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PERSPECTIVES
ON GLOBAL ISSUES



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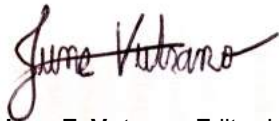
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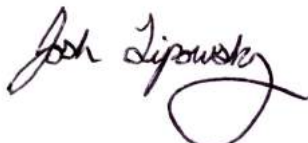
Letters from the Editors

We welcome you to explore our latest edition of PGI. The caliber of our students writing and research continues to excel and propel us into the global issues of the 21st century. Our colleagues have explored issues that range from personal reflections to policy recommendations, and the expanding interest in the continent of Africa. With the sad passing of Nelson Mandela on Dec. 5, 2013, we dedicate this journal to the memory of his lifetime struggle against racism and apartheid. It is difficult to imagine that one of our greatest heroes of the 20th and 21st centuries was only removed from the U.S. Terrorist Watch List in 2008. This only demonstrates that perspectives on global issues can breed myriad opinions and realities. Our writers understand the shifting sands of time and contribute to the world dialogue in so many positive ways. So it is with this edition that I dedicate the voice of the future to Nelson Mandela, *"I have walked that long road to freedom. I have tried not to falter; I have made missteps along the way. But I have discovered the secret that after climbing a great hill, one only finds that there are many more hills to climb. I have taken a moment here to rest, to steal a view of the glorious vista that surrounds me, to look back on the distance I have come. But I can only rest for a moment, for with freedom come responsibilities, and I dare not linger, for my long walk is not ended."*



June E. Vutrano, Editor-In-Chief
& the Editorial Staff

This past semester we witnessed the first direct contact between the United States and Iran in more than 30 years and we are hopeful that this will lead to a peaceful resolution of the Iranian nuclear conflict. The softer rhetoric of Iran's new president, Hassan Rouhani, led to the recent negotiations and interim agreement. We must remember that while Rouhani is making his overtures, his government continues its reprehensible behavior. According to the U.S. State Department, Iranian support of international terrorism has reached its highest levels since the 1990s. Iran continues to develop ballistic missiles capable of carrying nuclear payloads and reaching targets in Israel and Europe. And Iran's domestic human-rights situation remains appalling. The international sanctions against Iran have strained the country's economy and resources. Military engagement with the United States or Israel would threaten to further disrupt Iran's economy, which would inflame already heightened tensions among an Iranian population suffering from the effects of those sanctions. Military engagement is thus not a viable option for Iran, but putting on a charade of negotiations to buy time is. Iran has succeeded in loosening the crippling sanctions without giving up anything concrete. The 5 percent enrichment allowed Iran in the interim deal is not a significant concession for the Islamic Republic as none of Iran's nuclear infrastructure is affected and the country could still quickly make the jump to the 20 percent required for breakout nuclear weapons capabilities in a relatively short period. As students of global affairs, we know that the rhetoric of states' leaders do not always match up with their intentions and actions. We must be cautiously optimistic and maintain healthy skepticism. A peaceful resolution to this crisis is the best solution for everybody, but Iran has failed to give the West any reason to trust its claims of the peaceful nature of its nuclear program or that it will adhere to its agreements. Therefore all options must remain on the table to keep Iran honest. The Iranian regime should continue to feel the threat of the stick in order to make the carrot more enticing.



Josh Lipowsky, Managing Editor

Nelson Mandela



July 18, 1918 - Dec. 5, 2013

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Defining Severity: An Analysis of How 'Severe' Physical or Mental Pain Must Be To Constitute Torture Under International & Domestic Laws

by Erin K. Lovall

Introduction

International and domestic laws generally state that for an act to constitute torture, the pain or suffering inflicted, whether physical or mental, must be “severe” in nature. A number of international and domestic courts have attempted to define what constitutes sufficient severity, often reaching conflicting conclusions. After the Sept. 11, 2001, terrorist attacks, members of the Bush administration attempted to further define “severity” to determine whether certain so-called “enhanced interrogation techniques” were legal under international and domestic laws. This article addresses those efforts and their conclusions.

Domestic and International Law Regarding Torture

International Declarations and Covenants Regarding Torture

Chapter I, Article 1 of the 1945 United Nations Charter (U.N. Charter) provides that one of the purposes of the United Nations (U.N.) is to promote and encourage respect for human rights.¹ Almost all states – one hundred and ninety-three in total, including the United States – are party to the U.N. Charter.² In 1948, the U.N. General Assembly adopted Resolution 217A the Universal Declaration of Human Rights (UDHR).³ Article 5 of the UDHR provides that “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”⁴ The UDHR is an aspirational declaration, not a binding treaty. However, the prohibition of torture contained in Article 5 has arguably become customary international law.⁵

Moreover, in 1966, the U.N. General Assembly adopted the International Covenant on Civil and Political Rights (ICCPR), which contains the same language as Article 5 of the UDHR banning torture and cruel, inhuman, or degrading treatment or punishment.⁶ The ICCPR became effective in 1976.⁷ The United States signed the ICCPR in 1977 and ratified it in 1992.⁸

In 1949, members of the international community revised, expanded, and codified a series of prior international agreements into four treaties that would ultimately become the four Geneva Conventions for the Protection of Victims of War (the “Geneva Conventions”),⁹ which generally regulate the treatment of non-combatants during wartime. One of the

conventions, the Convention Relative to the Treatment of Prisoners of War (GCPW), specifically provides that “in the case of armed conflict not of an international character” parties to the conflict are required to treat detainees humanely and are explicitly prohibited from committing “violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture.”¹⁰ The United States ratified the Geneva Conventions, including the GCPW, in 1955.¹¹

Finally, in 1984, the U.N. General Assembly adopted the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the “Torture Convention”),¹² which the United States ratified in 1994.¹³ The Torture Convention defines “torture” as:

*[A]ny act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.*¹⁴

United States Law Regarding Torture

In 2001, when the United States began detaining individuals in connection with its “Global War on Terror,” the U.S. Army’s official interrogation policy was set forth in U.S. Army Field Manual 34-52 (the “1992 Army Field Manual”),¹⁵ which states that:

[The Geneva Conventions] and US policy expressly prohibit use of violence or intimidation, including physical or mental torture, threats, insults, or exposure to inhumane treatment as a means of or aid to interrogation . . . Torture is defined as the infliction of intense pain to body or mind to extract a confession or information, or for sadistic pleasure.¹⁶

The 1992 Army Field Manual gives the following as examples of physical torture: “(1) electric shock; (2) infliction of

pain through chemicals or bondage (other than use of legitimate threats to prevent escape); (3) forcing an individual to stand, sit, or kneel in abnormal positions for long periods of time; (4) food deprivation; and (5) any form of beating.”¹⁷ It gives the following as examples of mental torture: “(1) mock executions; (2) abnormal sleep deprivation; and (3) chemically induced psychosis.”¹⁸ It also prohibits coercion, defined as “actions designed to unlawfully induce another to compel an act against one’s will.”¹⁹ Examples of coercion include threatening to torture the interrogation subject or the subject’s family, or denying needed medical assistance to the subject.²⁰ The examples of physical torture, mental torture, and coercion set forth in the 1992 Army Field Manual are illustrative, not exhaustive.

The United States has also incorporated certain provisions and underlying principles of the Geneva Conventions, the Torture Convention, and other international laws and treaties, into its own domestic laws. For example, the War Crimes Act of 1996 incorporates and codifies into U.S. law several provisions of international treaties governing the laws of war, including certain provisions of the Geneva Conventions.²¹ Sections 2340 and 2340A of Title 18 of the U.S. Code similarly incorporate provisions of the Torture Convention. Section 2340 defines torture as “an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering . . . upon another person within his custody or physical control.”²² Section 2340A criminalizes both the commission of torture and conspiracy to commit torture.²³ Finally, the Torture Victim Protection Act of 1991 (TVPA) allows for the filing of civil lawsuits in the United States against individuals who, acting under the authority of a foreign nation, subject a person to torture.

International and Domestic Case Law Regarding What Constitutes Torture and Defining ‘Severity’

A number of international and domestic courts have grappled with the question of what constitutes sufficient “severity” of treatment so as to qualify as torture, rather than simply cruel, inhuman, or degrading treatment. While the cases addressing this question have narrowed the definition, courts have not reached a single, defined standard for determining when torture exists, and different courts have

reached different conclusions regarding the same acts.

i. International Case Law

In *Republic of Ireland v. United Kingdom*, the European Court of Human Rights considered whether certain interrogation methods used by British security forces against Irish detainees in the 1970s – including stress positions (some used for hours), hooding, continuous loud noises, sleep deprivation, and deprivation of food and drink – violated Article 3 of the European Convention on Human Rights which prohibits torture and inhuman or degrading treatment or punishment.²⁴ The court observed that:

*[a]s was emphasized by the [European] Commission [of Human Rights], ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is, in the nature of things, relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim, etc.*²⁵

The court found that the five techniques used by the British security forces, even when used in concert, qualified as inhuman treatment and were degrading, but were not torture.²⁶ The court held that the distinction between torture and cruel, inhuman, and degrading treatment “derives principally from a difference in the intensity of the suffering inflicted.”²⁷ The five techniques in question “did not occasion suffering of the particular intensity and cruelty implied by the word torture as so understood.”²⁸

In *Public Committee Against Torture in Israel v. State of Israel*, a group of Israeli human rights groups filed a lawsuit on behalf of Palestinians who had been interrogated by members of Israel’s General Security Service.²⁹ The Israeli Supreme Court (ISC) considered whether various interrogation methods used on the detainees constituted torture, including, among others, “the forceful shaking of the suspect’s upper torso, back and forth, repeatedly, in a manner which causes the head and neck to dangle and vacillate rapidly,” excessive tightening of hand or leg cuffs, and sleep deprivation.



Ultimately, the ISC held that certain interrogation methods (such as forceful shaking) are always prohibited, while others (such as handcuffing) are permissible when used humanely.³⁰ However, even methods that fall into the latter category, when used together, “impinge upon the suspect’s dignity, his bodily integrity, and his basic rights” and are not permissible.³¹

ii. Domestic Case Law

In the United States, there are a number of cases that attempt to delineate the level of severity that is necessary for a particular treatment to constitute torture. For example, in *Daliberti v. Republic of Iraq*, the U.S. District Court for the District of Columbia considered the treatment of four men who were working in civilian capacities along the Iraq-Kuwait border when they were taken into custody by Iraqi officials and held captive in Iraq.³² One man was held at gunpoint, threatened with physical injury (including cutting off his fingers or pulling out his fingernails) if he did not confess to spying, denied adequate food and water, and “incarcerated in a room with no bed, window, light, electricity, water, toilet, or adequate access to sanitary facilities.”³³ The others were threatened with loaded guns, deprived of necessary medical treatment for serious medical conditions, subjected to attempted executions, incarcerated in environments without adequate toilet facilities, and incarcerated in vermin-infested cells.³⁴ Each of the men suffered from severe and debilitating post traumatic stress disorder resulting from their treatment while in custody. Looking to the definition of torture contained in the TVPA,³⁵ the court held that the treatment of each of the four men constituted torture.³⁶

In another case, *Simpson v. Socialist People’s Libyan Arab Jamahiriya*, the United States Court of Appeals for the District of Columbia used the same definition of torture relied upon in *Daliberti*.³⁷ The court stated that the definition of torture contains a “severity requirement” that is “crucial to ensuring that the conduct proscribed by the [Torture] Convention and the TVPA is sufficiently extreme and outrageous to warrant the universal condemnation that the term ‘torture’ both connotes and invokes.”³⁸ The court stated that, even when individuals are subjected to direct physical assault while in custody, the treatment may nevertheless not rise to the level of torture.³⁹ Rather, the label of “torture” is reserved for “extreme, deliberate, and unusually cruel practices such as sustained systematic beating, application of electric currents to sensitive parts of the body, and tying up or hanging in positions that cause extreme pain.”⁴⁰ Although the plaintiff in *Simpson* was

interrogated, held incommunicado, threatened with death, and forcibly separated from her husband, the court held that her treatment was not so “unusually cruel or sufficiently extreme and outrageous” so as to constitute torture.⁴¹

The Torture Memoranda

In March 2002, the Central Intelligence Agency (CIA) captured and began to interrogate Abu Zubaydah - a high-ranking al-Qaeda member who participated in the planning of the 9/11 attacks.⁴² Later, the CIA sought approval from the National Security Council and legal advice from the Justice Department’s Office of Legal Counsel regarding the use of “enhanced interrogation techniques” (“EITs”) in the interrogation of Zubaydah.⁴³ In August 2002, three memoranda – representing the “heart” of the “Torture Memos”⁴⁴ – were written in response to the CIA’s inquiry. Ultimately, the Torture Memos concluded that the use of EITs by the CIA in Zubaydah’s interrogation were lawful.

The first of these memoranda was written by Jay Bybee, then assistant attorney general to then - attorney general Alberto Gonzalez on Aug. 1, 2002.⁴⁵ Gonzalez had asked Bybee to research the standards of conduct under the Torture Convention and Sections 2340 and 2340A of Title 18 of the U.S. Code in the context of interrogations conducted outside of the United States.⁴⁶ Bybee concluded that for an act to constitute torture as the Torture Convention and Section 2340 define it, the physical pain caused by the act must “be equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death.”⁴⁷ Bybee derived this definition of severe pain from federal statutes “defining an emergency medical condition for the purpose of providing health benefits.”⁴⁸ For purely mental pain or suffering to amount to torture, Bybee concluded that it must “result in significant psychological harm of significant duration, e.g. lasting for months or even years.”⁴⁹

The second memorandum was written by Bybee to John Rizzo, then-acting general counsel of the CIA.⁵⁰ Rizzo asked Bybee to write an opinion on whether the prohibition against torture set forth in Section 2340A would prohibit the use of 10 interrogation techniques the CIA wished to utilize in connection with the interrogation of Abu Zubaydah.⁵¹ Those techniques included: attention grasp; walling (pulling an individual forward and then shoving him into a wall); facial hold; facial slap; cramped confinement; wall standing; stress positions (for instance, kneeling on the floor leaning back at a

45-degree angle for long periods of time); sleep deprivation; insects placed in a confinement box (in Zubaydah's case, interrogators knew he had a distinct fear of insects); and the waterboard.⁵² Bybee concluded that none of these techniques, whether used alone or in concert, would result in physical or mental pain of sufficient severity to qualify as torture as defined by Section 2340A.⁵³ Bybee did state, however, that he was unsure whether or not the methods used as a course of conduct would constitute the threat of severe physical pain or suffering.⁵⁴

The third memorandum was written by John Yoo, then-deputy assistant attorney general, to Gonzalez.⁵⁵ Gonzalez asked Yoo to determine whether the interrogation methods used on al Qaeda operatives would violate the Torture Convention or create a basis for prosecution under the Rome Statute, which established the International Criminal Court (ICC) and which the United States signed but never ratified.⁵⁶ Despite the Torture Convention's prohibition against both torture and other cruel, inhuman, or degrading treatments or punishments that do not rise to the level of torture, Yoo concluded that the use of EITs did not violate any obligations under the Torture Convention and that actions taken as part of the interrogation of al-Qaeda operatives would not fall within the jurisdiction of the ICC.⁵⁷

'Severity' Under Domestic and International Law

As set forth above, numerous international and domestic laws clearly prohibit "torture." However, these laws require that, in order for treatment to qualify as torture, it must involve a level of "severity" that elevates it beyond simply being cruel, inhuman, or degrading. Courts that have considered these laws have reached differing conclusions on whether certain actions qualify as torture, leading some jurists to complain about the lack of clarity both in the definition and the possible erosion of the meaning of the word "torture." If all acts of cruelty meet the definition of torture, then what word should be used for the most vicious and cruel acts?⁵⁸ A judge writing separately from the majority opinion in the Republic of Ireland case, *supra*, observed that if the interrogation techniques made subject of that case are considered to be torture, then:

How does one characterize e.g. having one's fingernails torn out, being slowly impaled on a stake through the rectum, or roasted over an electric grid? That is just torture too, is it? Or might it perhaps amount to "severe"

*torture?! . . . These are not in the same category at all . . .*⁵⁹

In light of the inconsistencies between courts in considering the severity necessary for treatment to rise to the level of "torture," there would be value in a "bright-line" rule to clearly delineate what specific actions used against detainees will constitute torture. Sections 2340 and 2340A define torture as a criminal offense under U.S. law, and impose punishments of up to 20 years imprisonment where the torture does not result in death, and life imprisonment or even the death penalty where it does.⁶⁰ The TVPA also allows victims of torture to recover damages against their individual torturers.⁶¹ If the meaning of torture or the requisite severity of treatment required under these laws is unclear, individual interrogators or persons responsible for detainees will have no clear way to prospectively identify what actions are wrongful or to conform their conduct accordingly. Similarly, because states are obligated to protect their citizens from threats from within or without the state, a bright-line rule would arguably assist a state's understanding regarding what interrogation and detention methods the state can use to accomplish that protection.⁶² Interrogations are designed to create a certain amount of discomfort in order to encourage the individual being interrogated to reveal the desired information. However, there is a continuum of pressure from discomfort to torture, and it would arguably assist states to have bright-line guidance so that they can train their officials to utilize only those methods that are permissible.⁶³

One major problem with creating a bright-line rule is that it is impossible to list every act or combination of acts that would amount to torture. Even if such a list could be created, human ingenuity and capacity for cruelty would presumably conceive of new acts that, while not enumerated, would nevertheless be considered torture by most standards. Further, torture can be subjective. The same treatment may be considered torture if used against an infant or an elderly, disabled woman, for example, but not if used against an adult man. Jay Bybee's August 2002 memorandum to Alberto Gonzalez demonstrates the difficulty in drawing a "bright-line" rule. Bybee looked to a federal statute related to medical benefits unrelated to torture) to define what constitutes sufficiently "severe pain" for treatment to amount to torture.⁶⁴ The statute Bybee relies on defines an "emergency condition" as one:

manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent lay person,



*who possess an average knowledge of health and medicine) could reasonably expect the absence of immediate medical attention to result in—placing the health of the individual . . . (i) in serious jeopardy, (ii) serious impairment to bodily functions, or (iii) serious dysfunction of any bodily organ or part.*⁶⁵

As Bybee notes, the usage of the words “severe pain” in that statute relate to “ailments that are likely to result in permanent and serious physical damage in the absence of immediate medical treatment,” which he extrapolates into an interpretation of what constitutes torture under Section 2340.⁶⁶ This is problematic for several reasons. First, the use of “severe pain” in the medical statute was meant to be considered in a certain context, which had nothing to do with what qualifies as severe pain when being inflicted by one person upon another. Second, sections (i) through (iii) of the quoted statutory provision are defining the words “emergency condition,” not “severe pain.”⁶⁷ Third, Bybee’s logic arguably reverses the causality from the quoted excerpt to make his argument. The statute addresses the likelihood that a severe condition will lead to organic impairment if left untreated.⁶⁸ Bybee reverses this to argue that pain is “severe” only when it is associated with (or caused by) organic impairment or dysfunction.⁶⁹

Not only is it difficult to apply a bright-line rule to the severity requirement for an act to be considered torture, but attempting to do so begs the question of whether a detailed definition, if possible, is truly desirable. Would such a definition simply give bad actors a “determinate envelope to push?”⁷⁰ Is an attempt to create a bright-line test an effort “to narrow the class of people [that laws prohibiting torture] protect, to narrow the places at which [such law] applies, [and] to narrow even the class of people whose conduct or whose executive and command decisions are covered by the prohibition?”⁷¹

It is difficult to operationalize with pinpoint specificity the definition of “severity” for the laws prohibiting torture, just as it is with “excessive” for the Eighth Amendment to the U.S. Constitution or “unreasonable” for the Fourth.⁷² “All three of these [concepts] are in part value terms, intended to [establish] a standard, not just measurement terms indicating a numerical level of intensity.”⁷³

Ultimately, there are interrogation methods that most reasonable people would deem to be torture (such as intentionally breaking bones or pulling out fingernails). However, reasonable people - and, specifically, reasonable

jurists – can and do disagree on whether other, less drastic methods (such as stress positions, death threats, or prolonged shackling) are torture. The conclusions regarding severity set forth in the Bybee memoranda were later disavowed by the Bush administration, and were widely criticized by legal scholars when they became public. Thus, Bybee’s attempts to define severity are instructive only so far as to say that his conclusions were incorrect. While it may be impossible to eliminate all ambiguity in determining what actions are severe enough to rise to the level of torture, international and domestic laws and cases interpreting those laws do exist to narrow the spectrum of ambiguity, at least insofar as they are able.

Conclusion

International and domestic laws place an absolute, non-derogable prohibition on the use of torture. However, these laws state that physical and mental pain must be of sufficient severity to qualify as torture, rather than cruel, inhuman, or degrading treatment. Although international and domestic courts interpreting those laws both before and after 9/11 have been unable to develop a consistent interpretation of the severity requirement, legal advisers during the Bush administration attempted to draw a bright-line distinction between permissible interrogation and impermissible torture. The results of those efforts – the so-called Torture Memos – have not had the effect of clearly delineating what constitutes torture; rather, their conclusions have been criticized and disavowed.

Nevertheless, the fact remains that the determination of what is and what is not torture remains highly contextual and fact-dependent. A bright-line rule delineating what methods are and are not permissible interrogation methods – assuming such a list could be created – would likely be ineffective to stop all torture, and could be misused to limit the intended meanings of international and domestic laws against torture. Although the texts of those laws and the cases interpreting them do somewhat limit the ambiguity surrounding the definition of severity, there is no unequivocal definition or bright-line rule that is useful in separating those acts that rise to the level of torture from those that do not, and all signs point to it remaining that way.

Endnotes

¹ “Charter, United Nations.” UN News Center. UN. Web. 13 Mar. 2013. <http://www.un.org/en/documents/charter/chapter1.shtml>. Ch. 1, Art. 1, ¶ 3.

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³ “The Universal Declaration of Human Rights.” UN News Center. UN. Web. 13 Mar. 2013. <http://www.un.org/en/documents/udhr/index.shtml> (hereinafter, the “UDHR”).

⁴ UDHR, Art. 5.

⁵ “Final Act of the International Conference on Human Rights.” United Nations, Teheran 22 Apr. – 13 May 1968. UN Doc. A/CONF.32/41 at 4 (1968), ¶ 2 (“The Universal Declaration of Human Rights states a common understanding of the peoples of the world concerning the inalienable and inviolable rights of all members of the human family and constitutes an obligation for the members of the international community.”).

⁶ “International Covenant on Civil and Political Rights.” United Nations High Commission for Refugees. UN. Web. 13 Mar. 2013. <http://www.unhcr.org/refworld/docid/3ae6b3aa0.html>. Art. 7.

⁷ Status of International Covenant on Civil and Political Rights. United Nations Treaty Collection. UN. Web. 13 Mar. 2013. http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en (hereinafter, “ICCPR Status”).

⁸ ICCPR Status.

⁹ See “Geneva Conventions.” Legal Information Institute. Cornell Univ. Law School. Web. 13 Mar. 2013. http://www.law.cornell.edu/wex/geneva_conventions.

¹⁰ GCPW, supra n. 6, Art. 3.

¹¹ States Party to the Geneva Conventions. International Committee of the Red Cross. 20 Aug. 2012. Web. 13 Mar. 2013. http://www.icrc.org/eng/resources/documents/misc/party_main_treaties.htm. The United States has signed but not ratified the 1977 Protocols.

¹² “Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.” Office of the United Nations High Commissioner for Human Rights. UN. Web. 13 Mar. 2013. <http://www.unhcr.org/refworld/docid/3ae6b3a94.html> (hereinafter, the “Torture Convention”).

¹³ Status of Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. United Nations Treaty Collection. UN. Web. 13 Mar. 2013. http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&lang=en.

¹⁴ Torture Convention, supra n. 12, Art. 1.

¹⁵ Department of the Army. FM 34-52 Intelligence Interrogation. Washington, D.C.: Department of the Army, 1992. Print (hereinafter, “1992 Army Field Manual”).

¹⁶ 1992 Army Field Manual, Ch. 1, p. 8.

¹⁷ 1992 Army Field Manual, Ch. 1, p. 8.

¹⁸ 1992 Army Field Manual, Ch. 1, p. 8.

¹⁹ 1992 Army Field Manual, Ch. 1, p. 8.

²⁰ 1992 Army Field Manual, Ch. 1, p. 8.

²¹ See 18 U.S.C. Sec. 2441. 1996. Print.

²² 18 U.S.C. Sec. 2340. 1994. Print.

²³ 18 U.S.C. Sec. 2340A. 1994. Print.

²⁴ See Republic of Ireland v. United Kingdom, 2 ECHR (Ser. A) (1978) (hereinafter, “Republic of Ireland”).

²⁵ Republic of Ireland at ¶ 162.

²⁶ Republic of Ireland at ¶ 167.

²⁷ Republic of Ireland at ¶ 167.

²⁸ Republic of Ireland at ¶ 167.

²⁹ See Public Committee Against Torture in Israel v. State of Israel, 38 I.L.M. 1471 (1999) (hereinafter, “State of Israel”).

³⁰ State of Israel at ¶¶ 24, 26

³¹ State of Israel at ¶ 27.

³² See Daliberti v. Republic of Iraq, 146 F. Supp. 2d 19, 21 (D.D.C. 2001) (hereinafter, “Daliberti”).

³³ Daliberti at 22.

³⁴ Daliberti at 22-23.

³⁵ See supra n. 24 and accompanying text.

³⁶ Daliberti at 25.

³⁷ See Simpson v. Socialist People’s Libyan Arab Jamahiriya, 326 F.3d 230, 234 (D.C. Cir. 2003) (hereinafter, Simpson).

³⁸ Simpson at 234 (internal citations omitted).

³⁹ Simpson at 234.

⁴⁰ Simpson at 234 (internal citations omitted).

⁴¹ Simpson at 234.

⁴² Johnston, David, A Nation Challenged: Suspect; F.B.I. Says Al Qaeda Aide’s Arrest Will Help Prevent Attacks by Terrorists, N.Y. Times (Apr. 4 2002), <http://www.nytimes.com/2002/04/04/world/nation-challenged-suspect-fbi-chief-says-al-qaeda-aide-s-arrest-will-help.html?ref=abuzubaydah>.

⁴³ “Torture Timeline.” Alliance for Justice. Web. 13 Mar. 2013. http://www.afj.org/connect-with-the-issues/accountability-for-torture/torture_timeline.pdf, p. 1.

⁴⁴ Numerous memoranda concerning the use of EITs on detainees and collectively constituting the Torture Memos were written by government officials—both civilian and military—during the Bush Administration. This paper limits its discussion to the three main torture memoranda and one related memorandum.

⁴⁵ Bybee, Jay S. “Standards of Conduct for Interrogation under 18 U.S.C. §§ 2340-2340A.” Memo to White House Counsel Alberto R. Gonzales. 1 Aug. 2002. FindLaw.com. Web. 13 Mar. 2013. <http://fl1.findlaw.com/news.findlaw.com/nytimes/docs/doj/bybee80102mem.pdf> (hereinafter, “August 2002 Bybee/Gonzalez Memo”).

⁴⁶ August 2002 Bybee/Gonzalez Memo, p. 1.



⁴⁷ August 2002 Bybee/Gonzalez Memo, pp. 1, 5-6.

⁴⁸ August 2002 Bybee/Gonzales Memo, pp. 5-6.

⁴⁹ August 2002 Bybee/Gonzalez Memo, pp. 1, 6-8.

⁵⁰ Bybee, Jay S. "Interrogation of al Qaeda Operative." Memo to John Rizzo, CIA Acting General Counsel. 1 Aug. 2002. George Washington University, "The Torture Archive." Web. 13 Mar. 2013. http://dSPACE.WRLC.ORG/doc/bitstream/2041/70967/00355_020801_004display.pdf (hereinafter, "August 2002 Bybee/Rizzo Memo").

⁵¹ August 2002 Bybee/Rizzo Memo, p. 1.

⁵² August 2002 Bybee/Rizzo Memo, pp. 2-4.

⁵³ August 2002 Bybee/Rizzo Memo, p. 46.

⁵⁴ August 2002 Bybee/Rizzo Memo, pp. 15-16.

⁵⁵ Yoo, John. Letter to Alberto R. Gonzalez. 1 Aug. 2002. George Washington University, "The Torture Archive." Web. 13 Mar. 2013. http://dSPACE.WRLC.ORG/doc/bitstream/2041/70965/00355_020801_002display.pdf (hereinafter, "August 2012 Yoo/Gonzalez Memo").

⁵⁶ August 2012 Yoo/Gonzalez Memo, p. 1.

⁵⁷ August 2012 Yoo/Gonzalez Memo, pp. 1, 3-6.

⁵⁸ See Waldron, Jeremy. "Torture and Positive Law:

Jurisprudence for the White House." General Aspects of Law Seminar—U.C. Berkeley. 30 Sept. 2004, p. 9.

⁵⁹ Republic of Ireland, *supra* n. 43, Separate Opinion of Judge Sir Gerald Fitzmaurice, ¶ 35.

⁶⁰ See 18 U.S.C. Secs. 2340, 2340A(a).

⁶¹ TVPA, *supra* n. 24, Sec. (2)(a)(1).

⁶² Waldron, *supra* n. 66, p. 15.

⁶³ Waldron, *supra* n. 66, pp. 16-18.

⁶⁴ See August 2002 Bybee/Gonzales Memo, *supra* n. 50, at pp. 5-6; see also 42 U.S.C. Secs. 1395w-22(d)(3)(B) (2000).

⁶⁵ See 42 U.S.C. Sec. 1395w-22(d)(3)(B).

⁶⁶ See August 2002 Bybee/Gonzales Memo, *supra* n. 50, at p. 6.

⁶⁷ Waldron, *supra* n. 66, p. 23.

⁶⁸ Waldron, *supra* n. 66, p. 23.

⁶⁹ Waldron, *supra* n. 66, p. 23.

⁷⁰ Waldron, *supra* n. 66, p. 7.

⁷¹ Waldron, *supra* n. 66, p. 26.

⁷² Waldron, *supra* n. 66, p. 22.

⁷³ Waldron, *supra* n. 66, p. 22.



Photo by Karina Gosheva



Photo by Jennifer MacNeill



The Freedom House of Saudi Arabia

by Amy Newell

From 2009 to 2011, I lived in the Kingdom of Saudi Arabia (KSA), where I worked at the new, entirely female, Princess Noura Bint Abdurrahman University in Riyadh. When I first tell people about where I lived before I came to New York, the usual reaction is:

“Oh, isn’t that where women are terribly oppressed?!”

“Gosh, what was it like being a woman there?!” “Could you do anything??”

The opportunity to go to Saudi Arabia appeared out of the blue. On a typical grey and rainy day in London, I received a phone call from a recruitment company. Eager to find an escape route from gloomy, fiercely class-divided, negativity-sodden Britain, I immediately accepted the offer.

Perhaps counter-intuitively, living in Saudi Arabia allowed me more freedom than I had ever experienced in my adult life. People say: “Ah, that is because as a white Western woman, you would have had special privileges.” Although there clearly is an often Victorian-like caste system of differential treatment of ex-pats, I would argue that discrimination is related to level of education, rather than ethnicity. When newly arriving in any country, getting to know people and building your social circles takes work. Without exception, in every group that I got to know in Saudi Arabia, I was warmly welcomed and bowled over by the generosity and kindness that I encountered. Albeit a formal environment, I found freedom in the clear boundaries and conventions of public behavior. There were many other factors that added up to this feeling of liberation, unrelated to differential treatment, but rather to the ritual and rigid structure of everyday life.

By law, women in Saudi Arabia must wear an abaya in public. This diaphanous, black garment is a great equalizer. Precisely thanks to the universality of your appearance, space for your fundamental identity is set free. No longer can you be judged by your physical appearance: symmetry of features, body type, clothing budget, or skin color. Walking down the street is not a parade of wealth or sexual desirability, but about getting from one place to the next. The debate regarding modest clothing that generates such an eternal flap in the media reveals the glut of misperceptions surrounding the concept of oppression. This cartoon that made the rounds on the Internet last year (Evans 2011) effectively illustrates these tensions at either end of the spectrum. Views may always be

dramatically divided regarding what symbolizes women’s true liberation in terms of clothing, but this cartoon contributes to creating an urgently needed safe arena in which to debate these issues.

Having participated in the Soliya program through New York University’s Center for Global Affairs and taught around New York City over the last two years, the cartoon certainly has been a good tool for thought-provoking discussions. Only recently this September, did tensions re-emerge regarding modest dress, sweeping further across Europe, and now to the United Kingdom. A modest niqab or veil has come to serve as a political barometer of the moment, from Turkey to France, Belgium, Italy, and now Britain, perhaps representing a microcosm of wider clashes in an evermore rapidly interconnected world.



Evans 2011

Europe and the West are wallowing in economic crisis, yet, in my experience, I cannot remember a time when Britain was not in financial turmoil! Perpetually in a state of post-war- esque rationing and austerity, to break out of the United Kingdom and land in a country that actually welcomed my participation in the labor force was a blessing. With this came a healthy salary (by European standards), health care, housing with no bills, no taxes, and a decent job in a growing women’s university. In order to enter the “Magic Kingdom,” as it is often called by expats, you must specialize in a certain field, have a job contract, and unofficially have an adventurous

appetite for looking at the world from a very different perspective.

Travelling from Damascus three years ago was like flying through a history book, across Lebanon, Israel, Jordan, and down into Saudi Arabia. As the climate is so dry, visibility is absolutely clear. The Kingdom of Saudi Arabia (KSA) is an incredibly beautiful country, not only consisting of vast expanses of varying desert landscapes, but also mountains laced with mist, verdant coastline, and islands of pale sand surrounded by clear water and filled with a cacophony of colorful fish. Saudi Arabia is quite aware that its supply of oil (cheaper per liter than water) won't last forever. The government is actively seeking to diversify the economy for the future, currently by primarily increasing the number of students, both female and male, in higher education. In 2012/13, expenditure on this sector of education increased by 13 percent to \$44 billion. The university that I worked for, originally created in 1970, was dramatically expanded in 2008, and eventually aims to take in 40,000 students. Additionally, since 2005 the government has been giving out generous scholarships to students who wish to study abroad, ultimately to broaden the potential spheres of employment in the future.

Out of this will evolve an increasing "Saudization" of the workforce. This is a nationalization drive that is happening across all of the Gulf States that have very high percentages of foreign born employees and critical home citizen employment issues. Fifty-eight percent of those in higher education are female in the KSA, yet according to UNESCO figures from 2008, women made up only 16 percent of the workforce. Having handed over their expertise, as foreign workers are phased out in the country, the hope is that more jobs will become available for Saudi women.

Likely in response to the spreading tide of discontent during the "Arab uprisings," the popular and benevolent His Majesty King Abdullah rapidly began to make changes within the kingdom. In 2011, he swiftly increased public sector wages and unemployment benefits and provided housing subsidies for first time buyers. He also permitted women to work in lingerie stores, an example of the kingdom's many ironies in relation to gender segregation. Formerly, the only people permitted to sell women's clothing of any kind were men. This ruling changed in 2012, opening an additional small window of

opportunity for women's employment in the retail sector. In the flurry of events of 2011, it was seen as a good time to up the public demonstration of support for the Right2Drive campaign.

As we coasted through the streets of Riyadh in March 2011 (sitting in the back seat of course), the demonstration planned for that evening through social media was certainly unassuming, but importantly, its occurrence was tolerated. Again on Oct. 26, 2013, a similar demonstration occurred, this time hoping to gather more support. Unfortunately, prior to the demonstration the online petition was blocked, as were social media group sites. Stories of signatories receiving ominous phone calls prior to the 26th to dissuade them from participating circulated, and the turnout on the day again was underwhelming. Nevertheless, a well-loved group of savvy Saudi comedians was able to post a carefully inoffensive YouTube video of "No Woman, No Drive," based on the classic Bob Marley song.

I am not insinuating that KSA is a fairytale utopia. I do not condone turning a blind eye to the injustices of the kefala system that leaves an employer with ultimate power over his foreign employee, the harrowing human rights abuses in many construction sites across the kingdom with poor safety precautions, the inadequate housing of many workers, and violation of rules prohibiting outdoor work in excessive temperatures during the midday period, or Saudi's role in stifling the uprisings in Bahrain during the 'uprisings'. Nevertheless, I do admire the strides Saudi is taking to 'modernize' while retaining the essence of Gulf culture, and not letting itself be open to point of complete exploitation, as is the case in Dubai, the 'Atlantic City/Blackpool/Houston/Astana cocktail' of the desert.

Other notable changes following the 2011 'uprisings' were the decision in September of that year to allow women to vote in the next municipal elections in 2015, and the inclusion of women on the Shura Council in February 2012, despite some strong resistance. Just recently, a groundbreaking advertising campaign to raise awareness about domestic violence was shown across the Kingdom, featuring a carefully made up woman with a black eye beneath her niqab. The shocking imagery was not the only reason for these ads being conspicuous, but also because women are very rarely shown in advertising, to protect their modesty and to preserve, what



is supposed to be, their esteemed position in society. The campaign culminated in August 2013 with the passing of a legal ban against domestic violence and abuse of women.



King Khalid Foundation, "No More Abuse," 2013.

During the inauguration of women, making up 20 percent Shura Council, King Abdullah, who had steadfastly defied those that did not support his decision for the dramatic change, stated on national television:

"The development we are working at must be gradual."

The monarchy has clearly demonstrated that it's not impervious to change, as long as it is made on the nation's own terms, and is compatible with Saudi's proud sense of preserving its cultural identity. Particularly, as a traditionally, long-term ally of the US and powerful regional stabilizer, this shows an admirable and important strength of character in setting and maintaining clear boundaries as to what is appropriate in the country and in many aspects, across the region. If it is no longer considered acceptable that one set of rules is deemed as superior on the world stage, supporters of the concept of universalism may be thrown by the dynamics at work inside the Kingdom. Saudi Arabia is a living reminder that, while there may be some common threads between all nations, step into the country and you will immediately notice that even with increasing globalization and international interdependence, Saudi remains flamboyantly swathed in quite a different, yet still accessible, segregated sense of reality.

My sense of freedom came not only from relative economic empowerment, but also from the gender-segregated bubble that we existed in. In that space, dynamics were dramatically different than those that I had experienced throughout Europe

as an adult. Gender equity and the sharing of the public sphere, is thankfully far more comfortable in the United States. Prior to arriving in Saudi Arabia, I had not had the opportunity to exist in an all-female environment since I was at school. I had almost forgotten about the ability to take down some defenses and to enjoy using that extra energy to focus on the project of the moment. We lived together behind guarded walls, worked together on a huge campus; took evening classes together in a fascinatingly, draconian, religious school, attended vast expanses of women-run business fairs and conferences, and partied in colorful wear at art shows in various women's houses. The daunting citadels of more upscale housing compounds offered an alternative lifestyle.

Behind the several layers of thick concrete, barbed wire, passwords and machine gun carrying guards, I imagine, you could access a world not dissimilar to the last days of the Raj, or England in the 1950s, replete with little gardens, homemade alcohol on tap and lashings of sunburn. Albeit a strange set up, I was quite happy that this life was bizarrely contained.

Rejoicing in the shift in balance of power, I continued to head straight down the path in the other direction.



A sign seen frequently around the Kingdom.



Photo by Coco Lammers



Moral Courage & the Wars of the Former Yugoslavia

by June E. Vutrano



The hottest places in hell are reserved for those who in times of great moral crises maintain their neutrality.

-- Dante Alighieri (1265-1321)²

Introduction

"The accident of birth directs political opinion."³

In the scourge of modern warfare, genocide, ethnic cleansing, crimes against humanity, and war crimes often occur with impunity. It is not until much later that these atrocities are revealed to the public and attempts at transitional justice⁴ are brought before the international community. International law and justice have failed thus far to prevent these senseless and shocking atrocities. The wars of the former Yugoslavia are a modern example of the challenges and pitfalls of transitional justice. The United Nations established the International Criminal Tribunal for the Former Yugoslavia (ICTY) in May 1993 in response to mass atrocities that were taking place in Croatia, Bosnia, and Herzegovina (BiH). This was the first war crimes court created by the United Nations and the first war crimes tribunal since Nuremberg and Tokyo.⁵ The establishment of the ICTY was a milestone toward the advancement of international law and prosecuting the world's worst atrocities as well as the first time rape was prosecuted as a war crime.⁶ Unfortunately, the establishment of the court did not prevent further atrocities in the ensuing years of the former Yugoslavia: crimes such as the genocide at Srebrenica, the siege of Sarajevo, and the conflict in Kosovo occurred after the ICTY's creation. It is estimated that more than 17,000⁷ persons are still missing and unaccounted for,

hundreds of thousands were killed,⁸ and approximately two to four million persons were displaced and became refugees during the conflict.⁹ What is lacking from the transitional justice dialogue is a discussion of the people that stood up against such evils and risked their own lives and wellbeing for the sake of others.

This paper intends to focus not on the crimes and atrocities of the former Yugoslavia because justice in a postwar framework is very difficult to gauge depending on the point of view. Focusing on the positive factors during a time when it appears that evil prevailed highlights humanity's inescapable ability to remain ethical and moral, even when it appears that the world has lost its sanity. Examining the events that occurred during this dark period and highlighting those who found it within themselves to sacrifice their own safety and security are a form of transitional justice; the transformation of evil into good. The attempts to seek justice in the aftermath of the horrors that took place in the former Yugoslavia, without examining the moral and ethical goodness in those that chose to do differently, leaves a large gap in the story of justice.

This paper will highlight some of the individuals who collectively or individually stood up against the darkness, creating a space for beauty and light. Moral courage¹⁰ is the ability for people to do good, even when it would be easier and safer to remain silent, neutral, or to participate in the evil. Moral courage is an important factor toward the study of transitional justice, examining different reactions to the atrocities of war, which may lead to a better understanding of the best that can be found in people during the worst of times, with the goal of a more positive and peaceful future for us all.

Transitional justice is an important tool toward the peace of the future, but it tends to focus solely on the atrocities of war and its victims. While transitional justice seeks a sense of peace for the good of the future, if the individuals who did not participate or refused to stand by are not highlighted in the transitional justice process, a lacuna in the history will remain. The first part of this paper will explore the origins and sociological theories of moral courage that have evolved in our postmodern world. The second part of this paper will examine those who have demonstrated great moral courage during the wars of the former Yugoslavia and its aftermath.¹¹ The paper will conclude with the emphasis that to serve transitional

justice, we need to examine both the positive and the negative events of war toward the goal of peace, and how moral courage is one key aspect of this important process that cannot be ignored.

On Moral Courage and its Origins

“Courage liberates [wo]men from their worry about life for the freedom of the world. Courage is indispensable because in politics not life but the world is at stake.”¹²

Moral courage has always existed in the spirit of humanity but it was not until recently that it was given a name, according to Swedish sociologist, Richard Swedberg. There is no specific reference to when and where the terms civil, social, or moral courage became part of our modern language. Most references point to Otto Von Bismarck, who in 1864 first used the term *zivilcourage*.¹³ *Zivil* comes from German, meaning nonmilitary (in the military, one obediently follows orders and thus counts for less, according to Bismarck). And *courage* is taken from the French word *corage*; the quality of mind or spirit that enables a person to face, among other things, difficulty, danger, pain.¹⁴ For Bismarck, this is to behave in a non-conformist manner, which contradicts the majority.¹⁵ The standard definition shared by Swedberg is, “To dare to act because of one’s conviction, even at the risk of paying a high price for this conviction.”¹⁶

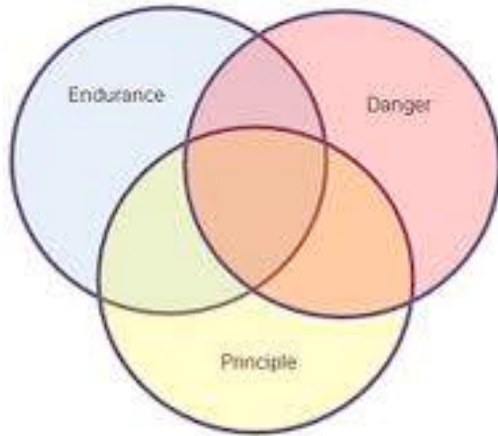
There exist several social science studies of why people obey, but not one single major study of civil courage exists. Civil courage is viewed as an individualistic phenomenon and difficult to approach through the science of sociology. There are ideas and concepts that are found within the sociological community when attempting to analyze civil courage. Emile Durkheim used the term “social institution,” where individualism is part of a higher form of human society. In this higher society, people are tied together through their respect for the rights of the individual.¹⁷ The closest that Durkheim comes to discussing civil courage is in his comments on the trial against Socrates in *The Rules of Sociological Method*.¹⁸ Durkheim points out that the courageous behavior of Socrates’ type can be viewed as a way of clearing the way for a new social morality.

Max Weber defines sociology as the science of “social

action,” understood as action by an individual that takes other actors into account and “is thereby oriented in its course.”¹⁹ According to Weber, all individuals are driven by a combination of ideal and material interests, and in the case of civil or moral courage, ideal interests predominate. The concept in Weber’s sociology that captures the essence of moral courage is “value-rational social action.”²⁰ An action inspired by ideal interests, carried out without concern for chance of success with a conscious belief in a value for its own sake. This entails some type of conflict and typically challenges a law or a convention.

It is immensely moving when...[an individual] acts by following an ethic of responsibility and somewhere he reaches a point where he says: ‘Here I stand; I can do no other.’²¹

One of the first publications on moral courage did not come until 1962, when Sir Compton Mackenzie wrote the book *On Moral Courage*.²² He describes the first instances of the term moral courage as a late arrival in English, cited in the *Oxford English Dictionary*, which was derived from a series of aphorisms written by Charles Caleb Colton published in 1822. Colton refers to moral courage for the first time in English print, “Oliver Cromwell’s hypocrisy neutralized his moral courage never his physical.”²³ The first attempt to define moral courage was in 1862, when Sir James Fitzjames Stephen wrote in an essay, “Moral courage is readiness to expose oneself to suffering . . . It arises from firmness of moral principle and is independent of the physical constitution.”²⁴ This was the definition first entered in the *Oxford English Dictionary*. According to Mackenzie: “Truth in his view of moral courage will be a humbler kind of truth based upon the individual’s own sense of justice.”²⁵ He views religion and moral courage as incompatible and believes that it was not until the development of human knowledge in the age of reason when faith was in doubt that moral courage could flourish. For Mackenzie, moral courage consists of five qualities: truth, justice, compassion, common sense, and self-respect.



Source²⁶

Rushworth Kidder, the founder of the Institute for Global Ethics, tackles moral courage in his 2005 book *Moral Courage*. Kidder believes that moral courage is something that can be nurtured in the human spirit and there are three intersecting elements: principles, danger, and endurance.

Kidder details the lives of ordinary people and world leaders who have demonstrated great moral courage as examples: Mahatma Gandhi, who advocated nonviolent struggle to free India despite repeated imprisonment; Nelson Mandela, who was imprisoned for 18 years and still forgave his oppressors; Lech Walesa, who led the solidarity movement that ultimately toppled Communism in Poland; and Aung San Suu Kyi, who resisted imprisonment in Myanmar while remaining an outspoken voice for democracy.

None of the stories of moral courage demonstrate that this is something one learned at home or in school, but there is a nuance of nurturing and experience that has led many people in history to rise up against injustice, to speak out, to do good deeds, even at the risk of their own personal safety or freedom. The question is are these people unique and is moral courage a phenomenon? If we examine the multitude of examples of moral courage that occurred in the wars of the former Yugoslavia, we would come to find that moral courage is more pervasive in humanity than some of our historians will have us believe.

Moral Courage During the Wars of the Former Yugoslavia

That picture, the words 'concentration camp' and 'holocaust' finally translated the true meaning of 'ethnic cleansing.' At last people in the West began to grasp what was going on. It was suddenly clear that Europe hadn't learned its lesson, that history always repeats itself and that someone is always a Jew. Once the concept of 'otherness' takes root, the unimaginable becomes possible.²⁷

Highlighted in Kidder's book is the story of Kosovo writer Sevdije Ahmeti; she spent years interviewing ethnic Albanian women who were raped by Serbian forces. She documented 13,000 stories and published them on the Internet. One evening Serb soldiers burst into her home to stop her from publishing. She escaped through a window and spent three months hiding in barns, attics, and basements. Ahmeti refused to stop publishing the truth even when her life was at stake. She is now the director and cofounder of the Centre for Protection of Women and Children in Pristina working with women and children who suffer from the effects of the war.²⁸ She was one of several participants testifying before the U.N. in 2005 who "gave powerful testimonies of frustration about the ongoing violations of women's rights on the ground, lack of responses from the highest levels and the difficulty of addressing gender-based violence."²⁹

Eyal Press recorded the story of Aleksander Jevic in *Beautiful Souls*,³⁰ a Serb soldier stationed at the Croatian town of Vukovar. The Serbs had rounded up hundreds of men and placed them in buses, transferring them to the neighboring border town of Stajičevo in Serbia for detention. Since Vukovar was home to an assortment of ethnic groups and Croats and Serbs spoke virtually the same language, an outsider had no way to know who was a Serb and who was a Croat among the hundreds of men they had rounded up for torture and eventual slaughter. Jevic was chosen by a commanding officer to sort out the Serbs from the Croats. Being a local, he knew who was a Serb and who was a Croat, but instead he seized this opportunity and made up Serb names for 150 to 200 prisoners who were Croatian, saving their lives and risking his own if discovered. There was no apparent motive for his act. His own maternal grandparents were killed during the Ustaša regime in the Jasenovac concentration camp by the Croats in World War II, and his mother is an orphan and survivor of the same camp. When asked why he risked his own life to save the Croats at Stajičevo, Jevic could recall only that his gut told him to do so; there was no other choice for him. His moral courage was based on his belief that all people are good, it was this belief

that led Javic to save the lives of so many.

The soldier Dražen Erdemović had a special kind of moral courage. Erdemović in July of 1995 was ordered to help carry out the massacre of Muslims trapped in the U.N. “safe area” of Srebrenica. Erdemović refused the order, but was told that if he refused he would be shot along with the Muslims. Erdemović – a Croat who had enlisted with a multiethnic unit to avoid combat duty and had a wife and child at home – made the decision to live and shot dozens of Muslims. After the last had fallen, Erdemović was told that there were more on the way in buses, this time he successfully refused to continue the slaughter.³¹ Erdemović, riddled with guilt and remorse over the enforced killings he participated in, sought out an ABC field reporter and confessed his crime, publicly revealing the crime of genocide at Srebrenica. He voluntarily testified at the ICTY about the massacre at Srebrenica and his participation in the massacre. He was given a lighter sentence in a judgment based on the defense of duress, “. . . that concluded his only choice was ‘to kill or be killed.’”³²

Svetlana Broz, the granddaughter of former Yugoslavian President Josip Broz Tito, traveled during and after the wars collecting thousands of testimonies of moral courage. *Good People in an Evil Time* was written to demonstrate how people are capable of ethical action, de-emphasizing the capacity of criminal action. The example of the Jews in Sarajevo during World War II, who survived thanks to Muslims, Serbs, and Croats who hid them, served as her inspiration. During the start of the siege of Sarajevo in 1992 there were 1,200 Jews. Most left in convoys and 200 remained. The remaining Jewish community, La Benevolencija, stayed and devoted themselves to rescuing and sustaining all those they could assist, regardless of ethnicity or religion.

La Benevolencija is a Jewish community that rebuilt life in Sarajevo after the Holocaust. “In 1941 eighty percent of the city’s 12,000 Jews were deported to their deaths. But nearly 1,000 escaped to fight with Tito’s Partizans.”³³ It was the adult children of the survivors of the Holocaust that made up the tiny community of La Benevolencija in the 1990s when the war arrived in Sarajevo. The Jews played no part in the ethnic battle that was unfolding, they were neither Croat, Serb, nor Muslim and had no reason to take a side. When the siege began, they relaunched their own humanitarian aid society they once had during World War II. Turning the last remaining synagogue of Sarajevo into a “free and open house for all,” they had 54 volunteers of mixed ethnic backgrounds. In the first two years of the siege of Sarajevo “La Benevolencija:

opened three pharmacies and gave away 1,600,000 medical prescriptions, opened the city’s only first aid clinic that treated 2,500 patients and made 650 house calls, gave away 380 tons of food, cooked 110,000 hot meals, started their own post office-handling 100,000 letters, set up two-way radio communications with the outside world, provided free apartments to Bosnian refugees, and sent 11 rescue convoys, to safety, carrying 2,300 people, less than half who were Jewish.”³⁴

It is no wonder that Svetlana Broz found La Benevolencija as her inspiration to travel about the region and collect the stories of moral courage found everywhere that the war had touched. Initially Broz embarked on the project to record these stories after volunteering at a medical clinic to treat the wounded during the conflict where she heard so many testimonies of lives saved by people who crossed the ethnic lines to save others. Between 1993 and 1997 Broz set off collecting stories throughout the region during weekends and holidays and had compiled enough to write a book. One night in 1997, an intruder broke into her apartment and stole all of her audio-recorded interviews; all that she had collected over four years was gone forever. She decided it was too cruel to return to the same people and have them tell their painful stories a second time, so Broz ventured out again, convinced that there were more stories untold. She eventually collected 9,000 pages of testimony that she used to compile the book *Good People in an Evil Time*.

The ICTY documented 7,000 war crimes that occurred in BiH. With a population at the start of the war of 4.5 million, this demonstrates that popular participation in genocide was limited to a tiny portion of the population.³⁵ The amount of testimony compiled by Broz in the many years that she had developed *Good People in an Evil Time*, demonstrates that there were thousands of instances of moral courage shown throughout the conflict. In a world where people were faced with unspeakable crimes only to be confronted with the limits and possibilities of their own choices, these stories highlight that not everyone was complicit and many resisted, demonstrating a latitude for personal action in war.

Moral Courage After the Wars of the Former Yugoslavia:

“Die Sonne scheint noch” – “The sun still shines.”³⁶

The civil courage prize is awarded annually by the Train Foundation, established by the Honorable John Train in 1987. “Since 2000, the Foundation has sponsored the International



Civil Courage Prize, which honors extraordinary individuals, whose acts undertaken deliberately, over time have demonstrated 'steadfast resistance to evil at great personal risk.'³⁷ The first Civil Courage Prize was awarded to Nataša Kandić of the former Yugoslavia in 2000. Kandić founded the Humanitarian Law Center (HLC) in Belgrade, Serbia, in 1992. Social worker turned lawyer, Kandić's unrelenting dedication to the truth behind the wartime atrocities is only overshadowed by her acclaimed investigation of the Srebrenica genocide. In 2005 she obtained video evidence of Serb paramilitaries executing six Bosnian Muslim prisoners near Srebrenica; the tape was used as evidence by the ICTY to indict Milošević. "At the outbreak of war in the early 1990s, Kandić began meticulously documenting cases of torture, rape and murder. She would spend the next decade seeking truth amongst the atrocities and battling to bring the perpetrators of war crimes to justice."³⁸ The HLC is currently compiling a name-by-name register of the victims of the wars of the former Yugoslavia. Thus far, they have collected 14,000 names, and are currently representing more than 1,000 victims. They advocate for compensation and reparations, and a new law to encompass all categories of victims (e.g., post traumatic stress disorder is still not recognized).³⁹

Srdja Popovic is the executive director of The Centre for Applied Nonviolent Action and Strategies (CANVAS). CANVAS was borne out of the nonviolent resistance to unseat Slobadan Milošević with the Otpor! campaign. During the campaign hundreds of thousands of protestors organized and took over the Serbian Parliament, effectively ending Milošević's rule.⁴⁰ In 2003, Popovic and other ex-Otpor! activists began the non-profit educational institution of CANVAS, working with people from 45 different countries to spread the knowledge of nonviolent strategies and tactics used during the Serbian pro-democracy movement. "In November of 2011, *Foreign Policy Magazine* listed Srdja Popovic as one of the 'Top 100 Global Thinkers' of 2011 for inspiring the Arab Spring protesters directly and indirectly and educating activists about nonviolent social change in the Middle East. In 2012 he was nominated for the Nobel Peace Prize."⁴¹

Denis Džidić is a transitional justice journalist for the Balkans Investigative Reporting Network (BIRN). This news agency monitors state trials and reports on their progress for public knowledge to spread awareness about the transitional justice process. According to Džidić, "The Bosnia media is still owned by the political elites and they utilize fear to retain

power. The trials at the Hague are highly criticized by the public due to their distance from the region, but the local trials are very popular, drawing attention to alternative media. Because of the post conflict mono-ethnic demographics, many people in the same country have a different knowledge of the history of the conflict."⁴² He feels that history and awareness of the transitional justice process needs to be taught in schools, as most students only learn about WWII and then the Dayton Accords with large gaps in the collective memory. Denis's work is focused on the lessons of the past, working toward the future generations to instill a sense of justice and memory so that the youth of the region will not allow history to repeat itself.

Velma Šarić is an extraordinary woman, who is the founder and executive director of the Post-Conflict Research Center (PCRC) in Sarajevo. PCRC's mission is to "cultivate an environment for sustainable peace and facilitate the restoration of intergroup relationships in BiH and the greater Balkans region using creative multimedia projects and programs that help foster tolerance, moral courage, mutual understanding, and positive change."⁴³ Velma was 16 years old when the conflict broke out. Her typical teenage memory is not the standard memory of a young girl going to dances and learning how to drive. Instead her memory of those developing years is filled with the horrors of war, which has shaped her personality and driven her to seek the truth from all sides. In her time working with the Institute for War and Peace Reporting, she learned how to be fair, balanced, and objective.

"Currently, my country doesn't instill the belief that you can do anything you put your mind and heart into, nor does it provide visible opportunities that members of the youth can pursue. I wanted to understand the different perspectives and experience all sides. I believe every individual tragedy deserves to be respected no matter which side it is coming from."⁴⁴

It was this belief and life experience that led to the creation of the PCRC.

Of the many projects that the PCRC is working on, Ordinary Heroes: Tales of Moral Courage & Rescue is a multimedia and educational project consisting of photography, youth workshops, and conferences. The project includes photos and testimonies of rescuers from Cambodia, Rwanda, the Holocaust, and BiH.⁴⁵ It is an outdoor, life-size exhibition that will be displayed in city centers throughout 18 cities throughout

BiH. In each city youth workshops are being held in conjunction with the Rescuers photo exhibit. According to the PCRC website, these workshops are designed to engage participants in activities and discussion around the thematic issues of transitional justice. These activities include: group dynamics, exclusion, discrimination, active and passive bystandership, and the different roles played out during the conflict, including what characteristics and actions classify one as either a bystander or a rescuer.⁴⁶

The Youth Initiative for Human Rights (YIHR) is based in Belgrade, with satellites in the territories of Serbia, Kosovo, Croatia, Montenegro, and BiH. The purpose and mission of YIHR is to enhance youth participation in the democratization of the society and to empower youth with the rule of law. The initiative was formed in 2003, with a New Policy School for youth to develop awareness about the past. There are three modules to the school, human rights, transitional justice, and the related values of the European Union. Through the education of young people and their empowerment, they can take an active role in solving problems in local communities with the goal that the future generation will lead different politics toward the victims of war and stop the politics of denial of crimes and impunity. YIHR also has a transitional justice program which focuses on the obligation of states toward the victims, education on facts established in courts, support for the arrest and trials of those responsible for war crimes, and the public education of out-of-court mechanisms for establishing the truth to create conditions for war crimes and human rights violations not to be repeated.⁴⁷

Hasija Branković represents Women Victims of Torture and Rape, a women's support group in Sarajevo. Herself a rape camp survivor and refugee, originally from Foča, she was the first protected witness at the ICTY where she bravely testified about her experiences. She also shared her story with Angelina Jolie during the creation of "In the Land of Blood and Honey." Branković is the voice of women who suffered rape and torture; her group also works with an association of concentration camp survivors. Only 18 years old when the war began, she lost multiple family members in the conflict, including her 3-year-old sister, brother, and father. The women in her support group gather in a tiny office above a cafe in Sarajevo selling handmade knitting and crafts for income. The state has yet to recognize her status as a victim and provide remuneration. Today she is an advocate for all women victims who suffered during the conflict. She has pressured the government to pass protective laws for victims of torture to

upgrade their legal status, make them eligible for loans and assistance, recognize their category of persons, and to provide adequate health benefits and care.⁴⁸

Hatidza Mehedovic, born in Sucevka, BiH, in 1952, is a remarkable woman who during the war was forced to flee to Srebrenica. Living with 40,000 other Bosnian Muslim refugees in deplorable conditions, she led a group of women and children to confront the U.N. commander in Bosnia, Philippe Morillon. She received from him a promise of protection. "Srebrenica was then declared 'a securely protected zone' under the U.N."⁴⁹ Two years later, Srebrenica was the scene of one of the worst atrocities since WWII. During her time in the camp, she was separated from her husband and sons, and never saw them alive again.

Today Mehedovic is the founder of the Mothers of Srebrenica Association with more than 2,000 members. The Mothers of Srebrenica is a non-governmental association involved in the complex transitional justice process in BiH. The association gathers women who survived the Srebrenica genocide, creating a public space for crying out grievances and lobbying for the goal of prosecution. They seek the truth about the past atrocities, demanding a complete investigation, the opening of mass graves, and the identification and burial of their sons, husbands and fathers.⁵⁰ "Until I can talk I will talk about what had happened. All children have to know what had happened so that to them or anyone else in the world something like Srebrenica never happens."⁵¹

Mehmedovic shared her story with NYU graduate students from the Center for Global Affairs in a restaurant near the scene of the genocide in Srebrenica. Here is an excerpt of Hatidza's words from that meeting:

"I returned to Srebrenica after it was safe to go back in 2002, the first opportunity to return a quasi normal life, without my sons or husband. I believe that the U.N. resolution for a protected zone was only on paper. The military aged men were gathered up and separated from the women and children but had no weapons. If there were no Bosniak Muslims living in BiH, the genocide would never have occurred, as the goal was to wipe out the Muslims who used to live in peace side by side with their neighbors. The Serb neighbors were stockpiling weapons, hiding rifles and ammunition under stacks of hay in trucks and transporting them for the bloodshed that was about take place. On April 19, 1992, the Serb army entered Srebrenica and began killing and burning homes.



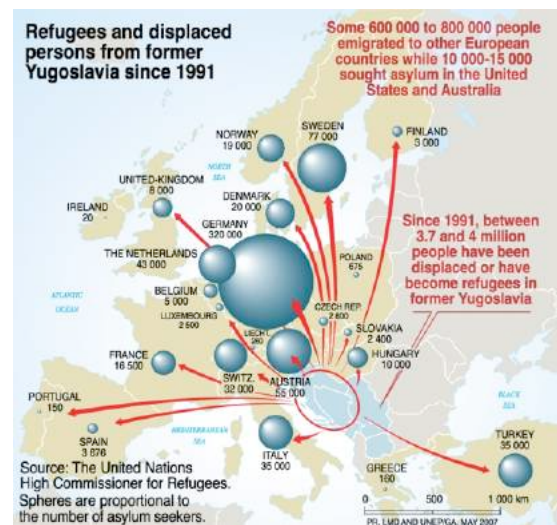
Even after the safe zone was declared, the Serb army was still left in control of the city and continued to kill people. The refugees lived in the safe zone with no food, no water, illness and death. Srebrenica was the biggest concentration camp in BiH with 50,000 surrounded by the Serb army. The Bosnian Serb military leader, Ratko Mladić arrived with his own press corps and a loudspeaker claiming no harm. He threw bread and chocolates to the people, telling them that buses were coming to take them wherever they wanted to go. Hours later he shut down the cameras and began taking people away. Machine guns were being installed nearby and people ran for the buses. Hatidza's mother in law was permitted onto a bus but Hatidza was pushed away. A soldier from the Yugoslavian Army saved her life by making sure she got on one of the buses. Others (not on the bus) went down the 'path of life,' which became the 'path of death.'⁵²

Hatidza is now alone and identifies with the thousands of mothers just like her who lost their sons, husbands, and fathers. She believes the only reason that they live alone now is because they had the wrong last name. It was not until 2007 that one of her sons' bodies was identified from the unearthing of mass graves. In 2010 she was reunited with the remains of her other son and her husband, and finally able to bury them all. Hatidza believes if this story is left unresolved and no clear definition of who was the aggressor at Srebrenica in the public discourse, "it will get resolved through our children in violence in war 20 years from now."⁵³ Hatidza believes it is very important that children learn the truth about what happened to prevent something like this from happening again, and we must act to prevent evil from spreading. For her there is no brighter future to be built without justice and truth. Hate is taught, not something we are born with. For Hatidza, love is the answer.

Conclusion

The stories highlighted above tell a much broader story. Those who crossed the imaginary ethnic boundaries before and after the conflict to preserve all that is good in humanity demonstrated moral courage during this dark period. For them there was no separate humanity, only people who needed help. The world seeks justice when crimes occur such as those that were committed in the former Yugoslavia. The intent of justice is to punish and prevent such crimes in the future.

Transitional justice is a key component toward prevention of future atrocities and has been used throughout the world in post-conflict situations, with some great success. The stories of moral courage shared throughout this paper are an intricate part of the transitional justice process. Only true justice can be achieved by preventing future atrocities from ever happening again. The people who were faced with unspeakable horrors who chose to do good did not volunteer to be heroes or heroines in these stories. The circumstances that they found themselves in, by being in the wrong place at the wrong time, led them toward a higher moral ground. Kidder believes that moral courage can be nourished and taught, these stories are all part of the teaching for our future. It is possible, even in the worst circumstances, to not follow along and to choose to make a difference. Even if that difference only affects the life of one individual, "Whoever destroys a soul, it is considered as if he destroyed an entire world. And whoever saves a life, it is considered as if he saved an entire world."⁵⁴



Annex⁵⁵

Endnotes

¹ Creating an "Arc of Crisis": The Destabilization of the Middle East and Central Asia. (n.d.). Global Research. Retrieved July 14, 2013, from <http://www.globalresearch.ca/creating-an-arc-of-crisis-the-destabilization-of-the-middle-east-and-central-asia/11313>

² Alighieri, Dante. *The Divine Comedy*. Manchester: Carcanet New PressPrint.

³ Quote from Zarije Seizović .Vutrano, June. Personal interview with Zarije Seizović, professor of political science, University of Sarajevo. Sarajevo, June 29, 2013.

⁴ The International Center for Transitional Justice (ICTJ), defines transitional justice as a set of judicial and non-judicial measures to redress the legacies of massive human rights abuses. These measures include criminal prosecution, truth commissions, reparations, and institutional reforms. This is not a special kind of justice, but an approach toward achieving justice during transition from conflict and/or state repression. The goal is to achieve accountability and redress victims through the recognition of the rights of victims; to promote civic trust and strengthen the rule of law. States have a duty to make sure these violations do not recur through a special duty to reform institutions that were either involved or incapable of preventing the abuses. "A history of unaddressed massive abuses is likely to be socially divisive, to generate mistrust between groups and in the institutions of the State, and to hamper or slow down the achievement of security and development goals. It raises questions about the commitment to the rule of law and, ultimately, can lead to cyclical recurrence of violence in various forms. As it is seen in most countries where massive human rights violations take place, the claims of justice refuse to 'go away.'" What is Transitional Justice? (n.d.). Retrieved July 16, 2013, from <http://ictj.org/about/transitional-justice>

⁵ "The key objective of the ICTY is to try those individuals most responsible for appalling acts such as murder, torture, rape, enslavement, destruction of property and other crimes listed in the Tribunal's Statute. By bringing perpetrators to trial, the ICTY aims to deter future crimes and render justice to thousands of victims and their families, thus contributing to a lasting peace in the former Yugoslavia." About the ICTY. (n.d.). Retrieved July 14, 2013, from <http://www.icty.org/sections/AbouttheICTY>

⁶ February 2001: Three Bosnian Serbs are sentenced at the war crimes tribunal at The Hague to long jail terms for systematically torturing and raping Bosniak women in the 1990s. This is the first time the tribunal has called rape a crime against humanity. Broz, Svetlana. *Good People in an Evil Time: Portraits of Complicity and Resistance in the Bosnian War*. New York: Other PressPrint, lvii.

⁷ Over 34,000 were reported missing to the ICRC since that time, 17,000 have been discovered through the efforts of forensics and DNA matches conducted with the International Committee for Missing Persons. ICRC. "MISSING PERSONS on the Territory of Former Yugoslavia." ICRC.org. August 2008. Web. July 2013 <icrc.org>.

⁸ The total figures of the death toll are highly controversial and no one has been able to ascertain an actual body count for the conflict due to a myriad of issues, including politics. According to a report prepared for the ICTY, the minimum number of casualties in Bosnia Herzegovina alone are 89,186 documented cases. Zwierzchowski, Jan, and Ewa Tabeau. *the 1992-95 War in Bosnia and Herzegovina: Census-Based Multiple System Estimation of Casualties' Undercount*. Berlin., 2010. Print. Conference Paper for the International Research Workshop on 'The Global Costs of Conflict'

the Households in Conflict Network (HiCN) and the German Institute for Economic Research (DIW Berlin). Srebrenica is still counting the death toll from the genocide, with a current estimate of 8,352.

⁹ Annex A

¹⁰ Sometimes referred to as civil courage or social courage, for this paper the term "moral courage" will be used throughout.

¹¹ Since there is more than enough data and information on the period between 1991 to 1995, Kosovo will not be examined as it is beyond the scope of this paper.

¹² Arendt, Hannah. *Between Past and Future, Six Exercises in Political Thought*. New York: Viking Press Print, 155.

¹³ "There exists no direct equivalent of Zivilcourage in English, but, just as there is the expression "civil society" I think there should be an expression called "civil courage." A related, but by no means identical concept, is that of "civil disobedience." As opposed to Zivilcourage, civil disobedience is centered around opposition to the state; it is also less individualistic in the sense that while it is easy to imagine a social movement centered around civil disobedience, this is less the case with Zivilcourage." Civil Courage ("Zivilcourage"): The Case of Knut Wicksell Richard Swedberg *Theory and Society* Vol. 28, No. 4 (August 1999), p.524. Published by: SpringerStable URL: <http://www.jstor.org/stable/3108560>.

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¹⁷ Supra note 13, at 515.

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²⁰ Supra note 13, at 517.

²¹ Weber, Max. *From Max Weber: Essays in Sociology*. Milton Park, Abingdon, Oxon ; New York: RoutledgePrint.

²² Mackenzie, Compton Sir. *On Moral Courage*. London: CollinsPrint.

²³ Supra note 17, at 11.

²⁴ Supra note 17, at 12.

²⁵ Supra note 17, at 22.

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²⁷ Drakulić, Slavenka. *The Balkan Express: Fragments from the Other Side of War*. New York: W.W. Norton & CoPrint, 3.

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³² Supra note 25, at 61.

³³ Serotta, E. (1899). *Survival in Sarajevo: How a Jewish Community Came to the Aid of Its City*. Brandstatter, Christian, cover inset.

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³⁵ Broz, Svetlana. *Good People in an Evil Time: Portraits of Complicity and Resistance in the Bosnian War*. New York: Other Press/Print, p.xvi.

³⁶ Sophie Scholl's final words before her execution. She was a member of the White Rose resistance movement against the Nazi regime. Holocaust Education & Archive Research Team. "Sophie Scholl." Holocaust Education & Archive Research Team. 2007. Web. July 2013 <<http://www.holocaustresearchproject.org/revolt/scholl.html>>.

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³⁸ The Martin Ennals Award for Human Rights Defenders. "Nataša Kandić - 1999." The Martin Ennals Award for Human Rights Defenders. 2013. Web. July 21, 2013 <martinennalsaward.org>.

³⁹ Vutrano, June. Personal interview at HLC with Sandra Orlovic, Executive Director, and Marijana Toma, Deputy Director, Humanitarian Law Center, humanrights@hlc-rdc.org. June 27, 2013.

⁴⁰ Vutrano, June. Personal interview with Srdja Popovic-CANVAS. Belgrade, Serbia, June 26, 2013

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Photo by June Vutrano



Structuring Public-Private Partnerships for Reducing Cyber Risks to Critical Infrastructures

by Ina G. Wanca

The growing uncertainty of cyber threats and the increasing interconnection of information systems make critical infrastructure vulnerable to disruptions. Today's infrastructure challenges are complex and must be addressed by a sound and comprehensive collaboration between the public and private sector, which share responsibility to protect key assets and build more resilient infrastructure. The current and future success of the public-private partnership (PPP) for critical infrastructure (CI) protection lies upon the fundamental knowledge of cybercrime, the characteristics of the partnership development and the ability of the partners to share sensitive information, commit resources and take rapid actions when needed. Transatlantic cooperation in fighting cybercrime would require a well-founded national PPP for infrastructure protection and resilience. Building the partnership is a complex process that mandates shared responsibility between the public and private entities. Understanding the nature of this partnership and its fundamental components would generate knowledge in the field of CI protection.

PPP model

Critical infrastructures have become mutually dependent as their network systems are interconnected. Examples are the Supervisory Control and Data Acquisition (SCADA) systems that control the energy generating and distributing infrastructure, the water and electricity systems and other major infrastructures. Because these systems are connected to the network, they are vulnerable to cyber-attacks. Protecting CI is a task that requires a solid PPP model due to the fact that most infrastructures are private. The involvement of the private sector is a prerequisite for structuring a meaningful national cyber security policy. However, different stakeholders have different needs when it comes to such policy. Currently, there are two forms of partnership: mandatory and voluntary. The European Union is pushing for mandatory information sharing and reporting requirements that place the public sector in a more regulated environment. The United States is adopting voluntary mechanisms for information sharing, therefore, shaping a more relaxed and flexible PPP model. Despite the diversity of partnership models, building partnership is based on some general elements (Fig. 1).



Fig. 1 PPP Core Elements

These are the essential components of each PPP model without which a partnership could not exist. Each component is mutually interconnected with the others.

Scope

Public-private partnerships grow and evolve in three different ways. The first approach is known as the “top down approach,” where the partnership evolves from a government piece of legislation or strategic plan that sets out a requirement for a PPP model and the number of participants.¹ When the evolution occurs from the “bottom up” then the community or the public recognizes the need to work together with government officials for a particular cause. Some PPP models develop by combining both approaches. They start top down, but then the membership and the strategic requirement develop top down. Depending on their focus, the PPP can be either sector specific, meaning that the PPP is focused on a particular sector, interest or common area of interest, or cross-sectorial, addressing all sectors involved in the CI.² It is necessary for each PPP model to have its own scope and mission statement. The European Network and Information

Security Agency (ENISA) recognizes five different types of PPP depending on their scope, which is mapped to the security life cycle:³

- PPP with a focus on Deterrence practices
- PPP with a focus on Protection by conducting research and developing standards
- PPP with a focus on Detecting threats by information sharing
- PPP with a focus on Response to threats
- PPP with a focus on Recovery

Sometimes partnership models overlap because they combine two or more PPP types. This is the case with some current forms of PPP for Detection, Protection and Response of cyber-attacks. The important lesson is for PPP to not duplicate efforts in the CI protection. Therefore, the relationship between the public and private sector should be focused and well defined. For the purpose of protecting CI from cyber-attacks, it is mandatory that the public entities prioritize working with infrastructure providers and not individual product vendors such as Internet Service Providers (ISP) or cloud providers to enable the development of a well-defined national response system such as the US-CERT.

Principles, Standards and Practices

The public-private partnership should be governed by two fundamental principles that will underpin the security of national infrastructures: cooperation and trust. The infrastructure protection is a shared responsibility, which requires the coordinated action of government organizations, private companies, and interested citizens. The security and resilience of CI must in some ways boost trust among the partners of cooperation. Security is not a value and it serves a purpose; therefore, the foundations of a sound partnership model should follow these core principles. Without trust, information sharing may be unsustainable. Partners that lack foundations of positive communication could reduce their trust and willingness to share information. The participating partners should commit to execute plans and recommendations timely and responsibly. They also should commit to provide resources and appropriate staff for the resilience and protection of CI.

Additionally, the “G8 Principles for Protecting Critical Information Infrastructures” prescribes that the PPP should be governed by the principles of cooperation and communication.⁴ The adoption of such standards would boost resilience and stability of the CI. Among these principles, the participating partners should follow the principles of responsibility, accountability, meaningful information sharing, safeguard of privacy, and international cooperation. Many cyber security standards are developed by consensus. Both private companies and government organizations adopt best practices and standards that fit their requirements, based on their roles and on their cultural and regulatory environments.⁵ In 2009, after the Russian and Chinese spies penetrated the U.S. electrical grid, the North American Reliability Corporation (NERC) adopted eight critical infrastructure standards and empowered the Federal Energy Regulatory Commission to oversee their implementation.⁶ While some critiques note that current cyber security standards are outdated, the real problem remains in their implementation by the private sector operators.

Currently, a number of standards exist in the field of CI and risk management. Examples include the standards ISO/IEC 27000 and NIST 800-53, which are used in many CI for security metrics.⁷ Other critical facilities such as the U.S. ports are lacking cyber security standards. This suggests that existing standards should be inventoried and updated depending on the priority of CI protection.⁸

The European Commission plays a vital role in the development of common standards across the European Union. The development and adoption of common risk metrics and standards should be set as a priority in the field of CI protection. Besides standards, there are a number of guidelines and best practices that have been developed over the past few years such as the NARUC/NASEO Energy Assurance guidelines that address state-level coordination on CI protection. However, the problem with these guidelines, best practices and standards is not their effectiveness, but their actual adoption and implementation.

Profile and Role of Participants

A study conducted by the Intelligence and National Security



Alliance identifies three broad categories of participants in the PPP model: (i) government, (ii) users, and (iii) suppliers.⁹ According to the U.S. Constitution, the common defense is a task of the federal government. Government has an important role as a regulator of the market and protector of public interests. However, it is also a very significant consumer of Internet services and cannot operate efficiently without the cooperation of the users and suppliers of Internet. The users are the individuals, private enterprises, and the government agencies. Telecommunication companies, ISP as well as hardware and software producers are the suppliers in this relationship. The users and the suppliers do not have the legitimacy to regulate cyberspace. This is the role of the government, which also can fully investigate the behavior of individuals and groups that violate the law. Each participant has his or her own interests, capabilities and limitations. One of the key responsibilities of the government is to assist the industry in developing codes of conduct and various technical standards. For example, NIST in the United States is responsible for developing voluntary and consensus-based standards and guidelines that can help the private sector enhance its cyber security policies. In Europe, the E.U. Commission has a leading role for identifying principles and guidelines for CI protection. However, the E.U. Commission is not a national, governmental entity; therefore, the PPP model in Europe has its own specifics.

The U.S. federal government is responsible for the protection of the nation's CI, enhancing the nation's overall cyber security posture, and ensuring the security of federal systems and the information they contain.¹⁰ Among other things, the government has an obligation to provide top-level leadership and develop a comprehensive cyber security strategy. In this respect, DHS issued a National Infrastructure Protection Plan (2009) and a National Cyber Incident Response Plan (2010).¹¹ The federal government should promote an environment in which the private sector can better carry out its particular protection responsibility.¹²

The private sector itself is very heterogeneous.¹³ The CI owners and operators represent a large market of potential private sector partners. These stakeholders need critical capabilities in order to perform their job well. Business enterprises participate in the development of cyber security standards and share information through industry trade associations, standard organizations or government liaisons.¹⁴ Moreover, private stakeholders spend money on research and development and with this, genuinely contribute

to the security of the national infrastructure.

Several reports prepared by the U.S. Government Accountability Office (GAO) identified that the roles and responsibilities of key agencies in the United States charged with protecting cyber assets are inadequately defined.¹⁵ Offices of the Department of Defense (DOD) have overlapping roles and responsibilities for preparing for and responding to domestic cyber incidents. This implies that DOD's guidelines should be updated to include a precise description of roles and responsibilities.¹⁶

In the United States, many PPP are based on cooperative research and development agreements.¹⁷ The federal agencies and private sector participants agree to work together on mutual beneficial projects and share information, expertise, and ideas in a protected environment. This is an extremely useful model, but before the establishment of any form of cooperation, each stakeholder conducts a cost-benefit analysis of participation in any form of venture.

Cost-Benefit Analysis

According to an Internet Security Threat Report released by Symantec in April 2013, the threats to online security have grown and evolved since 2012.¹⁸ Verizon's Annual Data Breach report counted 621 confirmed data breaches last year and more than 47,000 reported incidents.¹⁹ These numbers and statistics give the competent authority some information about the type of cyber threats that pose security risks. However, government partners and industry players often assess risk differently depending on their mission and objectives. Private sector enterprises assess risk in terms of economic consequences.

The stakeholder interests in protecting CI and partnering with the public sector comes with the cost-benefit analysis of the level of security mechanisms required. A study conducted by the McAfee concluded that cost is the primary obstacle for ensuring the security of critical networks.²⁰ Measuring cost-effectiveness of security measures is not possible without quantitative data. The economic impact of cyber-attacks is partially known through various reports prepared by the public sector. Nevertheless, because cyber-attacks have not caused catastrophic physical damages, measuring the economic impact becomes a challenge. The Internet Complaint Center is one of the few outlets that provide statistics on the economic impact of particular forms of cybercrime.²¹ The challenge of this outlet is that not every consumer reports cyber-incidents.

Some private companies such as Microsoft advocate that private companies work in parallel with DHS and DOJ to better track and measure cybercrime activities and their negative impact.²² Knowing the characteristics of the cyber-attacks would increase the detection of cyber threats. Furthermore, understanding the economic impact of cybercrime determines the cost of each countermeasure. More than one countermeasure may exist for reducing the risk of cyber-threats on CI. Nevertheless, before investing in CI protection, there is a need for a cyber threat assessment. This activity involves identifying CI and assets, assessing the potential risk of successful attacks to those assets, and prioritizing protective measures. An infrastructure is a collection of assets. An asset is something of importance or value, and can include people, property, information, systems, and equipment.²³ Key resources represent individual targets whose destruction could cause large-scale injury, death, or destruction of property. Key resources are nuclear power plants, government and commercial facilities and others.²⁴ An infrastructure is considered critical and resources are key if the destruction or damage causes a significant impact on the security of the nation. Therefore, data analysis is essential for the establishment of threat vulnerability databases. Cost-effective measures are meaningful if the attention is focused on those assets associated with the highest risks. Consequently, the accuracy of data is essential for the cost-benefit assessment of cyber threats. Moreover, both actuarial data regarding the losses that result from cyber-attacks and statistical data regarding the frequency of cyber incidents are essential components of the cost-benefit analysis. Data quality is commonly discussed and evaluated along six factors: relevance, accuracy, timeliness, accessibility, comparability and coherence (Fig. 2).²⁵

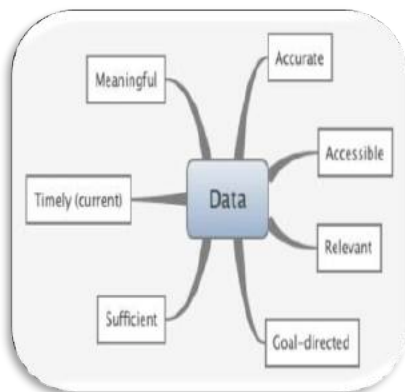


Fig. 2 Data Quality

Marketing activities and people's perception of cyber threats can impact business spending on preventive measures. Cyber threats can disturb the financial market and companies' marketing activities. Major economic loss resulting from cyber-attacks is considered a threat to the national security. In addition to direct losses, a company may lose the confidence of customers who worry about their business transactions.²⁶ Therefore, companies are interested in investing in cyber security so that their credentials and liability are untouched. On the other hand, many times the government uses people's perception of threat to push for policy or legislation which could increase spending on a particular infrastructure threat. Overall, the lack of cyber data mandates creating an appropriate measurement methodology.

Risk, Threats and Consequences

The Homeland Security Presidential Directive 7 lists the types of attacks that revive national critical infrastructure policies. These are attacks that could cause catastrophic health effects or mass casualties, impair federal agencies' ability to perform essential missions, undermine the ability of state and local government to provide essential services, damage the orderly function of the economy, or undermine the public's morale or confidence.²⁷ Nevertheless, the question is: how are these consequences measured?

Reducing the level of threat, the vulnerability to that threat or the potential consequences of cyber-attacks can reduce the risk associated with a specific attack on a CI.²⁸ A risk-based approach includes understanding risks, prioritizing them, and allocating resources accordingly.²⁹

Private companies such as Symantec, Verizon and Microsoft prepare on a regular basis most of the cyber statistic reports available on the market. Nevertheless, it is important to gather intelligence as well as statistics. Statistics give insights into trends and volume of cyber-threats, but intelligence allows partners to outline better preventive strategies for mitigating cyber-threats especially in the cases of "black swans." Black swans are "unknown" threats, which are difficult to predict and highly improbable. Statistics are not sufficient to predict them as black swans call for intelligent and creative detection. In this respect, without information sharing, no single agency or private company knows the full range of threats that the CI faces.

According to the DHS office, the nature of cyber-attacks



against CI could have three fundamental effects.³⁰ The first one could have a direct effect by disturbing functions or key assets of the CI by a direct cyber-attack on a critical node, system, or function. The indirect effects of a cyber-attack occur from the disruption and problems that result from a reaction to cyber-attacks on other CI. The last one is called “exploitation of infrastructures,” which could result in exploitation of elements of particular infrastructure to disrupt or destroy another target.³¹ The only one limitation of these classifications is that DHS refers to terrorists as the only cyber-offenders that could accomplish these effects.

Incentives

Private companies need incentives in order to follow nationally recognized standards and practices to protect against cybercrime. The U.S. Commercial Service makes a note in its report that many solutions have failed to provide sufficient incentives for firms to implement cyber security best practices into their operations.³² Some companies such as TechAmerica advise that the most effective incentives to encourage adoption of best practices would be associated with tax breaks, government procurement and less regulatory requirements.³³ The incentives must be powerful enough to affect behavior without being burdensome to private companies.³⁴

Information Sharing

Information sharing is the shared awareness of the risks and threats among all key stakeholders.³⁵ The term is vague and has not been defined in the literature or the legislation precisely. Information sharing is the process through which “information is provided by one entity to one or more entities to facilitate decision making under conditions of uncertainty.”³⁶ A core metric of the information sharing is that it must be goal-directed and shared with the appropriate participants that can use it to make decisions and take necessary actions to manage the security risk.³⁷ Goal-directed behavior requires all entities participating in the information sharing to understand the desired goal and agree with it. Furthermore, the participants should have the ability to reduce directly or indirectly cyber-related risk to CI and they have to be sufficiently resourced.³⁸ This means that the participating entities have the appropriate personnel who are sufficiently trained and equipped. Moreover, shared information should be fit to reduce uncertainty; therefore, the information sharing

should include data and meaning. It should be noted that information sharing might increase uncertainty as well. To meet the user needs, the information should be of sufficient quality. The challenge is that participants are often reluctant to share information due to a variety of reasons.

The reluctance of private enterprises is founded in potential legal barriers such as a third-party liability, potential for reputational damage, and regulatory consequences. There is also a lack of trust that the shared information is protected adequately between all information-sharing partners. Reputational harm may undermine trust among participating partners, which may undermine the extent to which they share information. Government officials are also hesitant to share sensitive information with the private companies because of fear that the information could be shared openly among the corporations. Consequently, the benefit of participation in information sharing should exceed the marginal cost of participation.

Cyber-attacks can impact national and economic security by the loss of sensitive and classified information. In the past, classified military networks have been compromised by foreign intelligence agencies. Public authorities may be reluctant to share unclassified information with their partners. There should be a level of trust and secure mechanism for information sharing. Accurate CI data is crucial for the development of infrastructure protection programs.

Most CI information sharing efforts are voluntary and self-regulatory as participants share only what, and with whom, they choose to share.³⁹ This approach is flexible and adaptable for companies compared to the regulatory compliance and reporting. Information sharing enables participants to agree how to assess risk. Nevertheless, some small and mid-sized private companies are unaware of the public-private mechanisms available for information sharing.⁴⁰ Instead these private companies regularly exchange data on malware, viruses and other cyber-threats among each other.

President Obama’s Executive Order (EO) 13636 supports efficient information sharing of cyber-threats with the private sector and directs the NIST to develop a Framework to identify best security practices among critical infrastructures sectors.⁴¹ The president’s EO also directs the Department of Homeland Security (DHS) to establish a voluntary program for the adoption of this Framework. Likewise, the EO expands the DHS Enhanced Cybersecurity Services Program (ECS) aiming to increase the security of the CI. ECS is a voluntary information-sharing program, which assists CI owners and

operators to improve the protection of their systems from unauthorized access, exploitation, or data exfiltration.⁴² The key civilian interfaces with the private sector for information sharing in real times and incident reporting is the DHS National Cybersecurity & Communications Integration Center (NCCIC).⁴³ NCCIC works closely with the National Infrastructure Coordination Center (NICC), which maintains situational awareness and crisis monitoring of CI. Presidential Policy Directive 21 mandates “NICCIC and NICC assist CI partners to obtain situational awareness and integrated, information to protect the cyber aspects of critical infrastructure.”⁴⁴ The Information Sharing Analysis Centers (ISACs) are sector-specific entities, which were established to ensure that the private sector has a direct relationship with the government. Moreover, DHS has established close working relationships with the industry through partnerships like the Protected Critical Infrastructure Information Program, which enhances the sharing of information between the critical infrastructure owners and the government.⁴⁵ The conclusion is that the information sharing is institutionally framed and partners should use the existing mechanisms to bolster their partnerships in protecting CI from cyber threats.

Information sharing at the European level on network information security (NIS) incidents remains a challenging task. There is cooperation only among a minority of Member States with a high level of cyber security capabilities. Currently, the players managing CI are not under obligation to adopt risk management measures and exchange information with relevant authorities. That is why the EU Commission adopted a proposal for NIS Directive that would require market operators and other Internet providers to report incidents to competent authorities and share information. Secondly, the companies in their specific sector would be required to assess the risk they face and adopt appropriate measures to ensure network and information security. The regulatory approach in the European Union would create a level playing field and close existing legislative loopholes. The proposed NIS Directive has special rules pertaining to information that is considered confidential. With respect to non-confidential information and to ensure transparency, the competent authorities should set up a website to publish the reported cyber-incidents.

Challenges to the PPP

Many challenges trigger the PPP model in protecting critical infrastructure. While the existing PPP models are not perfect,

they can be improved to insure resilience and security of the CI. According to the U.S. GAO report, the private sector is criticizing the federal partners for not being able to meet private sector expectations, including providing timely and actionable cyber-threat information and alerts.⁴⁶ The private sector also reports that the information sharing between the partners is not working properly as private stakeholders lack access to classified information, vital for their business operations. Moreover, there are many duplicative projects among a variety of federal agencies, which work independently without coordination between each other. Furthermore, private sector companies develop and sell products that are not focused on solving issues, but making profits.

Another problem is the priority level of the security issues for each of the participating partners. The U.S. GAO found that federal agencies lack information on what is a priority security issue for the private companies. Consequently, the government should be clearer on its direct expectations from the private sector by assisting the companies in understanding the direct benefit of their participation.

On the other hand, the public sector notes that while the private sector is meeting its obligations most of the times for providing available sources and appropriate staff, some improvements are necessary. The biggest issue is the reluctance of the private sector to share corporate information with the government. Private companies fear that the government would share their trade secrets with competitors. Moreover, some regulated industries are only implementing the minimum requirement for compliance, which does not make them more secure.⁴⁷

The PPP remains a key benchmark for a nation's efforts to secure and protect its CI. Private enterprises expect from the public sector to provide timely and actionable cyber threat information. However, the private sector partners are not receiving their expected services, because the federal partners are restricted in the type of the information they can share and vice versa. Additionally, private companies interact with multiple federal agencies, which can result in the duplication of efforts and projects due to the lack of coordination among federal agencies. The federal agencies also experience challenges with the private companies, which are unwilling to engage and provide support of the partnership effort.

Public and private sector partners have initiated efforts to revamp their partnership for CI protection. Without this cooperation, the private owners would not have the



appropriate information and mechanisms to protect CI.

Recommendations

Promoting the security and resilience of the nation's CI would require strengthening existing PPP based on the principles of commitment, trust, equality and shared responsibility. This implies that the expectations of all public and private stakeholders should be met regardless of different business models and market priorities.

To the U.S. Public Sector

The U.S. federal government should be able to work with a variety of stakeholders. This would require federal agencies to stay organized and efficient in providing timely responses to inquiries for assistance and guidance. The U.S. government should constantly brief and update private companies on what to expect in cases of cyber-attacks.

The U.S. federal agencies should inventory existing CI standards and update those that are not current. An inventory of current standards and best practices would generate knowledge and show existing gaps and loopholes that have not been addressed. When needed, federal agencies should employ diplomacy and tactics to promote the voluntary adoption of security standards on the basis of case studies and lessons learned from previous experiences. Coupling this approach with the development of the right incentives that correspond to the adoption of voluntary standards would increase companies practice for the adoption of these standards. In addition, DHS and other federal agencies could promote voluntary standards by randomly visiting companies' offices with a mission to highlight potential risks and consequences of cyber-attacks.

Defending CI from cyber-attacks will require information sharing among different stakeholders. The U.S. government should develop a secure environment for real-time information sharing. The participating partners should have clear knowledge of what information should be shared for CI protection. The disclosure of sensitive information should be protected by legislation. Sensitive information should not be available to other stakeholders without disclosure consent from the provider of the information. Likewise, federal agencies should not withhold classified information related to cyber threats on CI, but share it with senior management that have a top security clearance.

To the U.S. Private Sector

Private companies especially owners of CI should adopt

relevant standards and practices for critical infrastructure protection. In addition, every company should perform a cyber hygiene exercise and assess its risk management policy and standards. Private companies should invest in educational programs and risk assurance trainings, in order to keep their employees updated with current cyber trends and practices. Moreover, top senior level executives should develop relationships with policy makers to enhance technical capacity building.

Actions for Transatlantic Cooperation

Coupling national PPP with transatlantic partnerships and intelligence would not be easy due to different actors, interests and knowledge. Currently, the European Union is developing security standards on CI liability and preparedness, but these efforts need to be coordinated at a transatlantic level. TTIP negotiations will endorse the harmonization of technology standards across both sides of the Atlantic. Different regulations will create difficulties for multinational enterprises that maintain operations in the U.S. and Europe. Therefore, the Atlantic partners need to find a common way of promoting cyber security standardization and CI protection through strong and effective legislation.

The problem of international engagement is challenging. It is very unlikely that the problems of cybercrime would be tackled with a global treaty. This became an impossible dream due to the divergence of definitions and approaches to the issue. Going forward, the transatlantic public and private stakeholders need to engage internationally and assist developing countries in adopting international standards through strengthening post-conflict state capacities. In this way, developing countries will not remain barriers to market entry and safe havens for cybercriminals.

Critical infrastructure is the backbone of America's national security and economic prosperity. Nevertheless, cyber-attacks are real and dangerously underestimated by the private sector, civil society and individuals. The complexity of cyberspace breeds such unprecedented possibilities for criminal activities that a much more nuanced perspective on legal action is necessary in making institutions, organizations, policies, and technical tools more perceptive and robust in the fight against cybercrime. The effective investigation and prosecution of cybercrime will largely rest on legal institutions, cooperation between governments, (intergovernmental) organizations, and other stakeholders, both commercial and non-commercial.

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Photo by Amy Newell



The Tri-Border Region: A Burgeoning Security Threat

by Patricia Trujillo

Introduction

The Tri-Border Area (TBA) of Brazil, Paraguay, and Argentina has had a turbulent history since decolonization and independence, particularly in the late 20th and into the 21st century. The Argentine, Brazilian, and Paraguayan governments have long been troubled by a range of criminal activities occurring in the region, from arms and drug smuggling, document fraud, and money laundering, to trafficking in persons and the manufacture and movement of contraband goods.¹ All have been the dominant economic drivers of the region for many years. There have also been confirmed accounts of terrorist groups operating in the region, with Hezbollah having the largest presence. The aforementioned illicit activities have contributed financing and weapons directly to the group's military operations in the Middle East.

While the governments of Brazil, Argentina, and Paraguay have attempted to address the overall larger issue of illicit economic activity, the United States has regarded their collective efforts as uneven and only marginally successful in regards to the potential terrorist threat. In the past, Brazil has even been loath to admit to the possibility of foreign terrorist activity within its borders.² Thus U.S. officials have often expressed doubts as to the seriousness with which internal pressure has been applied to this zone of illegal activity.

On the whole, Latin American countries do not consider the presence of foreign terrorist elements as direct existential risks; not surprisingly they have other economic and criminal concerns requiring more of their attention than issues deemed to be of paramount importance by the U.S.³ It is also essential to consider a historical narrative of resentment against the United States as contributing to the problem. While this may appear speculative, it is important to outline not only the economic and criminal elements involved, but to also consider the perspectives behind this situation. Regional populist bravura appears to have created alliances with Islamist terrorist elements where a perceived commonality of "oppression" at the hands of the United States exists. To wit, both Iran and Venezuela have condemned U.S. foreign policy and both adhere to the narrative of historical subjugation to U.S. hegemony. The implications of their recent alliance are material toward creating an effective regional counterterrorism

and law enforcement strategy as well as to continued U.S. aid to Latin America.

Background

Even before the events of September 11, 2001, in the United States, U.S. officials had already asserted that Middle Eastern terrorist groups were operating in the TBA region. The TBA is adjacent to Iguassu Falls, a popular destination that attracts a large number of tourists each year. Ciudad del Este, on Paraguay's border with Brazil and Argentina, is estimated to generate roughly half of Paraguay's GDP and is the third largest free-tax commercial zone in the world after Miami and Hong Kong. Smuggling is a major source of income in the city, with some estimates putting the value of the black market at five times the national economy.⁴

While the population of Puerto Iguazú (est. tot. 33,358) is fairly homogenous and ethnically Argentinean,⁵ both Ciudad del Este (est. pop. 400,039) and the Brazilian city of Foz de Iguazú (est. pop. 256,634) have large and diverse Muslim populations, of which an estimated 90 percent is of Lebanese origin.⁶ This is largely attributed to the arrival of Shi'a Lebanese immigrants during the late 20th century.⁷ It has also been documented that within the TBA's larger Arab and Muslim community, there are impassioned terrorist sympathizers with direct ties to Hezbollah in Lebanon, Hamas in the Palestinian territories, and the Egyptian Islamic Jihad.⁸ Separate reports from the Rand Corporation and other think tanks have determined that Hezbollah cumulatively nets some \$20 million annually from the Tri-Border Region alone. As a result, the area constitutes the organization's most significant source of independent funding outside of the Middle East.⁹ This factor alone has been great cause for concern for U.S. national security experts.

Terrorist presence

It is important to first establish that while there are no known operational military cells of Hezbollah, or for that matter of al-Qaeda affiliates in the TBA at this time, Hezbollah's operational presence is known to date back to the mid-1980s. According to Roger Noriega, former U.S. ambassador to the Organization of American States, Hezbollah clerics and

members of other violent Islamic groups reportedly began planting agents and recruiting sympathizers from among Arab and Muslim immigrants in the area at the height of the Lebanese civil war.¹⁰

However, according to Ambassador Noriega, the TBA “continues to be an important regional nexus of arms, narcotics, and human smuggling, counterfeiting, pirated goods, and money laundering [and] all are continuing funding sources for terrorist organizations.”¹¹ The cities of Ciudad del Este and Foz do Iguacu have served as a base and a retreat for Islamic terrorists for plotting and carrying out terrorist attacks elsewhere in the Americas. Specifically, two events in Argentina in the decade before 9/11 have been linked to foreign Islamist terrorism:

March 17, 1992, Buenos Aires, Argentina: The first known Islamist terrorist attack was the detonation of a car bomb outside Israel’s embassy, killing 29 and injuring 242 others. The attack was subsequently attributed to Hezbollah extremists who had traveled to Buenos Aires for the purposes of the bombing.¹²

July 18, 1994, Buenos Aires, Argentina: A second known car-bomb attack occurred at the main building of the Argentine-Israel Mutual Association (AMIA).¹³ This strike killed 85 persons, and injured an additional 151.¹⁴ Argentine officials have alleged that Hezbollah carried out this second attack with the assistance of Iran.¹⁵

In May 2003, Argentine prosecutors officially linked the AMIA bombing to the towns of Ciudad del Este and Foz do Iguacu and immediately issued arrest warrants for two Lebanese citizens behind the attack who were last seen in Ciudad del Este.¹⁶ The first individual was Imad Mugnyiah, a Lebanese national who also served as the head of security for Hezbollah. (An Iranian double agent had told Argentine prosecutors that Mugnyiah was the principal behind the Buenos Aires bombings.) While Mugnyiah was never caught or arrested, he was later killed in a February 2008 bomb explosion in Damascus, Syria.¹⁷ (A prolific terrorist suspect, Mugnyiah had also been connected to the 1983 suicide bombing of the U.S. Embassy in Beirut.²²)

The second individual was Assad Ahmad Barakat. Considered one of Hezbollah’s most prominent and influential

members, Barakat had worked closely with numerous Islamic extremists in the TBA.¹⁸ In his case, Barakat had been able to enter Paraguay in 1989 using a visa illegally obtained from the Paraguayan Consulate in Panama (it was not authorized to issue such visas).¹⁹ In mid-2003, during the course of their investigation of both the AMIA and Israeli Embassy attacks, Argentine courts concluded that Barakat made suspicious trips to Teheran, Iran between 1990 and 1991. There he had reportedly met with high-ranking officials of the Islamic Republic of Iran.²⁰ According to Alberto Nisman, the Argentine district attorney leading the investigation, the connection between the Hezbollah attack and the Tri-border was hence unquestionable.²¹

Iran's Infuence

The larger implications of Iran’s potential involvement in the affairs of the TBA could not be clearer. Two of the three regional nations, Brazil and Argentina, possess rich uranium deposits and enrichment capabilities; they have the potential to serve as a source of materials and nuclear fuel for the production of weapons of mass destruction (WMD) related expertise and equipment.²² In 2011, Brazil and Argentina were the largest traders in the region with Iran.²³ In testimony to the U.S. Congress, Douglas Farah, a senior fellow at the International Assessment and Strategy Center in Washington, D.C., assessed the relationship between Iran and the Bolivarian states as one built on “a shared perception of history and grievances against the United States that leads directly to the doctrine of asymmetrical warfare, and...a roadmap of how to defeat the United States...”²⁴ Joint initiatives between Iran and Latin American countries include the opening of a military academy to teach Bolivarian military doctrine, operating in Santa Cruz, Bolivia;²⁵ the operation of Iran’s Sadra Marine Industry Company (also owned by the Iranian Revolutionary Guard) out of Venezuela;²⁶ and the Iranian launch of a Spanish language satellite TV station, Hispan TV, reportedly aimed at “helping familiarize Spanish-speaking citizens with the Iranian nation.”²⁷

Asymetrica Efforts

Brazil, Paraguay, and Argentina have varied in their efforts



toward addressing terrorism in the TBA. According to a Department of State Western Hemisphere Overview in 2011,

“[O]verall, governments in the region took modest steps to improve their counterterrorism capabilities and tighten border security, but corruption, weak government institutions, insufficient interagency cooperation, weak or nonexistent legislation, and a lack of resources limited progress. Most countries made efforts to investigate possible connections between transnational criminal organizations and terrorist organizations.”²⁸

It is indisputable that the TBA possesses a dangerous combination of vastly ungoverned spaces, poverty, illicit activity, and poorly equipped law-enforcement agencies and militaries to address these issues; most analysts consider it as open to terrorists and their supporters.²⁹

Corruption is another critical factor - in Transparency International's Corruption Index of 2012, Paraguay was listed as the 25th most corrupt country worldwide, Argentina the 35th most corrupt, and Brazil the 43rd.³⁰ A policy perspective making the rounds at the Pentagon during much of the last decade was that of “effective sovereignty.” It contends that U.S. national security is threatened by the failure of Latin American governments to exercise control over vast “ungoverned spaces” within their borders.³¹ In the view of counter-terrorism experts, Latin American militaries and law-enforcement agencies are not suitably organized for, nor can they adequately confront, terrorist networks. U.S. authorities expressed concern in late 2001 over the possibility that lax immigration procedures in various Latin American countries have allowed terrorist “sleepers” to adopt new identities and to infiltrate the United States, especially from Argentina.³² Law-enforcement agencies are not well funded or trained, and are notoriously corrupt. Mistrust between the military and law-enforcement institutions also impedes an ability to coordinate efforts.

Paraguay

In Paraguay, the smallest and poorest of the three TBA nations, there have been concerted efforts towards greater enforcement and transparency. Paraguay National Police spokesman Augusto Anibal Lima publicly stated that billions of U.S. dollars in drug and arms proceeds are laundered through the 19 banks and 12 foreign exchange houses in an area near

the Bridge of Friendship connecting the town to Brazil.³³ In November 2001, Paraguay's Judge Carlos Calcena charged that several Paraguayan consulates, including the Foz do Iguacu consulate in Brazil, had become outposts for the falsification of assorted documents, including visas.³⁴ And in May 2001, Paraguay's Vice Interior Minister, Mario Agustin Sapriza, admitted that the TBA served as a base of operations for dormant Islamic extremist cells linked to international terrorism.³⁵

At the national level, Secretariat for Prevention and Investigation of Terrorism in Paraguay (SEPRINTE) has been in the forefront of operations and arrests carried out in the Paraguayan sector of the TBA since the September 11 attacks.³⁶ SEPRINTE participates in an ongoing exchange of information with the MERCOSUR countries and the 3+1 Counterterrorism Group on Security.³⁷ It also participates in investigations into suspected international fundraising efforts in the TBA.³⁸ Under this mandate, Paraguay established the UAF (Financial Analysis Unit) in July 2002. However, its purview is limited solely to financial institutions. As indicated in the most recent Department of State report on Terrorism in the Western Hemisphere (2012):

Although Paraguay has enhanced counterterrorism efforts, it remains hampered by ineffective immigration, customs, and law enforcement controls along its porous borders, particularly the TriiBorder Area (TBA) with Argentina and Brazil. Limited resources, sporadic interagency cooperation, and corruption within customs, the police, the public ministry, and the judicial sector impede Paraguay's law enforcement initiatives. [However], continued activity by internal insurgent groups and the resulting public demands for governmental response [has] kept terrorism in the policy forefront.³⁹

Argentina

Argentine officials have consistently believed that Hezbollah is active in the TBA. Argentine intelligence documents show links between local mosques and various terror groups, and have identified Sheik Mounir Fadel, the spiritual leader of Ciudad del Este's main mosque, as a senior Hezbollah member.⁴⁰ In late January 2003, Argentina's Secretariat for State Intelligence (SIDE) presented then-President Eduardo Duhalde with a 500-page report on the AMIA bombing that confirmed the use of C4 plastic explosive

(commonly used by Hezbollah) and the arrival from Ciudad del Este of two or three Lebanese suicide bombers.⁴¹ An earlier effort in addressing terrorist threats included a 1998 Argentine initiative that created the Inter-American Committee to Combat Terrorism.

Brazil

While the Brazilian government has developed its own internal policies and continues to support counterterrorism-related activities, it has mainly focused its efforts and funding on the crime and illicit activities that occur within the favelas of its largest cities, not on the TBA. While the most recent Department of State Counterterrorism report claims that Brazilian security services are cooperating with the U.S. and other regional partners to counter terrorist activity, they also insist publicly that there is no evidence of terrorist operations in the region.⁴² However there are reports that a container security initiative in Santos, Brazil, has been moderately successful in reducing the smuggling of drugs, weapons, and contraband goods along the Paraguayan border.⁴³ Brazil and Argentina are also members of the Financial Action Task Force (FATF) and the Financial Action Task Force on Money Laundering in South America. Still, the FATF, a policy-making body, does not exert any concrete controls over terrorist money-laundering activities.⁴⁴

Regional Cooperation with U.S. Efforts

Facing a closer potential threat, the United States has provided assistance via a number of programs to Argentina, Brazil, and Paraguay to improve their counterterrorism capabilities. These programs have been administered by the Department of State: an Anti-Terrorism Assistance (ATA) program, an Export Control and Related Border Security (EXBS) program, a Counterterrorism Financing (CTF) program, and a Terrorist Interdiction Program (TIP).⁴⁵ In 2005 Washington established closer military ties with the Paraguayan government that saw a series of U.S. Special Forces exercises and a contingent of four hundred U.S. troops stationed at the international airstrip of Mariscal Estigarribia near the Tri-border region.⁴⁶

In addition to the expansion of Washington's regional military presence, additional efforts are also crucial. They include the sanctioning of Hezbollah's chief representative in South America, Bilal Mohsen Wehbe by the U.S. Treasury Department for illegal funds transfer to Lebanon from Brazil in

December 2010.⁴⁷ In June 2008, the Treasury Department imposed sanctions on two Venezuelans - Ghazi Nasr al Din (a Venezuelan diplomat serving in Lebanon) and Fawzi Kan'an – for providing financial and other support to Hezbollah through the Tri-border area.⁴⁸

Conclusion

As noted by authors Jorge Castaneda and Marco Morales in 2008: “Nationalism [in Latin America] may have various dimensions, although the most common are those that define nationalism as a reaction to the United States....”⁴⁹ Consider this observation in the context of a remark by then-President Luiz Inácio Lula da Silva of Brazil days before the 2009 Summit of the Americas. In reference to Latin America, Silva asserted, “[W]e’re a democratic, peaceful continent, and the United States has to look at the region in a productive, developmental way, and not just think about drug trafficking and organized crime.”⁵⁰

In light of the information outlined here, until the nations of the TBA uniformly address the transnational terrorist threat in the hemisphere, the United States may likely confront the issue unilaterally. Effective security policies must be implemented and existing laws enforced to combat the litany of illegal and subversive activities taking place in the region. Argentina, Brazil, and Paraguay must continue using whatever economic, political, intelligence-gathering, and military elements at their disposal to cut off terrorist financing activity. A concerted effort is critical to denying terrorist groups support and sanctuary in areas where they can gain a foothold; access to territory and transit must also be severed to prevent further entrenchment. Unless actions are taken in earnest to curtail all illegal and subversive activities occurring in the tri-border region, this narrative has the potential to evolve into a modern dangerous paradigm for the United States, with the potential for provoking future U.S. unilateral operations in the region.

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⁴⁴ *Ibid.*

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Photo by Jennifer MacNeill



Turkey's Security Priority: Negotiate with the PKK and Grant Kurdish Minority Rights

by Jason Cowles

Turkey's Foreign Policy Ambitions

As a result of the 2003 Iraq invasion, Turkey not only adjusted its relationship with the United States, but also its Middle Eastern strategy. Turkey rejected the US' proposed \$6 billion and the tactical plan place Turkey as the starting point of the Iraq invasion. The move signalled the end of Turkey's reliance on the US, and a new beginning for a self-described foreign policy of "zero problems with zero neighbours".¹ Turkey began to forge new relationships with countries in the Balkans, Caucasus, Northern Africa, and especially the Middle East.

• Turkey's foreign policy goals with the European Union and "zero problems with zero neighbours" are threatened by the Justice and Development Party's (AKP) hesitancy to grant greater ethnic rights to the Kurdish population and negotiate a settlement with the looming threat of the Kurdistan Workers Party (PKK). Furthermore, the Syrian Civil War has compounded the situation by distracting Prime Minister Erdoğan from Turkey's highest priority in completing its democracy.

Brief History of the PKK

The Kurdistan Workers Party or more commonly referred to by its Turkish abbreviation PKK, is an insurgency group based in Turkey that has violently pursued the autonomy of a Kurdish state. The clash between the Turkish government and the PKK insurgency has lasted 29 years and has resulted in at least 30,000 deaths since its 1984 beginning.² The PKK's founder and leader, Abdullah Ocalan, was captured in 1999, which resulted in a brief ceasefire that lasted until 2004.

Since June 2012, Syria has hijacked negotiations and stolen the Turkish government's attention away from the PKK conflict. On that date, relations with Syria took a violent turn when a Turkish F-4 Phantom jet was shot down entering Syrian airspace off its Mediterranean coast. Erdoğan made sure that approaching Syrian forces would be treated with similar hostility. On September 2012, Turkey shot down a Syrian Mi-17 attack helicopter for likewise invading its airspace, which marked the 75th death on Turkey's southern border since the start of the Syrian Civil War.³ Tensions will only increase on the 560-mile Turkey–Syrian border especially with an estimated 494,364 Syrian refugees

currently spread across 21 refugee camps.⁴ This conflict is sure to continue as Assad is only emboldened by the US' failure to intervene and now backed by a stronger alliance with Iran and Russia.

Specific Solutions

(1) The AKP needs to show good measure to the Kurdish population and the PKK by passing constitutional amendments removing ethnic discrimination, legalizing the use of Kurdish in all schools, offering documentation and government services in Kurdish.

Turkey functions at a higher democratic rate than its constitution allows. Even though Erdoğan has succeeded in eliminating state corruption and curbing the military's ultranationalist influence, there are still many reforms that Turkey must adopt, especially amending the constitution to encourage free speech and granting minority rights to Turkey's estimated 1/5 Kurdish population.⁵ Among the reforms in the AKP's most recent democratic package, "Erdoğan's proposal would allow private schools to have some classes in Kurdish [...] the letters q, w and x, which are part of the Kurdish alphabet but not the Turkish one, to be used in official documents. [...] loosen restrictions on political activities in languages other than Turkish." While these reforms certainly mean progress, they are deftly insufficient.⁶

Undoubtedly, Erdoğan is dangling the least amount of concessions in order to persuade the PKK to fully disarm and retreat across the Iraq border. The grand flaw in this logic is the PKK's only measurable influence is the use of force and a step they would only follow through with as a last step to being granted amnesty. Erdoğan and the AKP government need to pass these reforms without prejudice, not only as a term of good measure, but also because the EU accession process requires it to.

(2) The AKP needs to negotiate with the PKK, by taking the first step and repealing The Anti-Terror Law.

Turkey's Anti-Terror Law absolutely needs to be repealed. The law seeks to alienate often innocent Kurds from a Turkish state. According to the law, anyone that appears to be acting with PKK "intent" can be convicted as a member of a terrorist organization. There have been examples of children throwing

stones and yelling PKK slogans that have been convicted and sent to jail longer than actual PKK members that have participated in violence. According to Nurettin Bozkurt, Branch Office General Secretary of the Mazlum-Der Rights Association:

“If you put a child who got over-excited and threw stones in jail for ten years, you’re going to push the whole family towards terrorism. And every demonstration counts separately. So although fighting for the PKK carries a maximum sentence of six years, a stoning offence can get eleven or twelve years (for membership of a banned organization and taking part in a banned demonstration). [...] I’ve never seen anyone let off. Once they convicted 23 kids at once. There wasn’t even a picture, just the evidence of a policeman.”⁷

This law has been used irresponsibly by some military and police forces that don’t share any zeal for granting Kurdish minority rights and take advantage of this loosely defined law to jail wrongly perceived threats. The AKP needs to take a first step in negotiating with the PKK by getting rid of unjust laws that seek to undermine the democratic reforms it promotes.

(3) The Turkish government should refrain from using Ocallyan Abdullah as the mediator between itself and the PKK, and should instead use the Peace and Democracy Party (BDP).

The BDP is a legitimate body of Turkey’s parliament that was elected to primarily represent Kurdish interests. Using the BDP can bring legitimacy to negotiations and be a third party that can understandably deal with PKK demands. Any deal that is finalized will undoubtedly need Abdullah’s stamp of approval to bring the most radical of his followers into the fold. Yet, Abdullah’s effectiveness as a negotiator is marred first, by his insincerity in actually brokering a deal and second, by the primary need of negotiating for better living conditions for himself—trading his cell for house arrest. For Erdogan, this could be an opportunity to extend his majority amongst the Kurdish population. The BDP at the very least could prove to be a valuable resource by refreshing the long stalemate in negotiations.

Conclusion

The greatest threat to Turkey’s security and its ability to become a more influential international/regional actor is its own negligence towards solving the Kurdish issue. Negotiating with the PKK will never be productive as long as Turkey fails to compromise and grant basic minority rights to its people. Failure TO compromise with the Kurdish and the PKK will result in increasing conflict and inner turmoil. How can Turkey hope to sell the Middle East on its pitch of “zero problems with zero neighbours” if it can’t negotiate with the PKK and solve the Kurdish issue?

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From the Bottom Up: The Role of Civil Society in Challenging Extremism and Terror in a Post 2014 Afghanistan

by Sam Tyler Powers



“Blood cannot be washed out with blood”
- Afghan Proverb

The story of contemporary Afghanistan has been forged in the fire of invasion, conquest, infighting, and empire. Sitting at the crossroads of Asia, the territory now known as the Islamic Republic of Afghanistan has been the focal point of empires from the likes of Alexander the Great in the 4th century, through the Persians, and the Arab empire which brought Islam to this tribal society.¹ While a great deal has been written about the history of Afghanistan, this paper will focus on the current challenges facing this nascent democracy as American and Coalition forces plan to withdraw from the region in 2014. In particular, this research will center on the original mission of the International Security Assistance Force (ISAF) set forth to “enable the Afghan government to provide effective security across the country in order to ensure Afghanistan can never again become a haven for terrorists.” Throughout this paper, we will examine how prepared Afghanistan is to safeguard itself against a resurgence of extremism that could threaten security and future stability. Specifically, we will look at the role civil society plays in shielding communities from the threat of extremism and terror, and examine the many challenges that lie ahead.

This paper will begin with a brief overview of where we currently stand in the Afghan theater, highlighting specifically what progress has been made, and what the cost has been of ten years of war. This will be done to provide a context by which to gauge the current threat posed by extremist groups such as

the Taliban, Al-Qaeda, and the Haqqani Network. While security has improved markedly in certain parts of the country, particularly near Kabul, vast numbers of rural Afghans continue to feel threatened by extremist groups who have found sanctuary along the border with Pakistan.² One of the limitations of this research will be that it will focus not on Pakistan, a country that is critically important to understanding the current extremist threat in the region. The Taliban and other groups have found sanctuary in the Federally Administered Tribal Areas (FATA, see Figure 1a) and have been known to receive direct support from the Pakistani government, particularly the Inter-Services Intelligence (ISI).³ These issues have polarized relations between Washington and Islamabad. This paper will assume a more pragmatic approach, assuming that violence will continue on behalf of extremist factions regardless of where they are based. This paper will ask the question: how can civil society help defend against such elements by building a resilient Afghanistan that can hold its leaders to account and defend itself from attack and the influence of extremism?



Figure 1a

To examine how civil society can be used to improve security in Afghanistan and address the issue of a potential extremist insurgency, we will first have to define the term and present the various challenges facing Afghan society heading toward the 2014 withdrawal. In particular, we will look at the

effect that rampant corruption has had on the state apparatus and how it has created roadblocks for providing, inter alia, security, at times even opening a void that extremists can fill. The paper will present case studies of civil society initiatives both traditionally based as well as those supported by international donors, to show what Afghan society is doing to protect itself in situations where effective governance is negligible. We will continue by looking at the role of traditional mechanisms of justice, and governance, particularly the Jirga and Shura, both products of years old tradition that have come to supplant formal systems of justice that have been absent for years. The piece will conclude by offering recommendations on how the threat of extremism can be defeated through a “soft” approach, harnessing the power of civil society to address key issues of security and stability. It is the hope that this research will allow for future study on the role of civil society in Afghanistan’s reconstruction and also on the role it can play in preventing extremism in cases where security may be jeopardized across the globe.

10 Years of War: Where We stand in the Afghan Theater

After 10 years of war in Afghanistan, it is difficult to gauge whether the efforts of Coalition forces have been successful at satisfying ISAF’s mission of “enabling the Afghan government to provide effective security across the country in order to ensure Afghanistan can never again become a haven for terrorists.”⁴ What is true, however, is that after over 3,000 coalition deaths, the situation for many Afghans has improved dramatically in certain sectors. When the Taliban came into power in 1996, they enforced a strict form of Sharia law that oppressed women, forbidding them from attending schools, and carried out amputations, public executions and flogging to punish petty crimes.⁵ Currently, 3.2 million girls are attending school in Afghanistan.⁶ Although still amongst the lowest in the world, GDP per capita has tripled to a current \$576 per annum. Afghanistan now has a constitution that protects civil liberties such as freedom of speech, freedom from torture and the perseverance of life and liberty.⁷ In regards to security, Kabul has been pacified, with only the occasional attack making headlines, and the Taliban has been pushed back to take shelter in FATA.⁸

Although the work of Coalition forces, international

governments and NGOs should by no means be left unrecognized, the current state of Afghanistan shows that much still needs to be done in terms of security, development, human rights and, the rule of law. Afghanistan ranks just above Somalia as the world’s second most corrupt nation with corruption affecting all levels of government, the military, and police forces. Many Afghans feel that this rampant corruption directly empowers the Taliban and other extremists, particularly in rural areas where formal governance is not present.⁹ Even with billions of dollars of aid reaching the country each year, Afghanistan remains desperately poor with 90 percent of the world’s heroin production coming from the country and making up much of its GDP.¹⁰ While security remains tight in Kabul and parts of the south, The Taliban still continue to threaten the lives of Afghan civilians and coalition partners in the east of the country in places like Paktika, Kandahar, and Helmand province. Although the Taliban remain dispersed, the emergence of the Haqqani Network, based out of Pakistan and ostensibly funded by the ISI, is particularly worrisome. The group has already orchestrated attacks that have inflicted mass casualties, particularly in Paktika, Wardak, and Khost provinces and according to experts, may be set to take over the Quetta Shura Taliban when the US pulls out in 2014.¹¹ While more will be discussed in the following section about the groups that continue to threaten security and stability in Afghanistan, it must be made clear that the threats are vast, and the Taliban is not the sole player.

The Key Players: Understanding Extremist Threats in Afghanistan

Although it is difficult to count the number of groups operating against Afghan and US interests, there are various key players who will continue to pose a security risk as U.S. troops pack up ahead of a 2014 departure. Amongst these groups are the Afghani Taliban (also known as the Quetta Shura Taliban), the Haqqani Network, and, to a lesser extent, al-Qaeda.

Considering the goals set forth by US policy makers after the attacks on 9/11, it would be unjust not to begin this section by examining the current state of al-Qaeda in Afghanistan. Before the coalition invasion of Afghanistan, al-Qaeda had



used the country as their primary base of operations. When Coalition forces invaded in 2001, the group withdrew back into the foothills of FATA. The killing of Usama Bin Laden in 2011 ushered in a new era where Ayman-al-Zawahiri took the helm and has since been hiding within Pakistan near the Afghan border.¹² In Afghanistan, al-Qaeda's presence is limited with fewer than 100 fighters who move back and forth between the vast ungoverned border between Afghanistan and Pakistan where they are susceptible to a barrage of U.S. drone strikes.¹³

While al-Qaeda has, for the most part, been beaten back into Pakistani territory, the Quetta Shura Taliban still pose a real threat to the stability of Afghanistan, particularly as the ANSF assume complete responsibility for providing security throughout the country. In a recent AP interview, U.S. Army Gen. Martin Dempsey, chairman of the Joint Chiefs of Staff, made clear that the Taliban still constitute a threat to the security of Afghanistan, even amidst gains made by Coalition forces.¹⁴ Areas like Patika, Khost and Wardak remain heavily susceptible to intrusion by the Taliban and with the declaration of the recent "Spring Offensive,"¹⁵ attacks against coalition troops and Afghan civilians have ratcheted up. The group has also shifted their tactics as ANSF and ISAF troops have cracked down. In addition to their normal gamut of brutal suicide bombings and planting of improvised explosive devices (IEDs), the Taliban have pledged to increase the level of "insider attacks," in which a member of the Taliban either directly or through a dedicated proxy opens fire on coalition troops while wearing an ANA uniform. This tactic has proven incredibly effective at inflicting casualties and bringing down the morale of NATO forces in the past year.¹⁶

The Taliban have also worked hard to maintain their presence throughout the country, particularly in the Pashtun tribal belt (see figure 1b).

By exploiting a lack of government presence and instituting their own system, the Taliban have been able to fill a void left by the central government. Although uprisings against the group have recently been recorded in certain rural communities, the Taliban have maintained a tight grip on certain sectors of the population. This is partially a result of poor decision-making on behalf of President Hamid Karzai to ignore the grievances of local tribal leaders and instead place his associates in control of large swaths of land.¹⁷ These governors have operated with inefficiency, misappropriating aid money, and ignoring the need to build strong institutions and reform local police.¹⁸ In these desperate parts of the country, the Taliban have built upon high levels of corruption,

the distrust for central government and alienation of the majority population, to develop a support network that not only tolerates their presence, but also continue to fill their ranks.¹⁹

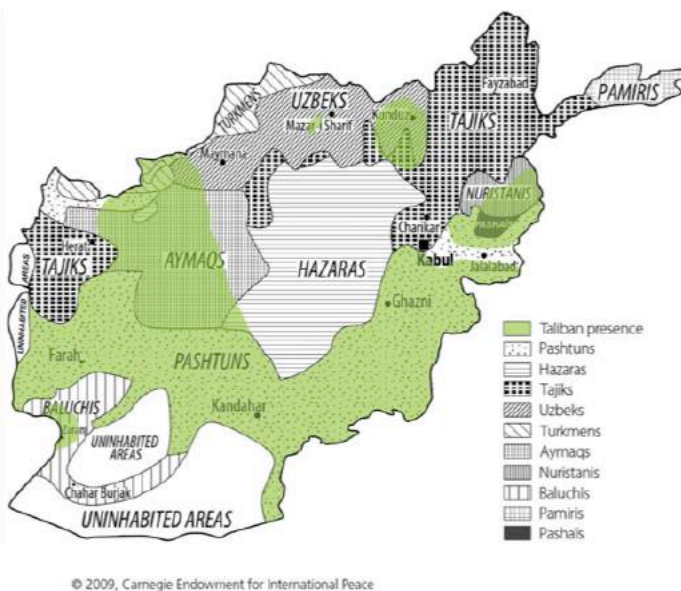


Figure 1b

Currently considered one of the "most potent" threats to Afghan security is the Haqqani Network, founded by Jalaludin Haqqani, a U.S. backed mujahedin commander during the war against the Soviet Union. Currently numbering upwards of 3,000 fighters, the group staunchly opposes the Karzai government and has been responsible for fatal attacks including a truck bomb in Wardak province and possibly the Khost bombing that killed seven CIA officers in 2009.²⁰ The group finds its sanctuary in Pakistan and has said to be supported directly by the Pakistani government receiving tactical support from the ISI.²¹ Admiral Mike Mullen, in his testimony to Congress, recently described the Haqqani Network as a "veritable army of the ISI."²² In 2009 and 2010, the Haqqanis were able to coordinate a massive attack in Kabul and a suicide car bomb that killed 13 U.S. personnel. The organization publicizes its exploits on the World Wide Web, garners funding from the Persian Gulf and has coordinated effectively with other extremists, including al-Qaeda and the Islamic Movement in Uzbekistan (IMU), providing training in camps in north Waziristan.²³

While various other extremist groups challenge the development of a free and prosperous Afghanistan, the

aforementioned players will be the principal focus in the following section that will discuss the role civil society can play in undermining the efforts of such groups.

Afghan Solutions for an Afghan Problem: Defining Civil Society in the Afghan Context.

Framing the term civil society in the 21st century lexicon has been a difficult undertaking for the international community. In order to better understand how civil society functions in the Afghan context, we will define the term alongside a 2002 report developed by the U.N. titled: Civil Society Initiative: External Relations and Governing Bodies:

The common understanding is that civil society embraces the general public at large, representing the social domain that is not part of the state or the market. Lacking the coercive or regulatory power of the state and the economic power of market actors, civil society provides the social power of its networks of people. Its ideas, information, services and expertise are used to advance the interests of people by seeking to influence the state and the market. It is a sphere where people combine for their collective interests to engage in activities with public consequence.²⁴

In the case of Afghanistan, the lack of government accountability and consistent war and poverty has raised the importance of civil society, as most people rely on such networks described above not only to survive, but also to gain traction on building a future for themselves and their families. Regarding issues of security, and the threat of extremism, understanding and empowering civil society is crucial to paving the way for a stable Afghanistan.

In his article "The New Public Sphere: Global Civil Society, Communication Networks, and Global Governance," Author Manuel Castells of USC sums up how civil society could fit into the Afghan context. He writes: "As a result of the decreased ability of governments to mitigate crises, nongovernmental actors become the advocates of the needs and values of people." What Castells touches on is critical in relation to Afghanistan, as the current state of the government has across the board been unable to address the grievances of the populous. Civil society, repressed under the Taliban, has found a strong place in the nascent Afghan democracy as means to hold officials responsible, improve accesses to basic services and undermine extremist organizations that look to exploit the bureaucratic malaise of the Afghan government to

maintain power. The following sections will address the various issues that civil society is working to tackle and how by addressing such issues, overall security and governance may be improved and the reach of extremist organizations may be diminished.

Corruptistan: Corruption in Afghanistan and its Effect on Extremism

"If we don't get a level of legitimacy and governance, then all the troops in the world aren't going to make any difference . . . Karzai has got to take concrete steps to eliminate corruption."²⁵

- Admiral Michael Mullen

According to the most recent statistics from Transparency International, Afghanistan ranks just above Somalia as the worlds second most corrupt country.²⁶ The pervasiveness of this corruption is so deeply entrenched that it has come to affect the very fabric of the state and has empowered extremist factions looking to undermine developments in governance. Most Afghans consider tackling corruption as one of the largest challenges towards building a truly effective democratic state.²⁷

While the international community plays a key role in overseeing a transition to a reliable government, the grunt work needs to be done by the central government in Kabul. Many Afghans have expressed their utter disappointment at the Karzai government's failure to address corruption since the new constitution was approved in 2004. Shafiq Hamdam, head of an Afghan NGO called the Afghan Anti-Corruption Network, commented, "corruption feeds unrest, feeds the insurgency...The Karzai government is the most corrupt government we have ever had in the country."²⁸ This sentiment is reflected in statistics that point to an abysmal record of corruption since Karzai assumed the presidency in 2004. This year, the money lost to corruption totaled an alarming U.S. \$ 3.9 billion, or double the country's domestic revenue.²⁹ More than half of Afghans paid a bribe to a public official in 2012, while 30 percent paid bribes to non-government employees. This corruption is most rampant within the Afghan National Police (ANP) and also amongst judges, doctors, and nurses. Reports of wounded ANA soldiers being denied treatment and dying because they failed



to bribe a doctor or nurse are not uncommon.³⁰ Provision of security, particularly in rural communities, remains hampered by rampant corruption that makes it easier for insurgents to continue to wreak havoc in certain areas. A 2009 report from the Carnegie Endowment for International Peace summarizes the challenges facing the ANP in particular:

Poorly paid patrol level police set up unofficial check points to extort money from drivers, senior commanders use police facilities and vehicles for the storage and transportation of drugs or buy appointments to positions with revenue generating opportunities, traffic police openly canvass for money, police are accomplices in robberies and kidnappings and bribes are exacted at every step of the lengthy processes for obtaining administrative services.³¹

Such widespread corruption, particularly within the ANSF, makes it very difficult not only to provide the means to protect Afghan citizens, but also the legitimacy to maintain their trust. Richard Holbrooke, the late Ambassador and Special Envoy to Afghanistan and Pakistan, commented on the issue of corruption stating: “Massive, officially sanctioned corruption and the drug trade are the most serious problems [Afghanistan] faces, and they offer the Taliban its only exploitable opportunity to gain support.”

Ambassador Holbrooke’s point has proven its truthfulness throughout the country, as the Taliban has been able fill the void left by the corrupt Afghan central government. In far-flung provinces along the Pashtun tribal belt, people remain weary of central government control and often, as will be discussed later, rely on traditional mechanisms to resolve disputes. By providing security and swiftly, albeit brutally, resolving disputes through means of Sharia justice, the Taliban fills a void that the central government has been unable to provide. In order to diminish the power of such groups, corruption must be tackled. The following section will show how civil society is stepping in to address this issue.

How Civil Society is Fighting Back Against Corruption

In his book *The Elephant in the Room*, author Eviatar Zerubavel discusses how in society, people often tend to neglect problems or events that clearly present themselves.³² In the case of Afghanistan, this “elephant in the room,” can be defined vis-a-vis corruption. While the Afghan government

may blame the international community for not stepping up to the plate, many of the problems in Afghan society stem from entrenched corruption that has been neglected and normalized. As Afghanistan transitions towards a democracy, the government remains essentially blind to this issue. The Afghan people, however, are not sitting around idly while their security is jeopardized and cronies and crooks exploit their democracy. Civil society has sprung into action to change what until now has been considered a normal part of life in the country. The role of civil society in battling corruption in Afghanistan has taken on various faces, traversing traditional mechanisms to the use of mobile phones to hold the government accountable. The following section will profile some of the civil society organizations that are working to prevent corruption from further destroying Afghan society and providing ammunition to extremists groups looking to legitimize themselves.

Founded in 2005, Integrity Watch Afghanistan (IWA) is an initiative sponsored by the UNDP and various international governments and is currently registered as an independent civil society organization.³³ In its work throughout the country, IWA has provided a forum by which members of civil society can discuss, plan and orchestrate means to monitor corruption and raise awareness. The group conducts surveys, analyzes national budgets and provides a megaphone to Afghan citizens who feel that their democracy is being threatened by rampant corruption. IWA conducts community based monitoring in over 45 communities throughout the country that allows community members to evaluate reconstruction projects and determine where corrupt officials are hindering the delivery of public services.³⁴ These results are made public, raising awareness of the issue and putting those responsible under the spotlight.

While IWA uses semi-traditional mechanisms, such as communal meetings and surveys to expose issues of corruption and malfeasance, other civil society organizations are harnessing the power of technology to subvert corrupt officials and provide stability to themselves and the nation. According to a recent CBS report, government officials in Afghanistan have been consistently responsible for skimming nearly 30 percent off the already abysmally low salaries in Afghan public service. Without enough money to feed their families or save for the future, corruption fuels resentment against the central government, often causing people to join extremist organizations and engage in crime out of

desperation.³⁵

Currently, there are 17 million mobile phone users in Afghanistan, a country where before 2001, a phone could cost up to U.S.\$ 500 and placing a local call could run U.S.\$ 4 per minute.³⁶ With this explosion in mobile phone use, Afghans have developed new tools by which to undermine corruption.

In 2008, Vodafone, the world's second largest telecommunications company partnered with Roshan, Afghanistan's telecommunications provider, to develop mobile phone payment technology in the country. Known as M-Paisa, the technology allows citizens to use a national ID card or passport to withdraw and deposit funds and transfer money, bypassing corrupt officials.³⁷ The program became a huge success in Afghanistan, particularly with the police forces that have statistically been grossly underpaid. When the program was initiated, reports from the Afghan police showed that many officers were pleased with a 10 percent raise in their salaries. In this case, technology and cooperation between the public and private sector helped subvert corruption and provided citizens with a bit more leeway in the struggle for survival in one of the world's poorest nations.

While not directly addressing the threat of extremism, this section provides an overview of the various means by which civil society can empower local communities, hold government accountable, and ensure fiscal stability. All of these advances enable bureaucracy to be more effective as civil society has oversight, improving issues of security and preventing extremists from gaining a foothold. In addition, as corruption strips Afghans of the money they need to survive, many take refuge in a life of crime and extremism. Through technology and empowerment of civil society, we see a grassroots effort to break this cycle.

“All Politics is Local:” The Role of Traditional Structures of Governance in Keeping Extremism at Bay

During the period of Taliban rule, dissent against central authority was met with oppression on a mass scale carried out under the auspices of Sharia law. Civil society was repressed with a brutal hand that placed the ideals of fundamentalist Islam at the center of politics and daily life. Although the voices of civil society remained in the dark, Afghanistan has had a long history of organic communal structures that must be considered in developing an effective strategy to improve security and keep extremists at bay. These community-based

forums, known as Jirga and Shura, can best be defined as traditional civil society actors. They address a range of issues that effect local communities and providing an effective link to the majority of Afghan's rural populace.

The majority of dispute-resolution and justice in Afghanistan is conducted outside the formal sector.³⁸ This is partially a product of years old tribal tradition that is distrustful of central authority but also an act of necessity. In most of Afghanistan, particularly in its vast rural expanse, the state has very little presence, especially in a judicial capacity.³⁹ The high levels of corruption in the central government and a genuine policy of discrimination on behalf of the Karzai government toward certain tribal groups advances reliance on these systems even further.⁴⁰

The Jirga has a long history in Afghanistan that predates the arrival of Islam to the region.⁴¹ Similar to a town hall meeting in the United States, Jirgas are convened when an issue of importance to the community arises and a decision needs to be made. While most popular amongst the Pashtun, Jirgas have a presence in various regions throughout the country and play an important role in addressing issues of security, development and rule of law. They often serve as the line of communication between figures in the central government, coalition forces, aid groups, and others looking to communicate with rural civil society. Ignoring the role of Jirgas, in particular, would undermine efforts to provide effective governance and address issues of security. Where such initiatives are cast aside or supplanted by cookie-cutter models of western justice, extremists can gain a foothold by providing a more traditional, and ostensibly more reliable space to address grievances.

Similar to a Jirga, a Shura is held as a council, but are particularly geared towards religious leaders, or Mullahs who reference the Quran to administer justice and resolve disputes that affect the local community.⁴² Both of these mechanisms are known to be unprejudiced and impartial, particularly when compared to formal governance mechanisms based in Kabul.⁴³

The existence of these mechanisms of justice and communal representation show one of the oldest forms of civil society in existence not only in Afghanistan, but also in the world. By airing grievances and discussing topics ranging from basic services to security, rural communities, who are left outside the reach of formal justice systems, have maintained order through organic mechanisms. With extremism and insurgency continuing to threaten rural Afghanistan, the role of



these councils is critically important in providing the tools to shield against such threats.

Takeaways and Recommendations

There is a famous Afghan proverb that reads: "Blood cannot be washed out with blood." After years of war, it is clear that hard power alone will not be able to guarantee a transition to a free and secure Afghanistan. While ISAF's original mission has improved the lives of many, vast swaths of Afghanistan's rural frontier remain out of the government hands, susceptible to an array of threats including extremism. Entrenched corruption, marginalization of tribal entities, and poverty not only make these communities susceptible to attack from groups like the Taliban and Haqqani Network, but also provide sources of recruitment. This paper has demonstrated the ways in which civil society can help ensure a stable transition post 2014, where security is provided and key issues such as corruption begin to be addressed. From mobile phones to the utilization of age-old tribal councils, the role of civil society remains critical in addressing key issues. As we build up to the withdrawal of coalition forces, the international community must continue to support initiatives such as Integrity Watch Afghanistan along with other civil society organizations that work to expose government malfeasance. That being said, many of the problems that exist in Afghanistan can only be solved by Afghans. For example, the Karzai government must reverse years of entrenched corruption in order to ensure that services are reaching the most poor and forces such as the police carry out their duties without extorting locals and collaborating with drug traffickers and extremists. In aiding this process, the international community must not rely on cookie-cutter models of justice and nation building that are imposed from the top down. Rather, mechanisms of traditional justice such as the Jirga and the Shura must be harnessed to ensure that Afghanistan's rural communities have a continued voice in state planning and tackling key issues. Technology can help expedite institutional reform as it allows for citizens to mobilize and coordinate and bypass corrupt institutions that make living in this already desperately poor nation even more challenging. Through these processes, women must be engaged in every decision-making process. As the constitution guarantees equal rights, women have mobilized to defend their newfound rights and establish their role as key players in crafting a democratic system that is secure and transparent.

The history of Afghanistan has been marred by years of war that has led to various nefarious actors taking root in the vastly

ungoverned pockets of the country's frontier. As this nation gets closer to taking the reigns of security and democratic reform, the role of civil society must be recognized as a game changer. It will help ensure transparency, accountability, and representation of Afghanistan's diverse populace. From traditional Jirgas to payments made via mobile phones, civil society should be considered equally as important as hard power initiatives in providing future stability, and diminishing the threat of an extremist resurgence in Afghanistan after 2014.

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Ethnic Cleansing in Bhutan

by *Livinia Mouries*

Introduction

Located between giants India and China, the remote kingdom of Bhutan has increasingly been described by most Western and Bhutanese media ever since the country started opening its frontiers in the 1970s as a mysterious and idyllic real life Shangri-La. Indeed, the prior policy of isolationism had allowed Bhutan to protect its cultural identity from the harmful effects of globalization, as well as preserve its untouched natural landscapes.

In 1972, Bhutan developed a new concept of global interest, Gross National Happiness (GNH), a term coined by Bhutanese King Singye Wangchuck. Bhutan recognizes happiness as an inalienable human right,¹ and as such, GNH “is a holistic and sustainable approach to development which balances between material and non-material values with the conviction that humans want to search for happiness.”² This concept is based on four pillars – “fair socio-economic development (better education and health), conservation and promotion of a vibrant culture, environmental protection, and good governance”³ – all of which should be ensured by the state, according to Bhutanese Prime Minister Jigme Thinley.⁴ As a result, the country uses GNH as its primary measure of prosperity, therefore rejecting GDP and claiming that 97 percent of Bhutanese citizens are happy.⁵

Yet these statistics and numerous media accounts mask a more divided history than that offered by the national government. In 1990, Bhutan launched a campaign of ethnic cleansing against one of its ethnic minorities resulting in one of the most neglected refugee crises in the world, and forcing one-sixth of the population to live in exile in Nepalese refugee camps.

This research paper will attempt to evaluate, through the lenses of instrumentalism and modernization, how Bhutan, a country that truly values happiness as an inherent human right, could simultaneously launch a massive campaign of ethnic cleansing against one of its minorities.

Lenses of Instrumentalism and Modernization

Instrumentalism

The theory of instrumentalism is informative in cases in which “ethnicity and nationalism can serve an instrumentalist

purpose.”⁶ That is, when political elites draw on these two elements for political goals. Instrumentalist thinker Anthony Marx claimed that, “elites construct group consciousness through the selective evocations of history to project an image of prior legitimacy and purposefully forget inconvenient images or experiences of past or present internal division.”⁷ In such cases, ethnicity is not viewed as derived from human nature as primordialists argue, but is rather rationally used to legitimize a conflict against a minority by advancing arguments of “ethnic differences and perceived threats to the ethnic groups by other ethnic groups.”⁸ The elite will try to form coalitions between people and create an in-group based on common traditions, interests, and language in order to fight changes brought by modernization. By doing so, the elite will try to gain and/or maintain power.⁹

Modernization

Although modernization can sometimes have a positive effect on a society and homogenize it, it can also often create “social fragmentation and/or state transformation, and these factors lead to ethnic conflict.”¹⁰ Georg Simmel explains that “modernization produces a more segmented society and identity polarization,”¹¹ where the democratic state is used for political competition and “the hegemonic national group uses the state to sustain its power and privilege.”¹² As a result, the dominant group will employ any means to ensure its hold on power.

Additionally, powerful groups and elites will often take advantage of the fact that establishing effective and strong democratic institutions takes time in order to threaten the stability of the process. Political elites will use “limited suffrage, unfair constraints on electoral competition, disorganized political parties, corrupt bureaucracies, or partial media monopolies”¹³ in order to maintain power. In many democratizing states, political elites will try to gain mass support by extensively using nationalist ideas, to legitimize “the exclusion of opponents from political participation on the grounds that they are enemies of the nation.”¹⁴ If the hegemonic group controls the media, these policies will be easily circulated to the public in order to gain mass support, while the absence of media channels will allow leaders to avoid transparency and accountability.

Demographics and Ethnic Composition

Demographics

Bhutan is a multi-ethnic country composed of four major ethnic groups: the Ngalongs (of Tibetan origin), the Scharchops, the Khengs (first Bhutanese inhabitants), and the Lhotshampas (of Nepali origin). The Ngalongs represent 50 percent of the total population, while the second largest group of the country, the Lhotshampas, make up 35 percent of the population, and the last 15 percent are comprised of Scharchops and Khengs.¹⁵ In 1969 the total population was evaluated to be just more than one million but that number was later reduced revised to 930,614, and was eventually adjusted to 600,000 individuals in 1990.¹⁶ The latter revision can be explained by the harsh campaign of ethnic cleansing led by the mainstream Drukpas against the minority Lhotshampas.

Drukpa and Lhotshampa Background

The Drukpas

Among the Ngalongs, the Drukpas are the majority and have largely populated the western part of the country since their migration from Tibet in the ninth and 10th centuries CE. The Drukpas follow a branch of Tibetan Buddhism, and share a common language called Dzongkha. The culture of the Drukpa has become “the mainstream culture of Bhutan”¹⁷ ever since the country’s first king, Ugyen Wangchuck, united the country in the late 19th century. To this day, most of the governmental ruling elite is part of this ethnicity.

The Lhotshampas

The Lhotshampa minority originates from Nepal, and primarily follows the Hindu faith. This ethnicity began to settle in Bhutan in the early 20th century as a result of high levels of taxation in Nepal – a pretext for enslaving a growing number of indebted peasants, and/or taking control over their lands. In turn, many started “migrating eastward, usually to locations where environmental conditions approximated to those of the places they left behind, and where the same modes of cultivation could be employed.”¹⁸ In the late 1980s, the Lhotshampas formed the majority of the population in the south-eastern and south-western regions of Samchi, Chhukha, Chirang, Geylegphug, and Samdrup Jongkhar.¹⁹

Pre-Conflict Policies

Pre-1970s Policies: Loose Territorial Nationalism and Integration

Geographical policy

Until the late 1930s, Nepalese immigration into Bhutan was welcomed as part of the country’s strategy to have the forests of the Southern region cleared and lands “settled and cultivated if the prosperity of the kingdom was to be assured and enhanced.”²⁰ This strategy allowed the Lhotshampas to settle in a region where no other ethnicity lived, therefore creating a sense of isolation between groups and impeding interaction. This was later envisioned as a clear “government policy [...] designed in order to protect ‘Bhutanese culture’ from being eroded or displaced by ‘Nepali culture’ through demographic pressure.”²¹ Indeed, it was later reported that a symbolic boundary was created above Nepali settlements in order to ensure that the Lhotshampas would not travel up North.

Unfortunately, this policy of minimal interaction was a clear pre-condition for conflict:

It populated the area of Bhutan most susceptible to rapid economic development and to ideological penetration from India with a community that had not been integrated, either socially or politically, into the broader Bhutanese society... The Nepali Bhutanese are concentrated in an area where they constitute the overwhelming majority of the population.²²

As a result, the Lhotshampas lived a Nepali lifestyle while feeling a sense of alienation from the Bhutanese government, and the society as a whole.

Policy of Modernisation: external and internal catalysts

In 1953, this cultural divide temporarily came to a halt when King Dorji Wangchuck promptly started launching a process of modernization throughout the country as a result of the rapidly changing political climate of South Asia. By 1947, India had acquired independence from the British sovereignty, resulting in independent India and Pakistan, and inspiring political parties in the region to demand “social and political reforms,



not just in Nepal itself, but also among Nepali communities in India, Sikkim and Bhutan.”²³ This political momentum encouraged Nepalese migrants to organize and, in 1952, resulting in the creation of the Bhutan State Congress (BSC),, “which was Bhutan’s first political party, [and] adopted demands for democratization, and the provision of citizenship rights and political representation for Nepali settlers as its main agenda.”²⁴ Nepalese settlers began developing a group consciousness, through which they began asking for legalized rights.

Furthermore, in the 1950s, Tibet lost its independence to China, which meant that the Bhutanese government needed to find a solution to the disruption of trade with the region and deal with the growing “population pressure upon land resources in southern and eastern Bhutan.”²⁵ The Bhutanese king realized that it was necessary to develop new sources of employment and production,²⁶ meaning that the region with the greatest potential for economic growth due to the richness of its soil, the South, had to be integrated with the rest of Bhutan.

As a result, in 1952 King Dorji Wangchuck started reforms designed “to integrate the economy and administration of the south with those of the rest of Bhutan, and thereby to bring its Lhotshampa population closer to the national mainstream.”²⁷ This policy resulted in the Nationality Law of 1958, enacted by King Dorji Wangchuck, that granted citizenship to the Nepalese immigrants who had settled in the kingdom prior to that year. Since then, “the Lhotshampa population has enjoyed all the rights and privileges of citizenship. No efforts have been spared by the Royal Government to bring the Lhotshampas into the national mainstream.”²⁸ Through this process the government officially recognized and legitimized the Nepali population’s citizenship rights, as well as its distinct cultural identity.

Post-1970s Policies: Discrimination and Ethnic Cleansing

In 1972, the short-lived period of national peace came to an end when King Dorji Wangchuck died and his son, Jigme Singye Wangchuck, took over the throne.

King Singye Wangchuck’s rise to power was marked by a new wave of Nepalese immigration between 1961 and 1981 as a result of new development projects, which offered opportunities for employment set forth by the country’s modernization process. This large wave of immigration led the Lhotshampas to become the ethnic majority in the South, and led King Singye Wangchuck to begin fearing a Nepali

rebellion.

This fear reportedly arose for two different reasons. On the one hand, some Nepalese groups started envisioning “a Greater Nepal stretching along the Eastern ranges of the Himalayas.”²⁹ On the other hand, the Nepalese agitation arising in nearby Sikkim led to the fall of the former ruler and allowed ethnic Nepalese to dominate the region.³⁰ Taking into consideration these nearby changes, King Wangchuck started enforcing a strict policy of ethnic discrimination.

In 1977, the government unveiled a new “Citizenship Act”³¹ to implement harsher restrictions on immigration. Some of the most restrictive terms of the Citizenship Act dictated that Bhutanese citizenship applicants had to have resided in the country for 20 years instead of 10 as defined by the 1958 Act, and that “eligibility was also conditional upon applicants having ‘some knowledge of the Bhutanese language both spoken and written and the history of Bhutan.’”³² This latter aspect of the new Act was of specific importance and was a harbinger to the later implemented Driglam Namzha policy.

Later on, the Marriage Act of 1980 legalized “punitive measures against Bhutanese who married non-Bhutanese [and] any citizen who married a non-Bhutanese would forfeit his/her right to government assistance in matters of education and training.”³³ Through this policy, the government began to create a divide between different ethnic groups that had never come into conflict thus far by putting restrictions on basic rights such as education.

In 1985, the “Third Citizenship Act”³⁴ was implemented, and applicants were required to “speak, read and write Dzongkha fluently and have ‘good knowledge of the culture, customs, traditions and history of Bhutan.’ These were to be assessed in written tests.”³⁵ Through this act the government was legalizing restrictions on the Lhotshampas’ citizenship rights by imposing knowledge of the Drukpa culture, while implementing the latter as the national identity. This act was particularly efficient in excluding the minority from national rights, as the Lhotshampa had thus far lived in isolation therefore knowing very little about the mainstream culture.

This policy was further enforced in 1988 with the ordinance of a new population census in the south, with the aim to approximate the population demographics according to ethnic background. The government quickly declared that the census had “detected the presence in southern Bhutan of more than 100,000 illegal immigrants. [...] It began to be alleged that forestlands had been illegally converted into orange and cardamom groves. [...] Government sources began to claim

that hordes of Nepalese migrants had been flooding in to southern Bhutan to take advantage of its economic prosperity ever since the enactment of the Nationality Law in 1958.³⁶

In turn, the census was used as a justification for harsher policies and, in 1989, the government enforced a policy of Driglam Namzha or, “One Nation, One People, One language” policy, which declared Dzongkha, the mother tongue of Drukpas, to be the national language of the country.³⁷ Furthermore, Dzongkha textbooks were printed for pre-primary to degree levels and, as a result, the Nepalese language was removed from the school curriculum in 1990. Additionally, the traditional dress of the Drukpas was made compulsory in Bhutan for every ethnic minority, and disobeying this rule was seen as a direct attack on the Drukpa government.

Unsurprisingly, the policy of Driglam Namzha started creating growing frustration and discontent among the Nepalese minority leading to the creation of the Bhutan People’s Party (BPP) in 1990. The BPP “dismisses the validity of the National Assembly not only because the Lhotshampas are under-represented but also because a member of the Assembly is not democratically elected. [...] Among the other demands of the BPP are multi-party democracy; amendments to the Citizenship Act, including an end to the 1958 cut-off; protection of human rights; abolition of the traditional judicial system; and the right to preserve Nepali dress, language and culture, including the right to carry the traditional knife.”³⁸

The creation of the BPP resulted in numerous protests which aimed at refuting the legitimacy of the Driglam Namzha law. Eventually, some of these protests became violent, and, in turn, the Bhutanese government ordered the Royal Bhutan Army to chase the illegal immigrants out of the country.³⁹

Ethnic Cleansing

The 1985 Citizenship Act, as well as the extreme policy of Driglam Namzha, made it difficult for Bhutanese to prove their citizenship rights. The Lhotshampas had come to realize that their human rights were grossly violated, and that their right to stay in Bhutan was largely at stake. Indeed, many Lhotshampas rapidly started losing their citizenship rights, and were eventually designated as illegal migrants.

As a result, Nepalese settlers were coerced to flee Bhutan. Many took refuge in eastern Nepal where the number of asylum seekers was estimated at 90,700 people in 1996. Many have reported that the Royal Bhutan Army forced people

to sign “voluntary migration forms” stating that the Nepalese minority renounced their homes and lands. One refugee explained,

“[T]he army took all the people from their houses [...]. As we left Bhutan, we were forced to sign the document. They snapped our photos. The man told me to smile, to show my teeth. He wanted to show that I was leaving my country willingly, happily, that I was not forced to leave.”⁴⁰

Other coercive methods used by the army involved the use of intimidation, setting houses on fire, violence, murder, rape, and incarceration.⁴¹

Refugee Camps

In 1990, the first refugees from Bhutan reached Nepal, where basic shelters were built in order to deal with the emergency. However, as their number started growing, conditions of life started swiftly deteriorating. Many aid workers handling the crisis “recall that malnutrition, dehydration, diarrhoea, measles and cholera were major problems. For a period of some months, infant mortality rates were very high. Reilly reports the deaths of up to 30 children per day in May and June 1992.”⁴²

Conditions of life for women were particularly affected. One refugee stated:

Sometimes I was beaten so badly I bled. My husband took a second wife. I didn't agree.... He said, ‘if you don't allow me to take a second wife, then the ration card is in my name, and I'll take everything.’ I have asked my husband for the health card and ration card and they don't give it to me.... I have not gotten approval to get a separate ration card.⁴³

Indeed, women were regularly confronted with gender-based violence and discrimination due to the patriarchal system on which the refugee camps were based.

As such, many women were forced to find refuge in other overcrowded households in order to flee abusive husbands. Women have also reported “rape, sexual assault, polygamy, trafficking, domestic violence, and child marriage,”⁴⁴ as well as sexual abuse and exploitation from aid workers.⁴⁵

Despite the poor conditions in which refugees are forced to live and international efforts to promote talks, to this day



Bhutan denies its 1980s-1990s campaign of ethnic cleansing and refuses to allow refugees to return to the country. The government maintains that the refugees are illegal immigrants, criminals, or voluntary migrants even though many people in the camps could provide “citizenship cards, tax receipts, or other documentary evidence of residence in Bhutan.”⁴⁶ In 2008, about 108,000 stateless refugees were still living in seven refugee camps of eastern Nepal.

Additionally, the Bhutanese government still denies basic rights to the Lhotshampas who remain in the country. In fact, many still do not own an ID from Bhutan and are instead given open certificates that have to be renewed yearly. With these certificates, Lhotshampas are not allowed to work, vote, or move freely, and children often have difficulties “obtaining the Security Clearance Certificate required to enrol [SIC] in school and sit exams.”⁴⁷

Resettlement

As a result of Bhutan’s refusal to allow the return of refugees, in 2006 the U.S. government “offered to resettle 60,000 of the Bhutanese refugees.”⁴⁸ This option is considered a last resort alternative, as further talks are unlikely to succeed.

The main resettlement countries include Australia, Denmark, Canada, New Zealand, the Netherlands, Norway, the United Kingdom, and the United States.

Within the United States, the IRC helps refugees find access to housing, work, health services, and English classes. In 2012, UNHCR resettled 16,000 more refugees while 49,000 still remain in the camps.⁴⁹

Unfortunately, this process has also created tensions between applicants for resettlement and young militants who want to regain control of Bhutan. Indeed, the latter insist that “return to Bhutan is the only acceptable solution and they are increasingly intimidating refugees who want to accept the U.S. offer – through beatings, burning huts, and death threats.”⁵⁰ The Communist Party of Bhutan has claimed that its goal is to overthrow the monarchy through a people’s war. It reportedly has access to home-made guns, knives, and explosives, and plans to progress to more technological military weapons.

Applying Theories to Bhutan

Until the 1970s, the Bhutanese government had slowly started implementing policies that integrated the different ethnic minorities within its frontiers. Each minority inhabited a

specific region of the country, which created a climate of limited interactions, and, as a result, accounted for a lack of conflicts. During the second half of the 20th century, the newly launched movement of modernization and democratization allowed Bhutan to recognize the Lhotshampas as a legitimate entity of Bhutan. As the consequences of modernization settled in, the Royal government refuted the legitimacy and legal status of the minority, claiming that the ethnicity had illegally settled in the country.

The refusal of the government to recognize the legal status of the Lhotshampas was a direct consequence of the process of modernization. Indeed, conflicts often arise as a result of “political and social modernization in nations which are economically less developed and ethnically more plural, especially where the effects of modernization and access to power and education are unevenly spread.”⁵¹ As a result, while the Lhotshampa minority lacked a group consciousness until the 1950s, the modernization movement launched by the king started a process through which the Nepali minority started organizing and seizing the opportunity to request political representation.

While these demands were initially met, in the 1970s history started being remodeled. The government had come to realize that ethnic pluralism could endanger the power of the Drukpa majority because “modernization can involve changes not only in the distribution of power within a political system but also in the amount of power in that system.”⁵² The government began to view the Lhotshampas’ political demands as a threat to its legitimacy and power. As a result, the royal government started implementing policies in order to slowly exclude the Lhotshampas from political participation.

The census was specifically identified as a primary tool used to differentiate the Lhotshampa ethnicity and, in turn, declare them as illegal immigrants. To prove their citizenship, the southern minority had to produce a tax receipt dated 1958. It was evident that in 1988, the name on the card was different since “often, it was the name of the individual’s father or grandfather in which case local people were required to convince the officials that the family relationship that was claimed did indeed exist.”⁵³ As a result, the census became proof that most Lhotshampas were illegal immigrants, even though international agencies had claimed that, “roughly 90% of their residents can prove citizenship.”⁵⁴

The laws implemented by the government were a direct consequence of the ruler’s fear that the second largest ethnicity would take over the country. Under the principle of

fear:

A fundamental factor causing ethnic conflicts to escalate to war is that first one side, then eventually both sides, come to fear that the existence of their group is at stake. [...] The source of such fear is typically the group's myth-symbol complex, portraying the in-group as peculiarly under threat or peculiarly victimized.⁵⁵

Bhutan used this principle by claiming that the Drukpas were the initial inhabitants, as well as the mainstream culture, which legitimized their hold on power. The Lhotshampas, on the other hand, had settled illegally, and had been profiting from the economic success of the country. Such national discourses ensured that the divide between the in-group, "us," and the out-group, "them," was clear enough in order for Bhutan to be able to legitimately "resort to violence in self-defense."⁵⁶

Simultaneously, nationalism became of crucial importance, as exemplified by the Citizenship Act of 1985.⁵⁷ Anthony Smith explains that, "ethnic and national units afford convenient 'sites' for generating mass support in the universal struggle of elites for wealth, power and prestige [...]. According to this view, ethnicity is fundamentally 'instrumental.' It serves purposes other than the cultural goals which its spokesmen proclaim to be its *raison d'être*, but it does so by combining economic and political interest with cultural 'affect.'"⁵⁸

Until the 1970s, nationalism had never been of crucial importance as the diverse ethnic groups had been living peacefully, though divided along territorial lines. In the 1970s-1980s, however, Bhutan's ruler started using nationalistic policies to ensure that the Drukpas would remain in power. One of these policies was the Driglam Namzha, which had come to be "interpreted as a system of rules of physical conduct and external forms, applied on an individual basis to forge a sense of nationhood."⁵⁹ In fact, every ethnicity was now required to wear the Drukpa dress and speak the Drukpa language, which was a clear attack on other ethnicities' traditions. Instead of forging a sense of nationhood among diverse ethnicities, however, this policy led to the rebellion of the Lhotshampas, and in turn, to the massive campaign of ethnic cleansing.

On another note, it is important to acknowledge the fact that the government effectively used the lack of media channels, which were banned until 1999, to its advantage by keeping other ethnicities in the dark. To this day, many mainstream Bhutanese are unaware of the campaign of ethnic cleansing launched in the 1990s, which demonstrates the state's lack of

transparency.

Moreover, the government still ensures its hold on power by giving the remaining Lhotshampas open certificates, which strip them of their voting rights. Many claim that the harsh policies implemented on the minority aim at forcing the few individuals left to "voluntarily" leave the country.

Conclusion

Bhutan is the only country in the world to reject GDP as a measure of prosperity, using instead the Gross National Happiness Index. Through this index, the Bhutanese state is responsible for ensuring its citizens' happiness by providing basic rights and respecting the nation's environment and culture.

Yet, during the 1970s-1980s, Bhutan paved the way to the subsequent 1989 campaign of ethnic cleansing, claiming that the only legal and recognized culture was to be the Drukpa's, and labelling Lhotshampas as illegal migrants.

This policy was a result of the modernization process launched by the government in the 1970s, which led ethnic groups to seek political representation under the new democracy.

Recognizing that the Drukpa power was threatened, the royal government used instrumentalism to re-create history and legitimize the use of force in order to remove the Lhotshampa minority from the territory.

Through these policies, the Bhutanese government made it clear that it recognizes its citizens' happiness, but only for those who are part of the mainstream culture and do not question the status quo.

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Photo by Sam Tyler Powers



Boko Haram

by *Livinia Mouries*

Background

Boko Haram is a Nigerian militant Islamic terrorist group that was founded in 2001 by Mohammed Yusuf in the hopes of overthrowing the Nigerian government, and in turn, establish an Islamic state based on Sharia law. Yusuf's original ideology was rooted in the rejection of Western education and modernization, both of which were envisioned as a threat to the hegemonic position of Islamic education within the country. As such, the institution of British education and British law during colonial times was seen as a denial of Islam's supremacy, and Yusuf claimed that:

Western-style education is mixed with issues that run contrary to our beliefs in Islam. Like rain. We believe it is a creation of God rather than an evaporation caused by the sun that condenses and becomes rain. Like saying the world is a sphere. If it runs contrary to the teachings of Allah, we reject it. We also reject the theory of Darwinism.¹

Boko Haram means, "Western education is forbidden" or "Western education is sinful", which became a symbol of the "alien, colonial, Christian, materialist and corrupt process of westernization."²

As a result, Yusuf blamed British colonization for the north/south divide within the country, which led the Muslim north, where Boko Haram operates, to a deep crisis. This crisis was magnified by the vibrant and modern economy of the south as a result of Western-oriented policies, in contrast to the stagnation and, eventually, decrease of the traditional economy of the north. It has been reported that, "the proportion of the population living below the poverty level is between two and three times the rate in the South." Such discrepancies led Yusuf to reject Nigeria's secular education, as well as the modernized southern Nigerian state, and use rampant corruption, arbitrariness, and human rights violations conducted by the security forces to legitimize the group's ideology.³

Boko Haram also rejects Muslim reformers, such as Abubakar Gumi, leader of the Yan Izala movement, who attempted to Islamize modernity. Yusuf saw these reforms as another form of westernization, and thus, the group also

targets moderate Muslims, or Muslims willing to compromise with the government. Accordingly, the establishment of the Sharia law in the twelve northern states of the country in 1999 "was deemed insufficient by Yusuf and his followers, who argued that the country's ruling class as a whole was marred by corruption and even Muslim northern leaders were irredeemably tainted by 'Western-style' ambitions."⁴

Evolution

Boko Haram did not gain widespread attention until the armed attacks of 2003 conducted against several police stations in the northeast of the country.⁵ While these attacks were violent in nature, their impact, in terms of destruction and casualties, was limited as Boko Haram made use of weapons such as "knives, machetes, bows and arrows and petrol bombs."⁶ The later attacks of June and July 2009, in contrast, made use of drive-by shootings and hit-and-run attacks against security forces,⁷ which were a definite evolution in the group's tactics. These attacks opposed Boko Haram to the Nigerian security forces, after the police conducted several raids on the group's camps. These conflicts led to the death of approximately 700 people, leader Mohammad Yusuf included. It was reported that Yusuf was "captured, beaten, interrogated, and finally shot – supposedly while attempting to escape – but not before [...] people were killed and numerous public buildings, including government offices, police stations, schools, mosques, and churches, were destroyed."⁸

Surprisingly, Yusuf's death did not provoke the group's decline, but rather allowed it to undergo a drastic transformation. In June of 2011, the group conducted its first suicide attack using a vehicle-borne improvised explosive device (IED), which exemplified the group's new tactical and operational capabilities, as well as its willingness to adopt one of the "deadliest instruments in the jihadist arsenal."⁹ Interestingly, this attack became the first suicide bombing in Nigerian history. In August of 2011, Boko Haram reused this technique by ordering a suicide bomber to drive into the United Nations (U.N.) offices in Abuja, the capital of the country. The aftermath of the explosion comprised the deaths of twenty-five people, as well as eighty injured, and marked the first attack of the group against an international target that they later defined as the "forum of all evil."¹⁰ Following this bombing, the group

conducted several more suicide operations on police stations in Damaturu, the capital of Yobe State, as well as attacks on 150 people in the Christian quarter, and bombing operations against churches, which aimed at fighting Christian hegemony. Lastly, the January of 2012 bombing targeted Kano, "Nigeria's second-largest metropolis and the Muslim north's economic, political, and cultural hub, which left more than 185 people dead."¹¹

Despite Boko Haram's important activity in recent years, little is known on the actual structure of the group's leadership and membership. Some analysts have estimated members to approximate a few hundreds, along with a few thousand supporters. Researchers have also claimed that members range from "Islamist militants to disaffected actors, to opportunistic criminals and hooligans, including some who have been encouraged by politicians keen on exploiting the ensuing violence and instability to advance their own political agendas,"¹² although some refute this argument. However, the literature largely supports the idea that Boko Haram is a highly diffuse organization that has "little, if any, central operational leadership."¹³

The group's main source of income derives from donations and bank robberies; in 2011, Nigeria's central bank reported that, "the organization robbed at least 30 banks over the course of the year."¹⁴ Recently, the group has also developed a preference for kidnappings, as a safe and easy way to fund the group's activities. It was reported that,

"before Boko Haram adopted the tactic in February 2013, kidnappings, especially involving foreigners, were rare in northern Nigeria and almost unheard of in Boko Haram's main base in Borno. From February to June 2013, however, more than 20 Nigerian government officials and civilians and seven foreigners were kidnapped in Borno."¹⁵

The group had initially developed this tactic as a means of retaliation against the government's policy of detaining the group's family members. Among others, one notable kidnapping involved the abduction of seven French individuals, including four children, because "the leaders of

Cameroon and Nigeria detained our women and children under inhumane conditions."¹⁶ One month later, the government paid Boko Haram \$3 million ransom and released 16 Boko Haram prisoners in exchange for the liberation of the French hostages.

Religious Terrorism: a national, regional, and transnational threat

Boko Haram is the most active, prolific, and radical terrorist group in Nigeria, and as such, represents the biggest threat to the nation as a whole. This extremist religious group holds that Islam is the only rightful religion, legitimizing its control over the country and its targeting of the Christian faith. Such views have the potential to put the country at risk of being precipitated into a civil war, creating a country divided along religious lines. Accordingly, many northern Muslims hold the view that the southern government has marginalized the north while giving preferential treatment to the Christian south. Such sentiments have created religious tensions that have led to an increase in violence against Christians by Boko Haram under the justification of retaliation. These attacks have been met with a statement by the head of the Christian Association of Nigeria, who claimed:

I will now make a final call to the Nigerian government to use all resources available to it to clearly define and neutralise the problem as other nations have done... The Church leadership has hitherto put great restraint on the restive and aggrieved millions of Nigerians, but can no longer guarantee such cooperation if this trend of terror is not halted immediately.¹⁷

Under this statement, the Christian Church promises potential retaliation against the Muslim community, which could plunge the country into chaos and lead to the fall of the government. Boko Haram uses such declarations as "evidence of a Christian conspiracy against Muslims in Nigeria, and should retaliatory attacks occur, Boko Haram will most likely see a boost in new recruits and will use these attacks as justification for increased violence."¹⁸ Under such pretences, Boko Haram presents itself as the defender of the



northern Muslim community, and is therefore able to gain massive public support. Such support has been extensive in northeastern Nigeria – “especially the states of Borno, Yobe, Gombe, and Bauchi,”¹⁹ where human rights violations and corruption by the security forces have accounted for growing discontent. As a result, the group is known to blend in extremely well with the civilian population. Here, it is clear that religious terrorism poses the biggest threat to Nigeria as the country is already divided into a Christian south and a Muslim north based on sharia law, both of which threaten to retaliate against one other. Were this to happen, the country would most likely fall, which could lead to one of the biggest civil wars and humanitarian crises in the world.

The Nigerian terrorist group also presents a major risk to the Sahel and Sub-Saharan regions because of its new transnational affiliations. It was reported that the group started cooperating closely with other terrorist groups such as al-Qaeda in the Islamic Maghreb (AQIM), al-Shabaab (Somalia), and the Movement for Unity and Jihad in West Africa (MUJAO). AQIM reportedly stated that it would provide the group with “weapons, training, and other support in order to expand its own reach into Sub-Saharan Africa not only to gain ‘strategic depth,’ but also to ‘defend Muslims in Nigeria and stop the advance of a minority of Crusaders.’”²⁰ Boko Haram itself pledged support to AQIM and claimed that it would rapidly wage jihad with the help of their Somali colleagues, al-Shabaab, whom had provided the Nigerian group with training on warfare.²¹ MUJAO has provided similar training to the group, which has been used by Boko Haram fighters in the Mali conflict.

Overall, it has been stated that all of these affiliations have accounted for the growing sophistication of the attacks conducted on Nigerian soil, and as such, for the increasing threat that Boko Haram represents. Accordingly, the group has become progressively active throughout the years, and “attacks attributed to the group increased from 21 in 2010 to 186 in 2011, and soared to 526 in 2012.”²² These attacks have also expanded in scale from small operations to the first suicide bombings conducted in the country, as well as daily attacks with armed men on motorcycles and homemade IEDs hidden in soft drink cans.²³ Likewise, Boko Haram’s area of operation has expanded from the northeast area of Nigeria to the west, the south, and the central regions (Kano, Kaduna, Bauchi, and Plateau),²⁴ which led to the displacement of hundreds of thousands of Nigerians.

Furthermore, Boko Haram has been able to spread its

ideology throughout the porous borders of neighboring countries, such as Benin, Cameroon, Chad and Niger, which are all “potential targets due to their proximity to Nigeria, their demographics and their socioeconomic realities.”²⁵ Niger and Cameroon, specifically, are extremely vulnerable to the spread of Boko Haram because of the common borders they share with northern Nigerian states, where the group has a strong influence. As such, “Citizens of Cameroon and Niger have been suspected of participating in Boko Haram attacks in Nigeria,”²⁶ which appears to confirm the terrorist group’s presence and activity in neighboring countries. Niger, specifically, is viewed as a fertile ground for terrorism due to “its weak government, socioeconomic challenges and the marginalisation of certain components of society.”²⁷ Under these circumstances, Boko Haram illustrates how a local terrorist group that is effectively internationally networked can become a major threat in regions where the government is weak.²⁸

This group not only has the potential to destabilize the country and the region as a whole, but also Western countries, which are highly targeted by groups such as AQIM. In 2010, it was reported that, “Yusuf’s former deputy, Abubakar bin Muhammad Shekau, [...] stated that Boko Haram would conduct attacks against both the Nigerian government, as well as ‘outposts of Western culture’,”²⁹ as exemplified by the U.N. attack in Abuja. Here, the strengthening of the terrorist network in the Sahel and Sub-Saharan regions will put Western countries, such as Europe and the United States, at risk of future attacks.

Counter-Terrorism Measures

The Nigerian government’s efforts to counter the Boko Haram threat have largely focused on military intervention. As such, in July of 2009, the government organized a joint security team to raid Boko Haram’s camps in Bauchi State, where members were arrested, and weapons, ammunition, and explosives seized. This raid resulted in violent clashes between Boko Haram members and supporters, on the one hand, and security forces, on the other, which “set the tone for how the Nigerian State was to respond to Boko Haram – meeting violence with violence.”³⁰

In June of 2011, President Goodluck Jonathan organized a special military task force consisting of “the army, navy, air force, Department of State Security and the Nigerian Police Force.”³¹ This task force aimed at pooling resources, avoiding duplication, and providing for the free flow of information

between different security services.³² This provision, however, had limited impact due to instances of corruption and human rights violations conducted by security forces and the government. President Jonathan also established checkpoints around the Nigerian capital, Abuja, after two terrorist attacks were conducted in the city. As a result, a state of emergency was declared in areas such as, Borno, Niger, Plateau and Yobe states, and a curfew was imposed in states like Adamawa, resulting in the deployment of 30,000 security forces.

Furthermore, the government implemented a policy of closed borders with neighbouring states such as Niger and Cameroon to prevent, on the one hand, Boko Haram fighters from using these as safe-havens, and on the other, from receiving flows of foreign fighters joining Boko Haram. However, such efforts have been impaired due to lengthy borders, difficult terrain, and poor capacity of the Nigerian State to contain cross-border movements;³³ as a result, frontiers have remained porous. Moreover, locals who rely on trade with neighbouring countries for economic sustenance have negatively been impacted by this policy, and the closure of the border with Nigeria has “compounded the food shortage problem in Niger,”³⁴ precipitating many into poverty.

Eventually, in June of 2013, President Jonathan declared Boko Haram a terrorist organization, and under Section 2 of the Terrorism Prevention Act of 2011, “Anyone found to have collaborated with a terrorist group or supported the commission of an act of terrorism will be sentenced to a minimum of 20 years imprisonment.”³⁵ The Central Bank of Nigeria also implemented anti-terrorism financing and anti-money laundering measures in the financial sector. Both of these laws represent the first steps taken by the government to frame terrorism in legal terms and provide for the prosecution of Boko Haram terrorists.

On another note, foreign countries have also provided Nigeria with counter-terrorism support. The United States has been the largest bilateral donor of financial support in the fight against terrorism in Nigeria. As such, the country has provided over “\$600 million annually in recent years to bolster democratic governance, agriculture and economic reform, education and health services, and to professionalize and reform the security services.”³⁶ Furthermore, the U.S. State Department has offered more than \$8 million to the Nigerian government “for the development of a counterterrorism infantry unit,”³⁷ and has offered, along with countries such as France, Pakistan, and Britain, to provide counter-terrorism

training to the Nigerian security forces. Lastly, in 2012, the U.S. State Department has added three of Boko Haram’s leaders in its list of designated terrorists,³⁸ even though the group is not currently part of the U.S. list of designated foreign terrorist groups.

Recommendations

The Nigerian government has conducted continuous heavy-handed military operations that have aimed at eradicating the threat of terrorism in the country; yet, “Boko Haram has actually gained footing in the country and is growing in both size and sophistication.”³⁹ This seems to indicate that the government lacks effective counter-terrorism measures, and should consider providing alternative solutions to a problem that cannot be solely solved through military warfare.

As such, the government’s primary goal should aim at improving the socio-economic disparities in the north on a long-term basis. Indeed, many Muslim northerners still hold the view, sometimes rightfully so, that the government favors the south, while discriminating the north. This statement is supported by a survey conducted in 2004 that found that “72 percent of the [northern] population lives below the poverty line [with] a low literacy rate of 32.51 percent (actually the lowest in the country).”⁴⁰ Yet, Nigeria is one of the world’s largest oil producers, and accordingly, benefits from large oil revenues. These revenues, however, have only benefitted the governmental elite, while most of the country, especially the north, struggles to survive. Under these circumstances, many northerners see Boko Haram’s actions as legitimate, and therefore, are more willing to join the terrorist group.

Thus, the government should focus on implementing policies that allow for a more inclusive political realm, the reduction of poverty and lack of health care, increased access to education, and the construction of new infrastructures to promote investment and economic growth, such as transportation and communication infrastructures. To efficiently allocate the necessary funding, the government will need to offer more leadership positions to northerners, as well as engage with religious leaders, who are viewed as trusted mediators in the north. The government should also consider appointing a few credible and legitimate northern advisers to efficiently invest in infrastructures that will benefit the most disaffected areas of the north.

Long-term reforms should also aim at reducing corruption



and occurrences of human rights violations, especially since reports from Human Rights Watch and Amnesty International have “detailed allegations of mistreatment and the disappearance of young Muslim males, generating a backlash amongst the very population security forces are ostensibly deployed to protect.”⁴¹ The Joint Military Task Force, for instance, has been accused of unlawful killings, extortion, and intimidation, and one report of 2011 stated that, in Maiduguri, “Twenty-five people were shot dead by security services, women and children beaten, homes burnt and many more boys and men were reported missing.”⁴² Here, it is clear that the government is viewed as a corrupt entity that cannot be trusted to provide security and protection. Boko Haram, on the other hand, promises to change the status quo and offer northerners a better way of life.

To decrease and eliminate Boko Haram’s public support, the government should consider enforcing anti-corruption and pro-human rights laws that will increase the public’s trust in the security forces. Community policing, for instance, would be an effective way to create a strong bond between locals and the police, since “The Nigerian soldiers and police patrolling in northern states are national, not local, and therefore unlikely to share either ethnic or cultural background with the local population, who view themselves as being under siege – in an occupation by foreign forces.” Community policing would allow the police to become more familiar with the area, while simultaneously building a trust-system with the locals.

Furthermore, regional cooperation should be implemented since “Boko Haram has used Nigeria’s porous borders and the limited capacities of neighbouring countries to its advantage.”⁴³ The Sahel and Sub-Saharan countries should consider creating a regional partnership that would provide for shared intelligence, common counter-terrorism policies, and the strengthening of national borders. Thus far, the only partnership available has been the one provided by the United States under the U.S.-sponsored Trans-Sahara Counterterrorism Partnership that supports “small mobile training teams, civil-military engagements, and development programming.”⁴⁴ However, this provision is not specific to Boko Haram, and as a result, counter-terrorism measures have been impaired.

Lastly, the government should put in place policies for strong cooperation between intelligence agencies. Thus far, “Despite the importance of Nigeria and the significance of the challenge it faces, what is actually known and reported is amazingly limited.”⁴⁵ This is due to the incapacity of the police to efficiently

gather intelligence and conduct forensic investigations. Thus, according to Amnesty International, “Most police stations do not document their work, there is no database for fingerprints, no systematic forensic investigation methodology, only two forensic laboratory facilities, few trained forensic staff and insufficient budgets for investigations.”⁴⁶ This lack of efficiency can also account for large amounts of corruption, which is counter-productive in the fight against terrorism.

Conclusion

Throughout the years, Boko Haram has become a virulent, strong, extremist, and transnational threat that Nigeria has had difficulties eradicating. Thus, reforms should be introduced in order to reinforce the government’s hold on the north, not solely through military means, but rather by soft approaches that will promote development, cooperation, and accountability. Until such reforms are introduced, it is likely that the Boko Haram threat will continue to expand, rendering the nation, as well as neighbouring countries, vulnerable to its actions.

Endnotes

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Abu Sayyaf Group

by *Livinia Mouries*

Origin

The Abu Sayyaf Group is a terrorist group that was included in the 2005 U.S. State Department's list of Designated Foreign Terrorist Organizations (FTOs), after an increase in terrorist activities.¹ The ASG was originally founded in 1991, as a splinter group of the Moro National Liberation Front (MNLF), by Abdurrajak Janjalani, "a veteran of the Afghan Mujiheddin and colleague of Osama bin Laden."² Janjalani's political goal was to establish an independent Islamic state based on Salafi Wahhabism in the southern Philippines in the "spirit of the 400-year-old resistance,"³ opposing the Philippine Muslims, known as Moros. Janjalani pledged to pursue this goal through armed struggle, known as "jihad qital."⁴

The Muslim struggle was an act of resistance against the systematic marginalization of the Moros in their homeland, the Mindanao islands. This marginalization was initially implemented by Spanish colonial rule during the 16th century, and then reinforced by the U.S. government in the first half of the 20th century. After the independence of the Philippines in 1946, successive Christian-Western orientated governments conserved the status-quo and implemented discriminatory policies against the Moros.⁵

The formal independence of the Philippines marked the integration of the Muslim homeland of Moroland, now known as the Southern Philippines and composed of Mindanao Island, the Sulu archipelago, Palawan, Basilan, and other small surrounding islands, into the larger Philippine territory. Since then, the Moros have suffered from "poverty, lack of services, inadequate infrastructure and lack of opportunity,"⁶ and even though they only represent 5 percent of the total population, they undergo "the lowest poverty and highest mortality rates, the least developed economy and minimal institutional government support."⁷

All of these discrepancies have led the ASG to operate in the Southern Philippines in the hopes of regaining control over the territories of Mindanao, Basilan, Sulu, and Tawi-Tawi, that the Moros recognize as their homeland. The ASG has also occasionally operated in Manila, although attacks on the Philippine capital have not been the norm.⁸

Terrorist Development

Under Janjalani, the ASG was rooted in a separatist ideology, which they tried obtaining through armed struggle by organizing small or medium-scale bombings, as well as assassinations and raids, by primarily targeting individuals of the Christian faith, missionaries, and government representatives.

In order to conduct these terrorist activities, the ASG developed close ties with al-Qaeda, which became the primary source of funding for the Philippine group. Indeed, Mohammad Jamal Khalifa, Bin Laden's brother-in-law, implemented a fruitful network of Islamic charities in the Philippines used as a pipeline to channel funds for the Abu Sayyaf Group as well as other Islamic groups.⁹ Out of all the charities sent to the network, "only 10 to 30 percent of the foreign funding [went] to the legitimate relief and livelihood projects and the rest [went] to terrorist operations."¹⁰ However, the Philippine police and military quickly uncovered this strategy and al-Qaeda funding was cut off in the 1990s.

Without the necessary funding, the Abu Sayyaf Group started to decline, and after leader Janjalani's death in 1998, the group transformed from a threatening terrorist group to a group of factions concerned with monetary gain rather than independence.¹¹ The group specifically started specializing in kidnappings-for-ransom, since "kidnapping is an easy, lucrative, and – relative to other forms of illicit activity – potentially a safer, more assured method of fundraising."¹² The group reportedly earned \$35 million from this activity, accounting for more than 90 percent of the group's funding.¹³ Local kidnappings have been the norm and have constituted an extensive source of revenue for the group,¹⁴ although larger scale abductions have generally gained more media coverage.

Kidnapping-for-ransom also marked an era of indiscriminate targets aimed at easily generating funding. In March of 2000, the ASG targeted 55 school children, and teachers, while in April of the same year, 20 foreigners were abducted from a dive resort on the island of Sipidan, and in May of 2001, "30 tourists, including two Americans, from the Dos Palmas resort on Palawan"¹⁵ were abducted. As such, the Abu Sayyaf Group had become "a well-armed criminal gang, but not an ideologically motivated political-religious

organization.”¹⁶

Moreover, the large sums of money gained through abductions allowed the group to attract numerous young recruits. In fact, while the group had approximately 600 recruits prior to the year 2000, the new high-profile abductions of 2000 allowed the group to expand to about 1,000 Abu Sayyaf members. These gains also allowed leaders to invest in new technological capabilities, such as radios, boats, and guns.¹⁷

The year of 2003 marked the reemergence of the Abu Sayyaf Group as a terrorist group. While few kidnappings were conducted, such as the July 2008 abduction of well-known Filipina journalist, Ces Drilon, and the January 2009 abduction of three workers of the International Committee of the Red Cross, kidnappings almost completely ceased, and bombings became the norm.

Accordingly, in 2003, the ASG recognized responsibility for the bombing of the main terminal of the Davao International Airport, killing 20 and injuring 150.¹⁸ The following year, the ASG conducted the massive bombing of the SurperFerry 14, killing more than 100 people, and wounding many. The attack was later coined “the second most lethal terrorist attack in Asia [...], and the single most deadly terrorist attack in the Philippines.”¹⁹ During this timeframe, the ASG also developed close ties with other well-known separatist groups in the region, such as the Moro Islamic Liberation Front (MILF), and Jemaah Islamiya (JI), in order to conduct larger-scale bombings.

In sum, the new strategy of the ASG started shifting toward the executions of intelligence operatives and informers, heavy use of bombings, and larger regional attacks. Many argued that this new trend was due to the deaths of main criminal leaders, the reemergence of Khadaffy Janjalani, Abdurajik Janjalani’s younger brother, as the new ideological leader, and the re-emergence of outside funding accounting for the decrease in abductions. Janjalani was looking to reaffirm the group as a national liberation organization rather than a group of bandits, and to this day, the group is still unwilling to engage in peace talks with the Philippine government. Abu Sayyaf remains active by executing criminal activities, as well as small-scale bombings.

Counter-Terrorism Measures

Since the 1990s, the high-profile kidnappings led by the ASG, as well as its close affiliations with international terrorist groups, have led the Armed Forces of the Philippines (AFP) to engage in armed clashes with the ASG, and to allot enormous financial resources toward their eradication.²⁰ Counter-terrorist measures have been primarily focused on military intervention, and several laws were passed in order to put to an end the demands of the ASG.

In September 2001, the Philippine government created the Inter-Agency Task Force Against International Terrorism in order to “coordinate intelligence operations and facilitate the identification and neutralization of suspected terrorist cells in the Philippines.”²¹ Additionally, the Philippine Congress enacted the “Anti-Money Laundering Act” of 2001, in order to freeze all financial assets of terrorists. In October of the same year, President Arroyo announced the 14-pillar approach against terrorism, allowing the AFP to suppress all forms of terrorism in Mindanao.

However, the AFP’s attempts to eradicate members of the ASG have been highly limited. In fact, the AFP is one of the “most poorly equipped armed forces in Southeast Asia,”²² and is impacted by difficult terrain, “lack of clear national command and operational level guidance, and rampant corruption.”²³ Therefore, the Philippine war on terrorism has had limited impact, although many leaders were neutralized in the process.

On the other hand, post 9/11 and the War on Terror represented a major drawback for the ASG. In fact, after President Arroyo expressed extensive support for the United States’ fight on terror, and asked Washington for military assistance, the two countries started a program of military cooperation under Operation Enduring Freedom. The United States reportedly “provided the Philippine military with \$284.86 million in aid [as well as] some 1,300 U.S. troops, including 160 Special Operations personnel, [under] a joint training operation, Exercise Balikatan.”²⁴ Under this Exercise, training between the AFP and the U.S. focused on “counter-insurgency and counter-terrorism warfare, logistics and equipment maintenance, intelligence training, and civic-military operations.”²⁵ Soon after the arrival of the U.S. forces in the Philippines, it was reported that the number of active



members within the ASG had highly decreased.

On another note, it is important to evaluate the use of arbitrary detention in the Philippines as a measure of counter-terrorism. As of 2008, no formal law was established in the Philippines banning enforced disappearances, even though the “Act Defining and Penalizing the Crime of Enforced or Involuntary Disappearance and for Other Purposes” was presented before Congress.²⁶ As such, the Armed Forces of the Philippines have been held accountable for numerous cases of disappearances, arrests without a warrant, torture, and lack of speedy trials, even though it is a direct breach of the Philippine Revised Penal Code. The law states that any individual who uses “against a charged or suspected person, threat, intimidation, coercion, or torture” risks imprisonment. Moreover, “500,000 PhP (approximately \$12,500) shall be paid, in case of detention, deprivation of liberty or arrest without a warrant, to the person charged with terrorism upon his acquittal or the dismissal of the charges against him.”²⁷

The Manolo brothers, for instance, were both abducted by the military on Feb. 14, 2006, in Bulacan. They resurfaced in August of 2007 after escaping the military,²⁸ whom, they claim, used torture to obtain a declaration from the brothers admitting to their terrorist affiliations. Another relevant case is the one of Bimbas M. Abukatar, who was abducted in Basilan by the AFP at the age of 14, and was still in military custody at the age of 20 without having seen a judge. Abukatar, like the Manolo brothers, reported instances of torture, under which he was forced to admit that his name was Ahmad, and that he was an active member of the ASG.²⁹

As of 2012, cases of arbitrary detention were still reported. Maras explains that, “those indefinitely detained have been denied the normal legal processes available to those suspected of crimes, such as the right to be informed of the evidence against them, the right to a speedy and public trial, and the right to an attorney.”³⁰ Indeed, many Philippine individuals have complained about having been arrested without a warrant, not being told why they were being detained, and being rarely, if at all, presented to judicial authorities during the legal timeframe authorized by the law.

Currently, the Philippines remains a safe haven for most terrorist groups as the government has been having difficulties implementing new counter-terrorist laws. In 2007, the government passed the Human Security Act as an anti-terrorism law, and the Association of Southeast Asian Nations (ASEAN) passed the ASEAN Convention on Counter Terrorism; yet, both laws have only loosely been enforced.

Banlaoi argues that this is due to the fact that “the present threat we face is dynamic and had the ability to metamorphose into something else in order to survive. Some threats have regrettably mutated into a more terrifying form with their growing nexus with crimes, banditry, clan conflict, warlordism, and other expressions of armed violence.”³¹ This is coupled with the fact that the Philippine government has been greatly focused on larger terrorist groups, such as the MILF and the New People’s Army, leaving ground for the ASG to develop.

The Abu Sayyaf Threat

Although the Abu Sayyaf Group is the smallest terrorist group in the Southern Philippines, it has been identified as the most radical Islamic separatist group, and a national security threat to the Philippines, and to civil society as a whole. Filler claims:

It has managed this feat despite three ‘all-out war’ campaigns launched against its relatively small area of activity [...]. It has survived despite the death of two of its two leaders and a good number of followers. Its ranks have not decreased despite losses: on the contrary, it has increased in size. Its threat has not been confined to Basilan and Sulu islands alone but has now spread to other island groups in Mindanao and reverberates even in other urban centers of the country such as Manila and Cebu.³²

Several characteristics account for the extensive threat that this small southern Philippine group represents, first to the country, and second, to the region as a whole.

First, counter-terrorist measures have been somewhat ineffective in eradicating the group, as there is a surprising lack of hierarchical structure and homogeneity. In fact, the group is amorphous and relies “primarily on small compartmentalized cells for specific operations.”³³ Hence, there is no clear-cut process to recruit new members, indoctrinate and train them, and no clear leader has been identified. The ASG also continually changes shape, despite the large-scale arrests and neutralization of leader-figures. This is largely due to the extensive amounts of young people willing to join the ASG for financial gains, since most of the Moros in the Southern Philippines have suffered from poverty and discriminatory policies.

Secondly, the ASG has for long benefitted from public support, and therefore the help of affected areas in the Southern Philippines. Many have claimed fearing the AFP

more than the ASG, due to corruption, arbitrary detention, and the use of torture. Indeed, Maras explains that, “the public needs to approve of policies in order for them to be effective. If the public does not support these measures, governments’ use of them will foster distrust and in consequence, the population subjected to them will be more inclined to resist them, this making them less effective.”³⁴ Under this statement, the abundance of public support for the ASG has derived from the disapproval of policies implemented by the government and the AFP, which have been largely discriminatory towards Philippine Southerners.

Thirdly, throughout the years, the ASG has developed a new strategy that targets individuals indiscriminately, and has “regard neither for life nor the sensibilities of civil society. The ASG does not distinguish between women, children and the elderly. Its members remorselessly behead victims to get what they want.”³⁵ As a result, the Abu Sayyaf terrorists have been branded as “successful entrepreneurs of violence,”³⁶ who have no remorse in killing large amounts of individuals for financial or political purposes.

Abu Sayyaf is also known for volunteering to conduct terrorist operations for other affiliated international terrorist groups. By developing close-ties with these groups, the ASG ensures that its organization is strong and able to conduct bombing operations throughout the region. Groups like Jemaah Islamiya have also reportedly extensively provided the group with heavy weaponry and training that make the group all the more dangerous. The SuperFerry attack has shown that Abu Sayyaf’s scale of bombings has largely increased.

Recommendations

In order to fight terrorism in the region, the Philippine government will have to refocus on different counter-terrorist measures. First of all, the government should prevent the Philippine media from giving extensive exposure to terrorist groups, such as the Abu Sayyaf Group. In fact, according to Eusaquito:

[T]he ASG has effectively used the media and other modern communications technology to project themselves and their terror into civil society’s consciousness. The Abu Sayyaf saw the media’s role in conveying their messages worldwide as essential to achieving their goals. They knew that their acts were newsworthy. According to Debatin, ‘the terrorist outrages

have been planned and timed so as to exploit the media to its absolute limits and to attract maximum publicity.’³⁷

Furthermore, media coverage can oftentimes encourage future acts of terrorism, known as the contagion hypothesis, by spreading terrorism around the globe.³⁸ Accordingly, without intentionally aiming to do so, the media can indirectly provide the ASG with new recruits, and can offer the group attention, recognition, respect, and legitimacy. Thus, it is important that the media refrain from using sensationalism to increase viewer ratings. The media could instead refocus its attention on the victims rather than the perpetrators, and could refrain from airing interviews/statements/live broadcasts from terrorist leaders, or overly use the term terrorism. Moreover, it has been reported that the media sometimes pay terrorists in order to visit the camps, or obtain declaration. Such actions should be prohibited.

Secondly, the government should consider discontinuing the payment of ransoms to the ASG. Kidnapping for ransom, is one of the primary sources of funding of the group, and allows the terrorists to obtain new weaponry, organize bombings, and attract more recruits. It is likely that the lack of ransom payments could result in the decrease of such kidnappings. This policy should also aim at reducing governmental, military, and police corruption, since there have been cases in which individuals have received compensation from the ASG.

Furthermore, the Philippine government should develop counter-terrorist policies aimed at lessening the socioeconomic and political issues of the Southern Philippines. In fact, as previously mentioned, the Moros have for long been impacted by discriminatory policies that have resulted in poverty, poor infrastructures, and no governmental support. Thus, the Moros have for long supported the Abu Sayyaf Group as a way to bring change in the region. Thus, the government needs to reinforce its hold on the southern Philippines, and promote development (in health, and education, for instance), and investments. Until the government does so, the ASG will be able to replenish its number of recruits in the region.

Lastly, the Philippine government should aim to consolidate its cooperation with other ASEAN members in order to efficiently eradicate terrorist activities in the region. In fact, other close-by areas have been impacted by strong instances of terrorism, and with the cooperation of terrorist groups, these instances will most likely worsen. Thus, there is a need for



regional governments to act together in unison against terrorism.

Conclusion

The Abu Sayyaf Group is the smallest separatist terrorist group of the Philippines, and as such, has often been discounted as a criminal band. Yet, the group has been able to sustain itself since its inception in the 1990s, and has conducted many terrorist attacks that have gained in scale and casualties. For this reason, the Philippine government should make it a priority to eradicate the Abu Sayyaf Group, with the help of regional and international allies, in order to ensure the security of the country and the region. The above-mentioned recommendations should be taken into consideration as an alternative to current counter-terrorism measures that have, so far, largely only encompassed military interventions.

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The Relationship Between M23 Rebels in the Democratic Republic of Congo and the Rwandan Defense Force

by Jonathan R. Beloff

Abstract

This is an examination of the “alleged relation” between the M23 rebel group and the Government of Rwanda. Based on an in-depth field research, this investigation will evaluate the recent allegations made by a UN Group of Experts accusing the Rwanda Government of supporting the M23. The analysis will focus on whether this external support is substantive and enough to explain the past success of the M23 along with the prevailing instability in the Kivu region.

Introduction

Over the last two decades, the Democratic Republic of the Congo (DRC) has been engulfed in a never-ending cycle of violence and chaos stemming from the special interests of regional and world powers. The country has become a beacon of corruption and lost potential for economic development. The lack of economic opportunities makes it easier to start a rebel group than a business. The fundamental problems of the DRC have led to continual violence and the emergence of rebel groups such as the M23 in the eastern Congolese state of North Kivu. After the failure of the implementation of the Mar 23, 2009, peace treaty between the National Congress for the People’s Defense (CNDP) and the Kinsasha Government under the administration of President Joseph Kabila, the M23 successfully mutinied from the DRC’s Armed Forces (FARDC) on May 6, 2012. This new conflict is responsible for the deaths of thousands and the displacement of nearly half a million people.¹ However, the international community is attempting to form public policies that would effectively stabilize the region as well as to understand why the U.N.’s Stabilizing Force in the DRC (MONUSCO) has failed in its objective to create peace.

Currently, the U.N. Group of Experts is holding Rwanda and Uganda responsible for the new wave of violence in the Democratic Republic of Congo; as a result, some of the foreign aid for Rwanda is being withheld now. Their allegations have been rebuffed by the government of Rwanda and by international scholars of the Great Lakes Region of Africa, who question the validity of the facts that are presented in the report.² The report glosses over the DRC’s fundamental domestic problems. The lack of economic development, good governance practices, and of public security are how M23 was

so easily able to establish itself in North Kivu and carry out its attacks. Moreover, another reason aiding the launch of rebel groups is the Congolese government’s affiliation with interest groups in the mineral trade. This connection between government and businesses overshadows the desires of their citizens to stop the series of violence, social instability, and economic underdevelopment.

The New Rebels in North Kivu: the M23:

The M23 originates from a previous rebel movement, the National Congress for the Defense of the People (CNDP). Its main objective is the protection of the Congolese Tutsis from the Democratic Forces for the Liberation of Rwanda (FDLR), the former Rwandan Hutu soldiers and genocidaires from the 1994 Rwandan Tutsi Genocide, and other Congolese Hutu militias.³ After the end of the Second Congo War in 2003 and until 2007, the CNDP was relatively successful in pushing back FARDC forces. In 2007, however, it encountered a Pakistani battalion of MONUSCO that forced CNDP leader General Laurent Nkunda to enter into a round of negotiations with the Congolese government.⁴

The March 23, 2009, peace agreement between CNDP and the Congolese government signaled the beginning of the measures for the integration of the rebel fighters into the FARDC forces. Approximately 6,000 fighters of the CNDP would be able to retain their military ranks and be stationed in the Kivu Region to protect the Congolese Tutsi populations. One of CNDP’s senior commanders, Bosco Ntaganda, was guaranteed immunity from extradition to the International Criminal Court (ICC) for the charge of war crimes. These conditions were in the hope that it would quell CNDP’s fear of Kabila’s true intentions in honoring the peace treaty. The political side of the rebel group would transition into a political party; thus, they would be able to run for parliamentary seats in the 2011 National Assembly election.⁵

Seemingly, the peace agreement began to collapse right after its confirmation. The 2011 National Assembly elections became a failure for the political wing of CNDP because of the annulment of the votes cast for it in its political stronghold of Masisi. After Kabila’s reelection on April 11, 2012, he went to Northern Kivu to announce the arrest warrant for Bosco

Ntaganda so that he could be extradited to the ICC.⁶ On March 18, 2013, Ntaganda voluntarily handed himself over to the U.S. embassy in Kigali, Rwanda, in order to be transferred to the ICC. Defections of former CNDP soldiers grew from the discrimination they faced in the FARDC and their deployment to regions outside of the Kivus.⁷ In addition to the violations of the peace treaty, there was continual political and economic corruption in Kabila's government; hence, it made the lives and livelihood of the Congolese more difficult than under the former Congolese President Laurent Kabila, father of the current DRC president, and Zairian dictator Mobutu Sese Seko. On April 4th, a number of soldiers were converted to create the M23 rebel movement under the leadership of General Makenga Sultani and Jean-Marie Runiga Lugerero. Originally, only 300 former CNDP fighters were enlisted, but it grew to a few thousand upon their defection from the FARDC.⁸

The successful military operations of M23 bring into focus the problematic capabilities of the FARDC. Many of these newly integrated troops are poorly trained based on the fact that military encounters between the two groups resulted in FARDC retreats. From its creation until November of 2012, the M23's military movements focused in the Rutshuru District of North Kivu.⁹ On Nov. 18, the M23 gave direct instructions to MONUSCO not to aid the Congolese government forces, or they would be attacked in what would be an invasion of the capital city of North Kivu, Goma. Two days later, the FARDC and the UN troops retreated from Goma without putting up any armed struggle, leaving a reported twenty shipping containers filled with arms and ammunitions that were seized by the M23.¹⁰ However, the United Nations and the Congolese troops would return to control the city on December 1, after an agreement between the M23 and the DRC Government was reached at the International Conference on the Great Lakes Region (ICGLR) Conference in Uganda.¹¹ In addition, the M23 fighters departed from the major city, Sake, which they had captured on November 23.¹² Importantly, in many of its battles, the M23 was able to defeat the FARDC troops and increase their bargaining power for future negotiations.

The M23 demands of the Kinshasa government remain relatively unchanged despite its military accomplishments. First, it demand that the March 23 Peace Treaty be honored by the Kabila administration. Second, it wants either the M23 or

the FARDC soldiers to protect the Congolese Tutsi populations from the Hutu extremists and the Mai Mai groups. Third, it wants a reintegration of the former CNDP forces without any bias against them because of their ethnicity. Finally, it seeks an annulment of the election results, or it is to be overturned.¹³ However, as military operations continue to grow and succeed, the M23 might change some of its core demands for the establishment of a de-facto region in the eastern Congo that would be governed by its own forces. This new desire has stemmed from its frustration at the current lack of governance and economic development in the region.¹⁴

The Connection between Rwanda and the M23

With the surprising success of the Rwanda and the M23 fighters, many in the international community publicly stated that the rebels are being aided by foreign powers, especially Rwanda and Uganda. The U.N. Group of Experts on the Democratic Republic of the Congo (UNGoE) was created to perform research on mineral theft in the DRC, but its final report focused on the military connection between Rwanda, Uganda, and the M23.¹⁵ The report was denounced by Rwandan President Paul Kagame and by the government of Rwanda, both posting a response to the allegations.¹⁶ However, it has led to some Western foreign aid donors such as the United States, Germany, the United Kingdom, Belgium, and the Netherlands to withhold their aid until Rwanda halts its assistance of the M23 rebels.¹⁷ Eventually, many of the governments returned portions of their aid, but the overall impression of the international community is that the Rwandan Defense Force (RDF) is still in control or at least sustaining the M23.

The UNGoE's 204-page report accuses the Rwandan army of providing military equipment to the M23; training and providing rebel fighters, giving medical care, and even burying some of the M23 fighters in the Kanombe Military Cemetery. In addition, many of the commanders of the RDF, in particular the Minister of Defense General James Kabarebe and General Jack Nziza, are coordinating with the leaders of M23 and instructing them on military tactics to destabilize North Kivu. The report states that why Rwanda would want instability in North Kivu is for its ability to fight the FDLR militias and for mineral theft.¹⁸



Some of the allegations become difficult to defend when examining the facts 'on the ground' and the UNGoE's methodology while investigating in Rwanda. The first major allegation is of the RDF providing military equipment to the M23 fighters. The weaponry that the M23 has employed in their clashes with the FARDC forces are predominately the same as the FARDC's.¹⁹ The report seems to ignore the fact that most of the rebel forces kept their guns and military equipment when they mutinied from the Congolese military. Some of the weapons that the M23 are using even originate from the time of the CNDP. In addition, most of the weapons that the M23 is using such as the AK47 can be easily bought in many markets in Africa, let alone the DRC for as little as US \$100. Consequently, it stems from the inability of the United Nations or any other institution being able to infiltrate and stop the undergrounds weaponry market that has expanded since the end of the Libyan Civil War.

Other than Rwanda providing military equipment to the M23, the UNGoE's report claims that Rwandan military troops are also being sent into North Kivu. This damning claim originates from two major sources. The first is from an innuendo that Rwandan troops have been stationed in the Rwandan town of Kinigi and Rutshuru, which are near the Congolese border. Thus, they are easily able to disguise themselves as the M23 troops and can subsequently cross the Rwanda-DRC border. The second source originates from the testimonies of five unnamed local Congolese villagers who claim to have seen Rwandan Special Forces help the M23 carry out its meetings.²⁰ Both of these claims do not hold credibility when they are examined. International law clearly states that Rwanda, as a sovereign nation has the legal right to move its troops within its nation's territory. Over the last two decades, the Rwandan military has stationed soldiers for the protection of the country from FDLR and other Hutu extremist groups near its western border with the DRC. There are also problems with the credibility of the testimony from the unnamed villagers. It is common knowledge that many Congolese do not trust Rwanda to such an extent that they are often considered the "scapegoat for the country's problems," as a result from the conflicts of the First and Second Congo Wars. The UNGoE do not provide the necessary information to ensure that the villagers' testimony was not affected by prior anti-Rwandan biases. (The methodology problems of the report are examined with more detail later in this section.) It is plausible that former Rwandan troops have joined the M23 in the hopes of fighting against the FDLR and protecting the local

Tutsi population in North Kivu. However, these actions would be independent; thus, it would not be approved by the Rwandan military.

The next major accusation is that the Rwandan military base at Kanombe is being utilized to train and give medical relief to the M23 fighters.²¹ The base is adjacent to the Kigali International Airport in eastern Kigali and located in the downtown neighborhood of Kanombe. Its size is too small for major military groups to be stationed there, and people who live in the neighborhood have neither reported witnessing any foreign troops nor hearing any gunshots. In fact, the small size of the property inhibits: only some military barracks that could hold a few hundred troops and the cemetery. The two fresh graves that the UNGoE state were for the M23 troops were actually for two Rwandan troops who were killed in the UN peacekeeping missions that Rwanda participates in within Darfur and Southern Sudan.²² The local population utilizes the adjacent military hospital; hence, it is impossible for the Rwandan military to sneak in any foreign troops for medical care without the local population noticing. Gaining access to the base is relatively simple for Rwandans as well as for foreigners.²³ The accusation brings up the question of why would the Rwandan military train the M23 troops in Kigali, the capital of Rwanda, with the local population being able to observe the foreign troops when there are so many other military bases around the country that are hidden from the public's eyes?

Another accusation is that Rwanda's minister of Defense, General James Kabarebe, and General Jack Nziza are coordinating with the leaders of the M23. The coordination of these individuals with the rebel group is only a "communication" to try to bring an end to the violence rather than to increase it. Since the beginning of the rebellion, the Kinshasa government specifically instructed Rwanda's military leaders to converse with the rebels to try to convince them to rejoin the negotiation process. The accusation that General Nziza has gone to Ruhengeri or Gisenyi to instruct the M23 rebels is debunked by the records of Rwandan and foreign guests who registered at his Kigali office at the Ministry of Defense. The UNGoE's audio recordings claimed to contain the voice of General Nziza ordering the M23 fighters have not been released online for public access.²⁴ Consequently, the rationale behind accusing these two RDF members stems from its long history of involvement in the DRC during the First and Second Congo Wars. Nevertheless, this does not give any justification in proving their guilt, especially when there is little

other evidence that shows direct responsibility. There are many other questionable claims made by the UNGoE for why Rwanda is held responsible for the M23 revolt and for the new violence in North Kivu.

The rationale behind why Rwanda would support a rebel military force is for the ability to fight against the FDLR, who still call for the destruction of the Rwandan government, as well as for their (FDLR) mineral theft. Clearly, the FDLR is a serious threat to Rwanda's security, for it continues to have success in committing cross-border attacks.²⁵ From 2009 until 2012, joint operations between the RDF and the FARDC have resulted in the deaths of FDLR leaders as well as its forces. The Rwandan government has sent six hundred troops to work with its Congolese military colleagues in the Kivu Region of the DRC.²⁶ As a result, Rwanda maintains a "close eye" on the region and tries to capture or kill the FDLR extremists. It has also allowed the Congolese government to monitor the Rwandan military movements in the country and allow greater training of its troops by the RDF forces.²⁷ Both countries still maintain the ability to continue with the joint operations in the future if it is deemed needed. Therefore, it seems problematic for Rwanda to support the M23 or any other rebel group after the relatively close military relationship that the two states have shared over the last few years.

The claim that Rwanda wants to have a military presence in the DRC for mineral wealth to finance its military also encounters some fundamental problems. Over the last few years, tin dioxide, coltan, gold, and other precious minerals have been discovered in large quantities for export.²⁸ However, they are still not able to properly exploit these mineral opportunities because of the lack of the proper infrastructure to process them. In recent years, Rwanda has been able to increase mineral exports through privatization of the mining sector that is now 90 percent owned by foreign, mostly western, companies. It begs the question: why would the government of Rwanda secretly and illegally extract minerals from the DRC when it is not extracting them in its own country?

The overall methodology used by the UNGoE is contradictory to its previous reports, and does not uphold the integrity that the institution is supposed to represent. Unlike prior UNGoE reports, it barely cites information gathered from other major regional actors. The UN Organization Stability Mission in the DRC (MONUSCO) is referenced only three times and the government of Rwanda is given only three references. Consequently, this is in conjuncture with the loss

of cooperation with the Rwandan government and the private sector institutions over a five-year period.²⁹

In total, the UNGoE claims to have more than eighty testimonies that were used to compose this report, but all of them are "classified." Most of the evidence from these witnesses aside from being "classified,"³⁰ cannot be independently verified. What is provided in the report are fifty pages of pictures and evidence, which are supposed to be the main source of the "open information."³¹ However, the credibility of the evidence is unclear for the average reader to interpret or to verify. For example, the photo identification cards of captured Rwandan soldiers from North Kivu have the names and faces purposely blacked out. The UNGoE's report states that this is done to protect the identity of the individuals who have testified and supported the conclusions of the report. However, the report does not inform readers of the credibility of these testimonies. We are expected to take the statements from these militia members at face value because they are a part of this particular or previous U.N. documents.³² This lack of detail prevents the accused party, the government of Rwanda, to cross-examine these witnesses to determine whether their confessions are truthful, or fabricated.

One of the most damaging accusations of the UNGoE's report against the Rwandan military is not credible compared to evidence that can be easily found in Rwanda. When UNGoE members arrived to seek a response from the RDF, they were in the country for only three days, July 25 to July 27. As a result, they did not allocate the proper amount of time for the Rwandan military to respond fully with their supporting counter evidence. In addition, they could not verify most of the UNGoE's evidence that was in the form of testimonies because they were classified as "confidential."³³ When the Rwandan military presented evidence that contradicted the UNGoE's statements, the UNGoE made no attempt to investigate the validity of the facts that were being presented to them. Many in the Rwandan military were left with the impression that the UNGoE were not performing a proper investigation and only confirming their own biases against the country.

The consequences of the report would result in Rwanda losing much of its foreign aid that provides more than 40 percent of the federal budget.³⁴ Clearly, the intent of these cutbacks was to punish the Rwandan military, but they harmed every instructional program that was conducted by the government of Rwanda. This includes social programs, health care, HIV programs, and educational services.³⁵ Thankfully,



the economic progress of the country seems largely unaffected because of how Rwandan small business programs responded to the financial cuts from the government. Many Rwandans joined by donating money to the Agaciro Development Fund, which is a voluntary governmental program. The loss of revenue for economic development is substituted by citizens giving up a small percentage (5 percent) of their monthly wages. It was only the United States, Rwanda's strongest ally, who designated its cut in foreign aid of \$200,000 to the Rwandan military rather than the social programs. Unlike the desires by the Western powers, the cut of foreign aid did not weaken the M23.³⁶ In the months that followed the cut in foreign aid, the M23 grew stronger and more powerful. Nevertheless, it neither means the inability to stop the M23 nor the environment that spawns these rebel groups.

Conclusion

The fundamental question of this policy paper is to determine whether the Rwandan military is coordinating with or assisting the M23 rebel movement who are stationed in the eastern Congo. Based on the history of the region, the evidence provided by the UN Group of Experts' report – and after a “private investigation” – the points raised in this report do not support the claim that the government of Rwanda is behind the current violence in the eastern part of the DRC. The reason for this conclusion is that the M23 is not a unique rebel group fighting for a special cause for all Congolese citizens. The February peace framework agreement between the African leaders will not lead to a sustainable peace because it does not address the fundamental causes of why rebel groups are born in the Eastern Congo.³⁷ The lack of good governance in Kinshasa has greatly harmed the incentives for social stability and for growth of the formal sector of the economy. The DRC has the mineral wealth to be one of the richest countries in the world, but the benefits are being halted by the special interests of a number of politicians and businesspersons who are increasing their wealth and power from the chaos. For rebel groups not to form in the lawless areas of the DRC, the Congolese people must demand and push for a government that represents their interests rather than turning to rebel groups who will indeed listen. Blaming foreign governments and businesses for the conflict, and trying to push or stop them, are only temporary solutions to the bigger problem. There is no doubt that they play a role in the violence, but they are being used as scapegoats by President

Joseph Kabila's administration, as well as the international community to explain the M23 and all the other major rebel groups operating in the DRC.

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The Darling Girls of Eastleigh

by *Cassy L. Cox*

After working for a refugee resettlement agency in New York City for a number of years, I secured an opportunity that would both further my professional development and my master's degree in Global Affairs. I was incredibly lucky to be granted an eight-week exchange within our organization's office in Kenya to better comprehend the challenges faced by urban refugees in Nairobi as well as how the private sector partnerships are realized in one of East Africa's largest cities.

Until this point in my career most of the refugees with whom I had worked, and those resettled to third-party nations are often from established refugee camps scattered around the world, this is consistent with the image that most have for a refugee. However, with the increase in urbanization, that image of a refugee sitting amongst tarpaulin tents is rapidly changing and the U.N. High Commissioner for Refugees (UNHCR) has acknowledged this growing trend of the urban refugee. The UNHCR reports that those who have fled into the major cities of neighboring countries accounts for approximately two-thirds of the 10.5 million existing refugee population around the world. As a "city girl," the idea of slipping into another city anonymously seemed like an obvious move, but after arriving my first day in Eastleigh Nairobi, a city where the rights of such refugees wasn't as clear-cut as it was for my clients in New York City, the challenges seemed almost insurmountable.

Refugees in Eastleigh live in constant fear. They are often harassed by police and face discrimination by many Kenyans. Without work authorization and proper documentation, urban refugees face harassment, discrimination, homelessness and an inevitable involvement in the local informal or illegal economy. In Cairo, Amman, Beirut, Bogotá, Kuala Lumpur, and in Nairobi, the stress on local developing infrastructure is dangerous and creates animosity between local residents and those seeking refuge in their city. In addition, most often these same neighborhoods are already lacking basic infrastructure. Eastleigh was no exception, it appears as if it had been deliberately neglected by the public works systems of Nairobi. Garbage was everywhere piled high on street corners and reeking. However, less than twelve kilometers away the Kileleshwa neighborhood is filled with beautiful lush gardens, expensive cars, malls – all surrounded by gates and barbed wire fence.

The morning of my first drive into Eastleigh, an area at times referred to as the "Somali slum" or "little Mogadishu" as the majority of refugees in the area are from Somalia, I followed all the rules; arrive early (7 a.m.), leave early (3 p.m.), with the doors of the vehicle locked and the windows opened no more than a few centimeters. This was all in order to avoid getting stuck in Nairobi's notorious traffic jams, where I would be a sitting duck for local thieves and carjackers, who had recently struck one of my colleagues on the commute home.

As we drove up to the office, the driver realized the entryway had been blocked by a pile of refuse ten feet high. When I offered to get out there and walk around the stinking mass, the driver advised that was not allowed and then hastily pulled a U-turn as I noticed all eyes were on us. Once on the main street, the driver took the next left onto what appeared to be a downhill path of mud. Children darted in front of us, narrowly avoiding getting hit, and residents stared while bucket bathing or brushing their teeth on the side of the street as the driver attempted to dodge the potholes. I sat in the passenger seat, white knuckling my water bottle, watching as a little boy pretended to launch a brick at my window contemplating if that 20-foot walk across the street would have been better than this.

After arriving at the Eastleigh office, admittedly a bit unnerved, I was thrilled with the incredibly warm welcome I received from the Kenyan staff who were anxious to meet me and exchange best practices. Much of their work was focused around the economic empowerment and protection of refugees but also the local urban poor, attempting to bridge that gap between local and refugee residents in Eastleigh. One of the programs of most interest to me was recently funded by the Nike Foundation's "The Girl Effect Program." Our organization had developed a micro-franchise program with lofty goals for the next two years; to reach over 800 girls aged 16-24 who are disengaged from school by assisting them to start small group businesses. The businesses were based on micro-franchise models created through a partnership between our organization and a private sector finance organization. One such model was through a local company, Darling Kenya that manufactures synthetic hair for braids, weaves, and wigs in Nairobi. The hair industry there is huge, women get their hair done every few weeks and styles are

constantly changing.

Upon being selected for the program the girls were broken into groups of ten and these Darling Girls were then trained and tutored to open ten small salons all over Nairobi. The girls were first trained in basic business skills and assigned a mentor who had undergone similar training, to help the girls manage their businesses. In the last phase of the program the girls attended six weeks of training at the Darling factory where they learned braiding, twisting, dying, straightening, make up and all other important salon skills. As soon as I heard about the Darling Girls I had to meet them.

I cajoled a colleague to join me in venturing to another part of Nairobi to meet the Darling Girls and hear firsthand their opinions about the program in which they were enrolled. We arrived at the factory and the girls were busily practicing the days' lesson on each other, in front of a makeshift wall of mirrors. I spoke with the trainers first; among the five was only one man, who claimed to have the "hardest hands," meaning his work was strong and known to last a long time. A very desirable result, when a new hairdo can cost a good portion of the average monthly salary here. I was surprised that there wasn't much commotion when my colleague and I walked in, but that quickly changed when the instructors announced we were willing to get our hair done. Moments later the two of us were sitting in Darling chairs while a dozen girls fingered our locks and asked what we wanted our hair to look like. My coworker and I gingerly described our desired looks, fumbling for the right words, as the girls listened diligently.

Before I knew what was happening, my chin was on my chest and someone had began tugging at the hairs at the nape of my neck. I heard the crinkling of a plastic bag being ripped open and suddenly the young face of a girl was showing me auburn colored hair asking me, "Is this color okay?" I shook my head yes, mostly because I wasn't sure what my other options were. I yelled to my sidekick, asking what was going on with her hair and she said she wasn't sure. We both laughed and relaxed into the idea that this was now completely out of our hands.

For the next four hours my hair was pulled and braided by up to seven girls at a time and every now and then when I found myself getting antsy I was happily distracted by the three girls who had planted themselves in front of me. A young Somali

girl, whose hair remained covered even at the salon academy, with beautiful henna roaming from her fingertips to the $\frac{3}{4}$ sleeve of her shirt, a quiet, obviously pregnant Kenyan girl and the ring leader, the chatty Kenyan version of myself. Led by the bubbly one, the three of us discussed favorite books, foods, music and girl baby names. I was asked by the Somali girl if I hated Somalis and by the pregnant Kenyan girl if I thought everyone should get married. I was forced to demonstrate my own braiding skills as they each told me of what they learned and how excited they were to be opening their own salons. We laughed as they tried to teach me Kiswahili slang and we each described our "perfect" man. They also wanted to know if there were girls like them in America, girls who needed "help with opportunities," as they framed it. They were surprised when I answered yes and proceeded to bombard me with questions about those girls; did they have babies, husbands, did I have a baby or a husband?

Even though the academy closed at 4:00 p.m., the girls stayed until after 5:00 p.m. to keep me company and the braiding continued until 5:30 p.m. when the instructors asked if I could come back the next morning to finish. I looked at my partner in crime who was bouncing around her new weave and happily agreed to return for a final hour of braiding first thing the next day. I arrived the next morning anxious to see what my finished look would be. Instructors and girls crowded around my head to braid the remaining strands and I was practically lulled to sleep as they chattered around me in Kiswahili and gently finalized my style.

When I was finished I departed the Darling Academy looking "quite smart" but with a dull headache. The awkward looks I received for the following few days were a small price to pay for the incredible interactions I shared with so many in Eastleigh, each experience confirming my belief in the hope and opportunities such public private partnerships can cultivate. The Darling Girls, like so many others I've met in this line of work, are palpable reminders that investment in human capital is perhaps the most sound and inspiring investment of our global society can make.



Photo by Sam Tyler Powers



Photo by Lili I Nikolova



The 21st Century Energy and Transition Aided by the Responsibility to Protect

by Brian Seavitt

In September of 1999, former U.N. Secretary General Kofi Annan gave a speech to the General Assembly addressing the prospects for human security and international intervention in the 21st century.

As we seek new ways to combat the ancient enemies of war and poverty, we will succeed only if we all adapt our Organization to a world with new actors, new responsibilities, and new possibilities for peace and progress. It has revealed the core challenge to the Security Council and to the United Nations as a whole in the next century: to forge unity behind the principle that massive and systematic violations of human rights – wherever they may take place – should not be allowed to stand.¹

Despite Annan's plea, the world's largest emitters of greenhouse gases are still largely ignoring one of the most crucial human security issues of the 21st century: global warming. Global warming will create unprecedented impacts as the climate continues to change. Drought, dried-up aquifers, and the loss of glacial water will, according to many scientists, cause the lives of the most vulnerable populations across the globe to become unmanageable. It has the potential, as Dr. James Lovelock says, "To kill several billion people before the end of the century."² In its Fifth Assessment Report, the Intergovernmental Panel on Climate Change (IPCC) found a 95 to 100 percent probability that human behavior is the main cause of climate change; it went on to say that, "[global warming] is unequivocal."³ Therefore, unregulated greenhouse gas emissions should be considered a systematic violation of human rights.

Halldor Thorgeirsson, a senior director with the United Nations Framework Convention on Climate Change (UNFCCC), told journalists in September of 2013 that, "we are failing as an international community" and that the world is "not on track" to prevent potentially catastrophic climate change.⁴ In 2012, members of the UNFCCC chose to extend the Kyoto Protocol from 2013 to 2020. However, the Kyoto agreement is not ambitious enough to prevent climate change. A more comprehensive climate control regime is scheduled to be

negotiated before the end of Kyoto's phase-out period in Paris in 2015. Even if an appropriate emissions reduction system is adopted at this time, new targets will not be slated to come into force until 2020. The international community has the capacity to effect change regarding emissions reductions prior to 2020 and should do so.

In his speech, Annan called for a new approach to international intervention in an increasingly globalized world. His speech was the precursor to the development of the Responsibility to Protect doctrine (R2P), a norm developed by the international community to address its struggle to respond to genocide and other large-scale atrocities. The international community should use R2P to help reduce emissions because climate change presents the most dangerous potential for environmental devastation. If emissions are not reduced, the potential for human fatalities is worse than any war or conflict ever fought on earth. Traditionally, R2P has been used as a pretext for intervention in countries that experience large-scale armed conflict and high civilian death tolls, such as Kenya and Libya. The international community should also use R2P to intervene to prevent climate change and protect against the human costs associated with energy production. Without R2P, the human costs will continue to rise. Sea-level rise will inundate land occupied by at least 100 million people,⁵ arable land will suffer from irreversible desertification,⁶ hunger and malnutrition will increase,⁷ and there will be an increase in adaptation costs for projects that are unable to offset climate damages.⁸ The effects of an unstable climate will force hundreds of millions of people to abandon their homes and land⁹ and conflict will likely rise in many countries as a sufficient water supply becomes increasingly difficult to secure.¹⁰ R2P can, therefore, apply to climate change to prevent both creeping human rights abuses and sudden outbreaks of violence.

Several existing international covenants uphold these principles. After World War II, the world powers developed an International Bill of Human Rights and a Universal Declaration of Human Rights to secure peace among nations. The International Bill of Human Rights includes the International Covenant on Civil and Political Rights (ICCPR) and Economic, Social and Cultural Rights (ICESCR). Their purpose was to ensure stability in the world by protecting human rights from

arbitrary exercises of state power. Since a direct correlation can now be made between air pollution and human rights, it can be argued that arbitrary air pollution is in breach of these commitments. General Comment 12 to Article 11 of the ICESCR, which outlines the right to adequate food, says a state's purpose is to provide: "accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights."¹¹ The Comment also prohibits states from the "adoption of legislation or policies which are manifestly incompatible with pre-existing legal obligations relating to the right to food."¹² Since behavior that advances climate change is incompatible with this obligation, interventionist policies must be made to correct it.

The difficulties in implementing these International Covenants are complicated by the principle of state sovereignty. Article 2.7 of the U.N. Charter states: "Nothing contained in the present Charter shall authorize the U.N. to intervene in matters which are essentially within the domestic jurisdiction of any state...."¹³ However, climate change is anything but a mere domestic matter. Indeed, it is an international catalyst to breaches of peace.

The international community is beginning to realize the implications of climate change. Sea levels are rising, the average annual temperature is warmer, and weather events are more extreme.¹⁴ Businesses and governments are slowly beginning to respond by advancing the renewable energy transition. Multinational companies, like Walmart, are developing on site renewable technologies.¹⁵ Germany is attempting to become the first nuclear-free and carbon-free economy in the world.¹⁶ China is investing hundreds of billions of dollars into renewable energies.¹⁷ Even the United States began to revise their greenhouse gas emissions policy in 1999, when private organizations filed a petition for the Environmental Protection Agency (EPA) to regulate greenhouse gases.¹⁸ In a landmark case: *Massachusetts v. EPA* (2007), the United States Supreme Court ruled in favor of Massachusetts calling for the EPA to regulate greenhouse gases under the Clean Air Act.¹⁹ The ruling has thwarted new coal plants from coming online, but it has yet to be applied to existing power plants that continue to cause climate change.

Attempts at reducing humanity's carbon footprint have been numerous and admirable, but the pace of changeover from

fossil fuel energies to renewable energies is slow – much too slow to prevent catastrophic climate change. The kind of mobilization needed will require interventionist policies to properly direct resources towards renewable energies and away from fossil fuels. R2P can be used as a lever to create interventionist policies that mitigate the impacts of climate change.

It is within the confines of supranational bodies like the World Trade Organization (WTO) that we can find solutions to climate change using R2P. By including the cost of pollution into a country's products, members of the WTO can reduce global emissions. The result of this proposal would affect the way firms invest, driving resources into cleaner production methods. "Emissions regulation without carbon tariffs limits regulators' ability to impact levels of production and shifts to cleaner technologies," Professor David Drake stated in a 2011 report published by Harvard Business School.²⁰ R2P can also be used to provide funding for forests that naturally sequester carbon dioxide – the principal greenhouse gas. The enhancement of forest sinks was most strongly pioneered by a group of countries known as the Rainforest Alliance.²¹ The goal is to sell carbon offsets for new forests and avoided deforestation. Countries would be compensated for maintaining the enormous environmental benefits that their rainforests embody.²²

According to the Human Development Index Report 2013, "The longer action is delayed, the higher the cost will be."²³ Using R2P to intervene on behalf of climate change will legitimize this generation's duty to protect our future generations. The international community should work to correct catastrophic climate change now by implementing R2P because as explained by environmental author and scientist Jared Diamond, "The world's environmental problems will get resolved in one way or another. The only question is whether they will become resolved in pleasant ways of our own choice, or in unpleasant ways not of our choice."²⁴

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