to surface as reporting mechanisms improved.<sup>5</sup> Although these were not the first instances of exploitation by peacekeeping forces, "the revelations in 2004 of sexual exploitation and abuse by a significant number of United Nations peacekeeping personnel in the Democratic Republic of the Congo" prompted an institutional review of prior reports received during other missions.<sup>6</sup> The review uncovered

sexual abuse and exploitation during operations in Bosnia and Herzegovina, Kosovo, Cambodia, Timor-Leste, West Africa, and the Democratic Republic of the Congo in the early 1990s through the mid-2000s.<sup>7</sup>

The presence of peacekeeping forces has been linked to sharp increases in the levels of sex trafficking and forced prostitution involving women and children, rape, gender-based violence, and instances of civilian women and girls hired by troops for domestic help and forced into sexual slavery.<sup>8</sup> The missions in the Democratic Republic of the Congo, Cambodia, Somalia, and the Balkans all uncovered widespread instances of sexual assault against and exploitation of girls and women.<sup>9</sup> By ignoring the gender construction inherent in military training and the subsequent ramifications of placing soldiers in situations that constrain the very identity of “soldier,” the UN did not foresee the potential for sexual violence and exploitation of local women by peacekeepers.

In the wake of damaging allegations of sexual violence and exploitation committed by civilian and military personnel deployed to postconflict zones under UN auspices, the Security Council and secretary-general began to take action through a comprehensive investigation and resolutions to integrate gender considerations into peacekeeping operations and to improve peacekeepers’ legal accountability. A primary mechanism for successful UN peacekeeping missions is the perception of UN personnel as impartial, benign, and legitimate; abuse or exploitation of vulnerable civilians by UN personnel does “great harm to the name of peacekeeping.”<sup>10</sup> The comprehensive strategy to eliminate sexual exploitation during peacekeeping missions, resulting from the investigation carried out by Jordan’s Prince Zeid Ra’ad Zeid Al-Hussein and issued to the General Assembly in March 2005, outlines and recommends improvements to the UNDPKO’s standards of conduct, investigative process, command responsibility, and individual accountability with regard to sexual exploitation and abuse.<sup>11</sup> This investigation represented an important first step in addressing the UN’s role in mitigating the devastating effects of armed conflict on women not only through its recommendations as a moral authority but also through training and appropriate disciplinary measures for its own deployed personnel.

Following the 2005 investigation, UNSCR 1820 was adopted on 19 June 2008 as a reaffirmation of UNSCR 1325, the Security Council’s commitment to integrating women into the peacekeeping process, and enforcement

of a zero-tolerance policy for UN personnel who sexually abuse or exploit civilians. UNSCR 1820 was the first resolution to go beyond a general recognition of the adverse effects of war on women, to issue an injunction against misconduct by peacekeeping staff, and to call on troop- and personnel-contributing member states to train personnel on gender issues and respond to instances of misconduct.

UNSCRs 1888 and 1889, adopted in 2009, built upon UNSCR 1820 with more specific measures fostering gender mainstreaming in postconflict reconstruction. These measures involve creating special representatives and special envoys of the secretary-general tasked with addressing sexual violence in conflict, including women's protection advisers in peacekeeping missions. They reiterated the need for states to deploy more women peacekeepers and charged the secretary-general with the task of creating a full report of progress made and remaining improvements after UNSCR 1325.<sup>12</sup>

The Security Council has attempted to address and prevent incidents of sexual violence and exploitation during peacekeeping missions planned and implemented by the UNDPKO by adopting resolutions and formal policies with limited change in practice. The Security Council and UNDPKO have recognized the effects of a peacekeeping system comprised predominantly of men deployed to unstable postconflict regions. Constraints posed by the personnel supply structure, however, make formal attempts at change difficult unless incentives for troop- and personnel-contributing states are sufficient to offset the contributing states' apparent hesitation to deploy women peacekeepers.

### **Gender Mainstreaming: A Response to Supply or Demand?**

Prior to addressing the feasibility of increasing the number of women involved in peacekeeping missions, one must understand the UN's rationale for instituting a gender-mainstreaming policy. This article employs a theoretical framework informed by basic economic principles to investigate the motivation for UN attempts to realize gender equality in peacekeeping operations. Approaching the puzzle in this way enables us to determine where the catalyst for the gender-mainstreaming initiative originated. The following sections apply the principles of supply and demand to the rationale underpinning the UN's efforts to mainstream gender in peacekeeping and

offer the observable implications of each explanation to determine which has more support.

### *Supply-Driven Explanation*

As discussed above, the UN's gender-mainstreaming initiative, as it pertains to peacekeeping, is embodied in UNSCRs 1325, 1820, 1888, and 1889. The adoption of UNSCR 1325 in October 2000 marks the point at which the UN began to grapple with the issue of gender equality within its own operations. Within peacekeeping, gender mainstreaming has the goal of increasing women's participation in missions at all levels of decision making—true for both supply- and demand-driven explanations of gender mainstreaming. The key difference between a supply-driven and a demand-driven explanation lies in the catalyst or motivation for the policy.

A supply-driven explanation holds that the UN effort to increase the participation of women in peacekeeping was motivated primarily by an existing presence of women in the militaries of member states. Gender mainstreaming, in this situation, amounts to a reaction to the gender composition of national militaries rather than a response to mission failures or top-down rhetorical statements about the need for gender equality in peacekeeping. The UN's gender-mainstreaming efforts would simply be a codification in policy of a preexisting reality: the female troops are already serving, and the policy emphasizing women's participation follows in an effort to recognize this fact.

A supply-driven explanation finds support if data indicate an overall trend toward gender equality at the state level. Data at that level, however, show that willingness to send women into combat varies widely: "In almost every country, the question of how and where women should be deployed inspires strident debate."<sup>13</sup> When national militaries are willing to recruit and deploy women, they employ an egalitarian rationale—one that gained traction with the advent of modern, more technologically advanced militaries. The modern military requires less brute strength and more intellectual acumen, discrediting the argument that women make less capable soldiers than men.<sup>14</sup> In the modern military, men and women are theoretically equal; the UN's rationale for gender mainstreaming rests on the assumption that women fulfill certain roles more successfully than men and that the presence of women in peacekeeping has a neutralizing effect on male aggression.



Thus, even for integrated militaries, the UN's gender-mainstreaming logic conflicts with the national justification for recruiting women to serve. Gender integration in the military varies widely, and it seems unlikely that the UN's gender-mainstreaming initiative derived its inspiration from a global surge of women in the military.

### *Demand-Driven Explanation*

In contrast to supply-driven explanations, demand-driven accounts hold that efforts to increase the participation of women in peacekeeping are driven by the UN's need for the greater involvement of women, regardless of the existing gender composition of national militaries. In this case, the UN would institute gender mainstreaming in response to peacekeeping failures and the belief that improved gender equality would have a beneficial effect on mission outcomes. A demand-driven explanation might also reach beyond this narrow strategic calculation to include the UN's broader interest in promoting gender equality and reinforcing the perception of the organization and its personnel as impartial, benign, and legitimate representatives of international society.<sup>15</sup> One would find support for a demand-driven account principally in the timing of and justification for UN gender-mainstreaming resolutions. More specifically, a demand-driven explanation finds support if UN resolutions were adopted in reaction to peacekeeping missions thought to have failed because of the absence of women peacekeepers.

The timing of the UNSCRs, combined with the organizational justification for the greater inclusion of women in peacekeeping operations, provides strong evidence for a demand-driven account. The Security Council and secretary-general had consistently professed a commitment to addressing and preventing violence against women in conflict zones, but not until a flurry of reports of crimes against women surfaced in the 1990s did the UN adopt UNSCR 1325 and institutionalize gender mainstreaming in peacekeeping operations.<sup>16</sup> Additional allegations of exploitation and abuse of civilian women at the hands of UN personnel in the wake this resolution prompted further institutional reviews of conduct across missions, revealing the presence of sexual abuse and exploitation during operations in Bosnia and Herzegovina, Kosovo, Cambodia, Timor-Leste, West Africa, and the Democratic Republic of the Congo in the early 1990s through the mid-2000s.<sup>17</sup>

To address reports of sexual violence and exploitation committed by UN civilian and military personnel deployed to conflict zones, the Security Council and secretary-general developed a comprehensive strategy to eliminate exploitation during peacekeeping missions. It sought to improve the UNDPKO's standards of conduct, investigative processes, command responsibility, and individual accountability with regard to sexual exploitation and abuse.<sup>18</sup> The Security Council adopted UNSCR 1820 in June 2008 to further cement UNSCR 1325 and the council's overall commitment to integrating women into the peacekeeping process as well as to enforce a zero-tolerance policy for UN personnel who sexually abuse or exploit civilians. UNSCRs 1888 and 1889, adopted in 2009, added more specific measures to foster gender mainstreaming in postconflict reconstruction.<sup>19</sup>

Not only the timing of resolutions but also the UN's framing of gender mainstreaming as a solution to prior mission failures bolsters a demand-driven explanation. Enlarging the presence of women in peacekeeping missions evidently reduces cases of exploitation, sexual abuse, and violence against women in conflict and unstable postconflict zones for at least three reasons. First, the UN considers women necessary participants in peacekeeping because of traits specific to their gender that allow them to complete and excel at tasks that men cannot perform. The predominant understanding of female peacekeepers and their contributions to the mission is that they, as women, are uniquely suited to work with victims of sexual violence. Therefore, they can address instances that occurred during the armed conflict or that were perpetrated by peacekeepers, fostering increased accountability in the cases of peacekeeper-perpetrated abuse. Civilians are less likely to perceive women as invaders or conquerors, and they have a civilizing effect, making the traditionally all-male deployment environment seem more like everyday life in society.<sup>20</sup>

Second, in addition to the specific tasks that women may perform better than men, a peacekeeping force comprised of both women and men appears less intimidating to civilians. Under the dominant logic of UN gender mainstreaming, having more women in male-dominated missions improves the image of the peacekeeping force on the ground and within the local population.<sup>21</sup> Finally, female troops apparently have a pacifying or civilizing effect on their male comrades in arms. The presence of women working in deployed military and police units approximates "real life" and consequently

minimizes the aggressive tendencies of peacekeepers who may otherwise find themselves swayed by the anarchic, overly masculine, and surreal nature of postconflict instability.<sup>22</sup>

In sum, both the timing of and justification for the greater inclusion of women in peacekeeping operations support a demand-driven explanation for the UN's gender-mainstreaming initiative. The UN consistently took action in response to mission failures on the assumption that the increased presence of women would have a beneficial impact on peacekeeping outcomes. These policy changes have resulted in an increased demand for women peacekeepers across all missions since the issuance of UNSCR 1325 in October 2000.

### **The Feasibility of Demand-Driven Gender Mainstreaming**

In light of the evidence pointing to a demand-driven explanation for gender mainstreaming, this article now addresses the feasibility of this policy initiative. This is important for at least two reasons. First, and most obviously, change in UN policies regarding the incorporation of women peacekeepers into missions is a crucial step toward achieving gender equality in peacekeeping operations. However, the initiative must also account for gender realities on the ground and within the TCCs to realize any practical success. Second, and following from this, by investigating whether a disconnect exists between the gender-mainstreaming policy and the gender compositions of troops from contributing countries, this article can evaluate the future success of the UN gender-mainstreaming initiative.

#### ***UN Troop-Contribution Data as a Measure of Feasibility***

To determine the feasibility of the gender-mainstreaming policy, we have narrowed the focus of the investigation to include the top 10 TCCs as identified by the UN. Table 1 includes the rankings of military and police contributions by country for 2010, combining police and troop numbers for all countries in order to increase the sample size.

Using figures published by the UN, we disaggregated these total figures according to gender composition, presenting the average monthly male and female peacekeepers contributed by each country in 2010. Table 2 presents

the results alongside the average annual percentage of female peacekeepers contributed by country for this year of activity.

**Table 1. Ranking of military and police contributions by country (2010)**

| <i><b>Ranking</b></i> | <i><b>Country</b></i> | <i><b>Average Total per Month</b></i> |
|-----------------------|-----------------------|---------------------------------------|
| 1                     | Pakistan              | 10,707                                |
| 2                     | Bangladesh            | 10,614                                |
| 3                     | India                 | 8,805                                 |
| 4                     | Nigeria               | 5,815                                 |
| 5                     | Egypt                 | 5,426                                 |
| 6                     | Nepal                 | 5,044                                 |
| 7                     | Jordan                | 3,745                                 |
| 8                     | Rwanda                | 3,679                                 |
| 9                     | Ghana                 | 3,663                                 |
| 10                    | Uruguay               | 2,521                                 |

Source: UNDPKO, "Ranking of Military and Police Contributions [2010]," accessed 3 August 2011, [http://www.un.org/en/peacekeeping/resources/statistics/contributors\\_archive.shtml](http://www.un.org/en/peacekeeping/resources/statistics/contributors_archive.shtml).

**Table 2. Gender composition of military and police contributions for the top 10 TCCs in 2010**

| <i><b>Ranking</b></i> | <i><b>Country</b></i> | <i><b>Average Total per Month</b></i> | <i><b>Average Male</b></i> | <i><b>Average Female</b></i> | <i><b>Percent Female</b></i> |
|-----------------------|-----------------------|---------------------------------------|----------------------------|------------------------------|------------------------------|
| 1                     | Pakistan              | 10,707                                | 10,663                     | 44                           | 0.4                          |
| 2                     | Bangladesh            | 10,614                                | 10,488                     | 126                          | 1.2                          |
| 3                     | India                 | 8,805                                 | 8,665                      | 140                          | 1.6                          |
| 4                     | Nigeria               | 5,815                                 | 5,447                      | 368                          | 6.3                          |
| 5                     | Egypt                 | 5,426                                 | 5,411                      | 15                           | 0.3                          |
| 6                     | Nepal                 | 5,044                                 | 4,948                      | 96                           | 1.9                          |
| 7                     | Jordan                | 3,745                                 | 3,739                      | 6                            | 0.2                          |
| 8                     | Rwanda                | 3,679                                 | 3,586                      | 93                           | 2.5                          |
| 9                     | Ghana                 | 3,663                                 | 3,340                      | 323                          | 8.8                          |
| 10                    | Uruguay               | 2,521                                 | 2,403                      | 118                          | 4.7                          |

Source: UNDPKO, "Ranking of Military and Police Contributions [2010]," accessed 3 August 2011, [http://www.un.org/en/peacekeeping/resources/statistics/contributors\\_archive.shtml](http://www.un.org/en/peacekeeping/resources/statistics/contributors_archive.shtml).

According to these results, the average annual female contribution of the top 10 peacekeeping countries is 2.2 percent of their total. Of the top-ranking military- and police-contributing countries, Jordan has the lowest rating with a 0.2 percent annual contribution of women peacekeepers, while Ghana tops the table with 8.8 percent. Unfortunately, the gender composition of the top 10 military- and police-contributing countries is available only for 2010. To account for this relative lack of data and to further bolster these findings, we engaged in mission-specific research to determine whether these macro annual figures reflected microlevel realities. Our monthly analysis of troop contributions by the top 10 ranking countries to UN peacekeeping missions in the Democratic Republic of the Congo (MONUC), Western Sahara (MINURSO), Central African Republic and Chad (MINURCAT), Darfur (UNAMID), and Timor-Leste (UNMIT) supported our aggregate annual findings. Analysis of mission contributions to operations in Liberia (UNMIL) and Haiti (MINUSTAH), however, revealed Bangladesh and India as outliers, both contributing high percentages of women peacekeepers. Further research is necessary to determine the cause of this variation.

### *Data from the Global Gender Gap Index as a Measure of Feasibility*

The World Economic Forum's Global Gender Gap Index is a helpful tool for researchers seeking to understand the magnitude of disparities between men and women nationally, regionally, and globally. The index focuses on inequality between men and women within countries, not unequal resources and opportunities across countries.<sup>23</sup> It does so by ranking countries according to *gaps* in men's and women's access to and participation in economics, politics, health, and education and by measuring gaps in rather than levels of access to opportunities and resources. The index examines gender disparities within four core categories: economic participation and opportunity, educational attainment, health and survival, and political empowerment.<sup>24</sup>

We consulted the Global Gender Gap Index rankings for each of the top 10 TCCs to assess the gender realities on the ground in each of these countries. Because the index ranking is not affected by relative levels of development, it offers a fair look at gender realities in these countries. Table 3 records the index ranking for each of the top-ranked TCCs.

**Table 3. Gender Gap Index ranking of top 10 TCCs**

| <b>UN TCC Ranking</b> | <b>TCC</b> | <b>Gender Gap Index Ranking</b> |
|-----------------------|------------|---------------------------------|
| 1                     | Pakistan   | 132                             |
| 2                     | Bangladesh | 82                              |
| 3                     | India      | 112                             |
| 4                     | Nigeria    | 118                             |
| 5                     | Egypt      | 125                             |
| 6                     | Nepal      | 115                             |
| 7                     | Jordan     | 120                             |
| 8                     | Rwanda     | n/a                             |
| 9                     | Ghana      | 70                              |
| 10                    | Uruguay    | 59                              |

Source: Ricardo Hausmann, Laura D. Tyson, and Saadia Zahidi, *The Global Gender Gap Report* (Geneva: World Economic Forum, 2010), 8–9, [http://www3.weforum.org/docs/WEF\\_GenderGap\\_Report\\_2010.pdf](http://www3.weforum.org/docs/WEF_GenderGap_Report_2010.pdf).

We are not attempting to delve into specific domestic gender policies/issues or to indict countries for their gender disparities; rather, we are addressing a macrolevel view of gender inequality in UN TCCs. Even a brief examination of this overall score reveals that the UN gender-mainstreaming policy urging greater participation for women in peacekeeping does not effectively take gender realities into account. Table 4 pairs the top-ranked UN TCCs with their Global Gender Gap Index ranking and troop contributions disaggregated by sex. In pairing the index ranking with the UN data on troop contributions, we assert that a disconnect exists between top-down UN gender-mainstreaming policy pertaining to peacekeeping operations and the reality of the gender composition in TCCs.

### ***Overall Summation of UN and Global Gender Gap Index Data***

Given the troop-contribution data and the Gender Gap score for the top TCCs, we argue that the demand-driven approach to gender mainstreaming in UN peacekeeping fails to account for gender realities within TCCs. Such a top-down approach to improving gender equality in peacekeeping missions is likely to encounter only limited success since the TCCs' national militaries must first work to integrate women in their ranks. Illustration of

**Table 4. Ranking of military and police contributions paired with Gender Gap Index ranking (2011)**

| <b>TCC</b> | <b>Gender Gap Index Ranking</b> | <b>UN TCC Ranking</b> | <b>Average Male Troops Contributed</b> | <b>Average Female Troops Contributed</b> | <b>Average Total Troops Contributed</b> | <b>Per-cent Female Troops</b> |
|------------|---------------------------------|-----------------------|----------------------------------------|------------------------------------------|-----------------------------------------|-------------------------------|
| Pakistan   | 132                             | 1                     | 10,663                                 | 44                                       | 10,707                                  | 0.4                           |
| Bangladesh | 82                              | 2                     | 10,488                                 | 126                                      | 10,614                                  | 1.2                           |
| India      | 112                             | 3                     | 8,665                                  | 140                                      | 8,805                                   | 1.6                           |
| Nigeria    | 118                             | 4                     | 5,447                                  | 368                                      | 5,815                                   | 6.3                           |
| Egypt      | 125                             | 5                     | 5,411                                  | 15                                       | 5,426                                   | 0.3                           |
| Nepal      | 115                             | 6                     | 4,948                                  | 96                                       | 5,044                                   | 1.9                           |
| Jordan     | 120                             | 7                     | 3,739                                  | 6                                        | 3,745                                   | 0.2                           |
| Rwanda     | n/a                             | 8                     | 3,586                                  | 93                                       | 3,679                                   | 2.5                           |
| Ghana      | 70                              | 9                     | 3,340                                  | 323                                      | 3,663                                   | 8.8                           |
| Uruguay    | 59                              | 10                    | 2,403                                  | 118                                      | 2,521                                   | 4.7                           |

the disconnect between UN policy and gender reality in the TCCs further supports our argument that UN gender mainstreaming in peacekeeping is a demand-driven and reactionary policy instituted in response to previous mission failures.

### Policy Implications for a Mainstreaming Initiative That Misses the Mark

When gender dynamics come into play in armed conflicts and when efforts to calm hostilities generate unintended consequences, the urgency of incorporating gender into the peacekeeping and reconstruction efforts increases. International actors are only starting to grasp the necessity of recognizing and accounting for gender issues in war. When peacekeeping and reconstruction efforts do not account for gender dynamics, they are unable to provide appropriate guidance and services, given the gender balance of the postconflict population and gender-based tactics utilized during the conflict. A second consequence resulting from gender-blind stabilization and reconstruction—the exacerbation of gender-based exploitation and violence perpetrated by peacekeepers and other international actors in the field—compromises the legitimacy of the mission, undermines the image

of peacekeepers, and perpetuates the cycle of gender-based violence in conflict zones.

By ignoring the construction of the masculine soldier, the underrepresentation of women in militarized peacekeeping, and established or shifting gender norms in the host country, peacekeeping missions have historically led to negative consequences for civilian women. Assumptions of gender neutrality and underestimation of the unequal power dynamics between civilians and peacekeepers in planning, training for, and executing peace operations led to rape, social stigmatization, increased transmission of sexually transmitted diseases, and higher demand for human trafficking during the peacekeeping missions in the 1990s.<sup>25</sup> The combined impact of wars that employed gender-based violence, reconstruction efforts that overlooked gender issues, and peacekeepers who abused their positions of power in postconflict zones awoke the international community to the need to consider the very real effects of gender in war and peacekeeping. UNSCR 1325 laid the groundwork for a solution to these problems in its call for enhanced participation of women in peacekeeping and a greater effort to incorporate gender considerations when planning and implementing missions, but the groundbreaking resolution possesses an air of shortsightedness in its call. As we have argued above, the UN's attempt to mainstream gender in peacekeeping ignores the gender realities of TCCs; in so doing, it runs the risk of remaining little more than lofty rhetoric.

Our assertion that the UN's demand-driven approach to gender mainstreaming, one characterized by a reactionary stance to past mission failures and embarrassments, raises a very simple but important question: *What should the UN do about it?* We have established the existence of a disconnect between UNSCR 1325's call for women peacekeepers and the gender realities in the top TCCs (as illustrated by the 2010 Global Gender Gap Index). What we propose is far from unheard of in UN peacekeeping strategy. To correct the top-down nature of the UN's current approach to encouraging greater participation of women in peacekeeping, that organization must offer incentives for state militaries to contribute female peacekeepers, just as it does for personnel contributions in general. One such incentive may take the form of a larger stipend for TCCs whose personnel contributions include a greater percentage of women in all ranks. The current stipend of approximately \$1,000 (US) per individual per month might



rise incrementally for each percentage increase of female peacekeepers from a given TCC, up to gender parity. For instance, a 1 percent increase in the number of female peacekeepers could merit a stipend of \$1,010 (US) per individual per month. To the top TCCs, this small boost in stipend would generate a significant amount of financial support for national military institutions. Although we recognize that financial incentives alone cannot close gender gaps and that the process of achieving gender integration in national militaries is a very gradual one, our point is simply that the gender-mainstreaming policy cannot have a substantial effect without offering incentives to the countries asked to send their women into conflict zones.

### Conclusions and Further Research

By employing a theoretical framework informed by the basic economic principles of supply and demand, this article has investigated the motivation for UN attempts to attain gender equality in peacekeeping operations. Finding support for a demand-driven explanation of this policy change, it utilized data from the UN Department of Peacekeeping Operations and the World Economic Forum's Global Gender Gap Index to assess the feasibility of the gender-mainstreaming initiative. Analysis of the data showed a clear disconnect between the UN gender-mainstreaming policy and the gender composition of the top TCCs to peacekeeping missions. We argue that this disconnect holds important implications for the future success of the UN gender-mainstreaming policy and assert that the UN must bolster its calls for the greater participation of women with targeted incentives.

This article represents one step in a broader research project on gender mainstreaming in peacekeeping operations. The findings presented herein are largely preliminary, due in part to the difficulty in ascertaining the gender composition of personnel contributions by country to UN peacekeeping missions prior to 2010. As peacekeeping gender-composition data become more widely available, further studies might collect information on the gender composition of the top 10 military- and police-contributing countries over a longer period of time and expand the sample size beyond the top 10 TCCs to test the validity of these initial findings. In addition, aberrant cases such as India and Bangladesh warrant further microlevel cross-sectional analysis, investigating troop contributions by country *and* mission. More extensive evaluation of these outliers will highlight differences among the

top TCCs that might help the UN better tailor its gender-mainstreaming incentives to increase the number of women across all peacekeeping missions.

## Notes

1. UN General Assembly, *A Comprehensive Strategy to Eliminate Future Sexual Exploitation and Abuse in United Nations Peacekeeping Operations*, A/59/710 (New York: UN General Assembly, 24 March 2005), 7, [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/59/710](http://www.un.org/ga/search/view_doc.asp?symbol=A/59/710).

2. Ibid., 7–8.

3. UN Department of Peacekeeping Operations (DPKO), *Gender Equality in UN Peacekeeping Operations*, DPKO Policy Directive (New York: UN DPKO, 3 November 2006), 8, <http://www.un.org/womenwatch/feature/wps/Policy%20directive%20gender%20equality%20FINAL%202006.pdf>.

4. Sandra Whitworth, *Men, Militarism & UN Peacekeeping: A Gendered Analysis* (Boulder, CO: Lynne Rienner Publishers, 2004), 68.

5. Following UNSCR 1325, the General Assembly adopted Resolution 57/306 on 15 April 2003 urging the secretary-general to address sexual exploitation in peacekeeping operations. In 2005 the General Assembly and Secretary-General Kofi Annan commissioned a comprehensive review of sexual exploitation in peacekeeping missions. UN General Assembly, *Comprehensive Strategy*, 10.

6. Ibid., [1].

7. Ibid., 7.

8. Keith J. Allred, “Peacekeepers and Prostitutes: How Deployed Forces Fuel the Demand for Trafficked Women and New Hope for Stopping It,” *Armed Forces and Society* 33, no. 1 (October 2006): 5–23, [http://www.operationspaix.net/DATA/DOCUMENT/5507~v~Peacekeepers\\_and\\_Prostitutes\\_How\\_Deployed\\_Forces\\_Fuel\\_the\\_Demand\\_for\\_Trafficked\\_Women\\_and\\_New\\_Hope\\_for\\_Stopping\\_It.pdf](http://www.operationspaix.net/DATA/DOCUMENT/5507~v~Peacekeepers_and_Prostitutes_How_Deployed_Forces_Fuel_the_Demand_for_Trafficked_Women_and_New_Hope_for_Stopping_It.pdf).

9. When confronted with complaints about the UN’s omission of sexual assault charges against peacekeepers from official peacekeeping documents and accounts, the United Nations Transitional Authority in Cambodia expressed the sentiment that “boys will be boys” and that the peacekeeping mission in Cambodia was “accomplished in part through the deployment of soldiers who assumed that their prerogatives as militarized men included access to prostitutes, as well as a freedom to pursue, harass, and assault local women.” Whitworth, *Men, Militarism & UN Peacekeeping*, 13. This expectation of soldiers’ pursuit of female sexual partners in Cambodia grossly overlooks the local social norms, which stigmatize and punish girls and women who engage in perceived sexual promiscuity, regardless of whether the encounter is consensual or forced. For comprehensive accounts of other missions, see Chiyuki Aoi, Cedric de Coning, and Ramesh Thakur, eds., *Unintended Consequences of Peacekeeping Operations* (Tokyo: United Nations University Press, 2007). For the UN’s take on these missions, see UN General Assembly, *Comprehensive Strategy*.

10. UN General Assembly, *Comprehensive Strategy*, [1].

11. Ibid.

12. UN Security Council, S/Res/1888, 30 September 2009, [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/RES/1888\(2009\)](http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1888(2009)); and UN Security Council, S/Res/1889, 5 October 2009, [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/RES/1889\(2009\)](http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1889(2009)).

13. Gerard J. DeGroot, "A Few Good Women: Gender Stereotypes, the Military and Peacekeeping," in *Women and International Peacekeeping*, ed. Louise Olsson and Torunn L. Tryggestad (London: Frank Cass Publishers, 2001), 28.
14. Ibid., 32.
15. UN General Assembly, *Comprehensive Strategy*, 1–2, 7.
16. UNDPKO, *Gender Equality*, 3.
17. UN General Assembly, *Comprehensive Strategy*, 7.
18. Ibid.
19. UN Security Council, S/Res/1888; and UN Security Council, S/Res/1889.
20. Louise Olsson and Torunn L. Tryggestad, "Introduction," in Olsson and Tryggestad, *Women and International Peacekeeping*, 2.
21. DeGroot, "Few Good Women," 34.
22. Doreen Carvajal, "A Female Approach to Peacekeeping," *New York Times*, 5 March 2010, [http://www.nytimes.com/2010/03/06/world/africa/06iht-ffpeace.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2010/03/06/world/africa/06iht-ffpeace.html?pagewanted=all&_r=0).
23. Ricardo Hausmann, Laura D. Tyson, and Saadia Zahidi, *The Global Gender Gap Report* (Geneva: World Economic Forum, 2010), 3, [http://www3.weforum.org/docs/WEF\\_GenderGap\\_Report\\_2010.pdf](http://www3.weforum.org/docs/WEF_GenderGap_Report_2010.pdf).
24. Ibid., 4.
25. Whitworth, *Men, Militarism & UN Peacekeeping*, 12–17.