

AFRICAN JOURNAL ON CONFLICT RESOLUTION

Volume 11, Number 3, 2011



The historic contribution of the United Nations to the resolution of conflicts in Southern Africa

Recent trends in peacekeeping operations run by regional organisations and the resulting interplay with the United Nations system

Peace agreements and the termination of civil wars: Lessons from Liberia

Conflict and environmental insecurity in the North Kivu province of the Democratic Republic of the Congo

Horizons of peace and development in northern Uganda

Labour arbitration effectiveness in Zimbabwe: Fact or fiction?



African Journal on Conflict Resolution

Volume 11, Number 3, 2011



The *African Journal on Conflict Resolution* is a biannual peer-reviewed journal published by the African Centre for the Constructive Resolution of Disputes (ACCORD) for the multidisciplinary subject field of conflict resolution. It appears on the list of journals accredited by the South African Department of Education. ACCORD is a non-governmental, non-aligned conflict resolution organisation based in Durban, South Africa. ACCORD is constituted as an education trust.

The journal seeks to publish articles and book reviews on subjects relating to conflict, its management and resolution, as well as peacemaking, peacekeeping and peacebuilding in Africa. It aims to be a conduit between theory and practice.

Views expressed in this journal are not necessarily those of ACCORD. While every attempt is made to ensure that the information published here is accurate, no responsibility is accepted for any loss or damage that may arise out of the reliance of any person upon any of the information this journal contains.

Copyright © 2011 ACCORD ISSN 1562-6997

All rights reserved. Apart from any fair dealing for the purpose of private study, research, criticism or review, as permitted under the Copyright Act, no part may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without the prior permission of the publisher.

Articles and book reviews may be submitted by e-mail, as Microsoft Word attachments, to the Managing Editor of the journal at malanj@accord.org.za, with a copy to ajcr@accord.org.za.

Articles should be of good academic quality, and should be between 6 000 and 8 000 words in length. An abstract of between 100 and 200 words and a few lines about the author should be included. Book reviews should be between 1 000 and 1 500 words.

All references, according to the Harvard method, should be included. As far as possible, in-text references should include the page numbers of the sections of sources referred to. In the case of a direct quotation, the exact page number is absolutely necessary. For the purpose of adding extra details, comments or references which may distract attention from the argument in the text, footnotes may be used sparingly. For more information about the referencing system, please see the excerpt from ACCORD's Style Guide, which is available at <http://www.accord.org.za>.

Design and layout by Immins Naudé.

Contents

Foreword	5
<i>Jannie Malan</i>	
The historic contribution of the United Nations to the resolution of conflicts in Southern Africa	9
<i>Mpfariseni Budeli and André Mbata Mangu</i>	
Recent trends in peacekeeping operations run by regional organisations and the resulting interplay with the United Nations system	27
<i>Andrea de Guttry</i>	
Peace agreements and the termination of civil wars: Lessons from Liberia	53
<i>George Klay Kieh, jr</i>	
Conflict and environmental insecurity in the North Kivu province of the Democratic Republic of the Congo	87
<i>Sadiki Koko</i>	
Horizons of peace and development in northern Uganda	111
<i>Robert Senath Esuruku</i>	
Labour arbitration effectiveness in Zimbabwe: Fact or fiction?	135
<i>Pharaoh Maitireyi and Richard Duve</i>	
Book Reviews	
<i>Walk with us and listen: Political reconciliation in Africa</i>	159
<i>Reviewed by Allard Duursma</i>	
<i>Guarding the guardians: Civil-military relations and democratic governance in Africa</i>	164
<i>Reviewed by Jannie Malan</i>	

Editorial Board

Publisher

Mr Vasu Gounden

Founding and Executive Director, ACCORD

Managing editor

Prof Jannie Malan

Senior Researcher, ACCORD

Co-editor

Dr Grace Maina

Manager, Knowledge Production Department, ACCORD

Advisory Panel

Amb. Nicolas Bwakira

Former African Union Special Representative for Somalia,
former Director at the United Nations and
former Director for Africa at the University of South Africa

Ms Phyllis Johnson

Executive Director,
Southern African Research and Documentation Centre, Harare

Dr Shauna Mottiar

Senior Research Fellow, Centre for Civil Society, School of Development
Studies, University of KwaZulu-Natal

Prof Thomas Ohlson

Department of Peace and Conflict Research, Uppsala University, Uppsala

Prof Jairam Reddy

Chairperson, Council of Durban University of Technology

Dr Alioune Sall

Executive Director of African Futures Institute, Pretoria

Dr Helen Scanlon

Senior Lecturer, African Gender Institute, University of Cape Town

Dr Meena Singh

Research Associate of the Common Security Forum, Cambridge



Foreword

Jannie Malan

In one of the articles in this issue the word ‘Lessons’ appears explicitly in the title, but in the titles or contents of all the other articles the emphasis on learning lessons is implicitly present. After all, when anyone of us writes something for others to read, the urge to share a meaningful experience is usually somehow present. We may not always think in terms of a learning experience, but there may indeed be elements of information and/or suggestion. What we communicate may therefore contribute to the receivers’ equipment for living life meaningfully. More specifically, however, if we write for an academic journal, our motivation will usually be to pass on what we have learnt from our research: findings, discussions and recommendations.

Switching to the perspective of the readers – to whom a foreword is obviously addressed – it may be worthwhile to consider a few aspects of receiving and responding to ‘lessons’. Sometimes one may feel tempted to shelve a new lesson in an in-box for possible attention later, or to summarily brush it aside as irrelevant. There are those of us who may happen to harbour unpleasant memories of having had ‘lessons’ inculcated into us by teachers or parents. Some of us may even have developed a deliberate or a sub-conscious allergy against the process of being taught lessons. From the keenly observant and

intellectually receptive readers of an academic journal, however, such an evasive orientation should not be expected.

What may indeed be expected from the readers of this journal is, firstly, a receptive but not uncritical mode of reading. The articles in this issue take us into the contexts of six countries, regional organisations and an international organisation. The 'lessons' are therefore to be assessed according to their appropriateness for the contexts concerned, but also in the light of their possible (aptly accommodated) applicability for other contexts – particularly the context of each reader.

We can appreciate the way in which the various authors provide us with insights into the interests, perspectives, motives, policies and actions of the parties concerned. Obviously, such understandings can only penetrate to some depth, and will leave further intuitive thinking and inquisitive questioning to us as readers. Nevertheless, we should be able to either agree with the conclusions and recommendations of the authors, or to modify them according to our own critical thinking, experience and expertise.

Having read an article, we secondly have to move into the mode of responding. Although the word, or metaphor, 'lesson' may remind us of our childhood responses to formal lessons, we should now be able to think more deeply and widely. In those days, our typical reaction was to memorise content and be prepared to give appropriate feedback in a test or examination. There were the cases, however, when we embraced bits of learning as worthwhile belongings for the rest of life. In our present era of outcomes-oriented education (and less of an obsession with mere content), more learners may have such an experience. It is something of this kind that may also happen when an academic article is read in which an innovative insight or a best-practice suggestion is shared. But then, of course, the acquired insight or skill has to be put into practice. We learn by doing, and inversely, by doing it becomes evident to ourselves and to others that we have indeed gained the learning concerned. Especially when the doing takes place spontaneously and creatively, it shows that the learning has been internalised.

With regard to the articles included in this issue, there are of course country-specific and profession-specific learning possibilities. Very few, if any, of our readers may be directly involved in international, regional or national peacemaking or peacekeeping operations, or in making or implementing peace agreements, or in promoting environmental security, socio-economic development or labour arbitration. Still, in some way or other, we may be able to pass on or disseminate a significant message, which might reach and influence a key figure and help to transform a conflict situation. Or we may accept and cherish a new idea or skill as another bit of life-long learning and put it to use later on.

What we should anyway remember, is that situations and people keep changing – as clearly shown in most of these articles. Something that was previously impossible may become a beckoning opportunity. Factors that were weak on their own may become combined and exert unexpected leverage. Each situation is unique, but experience from one unique situation may lead to creative wisdom in another.

We wish our readers fruitful reading and far-reaching responses. The example of sixteen unsuccessful peace agreements before a successful one may on the one hand encourage us to think out of the box, and on the other hand inspire us to persevere without abandoning hope.

The historic contribution of the United Nations to the resolution of conflicts in Southern Africa

Mpfariseni Budeli and André Mbata Mangu***

Abstract

Around the middle of the 20th century, Southern Africa presented the international community with two major and interrelated conflict-causing situations – two of the most challenging that it had to deal with since the inception of the United Nations (UN) in the 1940s: South Africa’s illegal occupation of the then South-West Africa, and South Africa’s apartheid policy, which it later extended to this neighbouring country. South-West Africa ultimately became independent as Namibia, and the apartheid regime came to its end, both in the early 1990s. These two crucially important events resulted from a combination of efforts by the UN, regional organisations, local liberation movements and other actors, both international and national. This paper is focused on the contribution of the UN, and almost two decades after the establishment of a democratic constitutional order in these two Southern African countries, it revisits the significant contribution made by the UN to the decolonisation of Namibia and the end of apartheid in South Africa.

* Dr Mpfariseni Budeli is Associate Professor in the College of Law at the University of South Africa (UNISA).

** Dr André Mbata Mangu is Research Professor and Director of the Verloren van Themaat Centre of Public Law in the College of Law at UNISA.

Introduction

Since the international community through the UN took the lead in combating South Africa's illegal occupation of Namibia and its apartheid policy, the paper considers the historical background, purposes and organs of the UN briefly. It then reflects on the contribution of the UN as an international organisation to the independence of Namibia and the ending of the apartheid policy in South Africa and Namibia. It acknowledges the important part played by a regional actor such as the Organisation of African Unity (OAU) and domestic actors such as the liberation movements and their leaders. The actual contributions of these regional and local organisations fall outside the scope of this paper, but the way in which they formed part of the context in which the UN could act as it did is taken into account.

The background and functioning of the UN

From the League of Nations to the UN

The 1914–1918 World War or World War I resulted in unprecedented destruction and misery. The States that then constituted the 'international community' resolved to unite their efforts and cooperate to create a more peaceful world free from war.

The League of Nations, as a means of avoiding any repetition of the bloodshed seen in World War I, was promoted by the President of the United States (US), Woodrow Wilson. Wilson's final plans for the League were reportedly influenced by the Prime Minister of the Union of South Africa, Jan Smuts, who had published a book entitled *The League of Nations: A practical suggestion* in 1918. The League of the Nations, which was the forerunner of the UN, was established in 1920 after its Covenant entered into force on 28 June 1919.

The Preamble to the Covenant of the League of Nations stressed its two major functions: namely the achievement of international peace and security and the promotion of international cooperation. However, the League of Nations failed to achieve these twin objectives. A new international conflict, World War II, broke out in 1939 and lasted until 1945. However, the idea of a universal

The contribution of the United Nations to the resolution of conflicts in Southern Africa

organisation dedicated to protecting and promoting world peace and security survived (Newman and Thakur 2000:2).

Accordingly, the UN was formed as an association of independent states whose principal purpose was to maintain international peace and security, to secure justice and human rights and promote social progress and better standards of life (Preamble to the UN Charter).

Devised by US President Franklin Roosevelt, the name 'United Nations' was first used in the 'Declaration by the United Nations' of 1 January 1942, which was signed during World War II by the representatives of 26 nations that pledged their governments to continue fighting together against the Axis Power (Russell and Muther 1958:5).

In the Moscow Declaration of October 1943, the 'Big Four' – namely China, the Soviet Union, the United Kingdom (UK) and the US – agreed to establish, at the earliest possible date, an international organisation based on the principles of sovereign equality of all peace loving states and open membership to all such states in order to promote international peace and security (Riggs and Plano 1994:12; White 1993:4). They anticipated that one of the principal organs of this new organisation, namely the Security Council, should have the function of maintaining international peace and security through collective measures, including the use of force. They also decided that together with France, they should have special permanent positions on the Security Council with special voting rights which would ensure that no substantive decisions would be taken by the Council without their unanimous concurrence. They granted themselves the 'veto right' (White 1993:5). In 1944, their representatives met at Dumbarton Oaks, a private mansion in Washington, D.C., and drew up plans for the world organisation.

In February 1945, Britain, the Soviet Union and the United States met at Yalta and agreed on voting procedures and called for a conference to draw up a Charter. The UN Conference on International Organisation opened on 25 April 1945 in San Francisco. Fifty countries participated in this conference (United Nations 1992:3). Eventually, their duly mandated representatives signed the UN Charter on 26 June 1945. Poland, which was unable to send representatives to the

conference due to political instability signed the Charter on 15 October 1945 and became one of the original 51 UN member States.

The UN officially came into existence on 24 October 1945 after its Charter was ratified by the 'Big Five' – namely China, France, the Soviet Union, the UK and the US – and by the majority of other signatories.

Purposes and organs of the UN

According to Article 1 of its Charter, the purposes of the UN are four-fold. First, the UN is to maintain international peace and security and to take effective and collective measures for the prevention and removal of threats to the peace and for the suppression of acts of aggression and other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes (Article 1(1) of the UN Charter). Second, the UN is to develop friendly relations amongst nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace (Article 1(2)). The third purpose of the UN is to achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character (Article 1(3)). The fourth and last purpose of the UN is to be a centre for harmonising the actions of nations in the attainment of these ends (Article 1(4)).

The UN Charter established six principal organs: the General Assembly, the Security Council, the Economic and Social Council, the Trusteeship Council, the Secretariat and the International Court of Justice (Article 7).

The General Assembly is the largest and the main deliberative organ of the UN. It is composed of representatives of all UN member states, each of which has one vote and may have a maximum of five representatives (Articles 9 and 18). It meets in regular annual sessions or in special sessions at the request of the Security Council, of the majority of its members, or of one member if the majority of members concur (Article 20). Decisions on important questions such as those on peace and security, admission of new members and budgetary matters, require a two-thirds majority of members present and voting. Decisions

The contribution of the United Nations to the resolution of conflicts in Southern Africa

on other questions are reached by a simple majority (Article 18(2)). The General Assembly may discuss any questions or any matters within the scope of the Charter or relating to the powers and functions of any organs provided for in the Charter, and, except as provided for in article 12, it may make recommendations to the members of the UN or to the Security Council or to both on any such questions or matters (Article 10). Unfortunately, the recommendations and resolutions of the General Assembly are not binding on the UN member states.

The second UN principal organ is the Security Council. Its primary responsibility is to maintain international peace and security in accordance with the principles and purposes of the UN (Article 24(1)). It consists of 15 member states, including China, France, UK, the Soviet Union (its seat is currently held by Russia) and the US. These five members hold permanent positions and have a 'veto' right that entitles each of them to invalidate any decision taken by the remaining members of the Security Council. In the Security Council, decisions on procedural matters are made by an affirmative vote of at least nine of the 15 members. However, decisions on substantive issues require nine votes including the concurring votes of all five permanent members. The Security Council has the power to take decisions which are binding on all UN member states (Article 24). This makes it the most important and powerful organ of the UN (Article 25). According to Article 39 of the Charter, the Security Council may take enforcement measures after it has determined that a situation poses a threat to or constitutes a breach of international peace and security or an act of aggression. Article 39 provides the Security Council with a mandate to utilise the provisions of chapter VI of the Charter in resolving international conflicts. Under Article 41, the Security Council may decide what measures not involving the use of force are to be employed. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio and other means of communication, and the severance of diplomatic relations. However, if the Security Council deems the measures taken under Article 41 to be inadequate in restoring international peace and security, it may resort to forcible measures (Article 42). Article 2(7) of the Charter provides that 'nothing contained in the present Charter shall authorize the UN to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to

settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

The third UN principal organ is the Economic and Social Council. Its primary function is to coordinate the economic and social work of the UN. It is devoted to achieving higher standards of living, improving health and education, and promoting respect for human rights and freedoms throughout the world (Article 62). The Council has 54 members who serve for three years. Voting in the Economic and Social Council is by simple majority and each member has one vote (Article 67). The Council functions under the authority of the General Assembly and reports to it.

The Trusteeship Council was the fourth UN principal organ. Its main task was to supervise the administration of Trust Territories, but this organ has become obsolete as there are no longer Trust Territories.

The International Court of Justice (ICJ) is the principal judicial organ of the UN (Article 92). It consists of fifteen judges elected by the General Assembly on the recommendations of the Security Council. Nine judges make a quorum and a decision is taken by a majority vote. The ICJ has jurisdiction over all disputes which States refer to it, and all matters provided for in the UN Charter. Its judgments are binding on all UN member states (Article 94(1)). The ICJ also serves as the legal advisor to the General Assembly and the Security Council and issues advisory opinions on legal questions submitted to it (Article 96).

The sixth UN principal organ is the Secretariat. The Secretariat carries out the day-to-day functioning of the UN. It serves the other organs of the UN and administers the programmes and policies laid down by them. The Secretary-General as the UN chief administration officer heads the Secretariat (Article 97). The Secretary-General is indeed the key figure with regard to all the interrelationships represented by the UN (Rivlin 1993:5) and the shaping of the peace and security agenda of the UN (Kille 2006:1). The Secretary-General is appointed by the General Assembly on the recommendation of the Security Council for a term of five years and may be re-elected once (Article 97). Through him passes all the interrelationships represented by the UN. Since its inception in 1945, the UN has had eight Secretary-Generals. Trygve Lie was the first UN

Secretary-General, and he served until 1952. The current Secretary-General is Ban Ki-moon.

The contribution of the UN to the decolonisation of Namibia and the end of apartheid in South Africa

The UN and the decolonisation of Namibia

From 1883 to 1915, South-West Africa was colonised by Germany. After World War I and the defeat of Germany, it became a Mandate Territory as a Class C Mandate under the Covenant of the League of Nations (Article 22) and was administered by South Africa since 17 December 1920 (Souare 2006:86). One of the duties of the Administering State was to lead the Mandated Territory to independence. The Union of South Africa refused to allow South-West Africa's transition to independence, however, and regarded it as its fifth province, in violation of the Covenant of the League of Nations.

When the UN Charter came into operation and the League of Nations was dissolved, the Mandate System was transformed into a Trusteeship System. The Union of South Africa objected and proposed to annex South-West Africa in 1946. It contended that its accountability over South-West Africa was owed exclusively to the League of the Nations and that the mandate lapsed when the League of the Nations died during World War II (Slonim 1973:4). It further argued that the UN lacked jurisdiction to deal with the issue since it was a domestic issue and any attempt to do so was contrary to its Charter (Article 2(7)). On the other hand, the UN argued that South Africa was under the League's supervision for its administration of South-West Africa and since the League of Nations represented the organised international community and had been replaced with the UN, South Africa had to account to the new organisation (Slonim 1973:4).

The Union of South Africa relied on secret arrangements made by three other powerful UN member states – namely Great Britain, France and Japan – which had agreed prior to the armistice that the Union of South Africa as a former British Dominion was entitled to annex some mandated territories, particularly South-West Africa. Thanks to US President Roosevelt's insistence, the principle

of 'no annexation' was adopted and the UN rejected any annexation of South-West Africa by the Union of South Africa. However, since legal issues were raised and there was a dispute over the administration and the legal status of South-West Africa, the ICJ as the UN judicial body had to intervene and deal with the matter.

In an advisory opinion given in 1950, the ICJ first ruled that the Union of South Africa was not obliged to convert South-West Africa into a UN trust territory, but was still bound by the League of Nations Mandate with the UN General Assembly assuming the supervisory role. It added that the General Assembly was empowered to receive petitions from the inhabitants and to call for reports from South Africa, the mandatory nation.

In 1955, in another advisory opinion, the ICJ ruled that the UN General Assembly was not required to follow the League of Nations voting procedures in determining questions concerning South-West Africa but still, the Union of South Africa objected to the competence of the Committee on South-West Africa established by the General Assembly to receive petitions from the mandated territory.

During the 1950s, the Herero chiefs submitted many petitions to the UN calling for it to grant South-West Africa independence. The Union of South Africa also objected to this and alleged that the Committee on South-West Africa was not entitled to receive or entertain such petitions. In an advisory opinion delivered in 1956, the ICJ recognised the power of this Committee to grant hearings to petitioners from the mandated territory.

In 1960, with the Union of South Africa opposing UN decisions and ICJ rulings with the backing of some of the most powerful UN member states with a veto right in the Security Council, particularly the US, UK and France, African countries sought to push the UN to act more strongly against this country. Ethiopia and Liberia instituted proceedings before the ICJ against the Union of South Africa. They argued that South Africa's continued presence in South-West Africa was contrary to the UN Charter and violated the right of the people of South-West Africa to self-determination. The General Assembly endorsed this move.

The contribution of the United Nations to the resolution of conflicts in Southern Africa

In 1966, the ICJ dismissed the case brought against South Africa by Ethiopia and Liberia on the ground that they were not proper parties to bring the case and therefore lacked *locus standi*.

The struggle against South Africa's illegal occupation of Namibia – to which it also extended its apartheid policy – received impetus with the creation of the OAU in 1963, which aimed at eliminating all forms of colonialism in Africa.

With South Africa persisting in its defiance of the international community, the UN General Assembly now dominated by Third World countries, including African countries that had acceded to independence in the late 1950s and early 1960s, decided to take one step further against South Africa.

By Resolution 2145(XXI) adopted in 1966, the General Assembly terminated South Africa's mandate over South-West Africa and ruled that South Africa had no further right to administer this country (Slonim 1973:313). This Resolution assigned the UN direct responsibility for the territory and designated the Security Council as the legal administering authority (Tessitore and Woolfson 1989:32).

On 12 June 1968, the General Assembly adopted Resolution 2372(XXII) that changed the territory name from South-West Africa to Namibia as proposed by SWAPO, which was formed by black Namibians in 1960 but was not recognised by the international community.

The General Assembly also ruled that the continued presence of South Africa in Namibia was illegal and South Africa was under the obligation to withdraw immediately from this territory. All UN member states were obliged to recognise the invalidity of any act performed by South Africa on behalf of Namibia, which was subsequently removed from the list of Non-Self-Governing Territories. SWAPO was recognised as a legitimate representative of the Namibian people and was granted UN Observer Status in 1968. South Africa was not impressed and continued its illegal occupation of Namibia in violation of the UN Charter and in total defiance of the international community.

In 1969, Resolution 269 was adopted by the Security Council. It called on the Republic of South Africa to withdraw its administration from Namibia, stating that 'its continued occupation constitutes an aggressive encroachment on the

authority of the United Nations, a violation of the territorial integrity and a denial of the political sovereignty of the people of Namibia’.

It also called on other member states to refrain from all dealings with South Africa concerning Namibia. Other resolutions such as resolutions 276 and 283 were adopted in 1970 reiterating the Security Council’s position regarding South Africa’s continued administration and calling on all member states to terminate all dealings with the South African government.

Security Council Resolution 284 requested an advisory opinion of the ICJ on the legal consequences of South Africa’s continued presence in Namibia (Sonnenfeld 1988:138). In 1971, the ICJ ruled that South Africa’s continued administration in Namibia was illegal as it violated the UN Charter and other relevant rules and principles of international law. The extension of its apartheid policy to Namibia was also found to be a flagrant violation of the purposes and principles of the UN Charter (Slonim 1973:4; Dugard 2000:238).

With the assistance of the international community and particularly of African independent states within the OAU more committed to achieve one of its objectives to liberate Africa from colonialism and help all its peoples achieve political independence (Article 2.1 (d) of the UN Charter), SWAPO intensified its struggle for independence.

On the other hand, South Africa was fighting another war at the domestic level where the African National Congress (ANC) and other liberation movements were determined to bring the apartheid regime to an end with renewed support from the international community and particularly from African countries within the OAU. This was too much a burden for the apartheid government that had lost much of the backing it received from its former Western allies within the UN Security Council.

In 1988, South Africa agreed to end its illegal occupation of Namibia and subsequently its apartheid policy in this country. On 21 March 1990, Namibia finally gained its independence. On 23 April 1990, Namibia was admitted to the UN. The independence of Namibia sent a clear message to the apartheid government in South Africa that its days were numbered.

The UN and the end of apartheid in South Africa

During the 19th century, South Africa was colonised by Britain. In 1910, South Africa became a self-governing 'dominion' under the British Crown with the state powers vested in the hands of the minority of white settlers who oppressed the majority of black South Africans (Souare 2006:78).

South Africa was one of the founders of the UN. It participated in the drafting and adoption of the UN Charter in 1945. South Africa's Prime Minister, General Smuts, who was the President of the Commission on the General Assembly, reportedly played a leading role in the formation of the UN and in the drafting of the Preamble to its Charter (Dugard 2000:236). South Africa also contributed to the Universal Declaration of Human Rights, which was adopted by the General Assembly in 1948.

South Africa became a terrible embarrassment to the international community when the National Party government adopted apartheid as an official policy when it came to power in 1948 (Souare 2006:79). The apartheid policy disenfranchised the majority of the population, who were black, by depriving them of all political rights, in violation of the Charter of the UN, of which South Africa was a founding member, and of the 1948 UN Universal Declaration of Human Rights to which South Africa had contributed. Political rights were reserved for the white minority who alone were considered citizens and entitled to rule. The NP government later on transported its apartheid policy to South-West Africa. South Africa became a pariah state under international law due to its policy of apartheid.

The issue of racial discrimination has dominated the agenda of the UN since 1948 and was even raised in the General Assembly before it was legalised in South Africa. As early as 1946, the government of India complained before the UN General Assembly that the government of South Africa had enacted legislation which discriminated against South Africans of Indian origin (United Nations 1992:158; Dugard 2000:237).

In its Resolution 44(I) of 8 December 1946, the General Assembly declared that the treatment of Indians by the Union of South Africa impaired friendly relations

between the two states and that the Indians should be accorded treatment in conformity with international standards (cf. Heunis 1986:250).

However, South Africa consistently maintained that its policies were a matter of domestic concern and that the UN resolutions were illegal and unacceptable since they violated the principle of non-interference in its internal affairs (Article 2(7) of the Charter) (Schweigman 2001:52). Since 1952, the issue of apartheid appeared annually on the agenda of the General Assembly (cf. Heunis 1986:251). By Resolution 616B(VII) of 5 December 1952, it had already ruled that the apartheid issue was subject to its jurisdiction in view of the legally binding commitment of the UN to the international protection of human rights.

Later on, the Assembly adopted several resolutions (e.g. Resolutions 1178/1957 and 1248/1958) in which it requested the government of South Africa to revise its apartheid policies.

Following the Sharpeville incident of 21 March 1960 when 69 peaceful black demonstrators were killed by South African police for protesting against the government's requirement that all Africans should always carry their identity documents, the Security Council first met to deliberate on the issue and by Resolution 134 of April 1960, it condemned apartheid as a crime against the conscience and dignity of mankind. The Security Council stated that the situation in South Africa had led to international friction and if continued, it could endanger international peace and security (United Nations 1992:158).

In 1962, the General Assembly requested member states to break off diplomatic relations with South Africa, boycott South African goods and refrain from all exports to South Africa including armaments (United Nations 1992:158). Later, by Resolution 1761(XVII) of 6 November 1962, the General Assembly again considered the question of the treatment of persons of Indian and Indo-Pakistani origin in South Africa together with the question of the policy of apartheid (Dugard 2000:238).

In its Resolution 181/1963, the Security Council expressed its conviction that 'the situation in South Africa is seriously disturbing international peace and security' and considered it 'inconsistent with the principles contained in the United Nations Charter' (cf. Malone 2004:71). The Security Council also called

The contribution of the United Nations to the resolution of conflicts in Southern Africa

upon the international community to establish an arms embargo against South Africa.

However, the South African government ignored UN calls and continued with its apartheid policies. Between 1960 and 1963, the General Assembly adopted many resolutions on apartheid, including Resolutions 1598/1961, 1633/1961 and 1761/1963. Later on, in terms of its Resolution 2202 of 16 December 1966, the General Assembly condemned apartheid as a 'crime against humanity'.

Between 1948 and 1966, the UN did not act strongly against the South African government because Britain, France and the US opposed such action due to their economic interests. They misused their veto power in blocking the proposed UN Security Council's actions against South Africa (Souare 2006:78). The attitude of the three Security Council's permanent members towards South Africa explains why the bulk of the UN work against the apartheid system in South Africa was done by the General Assembly and not by the Security Council. This also explains why apartheid in South Africa lasted for 45 years (Souare 2006:78).

In 1970, the Security Council condemned violations of the arms embargo established in 1993 and called on all member states to strengthen and implement it unconditionally, not to supply vehicles, equipment and spare parts for use by South African military and police forces, to revoke all licences and patents granted for South African manufactures of arms, aircraft or military vehicles, to prohibit investment and also to cease all military cooperation with South Africa (United Nations 1992:160).

The Security Council further held in Resolution 282/1970 that 'the apartheid policies and the constant build-up of the South African military and police forces' constituted a 'potential threat to international peace and security'. The Council reaffirmed the right of the people of South Africa to self-determination and recognised the legitimacy of their struggle against apartheid (Schweigman 2001:55). Later also, by Resolution 3068(XXVIII) of 30 November 1973, the General Assembly approved the International Convention on the Suppression and Punishment of the Crime of Apartheid. This Convention denounced apartheid as a 'crime against humanity in violation of international law' (Article 1).

In December 1973, the General Assembly adopted Resolution 3151 which declared that the South African regime had no right to represent the people of South Africa and recognised the liberation movements recognised by the OAU as the representatives of the majority of South Africans (cf. Heunis 1986:224).

Instead, the General Assembly invited the ANC and the Pan Africanist Congress of Azania (PAC) to participate in the debates on apartheid in the Assembly's special political committee in 1974 and later on recognised these two organisations as the 'authentic representatives of the majority of the South African people' (United Nations 1992:160).

The General Assembly recommended that due to its continued apartheid policies, South Africa be excluded from participation in international organisations and conferences held under the auspices of the UN. South Africa was prevented from participating in the proceedings of the General Assembly.

On 16 June 1976, thousands of Black South Africans, mostly school children, demonstrated in Soweto against 'Bantu Education', a second zone education which was offered to the Black people who were also compelled to learn in the main language used by the white minority, namely Afrikaans. The South African government responded by resorting to violence and killing. The General Assembly adopted Resolution 392 of 19 June 1976 that condemned the Soweto massacre and reaffirmed that the policy of apartheid was a crime against the conscience and dignity of mankind and seriously disturbed international peace and security.

The increasing public pressure and the intransigence of the apartheid government in South Africa led the UN Security Council by its Resolution 421/1977 to impose an arms embargo on South Africa. The Council also adopted Resolution 418/1977, which made the arms embargo against South Africa mandatory. This was the first time that such action had been taken against a UN member state under chapter VII of the Charter. All states were required to cease forthwith any provision to South Africa of arms and related materials.

In furtherance of its policy of apartheid, the South African government embarked on 'Bantustanisation', a policy consisting in the granting of independence to a

The contribution of the United Nations to the resolution of conflicts in Southern Africa

number of homelands occupied by the black people, starting with Transkei in 1976. Transkei was to be followed by Bophuthatswana (1977), Venda (1979), and Ciskei (1981). The General Assembly adopted several resolutions stating that the establishment of Bantustans was designated to consolidate the inhuman policies of apartheid, to destroy the territorial integrity of the country, to perpetuate and to dispossess the African people of South Africa of their inalienable rights. Accordingly, it called on all the UN member states to refuse recognition to Bantustan States. These resolutions were endorsed by the Security Council (Dugard 2000:446–461).

In 1978, the Security Council adopted Resolution 473 of 13 June which reaffirmed that ‘the policy of apartheid is a crime against the conscience and dignity of mankind and incompatible with rights and dignity of man, the United Nations Charter and the Universal Declaration of Human Rights and seriously disturbs international peace’.

The Security Council Resolution 473 of 13 June 1980 recognised ‘the legitimacy of the struggle of the South African people for the elimination of apartheid and for the establishment of a democratic society in which all the people of South Africa, irrespective of race, colour or creed will enjoy equal and full political and other rights and participate freely in the determination of their destiny’. In response to this Resolution, the South African government announced its plans for a new constitution in 1983. This constitution was approved by a referendum in which only white South Africans were entitled to participate. It provided for segregated chambers of Parliament for coloured persons and Indians, but not for black South Africans. In terms of Resolution 554/1984, the Security Council declared this constitution ‘null and void’ and urged all governments and organisations not to recognise the results of elections held under the 1983 constitution and to continue ‘to assist the oppressed people of South Africa in their legitimate struggle for a non-racial democratic society’.

By Resolution 556/1984, the Security Council once more considered apartheid a ‘crime against humanity’. The Council adopted other resolutions such as Resolution 558/1984 to reaffirm the validity of the UN sanctions against apartheid South Africa.

In April 1987, the South African government passed a decree in terms of which all protesters were to be detained without a trial. The Security Council expressed its concern and called on the South African government to revoke it. The General Assembly urged all UN member states to adopt legislative measures against South Africa and also imposed sanctions on individuals and enterprises that violated them (United Nations 1992:164–165).

Between 1967 and 1989, under the initiative of independent African countries such as Ghana, Guinea, Ethiopia and Liberia, the UN embarked on international campaigns appealing to the world public to put pressure on their governments in a bid to end the apartheid regime in South Africa (Souare 2006:86). The OAU also reinforced its pressure on the apartheid regime by increasing its support to liberation movements.

Some Southern African countries provided a sanctuary for militants who were persecuted in South Africa and offered them a base for military operations against the apartheid government. The leaders and peoples of countries such as Zambia, Botswana, Mozambique and Zimbabwe sometimes paid for their support to the ANC and other South African anti-apartheid organisations. On the other hand, the fall of the Berlin Wall that marked the end of the Cold War deprived the apartheid government of much of the support it once enjoyed from the West. The apartheid regime was therefore doomed to collapse and its leaders faced the dramatic challenge: reform or perish.

In 1990, the same year when Namibia became independent and apartheid was abolished in this country, President F.W. de Klerk announced lifting the ban on all black political parties and freeing Nelson Mandela and all political prisoners. Accordingly, the UN promoted negotiations between the white minority-led government and the black majority through the liberation movements. These negotiations resulted in the adoption of the interim Constitution of 1993 that paved the way for the first free and fair elections which were held in 1994. The ANC won these elections in which Black South Africans participated for the first time and Nelson Mandela became the first democratically elected president of the Republic of South Africa.

Conclusion

South Africa's illegal occupation of South-West Africa (Namibia since 1968) and the apartheid system that the National Party established in 1948 were two of the most serious international conflict-generating problems in Africa during the last six decades of the 20th century. The UN, determinedly and consistently, played a crucial role in the decolonisation of Namibia and the dismantling of apartheid in South Africa. It was not the only role player in this regard, and it should be said that it was the combined action of the international community through the UN and African states within the OAU that eventually led to South Africa's withdrawal from Namibia and the termination of its apartheid policy. Credit should also be given to the Namibian and the South African peoples and their liberation movements led by SWAPO and the ANC respectively. In any liberation movement or struggle, as in the consolidation of democracy that still remains a major challenge, the peoples have to play a very important role.

Barack Obama rightly disagreed with those 'who believe they can single-handedly liberate other people from tyranny' (Obama 2008:374). As he pointed out, 'there are few examples in history in which the freedom men and women crave is delivered through outside intervention. In almost every successful social movement of the last century, from Ghandi's campaign against British rule to the Solidarity movement in Poland to the antiapartheid movement in South Africa, democracy was the result of a local awakening' (Obama 2008:374). The peoples are therefore the primary architects of their development and the major actors in the resolution of conflicts that affect them. One of the critical lessons learned in the decolonisation of Namibia and the termination of apartheid in South Africa is that in Africa, as elsewhere, the people have to fight to liberate themselves and they should not expect to be liberated by other (foreign) peoples despite the support they may receive from them.

In the case of the then South Africa, however, the National Party government was so entrenched in an unassailable position that to overcome their obsession with their ideology much more was needed than a merely local struggle. Regional and international enforcement had to be applied to overcome the monster of apartheid. This case study can therefore serve to emphasise the conclusion that

to overrule and eliminate a severe human rights violation nothing less may be needed than a combined national *and* international onslaught.

Sources

- Dugard, John 2000. *International law: A South African perspective*. Cape Town, Juta.
- Heunis, Jan C. 1986. *United Nations versus South Africa*. Johannesburg, Lex Patria.
- Kille, Kent J. 2006. *From manager to visionary: The Secretary-General of the United Nations*. New York, Palgrave Macmillan.
- Malone, David M. ed. 2004. *The UN Security Council: From the Cold War to the 21st Century*. Boulder, Lynne Rienner.
- Newman Edward and Ramesh Thakur 2000. *New millennium, new perspectives: The United Nations security and governance*. Tokyo, United Nations University Press.
- Obama, Barack 2008. *The audacity of hope: Thoughts on reclaiming the American dream*. New York, Vintage Books.
- Riggs, Robert E. and Jack C. Plano 1994. *The United Nations: International organisations and world politics*, Belmont, CA, Wadworth.
- Rivlin, Benjamin 1993. The changing international climate and the Secretary-General. In: Rivlin, Benjamin and Leon Gordenker eds. *The challenging role of the Secretary-General: Making the most impossible job in the world possible*. Westport, CT, Praeger.
- Russell, Ruth B. and Jeannette E. Muther 1958. *A history of the United Nations Charter: The role of the United States 1940–1945*. Appendix C. Washington, D.C., Brookings Institution.
- Schweigman, David 2001. *The authority of the Security Council under Chapter VII of the UN Charter: Legal limits and the role of the International Court of Justice*. The Hague, Kluwer Law International.
- Slonim, Solomon 1973. *South West Africa and the United Nations: An international mandate in dispute*, Baltimore, MD, The Johns Hopkins University Press.
- Sonnenfeld, Renata 1988. *Resolutions of the United Nations Security Council*. Dordrecht/Boston, M. Nijhoff Publishers; Warszawa, PWN-Polish Scientific Publishers.
- Souare, Issaka K. 2006. *Africa in the United Nations system: 1945–2005*. London, Adonis & Abbey Publishers.
- United Nations 1992. *Basic facts about the United Nations*. New York, United Nations Publication.
- White, Nigel D. 1993. *Keeping the peace: The United Nations and the maintenance of international peace and security*. Manchester, Manchester University Press.

Recent trends in peacekeeping operations run by regional organisations and the resulting interplay with the United Nations system*

*Andrea de Guttry***

Abstract

Peacekeeping and (at a later stage) peacebuilding (PK and PB) operations were ‘invented’ and ‘pioneered’ by the United Nations as early as 1948 and for a long period the UN has been the only organisation able and willing to deliver them. In the last decades, however, the quasi-monopolistic role of the universal organisation in this area has been seriously challenged by both regional organisations and by the so-called ‘ad hoc coalitions of the willing’. This new situation, with a good, sometimes excessive, presence of entities interested and available to deliver PK/PB operations, presents new challenges and new opportunities to the international community as a whole, and to the individual states requesting the deployment of a PK/PB operation. Against this background, the present article, after having defined its scope, presents a

* This article is a revised and updated version of the article *Organizações regionais: tendências recentes na descentralização das operações de paz e a interação com o sistema ONU* (Guttry 2011).

** Andrea de Guttry is Full Professor of Public International Law and Director of the International Research Laboratory on Conflict, Development and Global Politics at the Scuola Superiore Sant’Anna, Pisa, Italy.

few statistics confirming the existing trend towards ‘decentralising’ the delivery of PK/PB operations, discusses why interest in playing a major role in PK has increased among states and regional international organisations, and outlines the consequences (both positive and negative) associated with such a trend.

1. Introductory remarks

Peacekeeping and (at a later stage) peacebuilding operations (PKOs and PBOs) were ‘invented’ by the United Nations (UN) in 1948 when the Organisation pioneered this kind of field operation by establishing the UN Truce Supervision Operation (UNTSO) in the Middle East. The role of the first mission was to monitor the armistice agreement between Israel and its Arab neighbours. Since then the UN has run more than 60 similar operations worldwide, with varying and sometimes controversial results (Jett 1999; Krasno, Hayes and Daniel 2003; Durch 2006; Sitkowsky 2006; Bellamy, Williams and Griffin 2010). A peak period for UN PKOs was from 1989 to 1994, when the UN authorised a total number of 20 new missions, raising the number of peacekeepers from 11 000 to 75 000. In recent decades, in response to increased demand for more professional and complex missions and taking into consideration the changed international reality, the UN initiated an interesting and important process aimed at critically assessing the results achieved, and at developing new proposals to improve the quality and effectiveness of its field operations. To this end, significant changes were made in several key areas: decision-making procedures, including the sensitive issue of the definition of the mandate; chain of command; training of the personnel involved; preparation of a sophisticated rapid reaction capacity; reorganisation of the UN structures devoted to PK/PB operations; clarification of the financial aspects. Such valuable work has been codified in numerous documents. These include the 1992 Report of the UN Secretary-General (UNSG), *An agenda for peace: Preventive diplomacy, peacemaking and peacekeeping* (United Nations 1992); the 2000 *Report of the Panel on United Nations Peace Operations* (The Brahimi Report) (United Nations 2000); the 2004 report of the High-level Panel on Threats, Challenges and Change, *A more secure world: Our shared responsibility* (United Nations 2004); the 2005 UN General Assembly Resolution 60/1, *2005 World Summit Outcome* (United Nations 2005); the 2006 report of the UNSG

on the financing of the United Nations peacekeeping operations, in which the Secretary-General outlined, among other things, a reform strategy entitled 'Peace Operations 2010' setting out the policies and procedures to enable the Department of Peacekeeping Operations (DPKO) to support peacekeeping over the next decade (United Nations 2006); the 2008 *United Nations Peacekeeping Operations: Principles and guidelines* (United Nations 2008); the 2009 document prepared by DPKO, *A New Partnership Agenda. Charting a new horizon for UN peacekeeping* (United Nations 2009) and its subsequent implementation reports; and, finally, the 2010 *Report of the Secretary-General on the Global Field Support Strategy* (United Nations 2010).

The situation described, in which the UN was indisputably the main – if not the sole – player, has changed dramatically in the last two decades, and the quasi-monopolistic role of the universal organisation in this area has been seriously challenged by both regional organisations and by the so-called 'ad hoc coalitions of the willing'. This new reality, with a good, sometimes excessive, presence of entities interested and available to deliver PK/PB operations, presents new challenges and new opportunities to the international community as a whole, and to the individual states requesting the deployment of a PK/PB operation.

Against this background, the present article, after having defined its scope, presents a few statistics confirming the existing trend towards 'decentralising' the delivery of PK/PB operations, discusses why interest in playing a major role in PK has increased among states and regional organisations and outlines the consequences (both positive and negative) associated with such a trend.

2. Terminological clarification

As a preliminary step it seems essential to limit the scope of this contribution to recent trends in PK/PB operations. The need for terminological clarification arises from overwhelming and sometimes surprising confusion in the use and the even more frequent abuse of terms. Peacekeeping, peacebuilding, peace-enforcing, regional peace-enforcing and peacemaking are concepts very often used in a loose manner, as if they were all synonymous. This is not the case, as each type of operation has its own characteristics which differ strongly from the others. It

has been argued that the existing terminological confusion is created deliberately, as states and regional organisations very often prefer to depict missions in a particular manner, knowing that public opinion might accept, welcome or reject them, depending on how they are presented. There are no doubts, in reality, that while PK and PB operations are extremely popular and usually enjoy the support of mass media and public opinion, other missions such as peace-enforcing operations are less popular and do not enjoy significant support among ordinary people worldwide. The terminological confusion has become even more complex owing to the fact that field operations based on identical pre-requisites and characteristics are labelled in a different manner in different continents. As an example, we may recall that the wording ‘peacekeeping operations’ to identify missions with given characteristics is typical of the UN system, while in other regions almost identical operations, if carried out at regional level, are termed ‘crisis management operations’ (on the European continent) or ‘peace-support operations’ (on the African continent).

For all these reasons it seems important to define more closely the typology of missions relevant to this paper, namely PK/PB operations. In order to do so we will be using UN terminology, as this Organisation has undertaken serious efforts at clarification to overcome the above-mentioned problems. According to *United Nations Peacekeeping Operations: Principles and guidelines* (United Nations 2008), largely inspired by the already mentioned *Agenda for peace* (United Nations 1992) and adopted by the DPKO and the Department of Field Support (DFS), the two operations are defined in the following manner:

Peacekeeping is a technique designed to preserve the peace, however fragile, where fighting has been halted, and to assist in implementing agreements achieved by the peacemakers. Over the years, peacekeeping has evolved from a primarily military model of observing cease-fires and the separation of forces after inter-state wars, to incorporate a complex model of many elements – military, police and civilian – working together to help lay the foundations for sustainable peace (United Nations 2008:18).

Peacebuilding involves a range of measures targeted to reduce the risk of lapsing or relapsing into conflict by strengthening national capacities at all levels for conflict management, and to lay the foundation for sustainable peace and development. Peacebuilding is a complex, long-term process of creating the necessary conditions for sustainable peace. It works by addressing the deep-rooted, structural causes of violent conflict in a comprehensive manner. Peacebuilding measures address core issues that affect the functioning of society and the State, and seek to enhance the capacity of the State to effectively and legitimately carry out its core functions (United Nations 2008:18).

These authoritative definitions, in use by DPKO and DFS, will be used in this article. They indeed allow us to highlight the following key features of peacekeeping and peacebuilding operations (which are useful in differentiating them from other field operations): deployment is decided only after a ceasefire has been agreed upon among the various factions, and only if there is a specific request by all the parties involved in the conflict (be it a civil or an international conflict). The mission will be ‘neutral’ and will not take sides with any of the factions of the previous conflict. These are the common features of both PK and PB, but it should be stressed that the main differences between these two categories of missions relate to their mandate and to the time of their deployment (always, in any case, only after a ceasefire has been agreed upon). In general terms PKOs are deployed immediately after the ceasefire, while PBOs are often deployed at a later stage, when the security situation in the country/ies is less tense. Finally, the mandate of a PBO addresses core issues that affect the functioning of society and the state, and seeks to enhance the capacity of the state to effectively and legitimately carry out its core functions, while the mandate of a PKO is generally less ambitious, as it aims mainly to preserve the peace in the short term and to assist in implementing agreements achieved by the parties involved in the conflict.

3. Entities deploying PK/PB Operations: facts and trends

During the summer of 2011 there were more than 50 PK/PB operations deployed in the field: 26 were UN-led (14 PKOs and 12 PBOs), while about 24 were

non-UN-led (about 20 run by regional organisations, 4 by ad hoc coalitions of the willing, and one jointly by the UN and the AU (which is UNAMID in Sudan)). No precise figures are known, but the manpower involved in these operations is estimated at about 500 000 military personnel (about 100 000 working in UN operations and the rest in non-UN operations in places such as Iraq, Afghanistan and Kosovo); about 50 000 police officers (15 000 working in UN PK/PB operations); and about 30 000 civilians (about 15 000 working with the UN).

Several entities involved (or preparing themselves to be involved) in PK/PB are regional and/or sub-regional organisations: African Union (AU), Economic Community of West African States (ECOWAS), Intergovernmental Organisation on Development (IGAD), Organization of American States (OAS), Arab League, Organisation for Security and Co-operation in Europe (OSCE), European Union (EU), North Atlantic Treaty Organisation (NATO). Among these, the EU has been one of the most active, demonstrating a specific interest and capacity to put in place multifaceted, complex and multidimensional field operations in various parts of the world. The EU decided to become involved in these operations only in 2000 when, at the Feira European Council, the Union decided to develop the civilian aspects of crisis management in four priority areas: policing, strengthening the rule of law, strengthening civilian administration and civil protection. The specific capabilities in these four fields could be used in the context of EU-led autonomous missions, or in the context of operations conducted by lead organisations, such as the UN or OSCE. The emphasis on the active involvement of the EU in these operations was formally confirmed in the consolidated version of the Treaty on European Union (European Union 2010). While article 42(1) of this Treaty states that

The common security and defence policy shall be an integral part of the common foreign and security policy. It shall provide the Union with an operational capacity drawing on civilian and military assets. The Union may use them on missions outside the Union for peace-keeping, conflict prevention and strengthening international security in accordance with the principles of the United Nations Charter. The performance of these tasks shall be undertaken using capabilities provided by the Member States ...

Regional peacekeeping operations and the interplay with the United Nations

the following article 43(1) clarifies that

The tasks referred to in Article 42(1), in the course of which the Union may use civilian and military means, shall include joint disarmament operations, humanitarian and rescue tasks, military advice and assistance tasks, conflict prevention and peace-keeping tasks, tasks of combat forces in crisis management, including peace-making and post-conflict stabilisation

Furthermore, in order to enable the European Union to take up its responsibilities for crisis management to the fullest extent, the European Council (Nice, December 2000) decided to establish several permanent political and military structures such as the Political and Security Committee (PSC), the European Union Military Committee (EUMC), the European Union Military Staff (EUMS), the Civilian Planning and Conduct Capability (CPCC) and the Committee for Civilian Aspects of Crisis Management (CIVCOM), which all contribute, with specific tasks and mandates, to the shaping and the implementation of the EU field operations. With some 20 missions on 3 continents, EU's role in providing security is rapidly expanding (Merlingen and Ostrauskaite 2006).

Another entity with great interest in PK/PB has been the African Union. This regional organisation has given political attention to an African Peace and Security Architecture (APSA), and has dedicated human and financial resources for its design and implementation. A central feature of APSA is the preparation for the active delivery of AU-led peace-support operations.

Finally, one cannot fail to notice that in the last two decades a new type of PK provider appeared on the international scene fairly suddenly, alongside the traditional UN presence and the recent increase in operations led by regional organisations: the ad hoc coalition of states (sometimes called 'Coalition of the Willing') or even a single state. Although one of the first significant PK/PB operations run by a group of states was launched as early as 1981 when the Multinational Force and Observers (MFO) was deployed with an ambitious

mandate¹ along the borders between Israel and Egypt, it is only more recently that this new trend has become very popular. Today there are several PK/PB operations run in a totally independent manner by ad hoc coalitions which sometimes have the task of providing support, and work in close co-ordination with UN PK/PB missions operating in the same area. Examples of such missions are ISAF in Afghanistan (co-operating with UNAMA), the International Coalition Force in Iraq (co-operating with UNAMI), KFOR in Kosovo (co-operating with UNMIK and EULEX Kosovo), and the French Forces in Ivory Coast (co-operating with UNOCI). As indicated above, the number of personnel involved in this new type of PK/PB operations has become very significant: about 400 000 personnel, mostly military, are currently deployed in this framework.

Comparing the present situation and figures with those existing 20 years ago, it is apparent that during the last two decades there has been a significant increase in the number of missions run by entities/coalitions other than the UN. While in the past the UN almost monopolised the field of PK/PB operations, the situation has now dramatically changed and the PK/PB 'market-place' has undoubtedly become multi-polar, with many more actors than in the past. The reasons for this shift and its consequences will be dealt with in the following paragraphs.

4. Reasons for a mounting interest in becoming PK/PB providers

The trend described in the last section developed mainly in the last two to three decades. It is very often analysed in close connection with the consequences of the end of the Cold War. Various international organisations (and not only those dedicated to providing security, such as NATO and the Western European Union) were prompted or even forced to reconsider their strategy and to redefine their mandate by the sudden and almost unexpected fall of communist regimes

1 The mandate of the MFO has been, since the very beginning of the Mission: to operate checkpoints, reconnaissance patrols, and observation posts along the international boundary, and to ensure the freedom of navigation through the Strait of Tiran. Under Agreed Arrangements signed on 1 September 2005, the MFO took on the additional responsibility of monitoring the deployment of Border Guards along the Egyptian side of the border between Egypt and Gaza.

in various Central and Eastern European countries. In those years the concept of security, whether national or international, underwent a major shift, and various international actors had to reshape their national and international security strategy. A more detailed examination of the internal discussions and events which characterised several of the relevant regional organisations during those years clearly demonstrates that almost all of them considered a more significant and active presence in the PK/PB area a priority for the years to come. These discussions sometimes resulted in formal revision of the statutes and treaties defining the mandate of the various organisations (see for example the innovations introduced into the EU Treaty); in other cases, new international treaties were adopted to enlarge the mandate of the organisation (see for example two of the numerous treaties signed on the African continent: ECOWAS 1999; ECOWAS 2002). In a limited number of other cases (for example NATO) no changes to the treaties were considered feasible or advisable, and therefore the goal of enlarging the mandate was pursued simply through political documents, adopted at the highest level, indicating the new priorities of the organisation itself. Whichever mechanism was chosen to widen the mandate to include the delivery of international field operations (including, but not limited to, PK and PB operations), the result was very significant, as the number of organisations legitimised, legally or politically, to become active PK/PB providers increased to a marked extent. In this context it must be noted that during these years several states, until then considered 'security consumers', suddenly transformed themselves into 'security providers', offering their services worldwide in an area where for a long period the UN had been actively engaged almost in an exclusive way.

The reasons for this new and increased interest by regional organisations and ad hoc coalitions of states in providing peacekeeping operations are manifold: the need to find a new and credible role in the changed international scenario; the desire to 'show the flag' and to make the organisation more visible; the desire to respond to the increasing pressure of public opinion, horrified by certain events occurring in faraway countries, with the request for an active role in the stopping of the massacres; the need to pursue, through these operations, national (or regional) key interests in foreign policy (for example, to secure areas and

countries along the borders of the sending organisation/coalition, to prevent massive outflow of refugees and illegal immigrants).

5. Changing nature and key features of contemporary PK/PB missions

While new international actors were preparing for active engagement in PK/PB operations, these operations were undergoing major changes, a few of them being so significant as to put in doubt whether the traditional pillars on which PK/PB operations were based still existed. From the very first time they were deployed, PK and then PB operations were based, as mentioned above in section 2, on three basic pillars: a ceasefire had been signed; all the states (if there has been an international armed conflict) or all the parties involved (if it was a civil war) had expressed their consent for the deployment of a PK/PB operation; and the operation was to be conducted in an impartial manner (i.e. without the aim of favouring any of the parties involved). These rules were respected for a long period – till very recently, but there have been dramatic changes in the environment in which PK/PB operations are requested to be deployed, the mandate of the mission, the manner in which the operation is to carry out the mandate, and the way in which PK/PB operations can be undertaken without the consent of the host state.

5.1 The changing environment in which PK/PB operations are deployed

While during the earliest period PK operations were mainly deployed in places where an international armed conflict had occurred, in more recent times PK/PB operations have been deployed mainly at the end of civil wars. The different deployment scenario has had a significant impact on the activities of the mission leaders and their dealings with the local stakeholders (Diehl and Druckman 2009).

5.2 The changing mandate of PK/PB operations

In the early period of PK the tasks of these operations were mainly linked to typically military activities (such as monitoring the ceasefire, monitoring the disarmament and demobilisation of the military forces, facilitating the exchange

Regional peacekeeping operations and the interplay with the United Nations

of war prisoners); after the end of the Cold War, however, these tasks increased and diversified. New tasks, such as monitoring human rights, providing humanitarian assistance, protecting civilians, taking care of internally displaced persons (IDPs) and refugees, disarmament, demobilisation and reintegration (DDR) and security sector reform (SSR) as well as capacity building, are mentioned in most of the recent mandates of these operations (Murphy 2007). A clear-cut signal about the increasing relevance of this expanded mandate is reflected in the decision by the UN to create the Peacebuilding Commission. With the enabling resolutions establishing the Peacebuilding Commission, UNGA resolution 60/180 and Security Council resolution 1645 (2005) of 20 December 2005, the United Nations specifically mandated this new body to: a) bring together all relevant parties to marshal resources and to advise on the proposed integrated strategies for post-conflict peacebuilding and recovery; b) to help ensure reliable financing for early recovery activities and sustained financial investment over the medium to long term; and c) to develop best practices to deal with issues arising in the areas of politics, security, humanitarian aid and development, in collaboration with actors in these areas.

The immediate consequence of the widening of the mandate was the need to have more diversified human resources involved in these operations. Traditionally, only military personnel were involved in PK activities, but with the expansion of the mandate, new categories of human resources, including civilians and police officers, were becoming essential for the implementation of the new mandate. The UN and regional organisations faced an enormous challenge, namely to find and recruit thousands of civilians able to perform in a professional manner all the new tasks assigned to field operations. In a first phase, sending organisations did indeed encounter substantial difficulties in the recruitment of these new categories of personnel; in more recent times, however, the situation has constantly improved owing to various strategic decisions adopted by the sending organisations. In this context, it might be worth recalling a few measures which materially contributed to improving this situation: the organisation of specific training opportunities for this personnel; the creation of worldwide and regional rosters to facilitate the matching of offers and demands; the establishment of specific job profiles; the consolidation of new PK/PB architecture to reflect the

role of the different components; a better defined division of labour among the various components; efforts to define and to apply a common organisational culture based on improved reciprocal knowledge and a new team spirit. The expanded mandate of PKOs contributed to the development of the so-called 'multifunctional operations' or complex operations involving personnel from a wide range of nationalities, backgrounds, disciplines and professional cultures.²

5.3 New trends in the way PK/PB operations are carried out

PK/PB operations have traditionally been considered as instrumental in consolidating reciprocal confidence and in monitoring the effective respect of the ceasefire by the parties who signed it. To that end, peacekeepers were usually armed only with light weapons to be used solely for self-defence, i.e. in the case that peacekeepers were attacked. In recent decades PKOs have been deployed in countries where security remained a critical issue, and as these traditional PKOs were repeatedly confronted (in the former Yugoslavia and in Rwanda, for instance) with major human rights violations without having the means to stop them, the UN decided to launch a new 'generation' of PK/PB operations – the so called third generation of PK (also known as 'muscular' PKOs).³ In such cases, peacekeepers (or rather, the military components of PKOs) are authorised to use force not only if directly attacked, but also whenever necessary (always as a last resort) in order to achieve the mission's mandate. In most of the more recent UNSC Resolutions providing for the deployment of a new PKO to a troublesome area, the Council authorised the PKO to 'use all necessary means within the limits of its capacity and in the areas where its units are deployed, to carry out its mandate' (UN Security Council 2010). The UN Security Council authorised the PKOs to carry out their mandates in a muscular manner in the following cases, amongst others: MONUSCO (DRC) and UNOCI (Ivory Coast). In other instances, which will be the focus of our attention in the next section, the UNSC authorised regional organisations and/or ad hoc coalitions of the willing to carry out a peacekeeping mandate in a muscular manner.

2 More on this in Cellamare 1999.

3 See more in Frulli 2001:347 and Findlay 2002.

For the sake of clarity, it has to be stressed that the actual use of force by peacekeeping forces beyond cases of self-defence has been quite rare. One of the most recent cases in which UN peacekeeping forces and PK operations run outside the UN did have recourse to force, clearly beyond self-defence, was in Ivory Coast in 2011, when both UNOCI and the French Licorne forces stationed in Ivory Coast actively took part in the military operations against the forces loyal to the incumbent President Laurent Gbagbo, which ended on 11 April 2011 with the arrest of Gbagbo himself.

Apart from the issue of 'traditional' as opposed to 'muscular' ways of carrying out a mandate, there may also be significant differences in the level of intrusiveness in the way the operation's mandate is implemented. The mandate may be drafted in such a way that the tasks of a PK can be performed in a very soft manner, for example using the mentoring, monitoring and advising techniques which imply a more active role for the local actors, while the international personnel carries out its duties in a more restrained fashion. Conversely, the mandate can also request the operation to perform in a very intrusive manner which could even involve, in specific situations, the replacement of local actors (so-called 'substitution missions'); which implies that the implementing organisation will physically replace local authorities for a given period, taking over all the relevant functions traditionally carried by the public administration.⁴ A similar model was applied in Kosovo by the UNMIK Operation in the first period of its activities: the number of civilians working with the mission was extremely high compared with the civilian presence in other UN PK/PB operations. In addition, running an operation of such kind was very expensive, owing to the number of officers recruited by the mission in order to carry out all the tasks assigned to it.

5.4 PK/PB without the consent of the host state: A new approach?

In recent times a new significant change in the key characteristics of PK/PB has been observed. We refer to the fact that there have already been two instances (one concerning Sudan and the other one concerning Somalia) where the UN Security Council decided to launch or to authorise the launching of PK operations without

4 More on this issue in Caplan 2005, Gomez 2008 and Wilde 2008.

the request from or the prior consent of the host nation.⁵ In the case of Sudan (UNSC Res 1706/2006), the UN Security Council, in order to support the early and effective implementation of the Darfur Peace Agreement, decided to expand the mandate of the mission to be deployed in Darfur and ‘therefore invites the consent of the Government of National Unity for this deployment ...’

This new trend, although for the time still fairly isolated in UN practice, deserves comment on account of its potential impact on the whole issue. The request/consent of the host state/s for the deployment of the mission was traditionally considered, as mentioned earlier, one of the basic pre-conditions which the very notion of PK/PB is founded on. The decision to launch a PKO without the consent of the host state risks transforming the nature of the mission, which could be perceived, locally, as a *peace-enforcing operation*, because the relevant decision has been taken without the necessary prior consent of the local state. This was probably not the precise intention of the UNSC at the time it adopted the two resolutions concerning Sudan and Somalia. It is worth mentioning that in one case (Somalia) the effective deployment of the mission never occurred, while in the case of the mission in Darfur the expanded mandate and deployment occurred only at a later stage, when the consent of the host state had been obtained.

5 The two resolutions of the UNSC are respectively 1706/2006 concerning Somalia and 1725/2006 concerning Sudan. In its Resolution 1725/2006 the SC decided ‘to authorize IGAD and Member States of the African Union to establish a protection and training mission in Somalia, to be reviewed after an initial period of six months by the Security Council with a briefing by IGAD, with the following mandate drawing on the relevant elements of the mandate and concept of operations specified in the Deployment Plan for IGASOM:

- a) To monitor progress by the Transitional Federal Institutions and the Union of Islamic Courts in implementing agreements reached in their dialogue;
- b) To ensure free movement and safe passage of all those involved with the dialogue process;
- c) To maintain and monitor security in Baidoa;
- d) To protect members of the Transitional Federal Institutions and Government as well as their key infrastructure;
- e) To train the Transitional Federal Institutions’ security forces to enable them to provide their own security and to help facilitate the re-establishment of national security forces of Somalia.’

On the basis of these two cases it seems advisable to approach the innovative nature of this new trend in the UN Security Council with caution. What appears very clear is that the decision by the SC to launch or to authorise the launching of a PK/PB operation without the host state having (yet) granted its consent is to be seen as a means of putting this state under political pressure, thus accelerating the giving of consent. A further decisive element emphatically confirming that this recent practice does not deviate significantly from the previous one is the fact that the actual deployment of the missions in both cases never occurred, or was postponed till consent was obtained. This is a clear indication that the UNSC did not want to undermine the basic rules which PK/PB operations are built on.

6. Regional PK/PB and the UN: A continuously evolving relationship

The new scenario described in the above paragraphs seriously affected the UN as it faced an unprecedented situation. If, in the past, the UN was the only PK/PB provider, in more recent times it has been challenged by new 'competitors' aiming at replacing⁶ it in providing this kind of service. The UN reacted at first by ignoring the new reality while, later on, it changed its attitude and tried to see the new challenge as an opportunity. Before entering into the details of the evolution of the relations between the UN and regional organisations in the area of PK/PB operations, it might be wise to consider briefly the more general aspects of the modality of co-operation between the UN and regional organisations as envisaged in the UN Charter. During the international conference in San Francisco which discussed and approved the UN Charter, the issue of the relations between the UN and regional organisations had already received special attention. In 1945 the drafters of the UN Charter showed a very innovative approach to this issue, especially if one considers that at that time regional organisations were almost

6 A good example of this may be drawn from the events which occurred on the European continent. While in the past there were several UN operations deployed (especially in the Balkans), they have been replaced step by step by EU-led missions (for example in Bosnia and in Kosovo). This sometimes happened smoothly with the full agreement of the two institutions (UN and EU) such as in Bosnia, but sometimes there has been friction and tension, such as in the case of Kosovo where nowadays two International Missions (UNMIK and EULEX Kosovo) are deployed with similar mandates. On the reasons of this unique situation, please refer further to Guttery 2007.

non-existent and ineffective. Notwithstanding this, the UN Charter (United Nations 1945) contains an important article dealing with this specific issue. Article 52 states that:

1. Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action, provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations.
2. The Members of the United Nations entering into such arrangements or constituting such agencies shall make every effort to achieve pacific settlement of local disputes through such regional arrangements or by such regional agencies before referring them to the Security Council.
3. The Security Council shall encourage the development of pacific settlement of local disputes through such regional arrangements or by such regional agencies either on the initiative of the states concerned or by reference from the Security Council.

This first paragraph clearly indicates that the UN had no negative attitudes towards regional organisations, provided of course that they did not conflict with the UN Charter. But, even more importantly, article 52 goes beyond this preliminary statement of friendly co-existence: paragraphs 2 and 3 clearly indicate that regional organisations should be the first and preferred fora for the peaceful resolution of local disputes, which should only be referred to the SC if this first attempt proves unsuccessful (Walter 2009). Should there be a need for a peace-enforcing operation (an issue which is beyond the scope of the present article), the Charter clarifies, at article 53, that these operations can be carried out by regional organisations, but only with the prior authorisation of the UN Security Council and under its authority.⁷ In other words, there is a clear indication in the UN Charter that regional organisations are to play a significant role in co-operating with the UN Security Council in the difficult and sensitive domain of protecting

7 Cf. Art. 53 of the UN Charter: 'The Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority. But no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council ...'.

Regional peacekeeping operations and the interplay with the United Nations

and promoting peace and security. To ensure proper co-ordination of activities, article 54 of the UN Charter (United Nations 1945) further states that:

The Security Council shall at all times be kept fully informed of activities undertaken or in contemplation under regional arrangements or by regional agencies for the maintenance of international peace and security.

It is precisely in this more general context that the whole issue of the relationship between the UN and regional organisations in the area of PK/PB operations has to be addressed and examined.

At first, when this trend of organising regional PK/PB operations began, the UN had an attitude which could be interpreted as implicit acknowledgment of this new reality: in various cases the UN did not express any opinion at all about this new situation. On a few occasions, however, the UN decided to offer some assistance to the regional organisations (including financial assistance, logistical support, political support, and sharing of relevant information). Although the level of co-operation varied significantly, depending on the specific situation, the role of the UN was quite limited and in most cases almost invisible, which made this form of co-operation not very attractive to the UN itself.

At a later stage, the UN undertook serious and extensive internal reflection about how to deal with this new trend, and as a result, the UN focused its efforts to improve the quality and efficiency of UN PK/PB operations. Several documents and reports have been adopted in the last two decades suggesting important innovations and changes to make the UN system more competent and efficient in the delivery of PKOs. The numerous documents adopted within the UN are mainly those already quoted in section 1 above.

In more recent times, relations between the UN system and regional organisations in the area of PK/PB have been enhanced by a new practice whereby the UN Security Council formally adopts ad hoc resolutions in which it '*authorises*' regional organisations (and/or ad hoc coalitions of the willing) to deploy a peacekeeping operation in a given area. This was the case, for example, in two operations: KFOR (run by NATO and its partner in Kosovo) and authorised by

UNSC Resolution 1244/1999, and ISAF (run nowadays by NATO and its partners in Afghanistan) authorised by UNSC Resolution 1386/2001.

This practice deserves a few comments. First of all it has to be emphasised that in all cases the host states expressed their agreement to the deployment of the operation. (This is an important aspect which clearly indicates that the operations authorised are PK operations and not peace-enforcing operations, the latter being operations against the will of a state.)

Secondly, the legal basis on which the UNSC based its decision to authorise the deployment of a regional PKO is usually traced back to Chapter VII. Indeed, in most cases the UNSC explicitly makes reference to this Chapter of the UN Charter as the legal basis on which the enabling resolution is based.

Thirdly, the request to obtain prior authorisation by the UNSC before deploying a regional (or an ad hoc coalition) PKO originated from the sending organisation (and not from the host state/s, although usually the formal request is presented by the host state/s). This procedure presents some unique features which deserve additional legal analysis. As a general principle, the sending organisation would not be required, formally speaking, to obtain prior authorisation from the UNSC provided that, as has always happened so far, the host state/s requested the deployment. In other words, the PK operation run by a regional organisation can legally be deployed without any prior authorisation by the UNSC whenever there is a specific request made or consent given by the competent authorities of the interested host state/s. On the other hand, if an authorisation to deploy is formally requested from the UN, this implies, arguing in strictly legal terms, that the mission cannot be deployed unless authorised by the UNSC. All this highlights the fact that there is a contradictory element in this international practice, and this is not easy to explain.

The concept of 'authorisation' implies that the activity for which the authorisation is requested cannot be carried out unless the authorisation is formally received. A good example of this is offered by the rule governing the deployment of peace-enforcing operations by regional organisations: the legality of these operations is only permitted, according to the explicit wording of article 53 of the UN Charter, provided that the regional organisation obtains *prior authorisation* by the Security

Regional peacekeeping operations and the interplay with the United Nations

Council itself. The deployment of a regional peace-enforcing operation without the prior authorisation of the UNSC would clearly be in conflict with the UN Charter and therefore illegal. But applying these conclusions to the case under scrutiny, namely PKOs, there would be a clear contradiction with the general, widespread and accepted legal and political opinion according to which the consent/request of the host state/s is sufficient for the deployment of a PKO, and no other authorisation has to be obtained by any party.

Taking a closer look at the missions for which prior authorisation by the UNSC was requested, it appears that this occurred mainly (if not almost exclusively) in the case of deployment of PKOs 'with muscles' (i.e. for those missions in which the operation was requested to carry out the mandate employing all necessary means, including, where necessary, the use of force). Even in these cases, the consent of the host state/s would be sufficient to legitimise the deployment of the regional PKO. Therefore, we must seek the rationale for the request of a prior UNSC authorisation elsewhere. The following explanations present themselves:

- a) the indication of some formal 'political blessing' from the international community which might be useful to prevent the deploying organisation being perceived as a non-neutral intervener (although in such a case a UNSC resolution expressing the political support to the sending organisation – without any reference to the notion of 'authorisation' – would serve this purpose, avoiding the complications resulting from the request of a formal 'authorisation');
- b) the clearly apparent willingness of the sending organisation/coalition to fully co-operate and co-ordinate with the UN (formally speaking, this goal could be achieved, once more, through a resolution in which the UNSC expresses its political support for the deploying institution and its readiness to co-operate with it);
- c) the need to take into account and/or accommodate public opinion of the member states of the sending organisation/coalition, on the assumption that PKOs under the UN are more popular and more easily accepted by

public opinion than other kinds of PK operations run by the sending organisation/coalition;

d) the desire to have the UN more closely associated with the mission from the very beginning, perhaps with the idea of requesting the UN at a later stage to replace the regional operation with a UN operation (which happens quite often: a recent case relates to Chad and the Central African Republic⁸);

e) the desire to avoid the negative impact of the potential reaction of the host state should it be necessary to make use of force beyond self-defence. In such a case the local state might easily be tempted to withdraw the consent it had given to the sending organisation/coalition to deploy the PK operation, especially if force has been directed against its own personnel/supporters. In such circumstances the legality of the deployment of the international mission would be under close scrutiny and the mission would most probably be requested to leave the country. In order to avoid this situation, which would represent a major defeat for the sending organisation/coalition, the existence of the UNSC enabling resolution could represent a legal argument to be used in reaction to such a request from the host state/s. The sending organisation could argue that the legality of its presence in that state is based upon the authorisation given by the UN Security Council, and therefore the mission will remain till the expiry of the authorisation. The authorisation would increase the credibility of the mission, and could be used as a tool in any negotiations with the hosting state, the basis of negotiation of the host state being significantly reduced.

8 In 2007 the UNSC decided (Resolution 1778/2007) to deploy a PK operation in Chad and the Central African Republic (CAR) (MINURCAT) and authorised, in the same Resolution, the deployment of EUFOR Chad/CAR, a European Union military operation with the mandate to protect civilians in danger and even UN personnel. In Resolution 1861/2009 the Security Council decided to expand the mandate of its MINURCAT Operation and to transfer to it the task previously assigned to EUFOR Chad/CAR.

Finally, in some instances, relations were clearly affected by some level of reciprocal mistrust. We refer to those cases in which the UN decided to deploy a mission in a country in which a PK operation was already being run by a regional organisation/coalition. What confers the 'special nature' on the UN PKO in such cases is related to the mandate of the mission itself: to monitor the behaviour and the activities of the peacekeepers sent in by the regional organisation.⁹

7. From competition to co-operation? New models of co-ordination and division of labour in the delivery of PK/PB missions between the main international actors

After a period in which relations between the UN and regional organisations deploying international field operations were fairly static, as described in section 6 above, in recent years there have been substantial innovations and changes which represent a significant departure from the traditional way of interpreting mutual co-operation. It is the opinion of the present writer that the relationship between the UN and regional organisations in this specific area has moved from a 'competitive' to a 'co-operative' one. There are two main innovations, both with a significant impact on the efficacy and efficiency of the PKOs.

7.1 The UN 'outsourcing' the security component of a mission to a regional organisation

The first innovation represents an attempt to find a credible and realistic solution to one of the major problems met during recent PKOs: the question of guaranteeing security to the local population, the local authorities and the PK mission members. In recent years, the issue of security has reached pivotal importance in most operations, as they have been deployed more and more often in areas with significant problems. One way of facing this situation has been to authorise the peacekeepers to use any necessary measure to deal with the situation (including, as seen in section 5 above, the use of force beyond self-defence).

⁹ This was the case, for example, in the UN Mission in Georgia (UNOMIG). According to UNSC Resolution 937/1944 the mandate of the mission included '(b) To observe the operation of the CIS [Commonwealth of Independent States] peace-keeping force within the framework of the implementation of the Agreement'.

This choice has not always been very successful, especially in those areas presenting significant security concerns and in those cases where the military component of the UN operation was considered not credible enough owing to the excessive number of national contingents taking part in the mission, the differences (in training, education or armament available) existing among those contingents, and the difficulties in organising a credible chain of command in such situations. Considering these aspects, the UN decided in several recent cases to ‘outsource’ the security component of the mission to a regional organisation. This was the case, for instance, in Ivory Coast (UNOCI and the French Licorne Forces), Kosovo (UNMIK and KFOR, run by NATO), Afghanistan (UNAMA and ISAF, run by NATO), Iraq (UNAMI and the International Coalition Forces under US co-ordination), and in Chad and the Central African Republic (MINURCAT and EUFOR Chad/CAR, run by the EU). The deployment of these operations (almost always ‘muscular operations’) is usually authorised in a UN Security Council Resolution which also defines the precise mandate. It must be emphasised here that the regional organisation will provide its ‘security services’ in an autonomous manner and is in no way under the control of the corresponding UN PKO: the relationship is based on co-operation. The tasks conferred upon the regional organisation are, generally speaking, those relating to the protection of the local civilians, the protection of especially vulnerable groups such as IDPs and refugees, the protection of the UN mission members and infrastructures, and sometimes even the protection of the mission’s military component, where it exists. (For example UNMIK, UNAMA and UNAMI do not have any significant military component and rely heavily on the security provided by the regional organisations co-deployed in the respective countries.) This model of ‘outsourcing’ the military component to another international actor, be it a regional organisation or a coalition of the willing, presents advantages and disadvantages. Among the advantages is the level of security provided by regional organisations/coalitions of the willing, which is certainly higher in this new model. Those involved in these operations are well trained, equipped and organised, allowing them to perform at an almost optimal level. On the other hand, however, this model can produce positive effects only if there is perfect co-ordination between the political agenda of the UN mission and that of the regional organisation’s mission running the

security component. If this is not the case, the institutional architecture will be extremely fragile and the UN mission risks on a daily basis being, *de facto*, under the control of the regional organisation providing the security. In circumstances where security is the main issue, there is no doubt about who has the last word and who really holds the power and takes the decisions. This is certainly the weak point of this model of organising co-operation between the UN and regional organisations in the delivery of PK operations.

7.2 The UN and a regional organisation jointly running a PK operation

The second innovation is based on a totally different strategic approach and implies the *joint running* by the UN and the regional organisation of a PK operation. So far the most significant examples are the joint United Nations-OAS International Civilian Mission in Haiti (MICIVIH) which was deployed in February 1993 in Haiti, and the African Union-UN Hybrid Operation in Darfur (UNAMID). The latter mission, which started at the end of July 2007,¹⁰ has already been commented on by various experts who have reached different conclusions about its efficacy and impact on the ground. In any case it has to be emphasised that UNAMID is the first comprehensive operation run jointly in an extremely difficult setting by the UN and the African Union. It is the opinion of the present author that it is still too early to reach any definitive conclusion about the impact of this type of co-operation between the UN and a regional organisation in the field of PK Operations.

8. Concluding remarks

The quasi-monopolistic role of the United Nations in delivering peacekeeping and peacebuilding operations has been severely challenged, in last decades, by both regional organisations and so-called 'ad hoc coalitions of the willing', which expressed a clear interest and availability to deliver such operations on their own. As a consequence, the number of non-UN PKOs has significantly increased: only 50% of the missions currently deployed are led by the UN while the remaining

10 UNAMID was established on 31 July 2007 with the adoption of UNSC Resolution 1769/2007. On 30 July 2010, the Security Council extended UNAMID's mandate for a further 12 months to 31 July 2011 (UNSC Resolution 1935/2010).

50% are led by regional organisations or by 'ad hoc coalitions of the willing'. Due to a significant – someone suggests 'excessive' – presence of entities interested and available to deliver PK/PB operations, more and more often some subtle competition among various 'service providers' has been noticed. Yet this latent antagonism only emerged with respect to missions with good prospects of success. When operations had to be deployed in very difficult environments and presented a high risk of failure, the UN was again asked to take the lead.

However, having said this, it has to be reaffirmed that reinforcing mutual co-operation between the UN and regional organisations in the delivery of field operations should be perceived as an extremely positive and promising trend which will most probably be further expanded and applied in future missions. The advantages and improvements brought by this co-operation are significant and are likely to have a real impact on the field, for the benefit of the local population suffering the negative consequences of instability. Mutually beneficial co-operation, division of labour, greater knowledge of the regional situation, credibility of the actors involved, more significant regional actors involved in the operation and in its aftermath, greater political support for the mission, a more synergetic approach among the relevant international actors are just a few examples of the reasons why joint deployment will most probably continue to be used in the future – and this notwithstanding that, at least for the time being, the evaluation of the outcomes of the first years' experience of the joint UN-AU Deployment in Darfur is not entirely positive and highlights the problems arising from the different organisational cultures which quite often make it difficult to take the right decision at the right time.

But the way ahead in the relations between the UN and regional organisations/coalitions of the willing in the delivery of PK/PB operations seems marked out already: it is moving from competition to co-operation, in the primary interest of the affected population.

Sources

- Aznar Gomez, Mariano 2008. *La administraciòn internacionalizada del territorio*. Barcelona, Atelier.
- Bellamy, Alex J., Paul D. Williams and Stuart Griffin 2010. *Understanding peacekeeping*. 2nd edition. Cambridge, Polity Press.
- Caplan, Richard 2005. *A new trusteeship? The international administration of war-torn territories*. London, Oxford University Press.
- Cellamare, Giovanni 1999. *Le operazioni di peace-keeping multifunzionali*. Torino, Giappichelli.
- Diehl, Paul F. and Daniel Druckman 2009. Dimensions of the conflict environment: Implications for peace operation success. *Journal of International Peacekeeping*, 13 (1–2), pp. 6–44.
- Durch, William J. 2006. *Twenty-first-century peace operations*. Washington, United States Institute of Peace.
- ECOWAS 1999. Protocol relating to the Mechanism for Conflict Prevention, Management, Resolution and Peace-keeping and Security. Lomé, ECOWAS.
- ECOWAS 2001. Protocol A/SP1/12/01 on Democracy and Good Governance, Supplementary to the Protocol relating to the Mechanism For Conflict Prevention, Management, Resolution, Peacekeeping and Security. Dakar, ECOWAS.
- European Union 2010. Consolidated version of the Treaty on European Union. *Official Journal of the European Union*, C 83/13, 30 March 2010.
- Findlay, Trevor 2002. *The use of force in UN peace operations*. Oxford, Oxford University Press.
- Frulli, Micaela 2001. Le operazioni di peacekeeping delle Nazioni Unite e l'uso della forza. *Rivista di Diritto Internazionale*, 2001.
- Greco, Ettore, Nicoletta Pirozzi and Stefano Silvestri eds. 2010. *EU Crisis Management: Institutions and capabilities in the making*. Rome, Quaderni Istituto Affari Internazionali.
- Guttry, Andrea de 2007. The European Union Rule of Law Mission in Kosovo: Remarks on its legality and its relations with UNMIK. *Diritto e Politiche dell'Unione Europea*, No. 3, pp. 147–169.
- Guttry, Andrea de 2011. *Organizações regionais: tendências recentes na descentralização das operações de paz e a interação com o sistema ONU*. In: Aguilar, Sergio Luiz Cruz ed. *Relações Internacionais: Pesquisa, Práticas e Perspectivas*. Marília, Oficina Universitária.
- Jett, Dennis C. 1999. *Why peacekeeping fails*. New York, St Martin's Press.
- Krasno, Jean, Bradd C. Hayes and Donald C.F. Daniel eds. 2003. *Leveraging for success in United Nations peace operations*. Westport, Praeger.
- Merlingen, Michael and Rasa Ostrauskaite 2006. *European Union peacebuilding and policing. Governance and the European Security and Defence Policy*. London, Routledge.

- Murphy, Ray 2007. *UN peacekeeping in Lebanon, Somalia and Kosovo: Operational and legal issues in practice*. Cambridge, Cambridge University Press.
- Sitkowsky, Andrzej 2006. *UN peacekeeping: Myth and reality*. Westport, Praeger.
- United Nations 1945. *Charter of the United Nations*. New York, United Nations.
- United Nations 1992. *An agenda for peace: Preventive diplomacy, peacemaking and peace-keeping*. Report of the Secretary-General pursuant to the statement adopted by the Summit Meeting of the Security Council on 31 January 1992. UN document A/47/277 – S/24111, 17 June 1992. New York, United Nations.
- United Nations 2000. *Report of the Panel on United Nations Peace Operations* (The Brahimi Report). UN document A/55/305–S/2000/809, 21 August 2000. New York, United Nations.
- United Nations 2004. *A more secure world: Our shared responsibility*. Report of the Secretary-General's High-level Panel on Threats, Challenges and Change. UN document A/59/565, 2 December 2004. New York, United Nations.
- United Nations 2005. UN General Assembly Resolution 60/1: *2005 World Summit Outcome*. New York, United Nations.
- United Nations 2006. Report of the UNSG on the financing of the United Nations peacekeeping operations. UN document A/60/69, 24 February 2006. New York, United Nations.
- United Nations 2008. *United Nations Peacekeeping Operations: Principles and guidelines*. Peacekeeping Best Practices Section, Division of Policy, Evaluation and Training, Department of Peacekeeping Operations. Available from: <http://pbpu.unlb.org/pbps/Library/Capstone_Doctrine_ENG.pdf> New York, United Nations.
- United Nations 2009. *A New Partnership Agenda. Charting a new horizon for UN peacekeeping*. Available from: <<http://www.un.org/en/peacekeeping/documents/newhorizon.pdf>> New York, United Nations.
- United Nations 2010. *Report of the Secretary-General on the Global Field Support Strategy*. UN Document A/64/633, 26 January 2010. New York, United Nations.
- United Nations Security Council 2010. Resolution 1925/2010 of May 28, 2010 concerning the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO). New York, United Nations.
- Walter, Christian 2009. Regional Arrangements and the United Nations Charter. In: Wolfrum, Rüdiger ed. *Max Planck Encyclopedia of Public International Law*. Oxford, Oxford University Press.
- Wilde, Ralph 2008. *International territorial administration: How trusteeship and the civilizing mission never went away*. Oxford, Oxford University Press.

Peace agreements and the termination of civil wars: Lessons from Liberia

*George Klay Kieh, jr**

Abstract

On Christmas Eve in 1989, the National Patriotic Front of Liberia (NPFL), a rebel group led by Charles Taylor, a former official of the Doe regime, launched a military attack against the north-central region of Liberia from a base in neighbouring Côte d'Ivoire. Understandably, the Doe regime launched a counter-offensive. The resultant 'tugs and pulls' degenerated into Liberia's first civil war (1989–1996).

Concerned about the adverse impact of the war on sub-regional security, the Economic Community of West African States (ECOWAS), the sub-regional organisation, intervened in the conflict using, among others, a peacemaking approach that revolved around various peace accords. However, the initial sixteen peace accords failed to end the war. Finally, the Abuja II Peace Accord ended the blood-bath. What factors accounted for these outcomes? The initial sixteen peace agreements were deficient in terms of one or more of the elements that that have to be dealt with for the successful implementation of a peace accord – ranging from the 'spoiler phenomenon' to the lack of enforcement. In contradistinction, the success of the Abuja II Peace Agreement was anchored in the fact that the requisite steps were taken to ensure the effective operationalisation of the battery of elements required for success. For example, the Taylor-led NPFL's perennial role as the 'spoiler' was addressed by the unwillingness of Burkina Faso and Côte

* Dr George Klay Kieh jr is Professor of Political Science and Former Dean of the College of Arts and Sciences at the University of West Georgia, Carrollton, GA.

d'Ivoire, the warlordist militia's two major supporters, to continue to acquiesce in the warring faction's obstruction of the peacemaking process. Also, ECOWAS developed the political will to enforce the agreement, including the threat of establishing a war crime tribunal.

Introduction

There is growing scholarly interest in the study of peace agreements as frameworks for ending civil wars (Hampson 1996; Walter 1997; Bell 2000; Spears 2008; Mutwol 2009). The reason for this development is because, as Mattes and Savun (2009:737) observe, 'Civil wars are more frequent, more deadly, and longer in duration than interstate wars, and they prove to be more difficult to settle peacefully'. Functionally, peace agreements have impacted civil wars in three major ways. First, in cases such as Zimbabwe (1980), Guatemala (1992–1998), Mozambique (1992–1995) and Angola III (2002), peace agreements succeeded in terminating civil wars (Stedman 2001; Mutwol 2009). Second, in other cases, such as Sudan (1972), Sri Lanka (1989–1990), Somalia (1990), Angola I and II (1991 and 1994) and Rwanda (1993), peace accords failed to end violent conflicts (Stedman 2001; Murshed and Verwimp 2008). The resultant effect was the reversion to warfare and its associated cataclysmic consequences. Third, in other cases such as Lebanon (1990), Cambodia (1991–1994), and Bosnia (1995), peace agreements were partially successful in helping to arrest the tide of armed violence (Stedman 2001).

In the specific case of the first Liberian civil war (1989–1996), the focus of this article, there was seemingly an endless cycle of peacemaking and resumption of war. This was evidenced by the fact that the various peace agreements were repeatedly violated by the Charles Taylor-led National Patriotic Front of Liberia (NPFL) (Kieh 2009; Mutwol 2009). Thus, when the civil war finally ended in 1996, it had taken sixteen peace agreements to reach the termination phase (Kieh 2009).

Against this background, the purpose of this article is twofold. First, it will examine the reasons the previous sixteen peace accords failed to end the first Liberian civil war. Second, the article will probe why the Abuja II Peace Accord,

the seventeenth peace agreement, was able to terminate the war. In order to address the research problem, the article is divided into six parts. In the first part, the theoretical issues are explored, including a review of the scholarly literature and of the theoretical model that guides the study. Next, the study examines the factors and forces that caused the first Liberian civil war. Third, the article explores the substantive contents of the various peace agreements. Fourth, the study tackles the reasons for the failure of the previous sixteen peace accords to end the war. Fifth, the article probes the reasons why the Abuja II Peace Accord succeeded in ending the civil war. Finally, the study draws the major conclusions.

1. Theoretical issues

A literature review

Hampson (1996) examines the *raisons d'être* for the success and failure of peace agreements. He proffers several major conditions. First, peace agreements can unravel because parties to conflicts simply come to the conclusion that it is no longer in their interest to abide by the agreements they have negotiated (1996:13). Second, confidence-building measures are major determinants of the outcomes of peace agreements. Third, there is the centrality of third parties that can offer carrots or wield sticks to ensure that the process does not become derailed (Hampson 1996:11–12).

Treading along the broad path regarding the outcomes of peace agreements mapped out by Hampson, Stedman (1997), in his seminal article, examines one of the major causes for the failure of peace agreements to help end civil wars. He posits that spoilers – leaders and parties who believe that peace emerging from negotiations threatens their power, worldview, and interests, and use violence to undermine attempts to achieve such peace (Stedman 1997:5) – pose the greatest threat to the successful implementation of a peace agreement. He identifies three major genres of spoilers: limited, greedy and total. Limited spoilers have narrow objectives. In the case of greedy spoilers, they are driven by particularistic opportunistic agendas that tend to wax and wane with the dynamics of the conflict. As for the total spoilers, they desire nothing short of the acquisition of power.

Gent (2007) explores the conditions for peace agreements to have successful outcomes. He argues that peace agreements that make sufficient concessions to the rebels are more credible because they decrease the ability of the government to renege on them. For example, if the rebels are represented in the transitional government, this would enable them to protect themselves against future defections by the current government (Gent 2007:5). Against this backdrop, it does not seem plausible that governments can agree to offer 'everything' (i.e. territorial autonomy or complete control over resources) and then be able to take it all away once it regains its strength after the civil war (Gent 2007:5).

Mattes and Savun (2009) transcend the government-based commitment problem postulated by Gent. They do so by arguing that the commitment problem is much broader in that it applies to rebel groups as well. Hence, the success of a peace agreement is contingent upon its capacity to mitigate the commitment problem between and among the warring factions (Mattes and Savun 2009:738). In this vein, they identify two types of provisions in peace agreements that can help address commitment problems and thus reduce the chance of further warfare: fear-reducing and cost-increasing provisions (Mattes and Savun 2009:738). Fear-reducing provisions are designed to help ensure mutual security. The cost-increasing provisions raise the stakes and cost of the return to warfare by either of the parties.

Derouen and Wallensteen (2009) examine the preconditions for the duration of a peace agreement. They posit that the duration is dependent upon the nature of the power-sharing provisions. For example, if the power-sharing arrangements are too costly for the government to implement, then it will abandon them. On the other hand, the rebel faction or factions would be adamant that the provisions be implemented. The resultant tugs and pulls could then unravel the peace agreement.

The Peace Agreement Model

The study uses the peace agreement model as its analytical framework for evaluating the various accords that were signed during the first Liberian civil war. The model was formulated by drawing from the lessons learned from the

'best practices' in peacemaking as reflected in the scholarly literature and the experiences of various practitioners, who have been involved in peace processes in civil wars across the globe. The model was ostensibly developed for two major reasons. The first is to help contribute to the development of the indicators for evaluating the successes and failures of peace agreements in civil wars. A related reason is to provide a roadmap for scholars interested in studying peace agreements, and practitioners involved in mediating accords and working with the warring parties to implement them. The model is based on several interlocking tenets.

The characteristics of the warring factions are critical to the outcomes of peace agreements. This is because the attributes of the conflicting parties and the resulting insights provide understanding of the parties' behaviours during the peacemaking process. Some of the major characteristics include the agendas of the various parties and their strategies for pursuing them. One of the major strategies is to be the 'spoiler' (Stedman 1997; Mutwol 2009). This role is performed by either the recalcitrant party's refusal to participate in a peacemaking process, or its efforts to thwart the implementation of a peace agreement.

Another matter concerns *the conflict dynamics*. In other words, it is important to examine the particular state or phase of the conflict during which a peace agreement is signed. This is important because the dynamics affect the behaviour of the parties to the conflict, especially their motivations for signing the accord. Linked to this is the spoiler phenomenon.

The substantive contents of the agreement are obviously crucial. These would cover issues such as power-sharing arrangements, fear-reducing methods and cost-increasing provisions (Hampson 1996; Stedman 1997; Gent 2007; Mattes and Savun 2009). Overall, there would be a trajectory for making the transition from war to peace consisting of such activities as disarmament, demobilisation and elections.

Also important are *the roles of third parties*. As Mutwol (2009:8) aptly observes, 'Third parties play a number of important roles in peace agreements.' Broadly, there are two major types of roles: positive and negative. The former refers

to activities that third parties undertake that contribute to the peace process and the success of the peace agreement. These may include activities such as peacemaking, peacekeeping and/or peace enforcement. On the other hand, third parties can play various negative roles that can undermine the success of the peace process and the peace accord. For instance, the provision of arms, sanctuary, and diplomatic or political support to the various warring functions. Such support could embolden the warring parties by making them intransigent and uncooperative in the implementation of a peace agreement.

The use of appeasement, which can serve as an effective ‘carrot’ for inducing a recalcitrant faction’s compliance with a peace agreement. In this instance, the act of appeasement should be case specific and appropriately calibrated. On the other hand, the use of appeasement can be counterproductive when it is employed recurrently, and fails to take cognizance of the specificities of a case. One major negative outcome could be the contribution to the ‘commitment deficit’ of the parties to the conflict. Such an outcome is made possible by the various parties’ belief that the ‘peacemaker’ would continuously pander to their repeated demands (Stedman 1997).

Another major contour is *the centrality of an effective enforcement mechanism* (Stedman 2001). In order for the parties to the conflict to comply with the terms of a peace agreement, a third party or parties must be willing to play the role of the ‘enforcer’(Stedman 2001; Derouen and Wallenstein 2009; Mattes and Savun 2009). That is, the third parties or parties must be willing to deploy the requisite resources, and bring them to bear on the implementation of the peace agreement.

Ultimately, it is important to assess *the outcomes of peace agreements* – as successful, unsuccessful or mixed. The evaluation is anchored on two major indicators. The extent to which the substantive contents of a peace agreement have been implemented. This is critical because it is comparatively easier to get parties in a conflict to negotiate a settlement than to actually implement it (Walter 2002). Also, consideration is given to the issue of the termination of the war and its associated violence, and the prevention of a relapse into war (Walter 2002).

2. The first Liberian civil war: A background

The first Liberian civil war was the result of the contradictions and the resultant multidimensional crises of underdevelopment – cultural, economic, political, security and social – engendered by the Liberian state (Kieh 2008; Kieh 2011). These crises were created during the two phases of the development of the Liberian state – the settler period (1820–1926) and the neo-colonial era (1926–present) (Kieh 2008; Kieh 2011). The settler phase of state-building was characterised by the primacy of ethno-cultural characteristics. Interestingly, these differences intersected with class distinctions (Burrowes 1982). That is, the ancestral origins and skin pigmentation of the various groups intersected with their respective class positions in the local political economy. For example, the light-skinned African-American repatriates occupied the middle stratum of the caste cum class structure during the colonial era (Burrowes 1982; Kieh 2008), and the upper tier during the commonwealth period and the initial four decades of the independence era (Kieh 2008). During the neo-colonial stage of state-building, the pivot was the ascendancy of class as the defining feature of the state and its local political economy (Kieh 2008; Kieh 2011).

Cumulatively, the state-building project generated multifaceted crises of underdevelopment that led to civil conflict and then warfare. Culturally, the crises revolved around two major problems: the settler-indigene divide, and the Krahn versus Gio and Mano antagonisms. In the case of the former, the foundation was laid in 1820 upon the arrival of the African-American repatriates or the settlers in Liberia (then known as the Grain Coast) (Kieh 2008:124). The repatriates were sent from the United States where they had been enslaved (Smith 1972; Beyan 1991; Sawyer 1992; Kieh 2008). When the repatriates or the Americo-Liberians or the settlers arrived in Liberia, they met sixteen indigenous ethnic groups occupying the area. These indigenous ethnic groups had their own polities replete with political, economic, social and cultural systems. Interestingly, because they had lived in the United States, albeit as slaves, the settlers came with a superior attitude. As Brown (1941:125–126) notes, ‘The American-Liberians [the settlers] considered themselves a ‘superior people’; thus, there was no sense of feeling of oneness with the Africans [the indigenes]’.

The resultant conflict between the two ethno-cultural stocks revolved around the issues of land, religion, and cultural values and norms. Although the conflict has undergone various permutations over the years, it remains unresolved.

The second major cultural crisis pitted the Krahn ethnic group against the Gio and the Mano. The conflict, which commenced in 1982, was caused by personal and political differences between Head of State Doe (Krahn ethnic group) and General Thomas Quiwonkpa (Gio/Mano ethnic group). The conflict reached its crescendo in November 1985, when General Quiwonkpa, one of the leaders of the coup that brought Doe to power on 12 April 1980, and a former confidante of Doe, staged an abortive coup (Mutwol 2009). In the aftermath of the coup, Doe instrumentalised ethnicity by portraying the Gio and Mano ethnic groups as subversive and anti-Krahn (Kieh 2008). Thereafter, the Doe regime undertook a 'scorch the earth campaign' in Nimba County, the base of the Gio and Mano ethnic groups, that resulted in the injury and deaths of hundreds of people from the two ethnic groups (Human Rights Watch 1990).

In the economic realm, the crises of underdevelopment were reflected in several indices. However, two will be discussed. One of the major pathologies of the country's peripheral capitalist economy centred around class inequities: the ruling class – local state managers and entrepreneurs and the foreign-based owners of multinational corporations like Firestone and other businesses – versus the subaltern classes consisting of the working class, the peasantry and the lumpens. For example, in 1985, the upper or ruling class, which accounted for about 5% of the national population, received about 68% of the national income (Ministry of Planning and Economic Affairs 1986). By the end of the 1980s, the country's Gini Coefficient was a high 0.53 (Peters and Shapouri 1997:45). Similarly, in 1985, the ruling class, comprising approximately 6% of the population, owned and controlled about 70% of the wealth (Kieh 1997:27). The other indicator of the crisis was the high rate of unemployment. In 1988, for example, the rate of unemployment stood at 36.2% (United Nations Development Programme 1990).

Socially, the crises found expression in many areas. Two of the critical ones were education and health care. In terms of education, fundamentally, the

Liberian state has never been interested in the education of its citizens (Kieh 2008:18). This manifestation of state neglect was reflected in the lack of access to educational opportunities, including an inadequate number of schools, the inadequacy of logistics, equipment, and supplies, and the challenge of the prevalence of untrained teachers at the primary and secondary levels (Kieh 2008). Similarly, in the area of health care, the crises were manifested in the inadequacy of the numbers of medical personnel, medical facilities, supplies, and equipment, among others. For example, in 1989, there was an estimated number of 3 526 health workers – doctors, nurses, etc. – in the country (World Health Organisation 2003).

Significantly, with the Liberian state severely weakened by the afore-mentioned multidimensional crises of underdevelopment, the Doe regime, despite its repressive proclivities, became vulnerable to armed insurrection (Kieh 2009:49). Against this background, on 24 December 1989, the Charles Taylor-led National Patriotic Front of Liberia (NPFL) took advantage of the perennial legitimate grievances of the Liberian subaltern classes and launched an armed rebellion (Kieh 2009:48). Characteristically, the Doe regime responded with the battery of its military assets. The resultant ‘tugs and pulls’ occasioned the first Liberian civil war.

3. The Peace Agreements

Background

The failure of the domestic peace initiative undertaken by the Religious Leaders of Liberia, coupled with the emergence of a state of anarchy, drew the concern of the Economic Community of West African States (ECOWAS) (Kieh 2009). Initially, the various member states engaged in a series of consultations regarding the appropriate action to take vis-à-vis the Liberian civil war (Adebajo 2002; Kieh 2009). They had to consider several major impediments. First, the organisation was primarily an economic entity; and thus, its charter did not make any provision for dealing with regional conflicts – both within and between member states (Kieh 2009). Second, the organisation's own Non-Aggression Treaty forbids, *inter alia*, interference in the internal affairs of member states. Third, the

Charter of the OAU, the multi-purpose continental-wide group, emphatically prohibited member states from intervening in each other's domestic affairs.

Interestingly, despite these prohibitions, ECOWAS decided to intervene in the Liberian civil war. Salim Ahmed Salim, the then Secretary-General of the OAU, formulated the *raison d'être* for ECOWAS' intervention thus: 'Africans are one people. It is hence unacceptable that a part of that people should stand in silence and in seeming helplessness when another part is suffering' (West Africa 1990:2691).

However, ECOWAS' decision to intervene transcended primordial and humanitarian concerns, because the Liberian civil war directly affected the member countries in two major ways. First, several of their citizens resident in Liberia were being killed, while others were taken as hostages. Second, the member states were concerned that the Liberian civil war could have a domino effect on the rest of the sub-region. This fear was based on the fact that since the preponderant majority of the member states of ECOWAS were governed by repressive regimes, the fact that the Taylor-led National Patriotic Front of Liberia had dissidents from various West African States within its ranks became a major concern of the member states of ECOWAS. The concern was rooted in the calculation that Liberia could have become, if Taylor's NPFL had taken control of the government, the beachhead from which these dissidents could have waged campaigns of subversion against their respective countries.

The ECOWAS Peace Plan: The Peacemaking Framework

ECOWAS devised a plan that was designed to end the civil war. Interestingly, the process of formulating the plan did not include consultations with the warring factions, civil society organisations or political parties in Liberia. In other words, ECOWAS designed a peace plan based on its assessment of the nature and dynamics of the civil war. The plan had the following elements:

- 1) An immediate ceasefire.
- 2) The formation of an ECOWAS Peacekeeping Force.
- 3) The establishment of an interim government that would exclude both Sergeant Doe, the incumbent Head of State, and Charles Taylor, the leader of the insurgency.

- 4) The holding of free and fair elections within a year, under international supervision and observation.

A Standing Mediation Committee, consisting of nine member states, was established to implement the peace plan. The plan was endorsed by the Organisation of African Unity (now the African Union) and the United Nations. However, Taylor's NPFL (and its two principal supporters, Côte d'Ivoire and Burkina Faso) rejected the plan. So, per the tenets of the peace agreement model, this accord failed for several reasons. The substantive contents of the peace agreement were unacceptable to Taylor and his NPFL, particularly because they prevented him from serving as the head of the interim government. The related reason was that Burkina Faso and Côte d'Ivoire as major third parties emboldened Taylor by refusing to accept the terms of the peace accord as well. Yet, another major reason was the lack of enforcement. ECOWAS did not have the political will to induce compliance from Taylor and his NPFL.

The rejection of the ECOWAS Peace Plan by Taylor's NPFL forced the organisation to convene a meeting of the Standing Mediation Committee (6–7 August 1990). The crux of the meeting was to explore ways of appeasing Taylor's NPFL. At the end of the meeting, a final communiqué was issued. Its basic planks were:

- 1) A re-affirmation of the ECOWAS Peace Plan.
- 2) The call for the convening of an All-Liberia National Conference to form an interim government. The said government would include representatives from the various political parties, interest groups and the warring factions.
- 3) The interim government would create the modalities for the holding of general and presidential elections within 12 months. None of the leaders of the warring parties would be eligible to head the transitional government. Similarly, the interim president would be ineligible to stand for the ensuing presidential election.

The communiqué was rejected by the NPFL. Again, the peace agreement failed because its contents, especially the prohibition against any leader of a warring faction serving as president of the interim government was unacceptable to

Taylor and the NPFL. This was because Taylor wanted to head the interim regime. Another factor, as per the peace agreement model, was the lack of enforcement. Again, ECOWAS did not have the will to enforce the terms of the agreement.

The Banjul I Peace Accord

From 27 August to 30 September 1990, an ECOWAS-sponsored All-Liberia Conference was convened in Banjul, the Gambia. The meeting brought together the leaders of Liberia's various political parties, interest groups and warring factions, with the exception of the NPFL, which refused to participate. The NPFL's refusal was based on the fact that it made the determination that the conference would not have met its ultimate desire of making Charles Taylor, its leader, the head of the interim government. At the close of the conference, the following measures were taken:

- 1) The President and the Vice-President of the Interim Government of the National Unity were elected. Correspondingly, the structure of the Interim Legislative Assembly was devised. The law-making body consisted of thirty-five members – two from each political party, one from each of the thirteen regions of the country, four from the Prince Johnson-led Independent National Patriotic Front of Liberia (INPFL), and six from the Charles Taylor-led National Patriotic Front of Liberia. Additionally, the speakership of the interim legislative body was reserved for Taylor's NPFL, and the deputy speakership was allotted to Prince Johnson's INPFL.
- 2) The 1984 constitution remained in force; but the appropriate modifications were made that were apropos to the prevailing circumstances.
- 3) The President and the Vice-President of the Interim Government were not eligible to run for public office in the ensuing elections. However, the Speaker of the Interim Legislative Assembly and other government officials were allowed to become candidates in the elections.

Despite the attempts to accommodate Taylor, his warring faction denounced the conference. As the NPFL's Justice Minister J. Laveli Supuwood asserted, 'The interim government led by Dr. Amos Sawyer is a group without legitimacy ...' (West Africa 1990:2714).

Barely a week after the conference, an important development occurred: Head of State Doe was captured and killed by the Johnson-led INPFL. The emergent perception was that with the death of Doe, and the formal collapse of his regime, Taylor's NPFL would be willing to accept the ECOWAS Peace Plan, and participate in the interim government. However, the accord failed to end the war for several specific reasons. The central element of the contents of the peace agreement dealing with the interim government did not satisfy Taylor, the principal warlord. This was evidenced by Taylor's reaffirmation of his demand that he be given the presidency as the *quid pro quo* for ending the war (Kieh 2009). Another factor was the character of the NPFL: The militia consistently played the role of the 'spoiler'. That is, it made the decision to undermine the peace process, as long as Taylor was not handed the leadership of Liberia. Also, no actor in the international community was willing to enforce the peace accord.

The Banjul II Peace Accord

On 24 October 1990, a meeting was held in Banjul, Gambia, under the auspices of ECOWAS. The meeting was attended by representatives of the interim government of Liberia, and the INPFL. The Taylor-headed NPFL refused to attend. The major outcome of the meeting was the establishment of a ceasefire agreement. However, in the absence of the NPFL, the other warring faction, it was difficult to achieve this goal.

This agreement failed for two major reasons. The contents of the agreement still did not meet the NPFL's central demand that Taylor be made the head of the transitional government. Like the previous failed agreements, neither ECOWAS nor any other external actor was willing to serve as the enforcer of the agreement. Hence, the trend of appeasing the NPFL continued with the mediation of another agreement.

The Bamako Accord

After intensive diplomatic efforts, particularly with the support of Côte d'Ivoire and Burkina Faso, ECOWAS persuaded Taylor to sign a formal ceasefire agreement with Johnson's INPFL and the remnants of Doe's army on 30 November 1990. However, after signing the accord, Taylor claimed that although he accepted the

cessation of hostilities, he did not accept the other provisions that buttressed the ECOWAS Peace Plan. This emerging trend of vacillation on the part of Taylor's NPFL continued the prolongation of the impasse and the war.

Again, the failure of the peace agreement was due to the fact that the key elements of the substantive contents did not meet the NPFL's central demand that Taylor be made the head of the transitional government. The related problem was that the NPFL was determined to continue performing its negative role as a 'spoiler' as long as its key demand was not met. In addition, the agreement lacked enforcement, which is the bedrock for the successful implementation of any peace agreement.

The Banjul III Peace Accord

On 21 December 1990, the leaders of the three warring factions – Taylor (NPFL), Johnson (INPFL), and Bowen (remnants of Doe's Army) – met in Banjul. In a clear concession to Taylor, the group agreed to convene a second All-Liberian Conference that would hold a new election for an interim administration. However, Taylor's NPFL made a concerted effort to stymie the development of the modalities for the proposed conference by refusing to cooperate.

Although this agreement subsequently led to the holding of the Second All-Liberian Conference, the difficulties in formulating agreed upon modalities for the conference made its failure imminent. The key reason was that the NPFL knew that the conference would not have led to Taylor becoming the leader of the interim government. Thus, the NPFL chose to continue playing its 'spoiler' role. Significantly, in the absence of an enforcer, the implementation of the agreement was doomed to fail, against the backdrop of the emergent trend of the NPFL not abiding by the terms of even the peace agreements that it signed.

The Lomé Peace Accord

From 12 to 13 February 1991, a meeting was convened in Lomé, Togo, to develop the modalities for the implementation of the ceasefire agreement. It was attended by members of the ECOWAS Standing Mediation Committee, the President of the Interim Government of Liberia and the leaders of the three warring factions. Again, after the meeting, Taylor denounced the agreement that he had signed.

Why was this the case? The agreement's key content regarding the leadership of the interim regime continued to be unacceptable to the NPFL. Thus, the NPFL continued to undermine the peace accord. Moreover, the agreement lacked an enforcer, which was prepared to induce compliance from both the NPFL and the other warring parties.

The Monrovia Peace Accord

In order to further appease Taylor's NPFL, a second All-Liberian Conference was held in Monrovia, Liberia, from 14 March to 2 April 1991, under the sponsorship of ECOWAS. The participants included Liberia's various political parties, interest groups, the warring factions and representatives from ECOWAS, the then OAU and the United Nations. During the initial stage of the conference, Taylor's NPFL suggested a 'new proposal' for ending the war. The proposal called for the interim administration to be based on a troika consisting of a chairman and two co-chairmen. Taylor insisted that he become the chair, that the other warring parties and political parties and interest groups elect one co-chair, and the second co-chair be a 'widely respected', 'politically neutral' Liberian to be agreed upon by all Liberians. Correspondingly, the NPFL called for the replacement of Archbishop Michael Francis as co-chair of the Conference. However, the conference rejected the NPFL's proposals on four counts: 1) it contained the old demand that Taylor be the President of the Interim Government and this was antithetical to the conference's purpose of establishing the foundation for the building of a new and democratic society; 2) the proposal was vague; 3) overall, it represented a deliberate ploy by Taylor's NPFL to undermine the conference, by making a proposal that it knew would be unacceptable; and 4) Archbishop Francis would not be replaced because he had demonstrated impartiality. Characteristically, the NPFL delegation decided to boycott the conference. Nevertheless, the conference proceeded.

At the conclusion, the Conference elected a President and a Vice-President of the Interim Government of National Unity, and an expanded Interim Legislative Assembly. Despite the continual intransigence of Taylor's NPFL, the conference made new concessions to Taylor: 1) it allotted 40% of the seats in the legislative body to the NPFL; 2) reserved the position of speaker for the NPFL; 3) allocated

seats on the interim supreme court to Taylor's NPFL; and 4) agreed that Taylor would be the only top official of the interim government who would be eligible to run as a candidate in the immediate presidential election. Again, Taylor rejected the offers, and continued his insistence that he must be both the President of the Interim Government, and a candidate in the ensuing election. This was because the agreement did not meet the NPFL's key demand. Based on the pattern of appeasement, which ECOWAS had adopted as the kernel of its peacemaking architecture, Taylor knew that the NPFL would not be compelled to abide by the terms of the agreement. Also, with the continuing split between Burkina Faso and Côte d'Ivoire, which supported Taylor's NPFL, and the other members of the organisation which did not want to acquiesce to Taylor's principal demand that he be made the head of the interim regime and subsequently be allowed to contest the Liberian presidency in the future election, the NPFL knew that there would be no enforcement of the terms of the agreement.

The Yamoussoukro Peace Accords

ECOWAS sponsored four meetings in Yamoussoukro, Côte d'Ivoire between June and October 1991. The central purpose of these meetings was to devise the modalities for implementing the ECOWAS Peace Plan. In a classic diplomatic stroke, ECOWAS designated then Ivorian President Félix Houphouët-Boigny, the NPFL's strongest supporter, as Chairman of the Group of Five, the committee selected to ensure the full implementation of the ECOWAS Peace Plan.

As usual, having agreed to abide by the terms of the Yamoussoukro Rounds, Taylor resorted to his old strategy of denials and the obstruction of the disarmament and encampment processes. That is, after agreeing to participate in the disarmament and encampment processes, the NPFL reneged on its promise. Two factors accounted for this. Taylor's main demand continued to be unmet by the various peace agreements. In spite of the progress made to resolve the rift between Burkina Faso and Côte d'Ivoire, the NPFL's principal supporters in ECOWAS, on the one hand, and the other members of the organisation, on the other, the NPFL made the determination that it could continue playing its 'spoiler' role without the fear of facing enforcement action.

The Geneva Peace Accords

Two rounds of discussion were held in Geneva, Switzerland. The central purpose of the first meeting, which was held under the auspices of ECOWAS in April 1992, was to clarify the mandate of ECOMOG, the ECOWAS Peacekeeping force, regarding the enforcement of the various peace accords. The second one was held in July 1993, under the auspices of ECOWAS, the then OAU, and the UN. The major purpose was to provide the Taylor-led NPFL with a final opportunity to abide by the terms of the myriad peace agreements, particularly with regard to disarmament, encampment and demobilisation.

Again, both of these peace conferences failed to end the war. Like the previous peace accords, the key substantive contents of the Geneva peace agreements did not meet Taylor's overarching demand that he be allowed to head the transitional government, and to run as a presidential candidate in the ensuing special election to settle the country's leadership question. Another recurring factor was the lack of enforcement. ECOWAS, the then OAU and the UN were unwilling, either singularly or collectively, to enforce the terms of the peace accords.

The Cotonou Peace Accord

The Cotonou Peace Accord was the by-product of a meeting held in Benin in 1993 under the auspices of ECOWAS. The meeting was attended by the various warring factions and the representatives of the Interim Government of National Unity. At the end of the meeting, a peace accord was formulated and signed by the warring factions. The key elements of the new peace agreement were power-sharing arrangements and security. In the case of the former, for the first time, the leaders of the major warring factions – Taylor (NPFL), Kromah (United Liberation Movement of Liberia for Democracy, ULIMO), and Boley (Liberia Peace Council, LPC) – were given direct roles in the executive leadership of the country through a new council of state. The other three members of the council were civilians with one of them serving as chair and Head of State. Dupuy and Detzel (2008:4) derisively referred to this arrangement as 'power for gun policy'.

However, despite this major concession to Taylor, he still refused to end the war. This was due to various reasons. Although this peace agreement came closer

to meeting the NPFL's key demand regarding the arrangement of political power during the transitional period, it failed to satisfy Taylor's ultimate desire to head the transitional government. So, the NPFL agreed to participate in the transitional government, on the one hand, while continuing to undermine the peace process, on the other hand. This strategy was also informed by the fact that Burkina Faso and Côte d'Ivoire, while remaining supportive of the NPFL, were becoming increasingly concerned about Taylor's perennial commitment deficit vis-à-vis the peace process. Thus, the NPFL decided to appease its two major supporters by appearing reasonable – by agreeing to serve in the transitional government. But, concurrently, the NPFL continued to play its 'spoiler' role. Importantly, the NPFL's half-hearted approach made it difficult for ECOWAS, even if the organisation had the political will, to compel the Taylor-led militia to end its practice of continually undermining the peace process.

The Akosombo Peace Accord

The Akosombo Peace Accord was the result of a meeting held in Ghana on 12 September 1994. The meeting, which was chaired by President Rawlings of Ghana, who was also the then Chair of ECOWAS, was attended by Taylor (NPFL), Kromah (ULIMO), and Bowen (Chief of Staff of the Armed Forces of Liberia). The resultant peace agreement had two major elements. The decision-making formula in the Council of State, the executive arm of the transitional government, was changed from consensus to majoritarian rule. The second issue was the establishment of a new deadline for the commencement of disarmament – following the installation of the new transitional government.

Although the NPFL signed the agreement, it subsequently failed to abide by the section of the substantive contents of the accord dealing with disarmament. This provision was central to ending the war. One major reason was that the NPFL's key demand had not been met by either the previous failed peace accords or the Akosombo agreement. So, consistent with its strategy, in light of the changing conflict dynamics, to appear 'reasonable', the NPFL accepted and abided by the provision of the agreement dealing with the organisational modalities of the Council of State – the emergent executive arm of the transitional government. However, the NPFL made the determination that this would not have any

significant impact on the continuation of the war, as long as the Taylor-led militia refused to abide by the critical disarmament provision. Also, with the continuing lack of the requisite political will to enforce the peace accord on the part of ECOWAS and the other members of the international community, the NPFL made the determination that it could, at this juncture, continue to give the superficial appearance of being committed to the peace process by abiding by the non-security related provisions, while undermining the successful implementation of the security dimension.

The Accra Peace Accord

On 21 December 1994, the leaders of the NPFL, ULIMO and the remnants of the Armed Forces of Liberia met in Accra, Ghana. Ghanaian President Rawlings chaired the meeting in his capacity as the Chair of ECOWAS. At the conclusion of the meeting, the 'new' peace agreement revolved around three major issues:

- 1) The establishment of a new deadline for a ceasefire.
- 2) The reconfirmation of the composition of the Council of State.
- 3) The holding of a national election and the subsequent installation of a new government in 1996.

Once more, the NPFL signed the agreement, but subsequently undermined its security provisions that called for the cessation of hostilities, and the creation of propitious conditions for disarmament. And again, although the NPFL was now a part of the transitional government, it continued to undermine the peace process by failing to agree to a ceasefire because its principal demand that Taylor be made the head of the transitional government and be allowed to contest the presidency in any future election had not been met. Characteristically, ECOWAS continued to lack the political will to induce full compliance from the NPFL.

The Abuja I Peace Accord

The Abuja I Peace Accord was the result of a meeting held in Abuja, Nigeria, on 19 August 1995. The meeting was attended by the six warring factions – NPFL, ULIMO-J, ULIMO-K, Liberian Peace Council, Lofa Defence Force (LDF), the NPFL-CRC, a so-called break-away faction from the Taylor-led NPFL – and the

representative from the Liberian National Conference (LNC), the amalgam of civil society organisations and political parties.

The resulting peace agreement covered four major areas. The power-sharing arrangements anchored by the six-member Council of State were re-affirmed. Also, amid the continuing fighting, a new date for a ceasefire was established. Further, ECOMOG was given the authority to enforce the provisions of all of the previous peace agreements. Finally, ECOWAS, the then OAU and the UN were authorised to supervise the ad hoc election commission that was to conduct the national election.

However, the accord failed to end the civil war for several reasons. First, the NPFL continued its 'spoiler role' by failing to abide by the proviso that all hostilities be ended. This was because its principal demand still had not been fulfilled. Second and related, although ECOMOG, the peacekeeping force, undertook some enforcement actions, they were not enough to induce full compliance from the NPFL. In other words, ECOWAS still lacked the political will to undertake complete enforcement of the peace accord. This was because neither the organisation nor the broader international community was willing to use military means to force the NPFL to abide by the terms, especially the security provisions, of the peace accord.

The Abuja II Peace Accord

A little over year after the Abuja I Peace Accord was signed, another meeting was convened in Abuja, Nigeria, on 17 August 1996. The meeting was attended by the six Liberian warring factions and the representative of the LNC. The meeting was designed to review the progress of the Abuja I Peace Accord. At the end of the meeting, the determination was made to formulate another peace accord. The new peace agreement dealt with three major issues:

- 1) It selected a new civilian chair of the Council of State and Head of State of Liberia. Also, it stipulated that all other members of the council should be vice-chairmen with equal status.
- 2) It developed a new schedule for implementing the modalities for the transition from war to peace.

- 3) It extended the tenure of office of the transitional government to 2 August 1997.

Significantly, after the failure of the previous peace accords, the Abuja II Peace Agreement succeeded in setting into motion the process of ending the civil war. The rift between the member states that supported the NPFL and those that were opposed to its desire to capture state power through military means had been reconciled. Consequently, for the first time during the peace process, there was unanimity within ECOWAS that the war needed to end. As the peace agreement model stipulates, the collective commitment of third parties to ending a civil war through the successful implementation of a peace accord is critical. Another reason was that ECOWAS decided to change its perennial peacemaking strategy of appeasing the NPFL by insisting that the warlordist militia fully complied with the terms of the accord or face several punitive measures, including the establishment of a war crimes tribunal to try Taylor and his principal lieutenants for the commission of war crimes and crimes against humanity. Also, the decision to muster the political will to fully enforce the modalities of the accord, especially the critical provision dealing with the ‘transition from war to peace’ sent an unambiguous message to Taylor and the other warlords. (See also the section below on the Abuja II Peace Accord and the termination of the war.)

4. The failure of the Peace Accords: Banjul I to Abuja I

Background

Several factors militated against the successful implementation of the initial sixteen agreements that were negotiated to terminate the first Liberian civil war (Banjul I to Abuja I). In this part of the article, the tenets of the peace agreement model will be used as the analytical and evaluative criteria for assessing the impact of the various peace agreements on the termination of the first Liberian civil war.

The characteristics of the warring parties

All of the warring factions had certain shared characteristics that compromised their ability to negotiate in ‘good faith’ and to abide by the terms of the

various peace agreements to which they were signatories. For example, their participation in the war was not motivated by the desire to seize state power and use it as a transformative instrument for democratically reconstituting the neo-colonial Liberian state – so that it could address the needs of the country's subaltern classes (Kieh 2008). Instead, the various warring factions served as the instruments of violence through which their respective leaders engaged in the predatory accumulation of wealth principally through the sale of the country's resources – gold, diamonds, timber, rubber and iron ore (Reno 1996; Atkinson 1997; Adebajo 2002).

Another shared characteristic was that the various warring factions (with the exception of the Taylor-led NPFL) were designed to serve as 'bargaining vehicles' through which their leaders could acquire political power and consequently economic power through ECOWAS' peacemaking formula that was based on what I term 'rewarding warlordism' – the allocation of state agencies and positions to various warring factions as the mainstay of the transitional power-sharing arrangements.

In contradistinction to all of the other warring factions, the Taylor-led NPFL's primary objective was to make Charles Taylor the new President of Liberia (Kieh 2009). For example, during one of his meetings with the Inter-Faith Mediation Committee, the conflict resolution mechanism of the Religious Leaders of Liberia, an ad hoc amalgam of Christian and Islamic clerics established during the first Liberian civil war, Taylor insisted on 'the immediate resignation of Mr Doe and his regime, and the consequent handing of power over to the National Patriotic Front of Liberia' (Francis 1990:2). According to Taylor, 'It was only the matter of hours for him to take Monrovia and overthrow Mr. Doe ... even while the peace talks were still taking place' (Francis 1990:2).

Thus, the NPFL recurrently assumed an antagonistic posture toward all of the peace agreements because they did not include a provision to make Taylor the President of Liberia. For example, during the Second All-Liberian Conference in 1991, the delegation of the NPFL angrily withdrew from the conference after its proposal that Taylor be made the President of Liberia was rejected by the overwhelming majority of the delegates. Subsequently, the NPFL resorted to warfare.

The conflict dynamics

The dynamics of the war adversely affected the successful implementation of the various pre-Abuja II peace agreements in several major ways. The increasing seizure of territory, especially resource-rich territory, by the Taylor-headed NPFL contributed to the warring faction's intransigence. This was because the NPFL saw the various peace agreements as major obstacles to the predatory accumulation of wealth by Taylor and its other leaders (Reno 1996; Adebajo 2002). That is, the termination of the war by the various peace accords would have made it difficult for the NPFL to continue the unbridled sale of the country's various natural resources – iron ore, rubber, gold, diamonds and timber (Reno 1996; Adebajo 2002).

Another factor was that the seemingly unending cycle of warfare and peacemaking enabled the NPFL to use the peace agreements as opportunities to 'buy time' during periods when the warlordist militias was under military pressure either from the peace enforcement actions of ECOMOG, the peacekeeping force, and/or the other warring factions. Under these circumstances, Taylor used the signing of various peace agreements as an instrument for ending the military pressure, getting new supplies of arms, and rethinking the NPFL's 'military strategy'. Then, once these objectives were achieved and the NPFL was strengthened militarily, Taylor would renege on the peace agreements and revert to warfare. Unfortunately, ECOWAS and the rest of the international community were vulnerable to these manipulative tactics by the NPFL, as evidenced by their willingness to continuously mediate new peace accords each time the NPFL violated the previous one.

What also happened was that the prolongation of the war, and especially the availability of natural resources as well as the opportunity to secure positions in the various transitional governments encouraged the mushrooming of new warlordist militias. For example, beginning in 1992, new warring factions – Liberian Peace Council, Lofa Defence Force, and the NPFL-Central Revolutionary Council – began to emerge, and ULIMO splintered into two factions (ULIMO-J led by Roosevelt Johnson, and ULIMO-K headed by Alhaji Kromah). In short, each emergent warring faction followed an interesting 'logic': the seizure of

territory with natural resources led to the opportunity to privately accumulate wealth, and to instant recognition by ECOWAS as a player in the conflict. In turn, this occasioned the warring faction's inclusion in the power-sharing arrangements and their resultant distribution of positions in the transitional governments. This cyclical process contributed to the commitment deficit of the various warring factions with regard to their adherence to the implementation of the various peace accords.

The substantive contents of the Peace Agreements

The overarching weakness of the various pre-Abuja II Peace Agreements was the failure to include effective 'cost-increasing' provisions (Mattes and Savun 2009). Although all of the peace accords implored the warring factions to adhere to their provisions, there were no clearly articulated stipulations for the punishment of violators. The major resultant effect was the creation of a 'culture of impunity' in which the various warring factions, especially the NPFL, recurrently violated provisions of the various peace accords, including ceasefire, without facing punitive measures from ECOWAS. Hence, since there was no cost for the violation of the provisions of the various peace accords, the warring factions were therefore emboldened to flaunt them.

Two specific cases were instructive. In 1992, the Taylor-led NPFL, after agreeing to abide by the disarmament and demobilisation provisions of the Geneva Peace Accords, refused to allow peacekeepers into the territories under its control (Secretary-General of the United Nations 1994; Adebajo 2002). Consequently, the exercise was stalled. Importantly, since the peace accords did not have effective 'cost-increasing' provisions, the NPFL did not face any punishment for this blatant violation of the peace accords. Similarly, on 28 May 1992, six Senegalese peacekeepers were killed by NPFL commandos in Vahun, a town in Lofa County, located in the northern portion of the country, and 500 ECOMOG peacekeepers were thereafter held hostage by the NPFL for one week (Adebajo 2002:609). Characteristically, no punitive measures were taken against the NPFL.

Enforcement

The capacity of ECOWAS to enforce the various pre-Abuja II Peace Agreements was undermined by several factors. As has been argued, the enforcement provisions in these accords were articulated in general terms devoid of the delineation of specific punitive measures for the breach of a provision or provisions. This demonstrated the lack of the required political will on the part of ECOWAS, the then OAU and the UN in holding recalcitrant warlords accountable for prolonging the war and its associated human and material costs.

Another factor related to the limitations of the capabilities of the peacekeeping force (ECOMOG). For example, ECOMOG did not have the troop size that could have enabled it to enforce the provisions of the various peace agreements. Even at its full strength of troops in 1992, including the forces from Senegal and Tanzania, ECOMOG could not effectively induce compliance from the various warring factions whose forces totalled approximately 60 000 (Berdal 1996). In addition, ECOMOG lacked adequate transportation, equipment and other logistics that could have enhanced its capacity to effectively enforce the provisions of the various peace agreements. As well, ECOMOG did not have the requisite intelligence assets that were exigent for effectively monitoring the activities of the various warring factions (Adebajo 2002).

Also, in some of the instances in which ECOMOG undertook peace enforcement measures in order to compel the recalcitrant warring factions, particularly the NPFL, to abide by the provisions of the peace accords, the efforts were undermined by the peacekeeping force's collaboration with some of the rival warring factions. For example, on 15 October 1992, when the NPFL launched 'Octopus', a full-scale military assault on Monrovia, the capital city, ECOMOG enlisted and used the help of ULIMO forces to repel the attack (Adebajo 2002).

Appeasement

ECOWAS, the OAU and the UN's recurrent practice of pandering to the wishes of the various warlords, even amid their violation of the various peace accords, adversely affected the successful implementation of the various peace accords. This was because the various warring factions, especially the NPFL, knew that

they could get virtually what they wanted over and over again. Interestingly, as Dupuy and Detzel (2008:3) poignantly observed, ‘appeasing the warlords did not stop the civil war. But rather appeasement provided the incentives for the warring factions to continue the war thereby creating heavy transaction costs for the continuing peace process as more groups emerged and existing ones continued to fight’.

Specifically, the practice of recurring appeasement was demonstrated in two major ways. The power-sharing arrangements in the various peace accords in effect rewarded the establishment of warring factions. This was done by the allocation of various government ministries, agencies and public corporations to the various warring factions. Moreover, the powerful warring factions like the NPFL were allotted larger percentages of the state entities. In turn, like ‘Tammy Bosses’ (Lowenkopf 1976), the various warlords then appointed the members of their respective factions to these positions. This enabled the warlords to exercise enormous power in the various transitional governments.

Another major set of causes related to ECOWAS and its partners’ unending willingness to virtually scrap peace agreements, once their provisions had been violated by a warring faction or factions. This was then followed by the planning of a new peace accord that was designed to placate the recalcitrant warring faction. Charles Taylor took full advantage of ECOWAS’ willingness to pander to his whims and caprices, as he violated one peace agreement after another. The resultant effect was the continuous process of formulating new peace accords.

The role of third parties

Some of the third parties undermined the successful implementation of the various peace agreements in various ways. From 1990 to mid 1996, ECOWAS, the principal ‘peacemaker’ in the first Liberian civil war, was hamstrung by the rift between the Nigerian-led ‘Anglophone bloc’ and the Ivorian-led ‘Francophone one’. At the core of the conflict was the Francophone bloc’s argument that ECOWAS’ intervention in the Liberian civil war was designed to establish the domination of the Anglophone bloc in the sub-region. Accordingly, the Francophone member states argued that the organisation’s intervention in Liberia was an ‘Anglophone road show’ (de Costa 1990:2699).

The related problem was that some of the member states of ECOWAS were serving as patrons for the various warring factions. For example, Côte d'Ivoire and Burkina Faso supported the NPFL (de Costa 1990; Adebajo 2002). Specifically, Côte d'Ivoire served as the launching pad for NPFL's insurgency, the conduit for transporting weapons and other materials to the NPFL bases in Liberia, a secured place of temporary residence for officials of the NPFL, and provided the conduit through which the NPFL conducted its external relations. As for Burkina Faso, it served as a conduit for funnelling arms to the NPFL.

Nigeria, the leader of the ECOWAS intervention in Liberia, was viewed as partisan by the NPFL. In part, this was attributable to the cordial relationship between President Ibrahim Babangida of Nigeria and President Samuel Doe of Liberia. Accordingly, from the NPFL's vantage point, the Nigerian-led intervention was propelled by desire to defend the Doe regime, thereby thwarting the NPFL's quest to overthrow the Doe regime and seize state power. This mindset informed the NPFL's participation in the peacemaking processes, and contributed to the warlordist militia's recalcitrant posture toward the various peace agreements.

The rivalry between the UN Observation Mission (UNOMIL) and ECOMOG also contributed to the commitment deficit that the warring factions, especially the NPFL, demonstrated toward the various post-Cotonou peace agreements. For example, although both UNOMIL and ECOMOG were responsible for the implementation of the security provisions under the Cotonou Peace Accord, UNOMIL failed to consult with ECOMOG, the lead peacekeeping force, in setting up monitoring sites and deploying observers around the country (Kieh 2009:51). This action, among others, conveyed to the various warring factions that UNOMIL neither trusted nor respected ECOMOG (Kieh 2009:51). Thus, by implication, the warring factions could follow suit (Kieh 2009:51). The resultant trust deficit emboldened the warring factions, especially the NPFL, to flaunt the various peace agreements.

5. The Abuja II Peace Accord and the termination of the war

Why was the Abuja II Peace Accord successful in ending the first Liberian civil war? Several factors accounted for this. The change of government in Nigeria,

especially the emergence of General Sani Abacha as the new President of Nigeria, after the military coup of 1993, affected the NPFL's relationship with Nigeria. Specifically, General Abacha was more willing to accommodate Taylor's presidential ambition than his predecessor General Babangida. In turn, this made Taylor and the NPFL more cooperative and willing to abide by the peace agreement.

Another factor was that the NPFL was under tremendous military pressure, especially from some of its rival warring factions, such as ULIMO-J and ULIMO-K. In some cases, the NPFL lost territory to these rival warlordist militias. So, by adhering to the peace accord, the NPFL was able to 'buy time'. This enabled it to get new supplies of weapons and to make adjustments in its war-making strategies.

Further, the *rapprochement* between the Nigerian-led Anglophone and Ivorian-headed Francophone blocs contributed to the erosion of the NPFL's support from the latter group. Consequently, the Francophone bloc joined the Anglophone one in exerting pressure on the NPFL and the other warring factions to end the war. Being cognizant of the fact that it could no longer take advantage of the split between the two blocs in its continual efforts to undermine the ECOWAS-led peacemaking efforts, the NPFL made the pragmatic calculation of acquiescing to the peace accord. Moreover, the NPFL made the determination that since it could win state power through an election, it therefore needed to cooperate in the termination of the war.

The related point is that the *modus vivendi* between the two blocs within ECOWAS contributed to increased international support for the conflict management efforts. For example, the United States, which had played a minimal role in helping to end the war, provided leadership in the establishment of the International Contact Group on Liberia. Additionally, the US contributed \$40 million for logistics for ECOMOG to use in helping to perform its security functions under the peace accord (Adebajo 2002). Similarly, the European Union contributed 119 trucks to ECOMOG to be used in the performance of its peacekeeping role (Adebajo 2002).

Significantly, unlike the various failed peace accords, the Abuja II Peace Accord was buttressed by the expression of political will by both ECOWAS and the OAU in increasing the cost for the continual violation of the peace agreements by intransigent warring factions. In the case of ECOWAS, it threatened to impose sanctions, including travel restrictions and the freezing of the business activities and accounts of the leaders of recalcitrant warring factions, and their exclusion from participation in the ensuing election (Adebajo 2002). As for the OAU, during its 1996 Summit held in Yaoundé, Cameroon, it threatened to draft and sponsor a resolution that would request the UN to impose sanctions against intransigent warlords, and to establish a war crime tribunal (Adebajo 2002).

6. Conclusion

The previous sixteen peace accords failed to end the first Liberian civil war both for specific and general reasons. In the case of the former, each of the peace accords failed to meet one or more of the criteria outlined in the peace agreement model for successfully ending a civil war. Three of the most recurrent factors were: a) the unacceptability of the substantive contents of the various failed peace agreements dealing with the transitional power arrangements (the NPFL's central demand having been that Taylor, its leader, should head the interim government, and also be allowed to contest the presidency in the future election); b) the character of the NPFL (its consistent lack of commitment to the peace process as a result of its central demands not being met, and the resulting playing of the role of the 'spoiler'); and c) the consistent lack of the political will on the part of ECOWAS and other actors in the international community to fully enforce the terms of the various accords.

Generally, the sixteen peace accords failed because of several factors. Among them were the partisan role played by external actors in supporting some of the factions, the rift within ECOWAS, the lack of effective enforcement provisions within the various peace agreements, ECOWAS' recurrent practice of appeasing the warlords and their factions, and the resultant emergence of a 'culture of impunity' among the warring factions vis-à-vis compliance with the various peace accords.

In contradistinction, the Abuja II Peace Accord succeeded in ending the war for several major reasons, including the fact that the Taylor-led NPFL made the determination that against the backdrop of the prevailing circumstances the electoral route provided the best option for the realisation of its optimal goal of making Charles Taylor the President of Liberia. This shift in the NPFL's position was shaped by the willingness of General Sani Abacha, the President of Nigeria, the primary source of financial, logistical and military support for the ECOWAS-led intervention, to accommodate Taylor's penchant for the Liberian presidency (Interviews 1998). Another major reason was that the NPFL was under enormous military pressure from rival militias, especially ULIMO-J and ULIMO-K. Furthermore, Burkina Faso and Côte d'Ivoire, the NPFL's principal supporters in ECOWAS, resolved their conflict with the Nigerian-led bloc that was unwilling to allow the NPFL to come to power through the use of the force of arms. Hence, there was greater unity within ECOWAS, the principal third party in the civil war. Also, ECOWAS developed the political will to fully enforce the peace accord, including the use of punitive means such as the establishment of a war crimes tribunal.

Finally, based on the Liberian case, as per the peace agreement model, there are several valuable lessons that could be learned and applied to peacemaking activities in other countries in Africa and the world both currently and in the future.

First, the warring parties have to be fully committed to the peace process both in words and deeds. And the peacemaker should accord serious attention to this as a central element of assessing the overall characters of the disputants in a civil conflict.

Second, the peacemaker should gauge from time to time the ways in which the dynamics of a conflict as reflected in the various phases of the conflict cycle impact the behaviour of the warring parties, including the 'spoiler' phenomenon.

Third, the substantive contents of a peace accord should seek to strike a balance among the critical variables of power sharing, fear reducing and cost increasing. In other words, peace agreements should seek to include all of the warring parties in the transitional power arrangements, allay their fears, especially about security, but explicitly delineate the cost for non-compliance with the provisions.

Fourth, by pursuing contradictory policies, including taking sides with the various warring parties, third parties can undermine the successful implementation of a peace agreement.

Fifth, while appeasement has some utility in terms of helping to ensure the development of commitment to the successful implementation of a peace agreement on the part of all of the parties involved, it must be calibrated and used sparingly so as not to develop the expectation of pander on the part of one or more of the warring parties, thereby contributing to the commitment deficit in the long-term.

Sixth, it is not enough to simply stipulate enforcement mechanisms in a peace accord. Instead, there must be the willingness on the part of a third party or parties to develop and demonstrate the political will to take concrete enforcement actions, if a violation or violations occur.

Finally, the ultimate test of the success of a peace agreement is whether it leads to the end of a civil war, and prevents a relapse into violence thereafter.

Sources

- Adebajo, Adekeye 2002. Liberia: A warlord's peace. In: Stedman, Stephen John, Donald Rothchild and Elizabeth M. Cousens eds. *Ending civil wars: The implementation of peace agreements*. Boulder, CO, Lynne Rienner. pp. 599–630.
- Atkinson, Philippa 1997. *The war economy of Liberia: A political analysis*. RRN Paper 22. London, Overseas Development Institute.
- Bell, Christine 2000. *Peace agreements and human rights*. Oxford, Oxford University Press.
- Berdal, Mats 1996. *Disarmament and demobilization after the Cold War*. Adelphi Paper No. 303. London, ITSS and Oxford University Press.
- Beyan, Amos 1991. *The American Colonization Society and the creation of the Liberian state*. Lanham, MD, University Press of America.
- Brown, George 1941. *The economic history of Liberia*. Washington, D.C., Associated Publishers.
- Burrowes, Carl 1982. The settler ruling class thesis in Liberia: Reconsideration. Occasional Paper. Chicago, Self-published.
- De Costa, Peter 1990. Confused State. *West Africa*, 1–7 October, pp. 2699–2701.
- Derouen, Karl and Peter Wallenstein 2009. The duration of civil war peace agreements. *Conflict Management and Peace Science*, 26 (4), pp. 367–387.
- Dupuy, Kendra and Julian Detzel 2008. *Appeasing the warlords: Power-sharing agreements in Liberia*. CSCW Policy Brief. Oslo, Centre for the Study of Civil War.

George Klay Kieh, jr

- Francis, Archbishop Michael 1990. Statement to Liberians in Sierra Leone. 7 October.
- Gent, Stephen 2007. Rebel strength, commitment problems, civil wars and peace agreements. Paper presented at the Annual Conference of the Midwest Political Science Association. Chicago, IL, 12–15 April.
- Hampson, Fen Osler 1996. *Nurturing peace: Why peace settlements succeed or fail*. Washington, D.C., United States Institute of Peace Press.
- Human Rights Watch 1990. *Liberia: Human rights development*. New York, Human Rights Watch.
- Interviews 1998. Conducted with some of the leaders of the various warring factions in the first Liberian civil war and Liberian political parties.
- Kieh, George Klay 1997. The crisis of democracy in Liberia. *Liberian Studies Journal*, 22 (1), pp. 23–29.
- Kieh, George Klay 2008. *The first Liberian civil war: The crises of underdevelopment*. New York, Peter Lang Publishing.
- Kieh, George Klay 2009. The United Nations Observation Mission and the first Liberian civil war. *Peace Studies Journal*, 2 (1), pp. 45–62.
- Kieh, George Klay 2011. *Liberia: State failure, collapse and reconstitution*. Cherry Hill, NJ, Africana Homestead Legacy Publishers.
- Lowenkopf, Martin 1976. *Liberia: The conservative road to development*. Stanford, CA, Hoover Institution of War.
- Mattes, Michaela and Bruce Savun 2009. Fostering peace after civil war: Commitment problems and agreement design. *International Studies Quarterly*, 53 (3), pp. 737–759.
- Ministry of Planning and Economic Affairs, Liberia 1986. *Economic survey of Liberia*. Monrovia, Government Printing Office.
- Murshed, S. Mansoob and Philip Verwimp 2008. Enforcing peace agreements through commitment technologies. UNU-WIDER Research Paper No. 2008/45. Helsinki, UNU World Institute for Development and Economic Research.
- Mutwol, Julius 2009. *Peace agreements and civil wars in Africa*. Amherst, NY, Cambria Press.
- Peters, May Mercado and Shahla Shapouri 1997. Income inequality and food security. *Economic Research Service*, November 9, pp. 44–47.
- Reno, William 1996. The business of war in Liberia. *Current History*, 95 (601), pp. 211–215.
- Sawyer, Amos 1992. *The emergence of autocracy in Liberia: Tragedy and challenge*. San Francisco, CA, Institute of Cultural Studies Press.
- Secretary-General of the United Nations. 1994. Third Report of the Secretary-General on the United Nations Observer Mission in Liberia. New York, UN Secretariat.
- Smith, Robert 1972. *The American foreign policy in Liberia, 1822–1971*. Monrovia, Providence Publication.

Peace agreements and the termination of civil wars: Lessons from Liberia

- Spears, Ian 2008. Understanding inclusive peace agreements in Africa: The problems of sharing power. *Third World Quarterly*, 21 (1), pp. 105–118.
- Stedman, Stephen John 1997. Spoiler problems in peace processes. *International Security*, 22 (2), pp. 5–53.
- Stedman, Stephen John 2001. *Implementing peace agreements in civil wars: Lessons and recommendations for policy-makers*. IPA Policy Paper Series on Peace Implementation. New York, International Peace Academy.
- United Nations Development Program 1990. *Human development report*. New York, Oxford University Press.
- Walter, Barbara 1997. The crucial barrier to civil war settlement. *International Organizations*, 51 (3), pp. 335–364.
- Walter, Barbara 2002. *Committing to peace: The successful settlement of civil wars*. Princeton, Princeton University Press.
- West Africa 1990. Liberia. *West Africa*, 8–15 October, pp. 2691 and 2714.
- World Health Organization 2003. *Liberia: Health/Nutrition Sector report*. Brazzaville, Congo, WHO.

Conflict and environmental insecurity in the North Kivu province of the Democratic Republic of the Congo

*Sadiki Koko**

Abstract

Despite receiving much attention in literature, the ongoing conflict in North Kivu has yet to be systematically studied with respect to its impact on environmental security. This paper seeks to contribute toward filling this gap. The paper argues that, notwithstanding natural factors such as the volcanoes – and social ills caused by poverty, unemployment and underdevelopment – environmental insecurity in North Kivu is caused by the ‘relative scarcity’ of land. The land crisis is aggravated by land ownership systems, demographic pressure, unregulated migrations and related identity disputes, short-sighted state policies and involvement by neighbouring polities; all of which set the stage for cyclic violent conflicts. In order to break this vicious circle, the article calls for the emergence of a strong and brave political leadership in the Democratic Republic of the Congo (DRC) as well as in the region, capable of establishing political, social and economic policies conducive to addressing the roots of the problems.

* Sadiki Koko is a Senior Researcher with the Multilateral Affairs Programme at Babhuti Research Institute (BRI) in Johannesburg, South Africa.

The author wishes to convey special thanks to a distinguished colleague, Martha Bakwesegha, for having taken time to read through an earlier version of this paper.

Introduction

From the Kinshasa hinterland or the degraded peri-urban halo around Bukavu where hundreds of Rwandan refugees amassed in 1994, to the emblematic nature reserves such as Virunga, Kahuzi-Biega, Garamba ... or Salonga, environmental degradation translates into human deprivation. The impact of this degradation, moreover, will be felt long after hostilities have ceased (Trefon 2005:135).

This accurate comment by Trefon is shared by many other concerned observers and practitioners that have visited the Kivu region since its descent into crisis in the late 1980s, but escalating in the early and mid-1990s. However, Trefon's reminder is yet to capture the meaningful attention of policy makers, both within the country and among its bilateral and international partners, as well as of the very local and immigrant populations participating – mostly out of ignorance and social hardships – in the perpetration of environmental insecurity in the area.

Since the inauguration of the democratisation process in the Democratic Republic of the Congo (DRC) in April 1990, the North Kivu province has witnessed repeated cycles of violence and armed conflicts involving ethnic communities, militias, rebel movements, and regular armies – both local or national and foreign. Disputes over land, aggravated by demographic pressure, have been at the centre of the violence. And while internal disagreements within the area already posed daunting challenges to transitional institutions increasingly losing control over society due to a crisis of legitimacy, the crossing into the province of approximately 850 000 Rwandan Hutu refugees in 1994 further complicated issues on the ground, exacerbating both the conflict and the land crisis in the region. The provincial ecology has since undergone systematic destruction, leading to what can be described as increasing environmental insecurity.

This article analyses the impact of the conflict on environmental security in North Kivu. The article discusses the concept of environmental security, reinserting it into the general human security debate (section one) before locating North Kivu within the national (DRC) and regional (Great Lakes) perspectives (section two). Section three summarily presents the biodiversity of North Kivu while section four explains

the conflict and its impact on environmental security in the province. Lastly, section five makes recommendations for a way forward through a proposal for an environmental peacebuilding strategy in North Kivu and the Great Lakes region.

1. The concept of environmental security

That human security has imposed itself as the new and latest paradigm in the general understanding of the concept of security is self-evident. The speed with which it has been propagated is putatively proportional to the ‘revolution’ in the debates about national and international security. However, rather than attempting to overtake the traditional, national or state-centric approach to security, human security simply seeks to complement the former by providing it with a human face and content. And, despite an apparent rebound on the part of the state security approach as a consequence of increasing terrorism threats, but also due to some weaknesses and imprecisions in the new concept, human security will undoubtedly continue to shape the security discourse as international society moves toward more globalisation and the general triumph of the democratic system of governance.

Emphasising ‘freedom from wants’, ‘freedom from fear’ and ‘empowerment’, the United Nations Development Programme (UNDP) 1994 Report on Human Development – believed to have first publicised the concept – pointed to seven indices as pillars of human security: food, economic, health, political, personal, community and environmental security.

As such, environmental security is not a new concept. Jeffrey Stark (2005:17) argues that the origin of the concept could be traceable to the 1977 work of Lester Brown, an environmental pioneer from the Worldwatch Institute, as he pleaded for the ‘inclusion of environmental problems in national security planning’. Although ‘time was not yet ripe for environmental security to enter the mainstream of policy discussions’ (Stark 2005:17), a wide range of authors continued to build a consensus on the concept, relating it to ‘scenarios of political, economic, and social conflict due to resource scarcity in combination with population growth’ (Stark 2005:17).

However, taking advantage of the (third) wave of democratisation that emerged in the early 1990s and the security predicament that ensued, characterised by the generalisation of intrastate (civil) wars, the notion of environmental security turned

out to be a concept to be reckoned with in both the theory and practice of security. It was, therefore, no surprise that while declaring 2003 the ASEAN (Association of South-East Asian Nations) environmental year, Cambodian Prime Minister Hun Sen clearly stated that ‘environmental security is as important as economic and political security’ (Stark 2005:18).

At the continental level, African leaders aligned themselves with the emerging trend when they adopted, in 2004 in Sirte (Libya), the Solemn Declaration on a Common African Defence and Security Policy (CADSP) in which they identified ‘protection against natural disasters as well as ecological and environmental degradation’ among aspects of the ‘newer and multidimensional notion of security’. At the international level, the awarding in 2004 and 2007 of the Nobel Peace Prize to environmental activists clearly asserts the consolidating linkage between environmental issues on the one hand and social, political, economic and security problems on the other hand.¹

As a region, Africa needs to domesticate the debate on environmental security while playing an increasing role within international forums and networks relating to the topic. The direct reason for this call for a shift stems from the economic predicament of the continent as it relies on natural resources production, the exploitation of which brings about continuous environmental degradation. This fact is further compounded by the material conditions of the African populations whose farming practices and social lifestyle impact negatively on the maintenance and renewal of the environment.

As far as the DRC’s North Kivu province is concerned, the imperative of environmental conservation for human security faces the challenge of pressures arising from natural disasters and catastrophes (such as earthquakes and volcanic eruptions), population growth (both naturally and as a consequence of immigration and population movements), economic decline as well as the inability on the part of state institutions to inspire confidence among the population and to impose law, order and compliance with rules and regulations in all spheres of national life,

1 The 2004 Nobel Peace Prize was awarded to Kenyan Professor and environmentalist Wangari Maathai while the 2007 Nobel Peace Prize was shared by former United States vice-President-turned-environment-campaigner Al Gore and the United Nations-sponsored Intergovernmental Panel for Climate Change (IPCC).

including environmental preservation. This raises the more important question of fully re-inserting the North Kivu province within the Congolese national framework while ensuring that Congolese state institutions and their external partners understand that the restoration of peace and stability in the DRC in general and in the North Kivu province in particular involves re-affirming the role of the state as well as adopting a holistic approach of security that combines state security and human security. At the same time, there is a necessity to reinsert the North Kivu province within the regional context of the Great Lakes, the natural framework through which it is likely to achieve its full development.

2. The case for North Kivu: The province in the Congolese and regional perspectives

In his massive book, *Histoire Générale du Congo*, Congolese historian Isidore Ndaywel è Nziem (1998:211, 226) refers to the Kivu as the Congolese region comprised between the volcanoes (the active Nyiragongo and Nyamulagira as well as the extinct Mikeno, Karisimbi, Visoke, Sabinio, Gahinga and Muhavura) and the Great Lakes (Albert, Edward, Kivu and Tanganyika). According to Jan Vansina (1966:105–114, 201–223), the Kivu region comprises three cultural areas, namely the North-East populated by Nilotics (Alur) combined with Bantus, the Great Agrarian Kivu region inhabited amongst others by Nande, Shi, Haavu and Hunde as well as the Maniema forest region occupied by Bembe, Lega and other smaller groups.

The ancient Kivu region shared many characteristics with its adjacent neighbouring societies located in contemporary Uganda, Tanzania, Burundi and Rwanda. Besides many commonalities in social organisation, the people occupying the Kivu region shared with their regional neighbours stunning similarities with regard to their political organisation grounded in kingship, based on succession.

Jourdan (2005) has observed that '[h]istorically the Great Lakes Region has always been characterized by important migration fluxes, even before the colonization period which established previously unknown frontiers'. The advent of colonisation in the Great Lakes region resulted at first into a separation of people whose social activities and organisations compelled them to coexist. This was mainly the consequence of the diversity of colonial regimes that landed in the area as the

Belgians took control of the current DRC; the Germans occupied Burundi, Rwanda and mainland Tanzania (at least until World War I) while Uganda fell under British control. Later on, however, colonisation would facilitate the 'mix-up' of populations in the region, especially as far as the Congo, Rwanda and Burundi were concerned. This emerged as a consequence of both the development of the Congo that required larger working forces and, more importantly, the take-over of Burundi and Rwanda by Belgian authorities from Germany after the First World War.

Within the Belgian colonial framework in the Congo, Kivu maintained a low status as the Belgian colonial strategy focused on the production of raw agricultural materials and minerals and, thus, put much emphasis on the south, west and the equatorial regions of the country, easily connected to the strategic Congo River and its tributaries. Apparently, besides its inclusion in the early general ethnographic studies undertaken by colonial administrators and religious missionaries, Kivu started receiving sustained attention only in the late years of colonisation (1956–1960). This shift was mainly conditioned by developments not within the Congo *per se*, but by the beginning of turmoil in Rwanda and Burundi. By the time the Congo gained independence (June 1960), the Kivu region had hosted scores of Rwandan and Burundian populations that had relocated to Congolese territory through a number of processes including Belgian-planned transplantation policies, clandestine migration as well as asylum seeking (mainly by Tutsi) in the aftermath of the Belgians-backed 'Hutu revolution' of 1959 that resulted in the dismantling of the Rwandan Tutsi kingship.

Until the Congo's independence from Belgium, Kivu's political, economic and strategic importance remained relative. However, this trend slowly changed as the DRC experienced its first armed conflict starting in 1961. Like much of the eastern part of the country, Kivu fell within the rebels' zone of influence. This state of affairs persisted, amidst periods of interruptions, until 1965, and was followed by a brief re-appearance of Belgian mercenaries in the late 1960s attempting to control the region. This same period witnessed the initiation of an internal armed resistance at the heights of Hewa Bora plateaus in South Kivu. Initially, Kinyarwanda-speaking populations or Banyarwanda – likewise other communities in the region – had sided with the rebels before turning against them when the latter engaged in the systematic killing of their cattle in order to supply themselves with the much needed food.

Conflict and environmental insecurity in the North Kivu province of DRC

Eventually, the national army – to which the Banyarwanda had allied themselves – succeeded in eradicating the rebellion by the mid-1960s, leaving a bitter taste about the Banyarwanda among other local communities. This resentment is believed to have been the trigger of what is commonly known as the ‘Kanyarwanda war’. A ‘first public display of anti-Tutsi sentiment in post-independence Zaire, [i]t lasted from 1963 to 1966 and resulted in large-scale massacres of Hutu and Tutsi’ (Lemarchand 2009:13). Much of the war took place in the Masisi area, pitting a coalition of Hunde and Nande, on the one hand, against the Banyarwanda (supported by the Bashi), on the other hand. The conflict revolved around the issue of land, much of which had fallen under the control of Banyarwanda.

The return of stability in the country in the early 1970s coincided with the increase in migration in the region from Rwanda and Burundi due to political turmoil and radicalisation in both countries.² This was almost concomitant with the ascent of individuals from Rwandan origin to strategic positions of power within the Congolese national institutions (the most prominent case being the appointment of Barthélemy Bisengimana Rwema³ to the position of Chief of Cabinet in the presidency between 1969 and 1977), resulting in their improved political, economic and social status, enabled by the enactment of Ordinance-Law n° 71-002 of 28 March 1971 and Law n° 72-002 of 5 January 1972 on citizenship. Both legislations are explained later in the text.

-
- 2 In this regard, one needs to recall that in the years 1972 and 1973, Burundi and Rwanda witnessed cases of appalling genocides. In Burundi, in reaction to a Hutu insurrection near Bujumbura that killed between 2 000 and 3 000 civilian Tutsi, Captain Michel Micombero (the Tutsi President who took power in November 1966 and proclaimed Burundi a republic) unleashed genocide reprisals aimed at eliminating the entire Hutu educated population. Between 100 000 and 200 000 civilian Hutu were killed while 150 000 fled the country. In the meantime, in 1973, Rwanda’s Hutu President (Grégoire Kayibanda) was deposed by his Hutu army chief of staff (General Juvénal Habyarimana). This resulted in government-orchestrated attacks on Kayibanda’s supporters and the Tutsi population, resulting in thousands of deaths and vast waves of migration. See Lemarchand 2009:69–78.
 - 3 Bisengimana was a political Tutsi refugee of the ‘1959 generation’ who had graduated as an electrical engineer from the University of Lovanium (Kinshasa). During his study days, he had served as the chairperson of Rwandan students at Lovanium. See Lemarchand 2000:11; Ndaywel è Nziem 1998:703.

Until 1987, North Kivu was simply a district of the Kivu province that encompassed the current provinces of North Kivu, South Kivu and Maniema. It is only at the Fourth Ordinary Congress of the then single party in the country, the *Mouvement Populaire de la Révolution* (MPR), held in Kinshasa in May 1988, that a resolution was put forward that ‘in order to draw the masses closer to the leaders,’ provinces should be downsized. However, very surprisingly, Kivu – one of the smallest provinces in the country at the time – was chosen as the first case in this experiment. It was split into three different provinces, namely South Kivu, North Kivu and Maniema.

This ‘administrative reform’ thus brought about by the single-party Congress resolution contributed to placing North Kivu into the contention perspectives of both national and regional politics. At the national level, the provincial status implied more political awareness and activities as political opportunities and incentives drew closer to the masses. At the regional level, it provided higher levels of authority – both civilian and military – and competence to enforce, or sometimes curtail, compliance on issues of land and citizenship.

3. Snapshot on the biodiversity of the North Kivu province

Until 1990, North Kivu was a marvellous province in the DRC, one of the main tourist attractions in the country. The province encompasses a wonderful and diversified fauna and flora, comprised of a large variety of species, including endangered ones. The province is home to extinct as well as active volcanoes which include Nyamulagira (the one that commands) and Nyiragongo (the one that smokes). The six extinct volcanoes are Mikeno, Karisimbi, Visoke, Sabinio, Gahinga and Muhavura. The Virunga volcanic rift is 90 km long and between 20 and 30 km wide. Adjacent to the volcanoes is Lake Kivu at about 1 500 m altitude. Rich with methane gas, the lake is 485 m deep and lies on 2 700 sq km. Of much importance in the Virunga volcanoes setup is the Mikeno sector. It is the portion of Virunga National Park that forms the Congolese component of the Virunga Massif and the dormant volcanoes. It is contiguous to Rwandan Volcanoes National Park and Ugandan Mbahinga Gorilla National Park. With an area totalling 250 sq km (more than the half of the Virunga Massif), it is the largest component of the Virunga volcanoes and is, in terms of biodiversity, the richest. It is, according to Kalpers (cited by Hecker 2005:10), ‘the only component to have conserved its lower reaches, which

Conflict and environmental insecurity in the North Kivu province of DRC

play an important role in the seasonal movements of a number of animal species: buffalos, elephants and, especially, gorillas.' Lastly, Lanjouw and others (cited by Hecker 2005:10) noted that '[u]ntil the recent crisis in the region, the Mikeno sector of the park was the primary source of income for the protected area authorities, generating funds through tourism for the protection of all the parks in the country. Most of the funds came from tourists visiting the five groups of habituated gorillas in their natural habitat'.

The region also plays host to a rift of mountains, from one of which Goma, the name of the capital city of the province, is derived. Farther in Nande lands, the province includes part of Lake Albert lying between the DRC and Uganda. The recent discovery of oil reserves in the lake has sparked suspicion and tension between the two countries. The exploitation of this wealth, it is argued, will either accelerate cooperation between the DRC and Uganda or contribute to further severing the already tense relations between them. The Grabben plateaus in the same area provide not only fertile soil to agriculture, but also utility grazing for cattle. Moreover, prospecting projects conducted in the area have attested of the existence of vast oil reserves. With regard to farming, North Kivu has been until recent years one of the most productive provinces of the DRC, supplying markets in both the east and the west regions of the country.

More importantly, human resource is another valuable asset the province boasts. With an area amounting to 59 631 sq km, North Kivu is literally larger than Burundi and Rwanda combined.⁴ Besides Kinshasa which, in Congolese administrative legal framework, enjoys a provincial status, North Kivu is the province with the highest population density in the country: 80 inhabitants per sq km (as opposed to an average of 26 for the country).⁵ This density would under normal circumstances give impetus to the province in terms of productivity and growth.

The weather in the province is significantly shaped by the region's landscape and ecology, making it one of the most balanced in tropical Africa. Lastly, the Virunga National Park stands out to embed the very identity of the whole province. The

4 Burundi has an area of 27 830 sq km while the total land area of Rwanda extends to 26 798 sq km.

5 See *Province du Nord-Kivu* 2007.

park was established in 1925 and has been subsequently designated a World Heritage Site and a World Heritage Site in Danger in 1979 and 1994 respectively. Running over 8 000 sq km, the park ‘encompasses a remarkable variety of ecosystems: high altitude forests and mountainous habitats, low-altitude forests, lava fields, plains and savannas, lakes and wetlands’ (Hecker 2005:10), to which should be added mountain gorillas as well as some eastern lowland gorillas.

The biodiversity described above presents North Kivu with valuable opportunities, conducive to accelerated growth and development in the province. Up to now, the province has instead been caught between new theories of ‘resource curse’ as the availability of natural resources turns out to be the very factor triggering and escalating violent conflicts in the region.

4. Conflict and its impact on environmental security in North Kivu

Background to the conflict in North Kivu

The root causes of the conflict in North Kivu are as complex as the conflict itself. They may be located in such diverse factors as the dual land acquisition and tenure systems (customary and common laws), the unwillingness and/or inability of the state (both colonial and post-colonial) to scrutinise Rwandans’ and Burundians’ migration and settlement in the region, the crisis of citizenship, demographic pressure, the political manipulation of identity as well as the impact of crises in neighbouring countries – especially in Rwanda. Rebellions and other armed groups that have been operating in the province prior to and since the settlement of Hutu Rwandan refugees in 1994 are simply symptoms of the conflicts while poverty, unemployment and underdevelopment can be considered as accelerating conditions.

According to Vlassenroot (2006:52), ‘[w]hile the nature of the Congolese political system has undeniable impact, the local potential for social conflict [in Kivu] rests on its geographical position and local history. Political events in both [Kivu] provinces have always been linked to the social and political dynamics of neighbouring Rwanda and Burundi, illustrated by the history of the

Conflict and environmental insecurity in the North Kivu province of DRC

Banyarwanda and Barundi migration to Congo'.⁶ He, therefore, asserts that 'the conflict in the Kivus [is] based mainly on issues of land access and citizenship'.

Lemarchand (2001:25–26) has identified land as the single independent variable in the unrest in the Kivu region. He writes, 'Basically, the roots of the Kivu crisis center on land issues. These are traceable in part to the legacy of Belgian policies, in part to the critical role played by one of Mobutu's most trusted advisers and chief of staff – a Tutsi "fifty-niner"⁷ named Bisengimana.' In an attempt to locate the source of the crisis, Lemarchand (2001:26) argues that

[t]he key to the situation lies in Rwanda. Land hunger in the Kivu would have never reached such critical dimensions had it not been for (a) the long-term effects of Belgian policies in 'facilitating' the immigration of tens of thousands of Rwandan families to North Kivu in order to meet the labor demands of European planters, along with the designation of hundreds of thousands of acres as 'vacant lands' so as to turn them into protected parklands; and (b) the crucial role played by Tutsi refugees from Rwanda revolution (1959–1962) in appropriating large tracts of land at the expense of the 'indigenous' communities. This is where Bisengimana – himself, like many of his kinsmen, one of the largest landowners in the Kivu – bears considerable responsibility in heightening tensions between the Banyarwanda and native Congolese.

But the confusion brought in by the Belgian colonisation and the Mobutu regime was further aggravated in 1993 when the first large-scale armed conflict opposed

6 On the issue of the impact of political dynamics in Rwanda and its impact on North Kivu, Mamdani (2001:234) reported an interview he conducted with one local in the region who stated, 'Ethnic conflicts are cyclic, with each ethnic group (Tutsi versus Hutu) taking in turn power and misfortune. The fate of one today is the fate of the other tomorrow. The consequence of cyclical fortunes is that when they return, not everyone returns, some remain. Those who remain become Congolese'.

7 'Fifty-niner' is a neologism coined by Lemarchand to refer to a Rwandan (Tutsi) individual that had fled Rwanda amid the 1959 Hutu revolution and sought asylum in a foreign country, including the DRC.

'natives' Hunde and Nyanga to 'migrants' Hutu and Tutsi.⁸ This turmoil related to the democratisation process inaugurated in April 1990 as well as the '*géopolitique*' administrative system introduced by Mobutu that advocated for positions of authority to be awarded only to those who were 'indigenous' to a given area. In North Kivu, this called for a 're-visitation' of the debate of ethnicity and citizenship in the province. This came at a time when many Hutu farmers in Masisi had lost lands after these were sold to rural capitalists of Tutsi origin (eventually belonging to the 1959–1962 generation). As they attempted to settle on lands in Walikale,⁹ they were met with protests of people and chiefs in that territory who, subsequently, initiated militia groups to 'protect and defend ancestral lands'.

However, other factors contributed to the misfortune of the Banyarwanda. Firstly, Hunde and Nande politicians were engaged in forming coalitions that would enable them to resist any registration of Banyarwanda as Congolese and, subsequently, as voters, for this would jeopardise their own chances in case of elections. Many among them went as far as recruiting and arming youths to operate as tribal militias. This led to the 'Masisi first war' in the first half of 1993 that 'lasted for more than six months and killed between 6,000 and 10,000 people, while displacing more than 250,000 [others]' (Vlassenroot and Huggins 2005:146).

Secondly, the situation in Rwanda was tense as the Tutsi-dominated Rwandan Patriotic Front (RPF) represented an imminent threat to the Hutu-dominated Habyarimana regime, despite the signing of the Arusha Peace Accords in August 1993. Development in neighbouring Rwanda thus played a role as a mobilising factor for the unification of Hutu in the DRC and their split with the Tutsi. A year later, the massive arrival in Kivu of millions of Hutu refugees fleeing Rwanda during and after the genocide brought additional dimensions to the crisis. The presence of soldiers from the defeated *Forces Armées Rwandaises* (FAR) and especially the *Interhamwe* militia reproduced in the DRC the Rwandan ethnic bipolarisation,

8 A remarkable and instructive account of this episode and the period that followed may be found in Vlassenroot and Huggins 2005:115–194. Read especially pp. 145–148.

9 With its 23 475 sq km, Walikale is almost as big as the entire state of Rwanda (26 798 sq km). Yet, Walikale's population hardly reaches 1 million (its projected population for 2004 was estimated at 612 847), in contrast to Rwanda's 9,5 million. See Ministère du Plan 2005:29.

Conflict and environmental insecurity in the North Kivu province of DRC

‘compelling’ local Hutu to sympathise with the refugees. This situation provided the stage for the ‘Masisi second war’ (1995–1996) pitting all Hutu on the one hand against ‘native’ Congolese and Tutsi on the other hand.

The advent of the *Alliance des Forces Démocratiques pour la Libération du Congo* (AFDL) rebellion led by Laurent-Désiré Kabila in late 1996 redefined alliances in the region. With much of the fighting force within the rebellion supplied by the RPF-controlled Rwandan national army, Hutu populations in Kivu – whether refugees or not – stood helpless on the losing side as local populations negotiated new alliances with the Tutsi. When the *Rassemblement Congolais pour la Démocratie* (RCD) emerged two years later to fight against Kabila, the remnants of the ex-FAR army and Interahamwe militia were already in the process of reorganising themselves into the *Forces Démocratiques pour la Libération du Rwanda* (FDLR) which is currently operational in Kivu. In the meantime, the Mai-Mai militias have sought to build their capacity through setting up cooperation mechanisms among them while former RCD Tutsi renegade General Nkunda set up the *Conseil National pour la Défense du Peuple* in 2008, arguably to protect Tutsi against threats of extermination represented by the FDLR.

Land and demographic pressure: At the centre of conflict and environmental insecurity in North Kivu

Due to the general resentment over colonial policies on land applied by the Belgians, the land issue turned out to be a matter of assertion of national sovereignty in the very aftermath of independence in 1960. If the political instability that paralysed the country between 1960 and 1965 did not enable a quick move towards reforming land laws, Mobutu set himself up to this task as soon as he came into power in November 1965 through a military coup. On 7 June 1966, he promulgated what is referred to as ‘Bakajika Law’. The law aimed to regulate land ownership in the country. It emphasised that the state reserves right on any land in the country. A similar mention appears in article 9 of the current Congolese constitution (adopted by referendum in February 2006). But what was at stake in 1966?

The colonial land ownership model distinguished between portions of land left to indigenous populations, mostly as tribal groups in rural areas, and the large areas owned by the state. The former encompassed the spaces duly occupied by

communities as well as such reasonable others they were believed to need for their subsistence farming activities. Beyond this, the state regulated the distribution of land. In a very large and sparsely populated country at the time, the colonial state and its allies 'owned' up to 80% of the best lands in the DRC. Bakajika Law, therefore, removed the colonial order by restituting to the state all lands rights issued by the colonial state.

However, the law clashed with the social approach on land which, in virtually the entire Congo, is managed by customary law. Under Congolese customary law, the notion of '*terres vacantes*' ('un-owned' lands) does not exist insofar as every piece of land, occupied or unoccupied, belongs to a specific tribal community, shared among its clans, lineages and families. Given the chronic weakness of the common legal regime in the country, aggravated by the weakening of the state capacity, customary law regulates the lives of the vast majority of the Congolese population.

But besides the legal system, the problem of land crisis is further complicated by demographic pressure due to the population growth rate (3,5% per year) as well as migration.

Approached holistically, the land hunger issue may be contained if the weight of customary law and ownership of land could be eased. For example, Walikale, which is indeed the largest entity (territory) in the province, has a lower population compared with the much smaller Masisi. But the sensitivity of human settlement in the region combined with the persistence of customary law and the *de facto* precedence of the latter on common law with respect to the management of land continues to impede any policy of an even redistribution of population around the province.

Demographic pressure and its impact on conflict in North Kivu also ought to be put into context. In this regard, Varga and others (2002:26) argue that '[n]ot only is population density and growth an important element [in the likelihood of conflict], also the age composition of a population is a powerful element in explaining societies' tendencies to violence. The younger the population, the greater the potential for violence. Also the level of education and the rates of unemployment are vital elements'. This argument perfectly fits into the current situation in North Kivu. In a national economic predicament characterised by persistent decline, the majority of the estimated 4 780 170 total population of the North Kivu province is

Conflict and environmental insecurity in the North Kivu province of DR Congo

unemployed and relies on subsistence farming to make a living. Although the exact percentage of youth within the population may not be directly accessible, it is easy to grasp the importance of such a group by referring to the average life expectancy in the province which stands at 43,7 years. The same applies to the general level of education which can be perceived through the low rate of enrolment in primary school, standing at an average of 34,1% (far below the national average of 51,7%) as well as the 5,2% adult literacy, lagging behind the national rate of 68,1%.¹⁰

As stated earlier, the land crisis in North Kivu is equally exacerbated by migration, both past and present. Over the years, migration in North Kivu has mainly involved people from Rwanda and, to a lesser extent, from Burundi. If anything, the issue of migration in North Kivu contributes to linking the land question to the problematic issue of identity, understood as both ethnicity and citizenship.

Pabanel (1991:32–35) identifies five factors as contributors to the Rwandan settlement in Kivu. These include:

- The 1910 convention on the delineation of boundaries between Belgian and German possessions that led to the inclusion of Kinyarwanda-speaking areas such as Bwisha, Kanurunsi, Idjwi Island and Gishari into the Congo;
- The *Mission d'Immigration des Banyarwanda*¹¹ with its two objectives, namely easing human pressure on Rwanda and providing for labour in the Congo;
- Continuous recruitment of Rwandan workers who, eventually, did not return to Rwanda thereafter but instead settled in their new locations, generally in the mining areas of Kivu, Maniema and Katanga;

10 2005 estimates. For indices relating to the size of population, life expectancy and school enrolment, See Province du Nord-Kivu 2007.

11 According to Pabanel (1991:33–34), '[t]hese new immigrants supplied the necessary labour for the large colonial coffee, tea or cotton estates and cattle ranches in the Kivu highlands, where they were settled on land controlled by 'autochthonous' ethnic groups such as the Bahunde [Masisi] and Banyanga [Walikale]'. By 1955, Pabanel asserts, the 'newcomers' had occupied a space by far exceeding the initially agreed upon territory (350 sq km), especially in Masisi. Guichaoua (1989) speaks of more than 150 000 hectares or 1 500 sq km.

- Political refugees made up of those who entered the DRC during and in the aftermath of the 1959–1961 Hutu revolution in Rwanda; and
- Clandestine immigrants fleeing overpopulation and the subsequent scarcity of resources.

Table 1 provides an indication of the linkage between migration, land and conflict in North Kivu, although the figures it contains date back to the 1990s (anyway, no proper population census has been conducted in the DRC since 1984!).

Table 1: Importance of immigrants in the total population of North Kivu (1990 and 1994)

Territory	Size in km ²	Population							
		Nationals		Immigrants		Total population		% of immigrants	
		1990	1994	1990	1994	1990	1994	1990	1994
Masisi	7 484	172 166	149 981	320 811	366 175	492 977	516 156	65,08	70,94
Rutshuru	18 096	381 077	410 520	100 849	105 153	481 926	515 673	20,92	20,39
Lubero	5 289	767 835	788 347	3 325	3 048	771 160	791 395	0,43	0,38
Beni	4 734	651 990	681 155	1 013	572	653 003	681 727	0,16	0,08
Walikale	23 475	166 411	417 640	23 094	38 377	189 505	456 017	12,19	8,42
Nyiragongo	163	24 939	24 277	-	4 511	24 939	28 788	-	15,67
City of Goma	76	102 796	155 200	15 090	32 340	117 886	187 540	12,80	17,24
Provincial total	59 317¹²	2 267 214	2 627 120	464 182	550 176	2 731 396	3 177 296	16,99	17,32

Source: author's own compilation working with data obtained from Pabanel (1991:36)¹³ and Ministère du Plan (2005:34–35).¹⁴

- This figure was arrived at by summing up the areas of different territories making up the North Kivu province. However, the official monograph by the province itself indicates 59 631 sq km as the official land mass area covered by the province.
- Pabanel indicates that 90% of foreigners are Rwandans. Ugandan migration toward the region remains very low. Pabanel also admits that data compiled in his table were obtained from unofficial sources at the provincial migration division.
- Data used in the provincial monograph were obtained from the provincial Division of Interior and Traditional Affairs as well as the provincial Division of Planning.

Conflict and environmental insecurity in the North Kivu province of DRC

As a legacy of colonialism and the introduction of the modern state, there has emerged the contentious issue of a dual system with regard to land acquisition and ownership in virtually all parts of the DRC, and even more critically in North Kivu, mainly because of the relative land hunger in the province. Whereas the colonial state as well as the successive regimes that have ruled over the DRC since independence have sought to enforce common law with regard to the acquisition and tenure of land in the country (including North Kivu), traditional leadership has consistently upheld customary law, emphasising the principle of collective ownership of every existing land by the respective tribes.

The irony of linking land acquisition and tenure to tribe or ethnicity, insofar as the DRC is concerned, lies in the fact that, since colonisation, citizenship has always been linked to tribe or ethnicity. In this context, it is not surprising that the issue of land in North Kivu becomes directly connected to the problem of citizenship. In both 1971 and 1972, Mobutu had hoped to resolve the crisis of citizenship in the region by enacting Ordinance-Law n° 71-002 of 28 March 1971 and Law n° 72-002 of 5 January 1972. The first granted Zairian (Congolese) citizenship to people of Rwandan and Burundian origins established on the territory of the Congo before 30 June 1960 (Ndaywel è Nziem 1998:703). In its article 15, the second (Law n° 72-002) stated that people of Rwandan and Burundian origins who had been established in the Kivu¹⁵ province before 1 January 1950 and had subsequently continuously lived in the country were granted Congolese citizenship as from 30 June 1960.

These two pieces of legislation did not solve the problem of citizenship in North Kivu for a number of reasons, cardinal among which were the lack of clearly defined implementation and enforcement measures and the resistance on the part of traditional leaders to abide fully by the provisions of the new laws. Instead, the crisis of citizenship in the region was further exacerbated following the enactment (by Mobutu) of Law n° 81-002 on 29 June 1981. This new law abrogated Ordinance-Law n° 71-002 and Law n° 72-002 as well as rejected the

15 The emphasis on *Kivu* was, in itself, problematic since *Kinyarwanda*-speaking populations brought to Congo by Belgian authorities through labour transplantation did not all settle in *Kivu*, some having been taken as far as the mining areas and railway construction sites in *Katanga*.

‘collective’ approach of granting Congolese citizenship (to people of Rwandan and Burundian origins). Emphasising acquisition on an individual case as the mode of accessing Congolese citizenship, Law n° 81-002 provided that immigrants (including Rwandans and Burundians) thus acquiring Congolese citizenship could not qualify to hold political office. According to Lemarchand (2001:26), ‘[b]y 1981 the land problem and the nationality question had become both sides of the same coin.’

Law-Decree n° 197 of 29 January 1999, enacted by Laurent-Désiré Kabila, did not alter the status quo with regard to the citizenship of populations of Rwandan and Burundian origins for it did not abrogate Law n° 81-002, but simply sought to complement it. Lastly, Law n° 04/024 of 12 November 2004 has attempted to clarify past contentious issues by choosing independence day (30 June 1960) as point of departure for the acquisition of Congolese citizenship as well as by granting Congolese citizenship not only to tribal or ethnic groups that had formed part of colonial Congo, but also to *nationalities* that were located on Congolese territory during the same period (article 4). Though the law does not explicitly indicate the nationalities being alluded to, it is logical to assume that they include populations of Rwandan and Burundian origins.

Environmental insecurity in North Kivu

It has been argued earlier that, from a density point of view, North Kivu is the most populated province of the DRC (of course besides Kinshasa). Its regions surrounding the Virunga National Park are even more so due to the abundance of natural resources and highly fertile soil.

However, as a geographical entity, North Kivu is naturally a region prone to environmental insecurity. Lake Kivu contains methane gas that not only impedes the development of many maritime species but also may endanger human life in case of submarine volcanic eruption or a major earthquake. The sulphur-heavy smoke permanently emitted by Nyiragongo volcano may also cause intoxication. And the activities of both Nyiragongo and Nyamulagira volcanoes have always been issues of major concern for the region and its population. Since 2000, Nyiragongo has erupted once, in January 2002, sweeping 17% of Goma city and

Conflict and environmental insecurity in the North Kivu province of DRC

80% of its business, destroying 14 villages and killing more than 100 people. For the same period, Nyamulagira has reportedly erupted six times (in 2001, 2002, 2004 and 2006), without major destruction and sometimes unnoticed. And, lastly, Goma itself is built on a thick mixture of volcanic products. In this situation, for many inhabitants of Goma and its surroundings, rebuilding homes and lives due to volcanic eruptions or major earthquakes has become an integral part of a natural process in the evolution of life.

Environmental destruction in North Kivu is also caused by deforestation, wildlife exploitation, soil erosion as well as the movements of internally displaced persons (IDPs) and refugees. Deforestation is an old activity in the area. Trees are cut for commercial use as well as for firewood and construction. These activities intensified in 1994 after the settlement of Rwandan refugees as their camps (Mugunga, Kahindo and Kibumba) were erected around the park area. McNeely (2002, cited by Huggins et al. [2006]:401) writes in this regard:

The ... refugee flow into the DRC had a massive effect on the Virunga volcanoes region, as around 850 000 refugees ... were living in close proximity to the Virunga National Park, relying upon it for firewood, timber and food to supplement that supplied by relief agencies. This resulted, among other impacts, in the loss of some 300 km² of forest. As many as 40 000 people entered the park each day to harvest forest products and hunt wild animals, including elephant, hippopotamus, and buffalo.

In the same vein, Hart and Mwinyihali (2001, cited by Huggins et al. [2006]:402) argue that:

[w]hile details of the environmental impacts of the war in the DRC are sketchy, and sometimes completely absent, there is evidence of overexploitation; this was particularly evident near refugee camps between 1994 and 1996. During the refugee crisis, which saw close to one million people settled in refugee camps in and around Africa's oldest national park and a natural World Heritage Site – the Virunga National Park – large-scale destruction occurred. Large numbers of animals such as hippos, buffalo and antelope were targeted by both militias and

the military. Poaching for bushmeat escalated alarmingly everywhere. Deforestation in the park was also a major problem as refugees cut down trees for fuel wood. An uncontrolled incremental increase in logging has become serious in unprotected forests, which have been severely looted and tramped, particularly along the eastern border with Uganda.

Deforestation is also a consequence of agricultural activities generally practised by the population, the majority of whom, especially in rural areas, live on farming. Wildlife exploitation is also much related to deforestation and, like agriculture, it has been a long-standing practice in the region. In an area where bush meat is part of the common meal and its business quite lucrative, poaching and hunting become a major challenge for authorities in the region. It endangers the life of not only the animals but also of people working to protect the reserves. As McNeely (2002, cited by Huggins et al. [2006]:401) clearly puts it, 'Currently, one of the most serious problems for park management is the murderous activities of the remnants of former *Interahamwe*/Rwandan Armed Forces... At least 80 of Virunga's park staff have been killed by insurgents'.

Like deforestation, poaching and hunting intensified in the aftermath of the arrival of Rwandan refugees in 1994. The activity is also believed to involve members of the military, militias and rebel groups who make use of their firearms to engage in such practices.

Soil erosion equally represents a major challenge to environmental security in North Kivu. Soil erosion in the region is mostly caused by the intense use of land for farming and also by deforestation. As of 15 April 2004, the Kinshasa office of the Organisation for the Coordination of Humanitarian Assistance (OCHA) had estimated 713 000 IDPs in North Kivu. This figure has since decreased due to relative improvements in the security situation in the province. Nevertheless, the presence of IDPs and refugees in the region has always caused serious damage on the environment.

5. Environmental peacebuilding¹⁶ in North Kivu: The human security face of peace

Former United Nations Secretary-General Kofi Annan (1997, cited by Huggins et al. [2006]:375) once declared that '[s]afeguarding the environment is a crosscutting United Nations' activity. It is a guiding principle of all our work in support of sustainable development. It is an essential component of poverty eradication and one of the foundations of peace and security'.

The way forward in North Kivu, insofar as the impact of the conflict on environmental security is concerned, would be to focus on environmental peacebuilding. This will take the form of preventing conflicts that are generated by unequal distribution of resources as well as reviving and/or setting up mechanisms for trans-boundary cooperation between Rwanda, Uganda and the DRC on environmental issues.

Given the complexity of the conflict in North Kivu, no proposal of a solution may be seen as a panacea. Preventing conflict in the region implies addressing its root causes, namely the land and identity questions. This cannot be imagined without the Congolese state re-asserting its full authority not only in the region, but also throughout the whole country. The general elections held in 2006 have provided an opportunity to undertake such an endeavour. However, success or failure will mainly depend on the boldness of current political office bearers at both national and provincial levels to confront these very sensitive issues of nationality and land in North Kivu. But more importantly, in order to address the land question at the centre of the conflict, there is need to focus on the social conditions that prevail in the area. These include extreme poverty, lack of development opportunities and high level of unemployment that maintain large numbers of people on subsistence farming activities.

Accelerated economic development, provision of jobs and of meaningful poverty alleviation programmes coupled with sustained urbanisation and improvement of the infrastructure (including that of the education sector) bear the potential of reducing pressure on land. But all these transformations should not be limited

16 For further reading on environmental peacebuilding, see Miall et al. 1999:22.

to North Kivu. They ought to encompass the whole Kivu region and the entire country. In the meantime, all contentious cases of significant land ownership ought to be revisited, while the customary law needs to be constrained to its applications that do not contradict the Congolese common law.

Projects aimed at accelerating economic and social development in the region cannot take off before the issue of armed groups in the region is fully addressed. Political solutions need to be found for the armed groups still operating in the region and for the Mai-Mai militias. Concerted efforts to negotiate the return of the FDLR to Rwanda need to be undertaken by the government of the DRC, Rwanda, the international community and the FDLR.

The issue of citizenship in the region needs very careful and particular attention. This is a very important matter given the new political dispensation in the country as it provides for periodical popular elections at all levels. As the delineation of constituencies will, to a very significant extent, impact on the orientation of the votes – and of the elected leaders thereof – a very transparent, inclusive and meticulous task of identification needs to be undertaken in earnest. This should be followed by a very effective national policy on the management of migration and migrants in the DRC in general, in North Kivu in particular.

Lastly, the question of conflict and environmental insecurity in North Kivu cannot be addressed without taking into account its regional dimension. There are two aspects to this, namely improving political and security cooperation between Rwanda, Uganda and the DRC as well as setting up intergovernmental mechanisms for improved cooperation on the management of what is referred to as the Virunga-Bwindi Region (that includes the Virunga National Park in the DRC, the Volcanoes National Park in Rwanda as well as the Mbahinga National Park and Bwindi Impenetrable Forest National Park in Uganda). A consultative management of this zone is crucial for the security of the three countries as it has been for years a sanctuary for militias and other armed groups operating in the region. It currently hosts such groups as the FDLR, remnants of Nkunda's CNDP (National Congress for the Defence of the People), Mai-Mai militias and elements of Joseph Koni's Lord's Resistance Army. With regard to political and security cooperation, the time has come for the three countries

to improve diplomatic cooperation, refrain from supporting rebel movements in neighbouring countries and set up mechanisms for regular consultations on security matters.

Sources

- Hecker, Jeanna Hyde 2005. *Promoting environmental security and poverty alleviation in Virunga-Bwindi, Great Lakes Africa*. The Hague, Institute for Environmental Security.
- Huggins, Chris, Munyaradzi Chenje and Jennifer Mohamed-Katerere 2006. *Environment for peace and regional cooperation*. Available from: <http://www.unep.org/DEWA/Africa/docs/en/aeo-2/chapters/aeo-2_ch12_ENVIRONMENT_FOR_%20PEACE_AND.pdf> [Accessed 14 August 2010].
- Jourdan, Luca 2005. New forms of political order in North Kivu. The case of the governor Eugene Serufuli. Paper presented at a conference on the theme 'Beside the state. New forms of political power in post-1990's Africa'. Milan, December 2005.
- Lemarchand, René 2000. *Exclusion, marginalization and political mobilization: The road to hell in the Great Lakes*. Occasional Paper, Centre for African Studies, University of Copenhagen, Copenhagen.
- Lemarchand, René 2001. *The Democratic Republic of Congo: From collapse to potential reconstruction*. Occasional Paper, Centre for African Studies, University of Copenhagen, Copenhagen.
- Lemarchand, René 2009. *The dynamics of violence in central Africa*. Philadelphia. University of Pennsylvania Press.
- Mamdani, Mahmood 2001. *When victims become killers. Colonialism, nativism, and the genocide in Rwanda*. Princeton, Princeton University Press.
- Miall, Hugh, Oliver Ramsbotham and Tom Woodhouse 1999. *Contemporary conflict resolution: The prevention, management and transformation of violent conflicts*. Cambridge, Polity Press.
- Ministère du Plan 2005. *Monographie de la province du Nord-Kivu*. Kinshasa, Unité de pilotage du processus DSRP.
- Ndaywel è Nziemi, Isidore 1998. *Histoire générale du Congo. De l'héritage ancien à la République Démocratique*. Paris/Brussels, Duculot.
- Pabanel, Jean-Pierre 1991. La question de la nationalité au Kivu. *Politique Africaine*, 41, pp. 32–40.
- Province du Nord-Kivu 2007. *Programme du Gouvernement du Nord-Kivu, Mai 2007*. Available from: <<http://www.provincenordkivu.org/docs/PROGRAMME%20NK.pdf>> [Accessed 14 February 2010].
- Stark, Jeffrey 2005. *Environmental security: From theory and cases to policy*. Paper presented at the annual meeting of the International Studies Association, Hilton Hawaiian Village,

- Honolulu, Hawaii, March 2005. Available from: <http://www.allacademic.com/meta/p7145_index.html> [Accessed 6 January 2011].
- Trefon, Theodore 2005. The social cost of conflict in the Democratic Republic of Congo. In: Chabal, P., U. Engel and A.-M. Gentili, eds. *Is violence inevitable in Africa? Theories of conflict and approaches to conflict prevention*. Leiden/Boston, Brill.
- Vansina, Jan 1966. *Introduction à l'ethnographie du Congo*. Kinshasa/Kisangani/Lubumbashi/Brussels, CRISP.
- Varga, Sonja, Abdul-Rasheed Draman and Koren Marriot 2002. *Conflict risk assessment report. African Great Lakes: Burundi, Democratic Republic of Congo, Kenya, Rwanda, Tanzania, Uganda*. Country Indicators for Foreign Policy Project. The Norman Paterson School of International Affairs, Carleton University, Ottawa.
- Vlassenroot, Koen 2006. A societal view on violence and war. Conflict and militia formation in eastern Congo. In: Kaarsholm, Preben ed. *Violence, political culture and development in Africa*. Oxford/Athens/Pietermaritzburg, James Currey/Ohio University Press/University of KwaZulu-Natal Press. pp. 49–65.
- Vlassenroot, Koen and Chris Huggins 2005. Land, immigration and conflict in eastern DRC. In: Huggins, Chris and Jenny Clover eds. *From the ground up. Land rights, conflict and peace in sub-Saharan Africa*. Pretoria, Institute for Security Studies. pp. 115–194.

Horizons of peace and development in northern Uganda

*Robert Senath Esuruku**

Abstract

Northern Uganda is undeniably a safer place today compared to five years ago. The relative peace in the region has enabled the majority of former Internally Displaced Persons (IDPs) to return to their home areas and begin to rebuild their lives. However, inadequate access to basic services along with unemployment, social dislocation, growing land disputes and inadequate conflict prevention measures present a grave challenge in the region. In order to facilitate the resettlement process, the Government of Uganda has formulated a comprehensive development framework, the Peace, Recovery and Development Plan (PRDP) for northern Uganda, as a strategy to eradicate poverty and improve the welfare of the populace in the region. This was followed by the resettlement programme launched by the Office of the Prime Minister which has contributed to the rehabilitation and construction of new social service infrastructure to support the livelihoods of the returnees. However, the implementation of the PRDP has fallen short of the envisioned peace, recovery and development in

* Dr Robert Senath Esuruku, formerly senior lecturer in the Institute of Ethics and Development Studies at the Uganda Martyrs University, Kampala, is Head of Research in the Uganda-Great Lakes Programme of International Alert.

northern Uganda. Conceptual and capacity problems pose a serious challenge to the implementation of the plan. The paper concludes that the PRDP is ill-equipped to comprehensively address the over two decades of deep-seated human anguish, devastation and psychosocial trauma caused by the civil war. It lacks the mechanism to institute social justice through non-discriminatory and equitable accountability of the state and non-state parties for women, men and children in the region. The paper then makes some proposals for healthier implementation of the plan.

1. Introduction

After more than two decades of civil war in northern Uganda, the Government of Uganda (GoU) has formulated a comprehensive development framework, the Peace, Recovery and Development Plan (PRDP), as a strategy to eradicate poverty and improve the welfare of the populace in northern Uganda. PRDP is a stabilisation plan which has disaggregated northern Uganda from national sector plans and forms the framework for post-conflict recovery and development intervention. The targets of the PRDP include: consolidation of state authority, strengthening of the rule of law and access to justice, rebuilding and empowerment of communities, peacebuilding and reconciliation, and revitalisation of local communities (GoU 2007). Within the framework of the PRDP, development partners are invited to implement specific development programmes in the region.

The PRDP is based on the premise that effective peacebuilding, recovery and development strategies in northern Uganda require an in-depth understanding of the different armed conflicts which have very grossly affected women, men and their children in many ways. It was designed to propagate community reconciliation and mitigate conflicts as a basis for sustainable development in the region. It is hoped that communities would identify conflict mitigation measures to overcome the legacy of violence and address its underlying causes. The development interventions would then flow out of processes of conflict management by providing former combatants, abductees and victims of violence with livelihood opportunities and secure sources of income from labour and contracts for community infrastructure projects (GoU 2007). The plan also has

a monitoring framework to track the progress of development investments to ensure that the targets set by the government are met.

This paper traces and discusses the historical roots of the civil conflict in northern Uganda, its impact in the region, the transition to relative peace, the need for sustainable peace and development and then makes an evaluation of the implementation of the PRDP. Lastly, the paper makes recommendations for better implementation of the plan.

2. Background

2.1 The roots and results of the conflict in northern Uganda

The origin of the civil conflict in northern Uganda can be traced to the deeply rooted ethnic mistrust perpetrated by the colonialists (Kasozi 1994; Latigo 2008; Tripp 2010). The British colonial administration recruited the people of northern Uganda into the armed forces while people from the other regions of the country were mainly employed to work as civil servants. This created a division between people of the other regions of the country who were becoming more developed and the population of the northern region who remained poor and only relied on cattle-keeping as the main source of their livelihood (Gersony 1997; Mamdani 1999). This ethnic and socio-economic divide was exacerbated by political and religious divisions; and since independence in 1962, Uganda's successive undemocratic governments instigated the war in northern Uganda. The two decades of civil conflict in northern Uganda between the Lord's Resistance Army (LRA) and the Uganda People's Defence Force (UPDF) began in 1986 in the Acholi sub-region. The two warring parties signed cessation to hostilities in 2006.

Social services including agriculture, education and healthcare systems were severely looted and wrecked and many professional employees deserted the region. The earlier attempts by the government to rebuild the region through development programmes such as Northern Uganda Social Action Fund (NUSAF) were driven by elite socio-economic and political interests and succumbed to massive corruption (Hickey 2003). Although the social fund

approach has the advantage of devolving responsibility to the community and protecting those responsible for project implementation from undue political influence, the availability of substantial resources for development purposes was an attractive source of political patronage in a region long deprived of such resources. While the objective of NUSAF was to prioritise the most vulnerable groups and areas, politicians keen to re-establish their legitimacy in the region often used the programme as a footstool for advancing their political ambitions.

The destruction of the region's economic base and the breakdown in social cohesion have been strongly felt by communities. At the root of this conflict lie issues of inequality and exclusion from state mechanisms and development opportunities, which have marginalised a large proportion of vulnerable groups in northern Uganda. Explanations for the conflict are complex and intertwined and include Uganda's colonial history, a tradition of political mobilisation along ethnic and regional lines since Independence and the LRA's religious and identity driven agenda (Allen 2006; Doom and Vlassenroot 1999). Insecurity in the Karamoja sub-region, partly rooted in the proliferation of small arms and problematic disarmament programmes, has hampered the administration of central government services resulting in a chronic breakdown of law and order as well as underdevelopment in northern Uganda (UNDP 2008).

The impact of the conflicts in the entire North has been phenomenal. While the national average of Ugandans living in absolute poverty declined from 38,8% in 2002/3 to 31,1% in 2005/6, poverty levels in northern Uganda increased from 2,9 million in 2002/3 to 3,3 million in 2005/6. Statistics show that nearly one third of the chronically poor in Uganda come from the northern region alone (UBOS 2006).

The Human Development Indices (HDIs) and Human Poverty Indices (HPIs) demonstrate that northern Uganda is lagging behind the rest of the country in terms of regional and district-specific breakdowns. While the national HDI had improved from 0,488 in 2003 to 0,581 in 2006, there were regional imbalances that were skewed against the northern region. The Central region for instance scored the highest HDI of 0,650, followed by the Eastern region with 0,586

Horizons of peace and development in northern Uganda

and the Western region with 0,564, while the northern region tailed with 0,478 (UNDP 2007).

Furthermore, while the national annual income per capita is estimated at UGX 570 000= (approximately USD 320), the figure for the northern region stands at a paltry UGX 153 000= which is about 27% of the national average. Although at national level, absolute poverty fell from 56% in 1992 to 31,1% in 2006, 61% of the residents in northern Uganda have hitherto remained poor. Similarly, while Uganda's national infant mortality rate stands at 76 per 1000 live births, the average rate for the north is a hefty 106 per 1000 live births (UNHS 2003). Similarly, the North had the highest HPI of 30,7% as compared with the Central, Western and Eastern regions' percentages of 20,19, 20,56 and 27,11 respectively (UNDP 2007).

In Acholi, Lango, parts of Teso and West Nile, the immediate effects of the armed conflicts were loss of life, massive destruction of property and breakdown of the social, economic and other infrastructure, but also massive population displacement into Internally Displaced Persons (IDP) camps. By September 2006, there were 1,3 million IDPs in Acholi sub-region alone (Amuru, Gulu, Kitgum and Pader) – a number equivalent to over 98% of the estimated population of the sub-region. By the end of 2006, there were 251 IDP camps in the entire northern Uganda, some with a population of over 60 000 IDPs and a density of as high as 1 700 persons per hectare. By January 2007, the number of IDPs in northern Uganda numbered more than 1,8 million people (UNHR 2010).

Figure 1: Map of northern Uganda



Source: Adapted from GoU 2007

In Karamoja and neighbouring districts, the armed conflicts associated with cattle raids have increasingly undermined the ability of households to cope with the harsh physical conditions, which increased their vulnerability to food

insecurity. Inter-clan and inter-tribal armed cattle raids in Karamoja have also resulted in insecurity, death and low development, much as in the war areas. Many people in IDP camps in Teso and some parts of Lango and Acholi were displaced by the cattle rustling which had prevailed in these areas for nearly 20 years (UNDP 2008).

2.2 Transition from war to relative peace

The negotiations between the Government of Uganda and the LRA, which begun on 14 July 2006 in the South Sudan capital of Juba, have resulted in relative calm in northern Uganda. The signing of a Cessation of Hostilities (CoH) Agreement on 26 August 2006 led to the 29 June 2007 Principles of Accountability and Reconciliation and the final disposal of all items of the negotiation agenda. The Comprehensive Peace Agreement (CPA) had not been signed. This has in part been attributed to the impasse around the International Criminal Court (ICC) indictments on some of the LRA leaders. Nonetheless, the relative calm in the region has resulted in large numbers of IDPs moving back to their homes. The IDPs were first placed in transit camps to prepare them to return to their original homes.¹

However, the current return and settlement of the former IDPs are affected by several factors, including concerns about security, availability of requisite tools for bush clearing, land cultivation and planting materials, and inaccessible roads due to non-maintenance. While there was less congestion in return areas, basic social services such as primary healthcare services, safe water, education, nutrition, protection and shelter are seriously lacking. The over 20 years of exposure to armed conflicts and life in encampment have changed not only lifestyles but more significantly social values which increased the potential for domestic violence. Most of the families returning to pre-displacement sites are broken families headed by divorcees, widows/widowers or other single parents, and many child-headed households. The returnees are facing significant problems accessing

1 By the time of finalising this paper, the number of the IDP camps has reduced to nine and the number of the transit sites reduced from 285 to 210. According to the UNHCR Factsheet of 31 March 2011, by the end of March 2011 there were 73 239 IDPs in Northern Uganda. This comprises 26 390 IDPs remaining in active camps and 46 849 in the decommissioned camps.

land in areas of return. During encampment, most men, due to frustration and redundancy, became accustomed to consuming a lot of alcohol and doing very little work (Pham et al. 2005). The burden of looking after the homes has been that of the women. There are also problems resettling the elderly and disabled persons.

After the LRA guns fell silent, armed thugs who operated under their shadows emerged as the leading cause of terror for IDPs returning to their homes. Different criminal gangs continue to terrorise communities in Amuru, Gulu, Kitgum and Pader districts. Hence, the need for an effective Police Force cannot be over-emphasised. Although the strength of the Police Force has grown from 27 000 in 2006/7 to 48 000 by July 2007, there is still a manpower deficit in the entire northern Uganda (UNDP 2008).

The performance of the Justice, Law and Order sector is also affected by the extremely slow processes of trial for suspects, which undermine the confidence in the justice system. By June 2007, 4 000 of the 32 000 inmates countrywide were in war-torn northern Uganda. The judiciary and public prosecution departments are still weak despite nationwide efforts to improve the performance of these institutions. There are also challenges related to Explosive Ordnance Disposal (EOD). Recent assessments, however, show that the threat from mines within the war-affected districts is very low (UNDP 2008).

2.3 Attempts to address the need for sustainable peace and development

Northern Uganda to date has a large number of national and international actors providing humanitarian, recovery and development support to war-affected communities. Since the early 90s, the Government of Uganda with donor support has implemented a number of programmes to improve local infrastructure and livelihoods of the war-ravaged communities in northern Uganda. In response to the challenges experienced by the communities in the conflict-affected districts, the Ugandan government put into action a number of measures aimed at enhancing the protection of the civilian population and bringing the region to normalcy. As part of its response to pillar 5 of the Poverty Eradication Action Plan (PEAP), security and conflict resolution, the government developed a comprehensive

Horizons of peace and development in northern Uganda

Internal Displaced Peoples Policy, the Emergency Humanitarian Action Plan (EHAP) and other programmes.

The earliest development programme implemented in the region was the Northern Uganda Reconstruction Programme (NURP-1) with support from the International Development Association (IDA). It was designed to upgrade the infrastructure in the region through the construction of roads and the provision of water supplies, health facilities and schools. In the West Nile sub-region, a demand-driven programme called Community Action Plan (CAP), funded by the Netherlands government, was implemented. Initially CAP was part of the NURP-1 before it became an independent development programme.

In 2002, the Ugandan Government designed a 5-year Northern Uganda Social Action Fund (NUSAF) development programme funded by the World Bank. The goal of NUSAF was to help local communities in by then 18 districts of northern Uganda that have been ravaged by conflict. This money was given directly to members of the community so they could invest in infrastructure and training for long-term development. NUSAF was a community-driven development programme in which local communities could identify, plan and implement sub-projects geared to improving local infrastructure, promoting livelihood opportunities and resolving conflict.

Other development programmes implemented in the northern region before the PRDP are the Northern Uganda Rehabilitation Programme (NUREP) and the Karamoja Integrated Disarmament and Development Plan (KIDDP). These two development programmes later were incorporated into the PRDP. NUREP, which is a European Union-funded programme, is geared to strengthening the self-reliance and protection of the local population in northern Uganda, rehabilitating the social infrastructure and improving the capacity of Ugandan stakeholders to respond to conflicts and disasters. The KIDDP, on the other hand, has the overall goal of contributing to human security and promoting conditions for recovery and development in Karamoja by dealing with the problem of small arms and light weapons.

To support the return and reintegration of the communities, UNDP has designed an Area Based Integrated Development Programme (ABID) for northern Uganda

to restore and strengthen the capacities of communities and authorities for sustained recovery, reconciliation and peacebuilding with a view to achieving sustainable development. The primary beneficiaries from the interventions include the most vulnerable such as the elderly, HIV/AIDS victims, widows, child-headed households and people previously abducted by the LRA. To ensure successful implementation of the ABID, UNDP is working closely with the Government of Uganda and the local authorities in six districts in northern Uganda. In addition UNDP has entered into agreements with the Norwegian Refugee Council (NRC) and Food and Agriculture Organisation (FAO) to implement the livelihood component of the programme. The United Nations Capital Development Fund (UNCDF) and the United Nations Development Fund for Women commonly known as UNIFEM are expected to support the implementation of the programme.

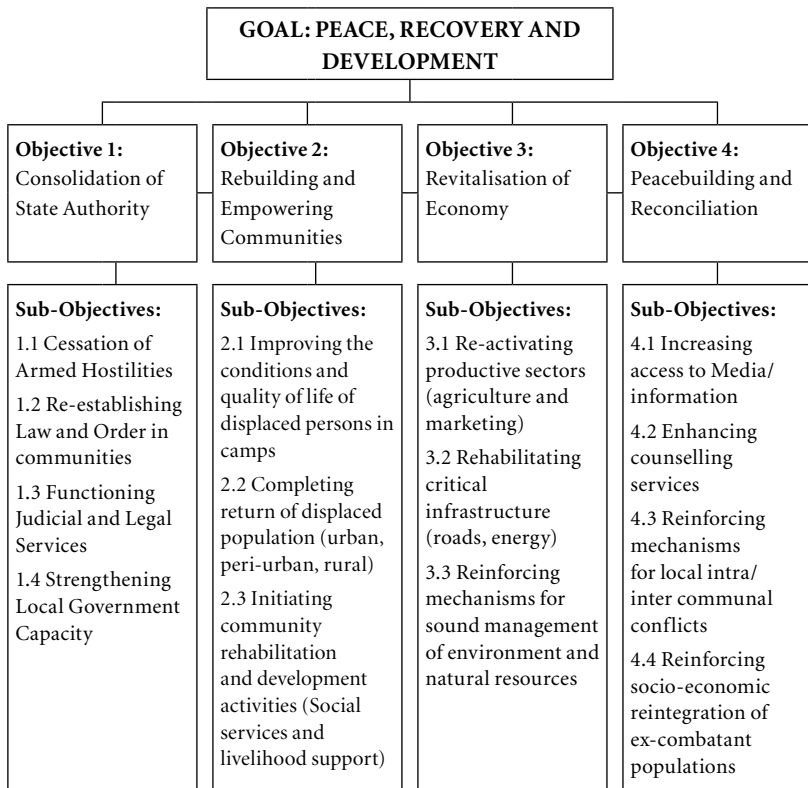
3. The Peace, Recovery and Development Plan (PRDP) for Northern Uganda

3.1 Objectives and programmes

The PRDP is a three-year Government of Uganda plan for the recovery and development of northern Uganda, which currently covers 55 districts and 9 municipalities in northern Uganda. The overall goal of the PRDP is stabilisation in order to regain and consolidate peace and lay the foundations for recovery and development in the region. PRDP was initially conceived as a ‘master plan’ for northern Uganda. It is not only a response to immediate post-conflict-specific issues, but is also meant to eliminate the great discrepancies in the development of the northern and the southern part of the country.

Through the adoption of a set of coherent programmes, the Government of Uganda seeks to achieve four Strategic Objectives in harmonisation with all stakeholders of the PRDP’s implementation process. These objectives include (1) Consolidation of State Authority; (2) Rebuilding and Empowering Communities; (3) Revitalisation of the Economy and; (4) Peace Building and Reconciliation. Please see figure 2.

Figure 2: PRDP Goals and Strategic Objectives



Source: Adapted from GoU 2007

3.2 Coordination and implementation

Ongoing programmes in the North, such as the Northern Uganda Social Action Fund (NUSAF), Northern Uganda Rehabilitation Programme (NUREP), Karamoja Integrated Disarmament and Development Plan (KIDDP), Transition to Recovery Programme, Mine Action Programme, Northern Uganda Youth Rehabilitation Programme, Northern Uganda Youth Centre, North West Small Holder Agricultural Programme and the Northern Uganda Data Centre (NUDC) have all been realigned to the objectives of the PRDP.

The Department for Pacification and Development in the Office of the Prime Minister (OPM) is in charge of the management and coordination of the PRDP, which is spearheaded by the Undersecretary for Pacification and Development. The government's efforts to realise the various Strategic Objectives are testimony to its great commitment to stabilise and recover northern Uganda. All development actors, governmental and non-governmental, are expected to align their interventions in northern Uganda according to the PRDP framework.

In the framework of the PRDP, sector technical planning and coordination will continue to be done by the Sector Ministries and Local Governments (GoU 2007). Hence, execution is to a large part performed under the regular system and procedures for the implementation of sector programmes and district development plans (DDP). The Chief Administrative Officers (CAOs) are responsible for the general management and coordination of the PRDP at the Local Government Level, i.e. developing implementation plans and overseeing and managing the PRDP. In each PRDP district the CAO appoints a PRDP Liaison Officer whose task is to follow up the implementation of the PRDP in close collaboration with all the stakeholders that are operating in a given district.

The PRDP has a Technical Working Group (PRDP TWG) which is primarily in charge of the harmonisation of all actors involved in the recovery process in northern Uganda under the framework of the PRDP, as well as of the coordination of the PRDP itself. This entails the effective steering of PRDP Special Programmes and projects such as KIDDP, NUDC, and NUSAF2. Besides ensuring that activities do not overlap and that PRDP's framework design and government policies are adhered to in implementation, the TWG is to foster synergies amongst all stakeholders engaged in recovery interventions. Moreover, it is the body coordinating the submissions of sector and agency budgets and Harmonised Sector Work Plans for consideration under resource mapping. The TWG also receives and analyses progress reports, informs decision making, identifies challenges and obstacles to a successful recovery and advises on their implementation.

Full-scale implementation started in July 2009 and it is currently programmed to run until June 2012. Forty District Local Governments and seven Municipal

Local Governments implemented activities in the four sectors of education, health, roads and water. The Uganda Police Force and Uganda Prisons Services implemented activities related to the Enhancement of State Authority under strategic objective 1. The other agency involved in the implementation of PRDP activities is the Amnesty Commission. The priorities in the district PRDP work plans were decided by the districts in consultation with the area members of parliament. All the implementing districts prepared annual work plans containing their priorities duly approved by their district councils and submitted to the office of the prime minister for final approval. The Ministry of Finance, Planning and Economic Development (MoFPED) and the Northern Uganda Data Centre (NUDC) provided a format to enable the districts to report progress on the implementation of PRDP activities.

3.3 Achievements

The resettlement programme to support the return of the IDPs commissioned by the OPM has made remarkable achievements. To support food production, the OPM introduced a tractor hire scheme which has resulted in cultivation of over 7 900 acres of agricultural land for crop plantation. The government also provided 350 ox ploughs, 700 oxen and 500 heifers to support local farmers in agricultural production in Lango sub-region (GoU 2011). Under the Karamoja Food Security Action Plan (KFSAP), the government has supported communities in the sub-region to participate in food growing and a number of water points have been constructed to support agricultural production. For example, GoU hired a private tractor company to plough 2 200 acres of land in Karamoja for vulnerable people and provided seeds, cassava cuttings, potatoes and vines to boost food production.

Furthermore, as part of the settlement incentive, the GoU has procured and distributed 32 000 corrugated iron sheets to the returning IDPs to facilitate the construction of houses. A low-cost housing scheme using hydraform was piloted by the government in the Karamoja, Teso and Acholi sub-regions. In Karamoja sub-region 40 low-cost housing units and a health centre were constructed at Nadunget and Campswahili. The GoU has also trained 80 youth in brick making and the construction of low-cost housing units (GoU 2011).

In order to address strategic objective 2 of the PRDP, the GoU initiated NUSAF2. A systematic roadmap to roll out the project in the war-ravaged regions was developed by the OPM. NUSAF2 was designed on the basis of a community demand specifically focused on livelihood improvement and access to socio-economic services. As part of the intervention, a number of public infrastructure investments has been made as summarised in table 1 below:

Table 1: Public infrastructure development

Infrastructure	Number
Primary school classrooms	525
Teachers' houses	239
Construction roads	1 200 km
Houses for Acholi Chiefs	49
Boreholes	390
Shallow wells	33

Source: GoU 2011

4. Shortcomings and challenges in the planning and the implementation of the PRDP

4.1 Inherent weaknesses within the PRDP

The PRDP at first glance may be seen as a conflict-sensitive development programme with an attractive title: 'Peace, Recovery and Development Plan for Northern Uganda'. At its very inception, however, the PRDP was faced with challenging problems, such as finding conceptual clarity, an appropriate model, sufficient institutional capacity and adequate funding.

The critics of the PRDP challenged the government to provide a comprehensive conflict-sensitive development policy framework for the war-ravaged northern Uganda. But, according to Clausen and others (2008:35), 'the PRDP emerges from a historical background of GoU policies and programmes towards the North that have been highly conflict insensitive. Against this background the

PRDP rests on an insufficient [sic] detailed and differentiated conflict analysis, mainly focusing on symptoms rather than the underlying dynamics of the conflict’.

Women’s contributions to war and peace in northern Uganda have been underestimated by the PRDP. A number of studies conducted in the region (International Alert 2010; Isis-WICCE 2000) established that conflict worsens existing patterns of gender-based violence, especially sexual violence, as communities’ values are disregarded during and after conflicts. Women in northern Uganda were subjected to different forms of gender-based violence including abduction, sexual slavery, gang rape, forced marriage and maiming of body parts. Violence against women also extends to denial of the right to economic resources like land due to the breakdown in the traditional system of land management.

The PRDP investment was mainly focused on infrastructural development – neglecting the crucial peacebuilding and reconciliation strategic objective. Both of these key aspects were included in the plan, but they were ‘mainly boxed into the fourth strategic objective of peace building, recovery and reconciliation and not sufficiently recognised under the other objectives’ (Clausen et al. 2008:35).

4.2 Institutional capacity challenges

The capacity to include PRDP priorities in regular plans and programmes and execute them as planned is adequate at national level. However, in PRDP districts there are significant human resource and capacity constraints. Whereas local governments all over the country experience staffing constraints, the situation in the north has been exacerbated by over two decades of conflict. Government structures in most parts of the region were destroyed and replaced by camp commandants. With the influx of humanitarian assistance, the North has become a relief-dominated economy while the district authorities have very few resources at their disposal. Staff attrition is extremely high and the average staffing capacity in the region ranges between 35% and 55% of the approved positions (GoU 2006). Many critical positions in both the administrative and technical cadres remain unfilled. The situation is even worse at the lower

local governments where many positions of Sub-county and Parish chiefs are frequently occupied by persons in acting capacity. Among the technical departments, the health sector is the worst affected due to an acute shortage of health workers in the region. An assessment conducted by the Ministry of Local Government (MoLG) in December 2006 indicated that the Acholi region had a 63,2% gap of unfilled staffing, West Nile 56,1%, Lango 51,1%, Teso 44,6% and Karamoja 50%.

In addition to low staff numbers, many local governments in the conflict-affected districts also lack basic office facilities, equipment and logistics to support their operations. Because of the security threats, poor living conditions, lack of social infrastructure, lack of basic office amenities and low local revenue the districts continue to experience difficulties in attracting and retaining qualified staff. This has an adverse impact on key functions as internal audit and control. Staffing gaps in some districts have also been attributed to the creation of new districts which have further depleted the older districts of their staff complement. Low management capacity, weak discipline in relation to GoU regulations and weak internal control systems have resulted in significant amounts of unauthorised expenditures in many districts. The rectifying factor would be to closely monitor compliance with GoU public financial management regulations and ensure that audit qualifications are followed up.

4.3 Limited financial resources

As a master plan, the PRDP is estimated to cost 606 million US dollars over a three year period. Sector-specific costing exercises, however, indicate a much higher level of financial requirement to reduce the regional imbalance between North and South in the various sectors (Clausen et al. 2008). Furthermore, there are disagreements between the different government institutions as to whether the costing of PRDP was an estimate of the need for additional funding or whether it included current allocations (Clausen et al. 2008:44). Funding for the PRDP priorities are partially based on the assumption that humanitarian assistance channelled by donors through NGOs and UN agencies for northern Uganda can be shifted to regular on-budget support for PRDP (Bailey et al. 2009). Although some donors have indicated increased transitional and development funding

Horizons of peace and development in northern Uganda

to the North, there is a gap in funding for the transition from humanitarian assistance to longer-term development funding. For most donors, humanitarian assistance is allocated through global votes and prioritised between emergency situations and not allocated to a specific country (Bailey et al. 2009).

In the fiscal year 2009/2010, which was the first full-scale year of PRDP implementation, the contribution of the Government of Uganda amounted to UGX 100 billion, details of which are provided in table 2 below. While UGX 76 369 billion was disbursed directly to the 40 District Local Governments in accordance with their Harmonised Sector Work Plans, UGX 3 601 billion was allocated to the 7 Municipal Local Governments. On the basis of the sector work plans harmonised with the Office of the Prime Minister, the Ministry of Finance, Planning and Economic Development released a total of UGX 79 466 billion representing 99,4% of the total allocations in the fiscal year 2009/2010.

Table 2: PRDP Allocation for FY2009/2010

Sectors/Agencies	Amount (UGX)
Uganda Police Force	6 256 783 390
Institutional support for coordination and monitoring	2 781 343 405
Uganda Prisons Services	1 602 609 735
Amnesty Commission	1 200 000 000
Ministry of Justice and Constitutional Affairs	3 189 110 470
Karamoja Development Programme	5 000 000 000
District local governments	76 369 153 000
Municipal local governments	3 601 153 000
Grand Total	100 000 000 000

Source: GoU 2010

The PRDP budget also includes on-budget and off-budget support as well as funds provided for Special Programmes. On-budget support to the PRDP

is project funding to the government by donors who support specific PRDP-related activities implemented by central government over a fixed period of time. Activities funded by this basket fund are managed by different institutions and primarily use government budgeting, procurement, accounting and reporting systems. Off-budget support refers to donor expenditures channelled through NGOs or implementing organisations. However, this includes only those projects which are in line with the PRDP's strategic objectives, in particular with strategic objectives 2 and 4, and are implemented directly by UN or NGOs (GoU 2010).

In 2008, a Joint Financing Agreement (JFA) was established to contribute towards the on-budget funding of the PRDP. Norway and Sweden contributed in the fiscal year 2009/2010 NOK 30 million (approximately USD 4,4 million) and SEK 15 million (approximately USD 1,9 million) to the budget fund, which supported the PRDP districts in the priority sectors of health, roads, education and water. In the coming fiscal year 2010/2011, the two countries will continue to contribute to the JFA, joined by Denmark and Ireland totalling approximately USD 12 million.

4.4 Implementation challenges

The implementation of the PRDP and its possible impacts have been intensely discussed and highly criticised by academics, policy analysts and the civil society (Salborn 2010). An accurate evaluation of the achievements made by the implementation plan is still missing. As a guiding principle, the PRDP implementing districts were required to come up with their annual priority interventions through a consultative process involving all stakeholders, notably the members of parliament and political leadership in the districts. The lower local units were also expected to set their priorities and submit them to the districts for consideration. These PRDP priority activities are presented by the District Technical Planning Committee (DTPC) to the District Council (DC) for final approval. However, this process has several challenges ranging from lack of information, poor communication to inadequate capacities of planning teams.

The Office of the Prime Minister received a number of complaints from the PRDP implementing districts (GoU 2010). Most district councillors never gave

Horizons of peace and development in northern Uganda

any feedback to the sub-counties they represent on the prioritisation decisions of the councils and the spirit under which they were taken. The apparent poor working relations between the members of parliament and some district leaders resulted in poor flow of information. Some districts also approved the PRDP work plans without subjecting them to serious scrutiny by the stakeholders, which resulted in duplication.

There was duplication of work plans between line ministries and local governments in a number of districts. For example, Budaka district and the Ministry of Water and Environment both planned to construct motorised boreholes at Iki-Iki Town Board in the same FY 2009/10. Similarly in Moyo district, the construction of a staff house at Abeso H/C II in Metu sub-county worth UGX 67 980 000 was planned for twice – under the normal Primary Health Care (PHC) development grant to the district and also under PRDP.

Furthermore, unclear policy guidelines have resulted in conflicting prioritisation, lengthy procurement processes and high costs of investment. Coupled with poor public information and limited understanding of the PRDP, there are unrealistic expectations held by implementing districts. For example, members of Lira district local council planned to build a 40 000 seat modern stadium named after John Akiibua, a former olympic gold medallist, and an airport at Anai using PRDP funds (Omara 2009).

There are cases where the implementation of the PRDP has created conflicts, which it then had to mitigate. For instance, the rehabilitation of Anamido-Adero landing site road in Amolator district led to destroyed property and crops, which caused protest from the community. Without consulting the community, the contractor abandoned the procurement requirements and opened up a new road instead of rehabilitating the existing road. The intended outcome of strengthening local government capacity and empowering local communities was at stake. Land use and crop destruction are now the new sources of conflict in the district.

Another concern was the Government's creation of new districts, which posed a challenge in human resource deficits coupled with poor service delivery. Many times, the leaders from the already planned for districts have raised concerns

about the reduction in funding because new districts have to be catered for. For example, a serious capacity gap forced Nakapiripirit district to use the Kapchorwa district contracts committee. The lengthy procurement process slowed down the implementation of the PRDP programmes. Other districts in similar procurement difficulties were Busia and Budaka. Also a number of districts such as Pader and Kumi have failed to adhere to their work plans and lack the capacity to implement them.

In some cases there is a tension between some district local governments and the sector ministries about their mandate in the implementation of the PRDP activities. For example, the Ministry of Education and Sports (MoES) has moved beyond its mandate of ensuring quality through provision of technical support to ensure compliance with line sector norms and standards in the implementation of PRDP activities. In Manafwa district in particular the District Education Officer (DEO) with instruction from the MoES took over the role of managing the funds under the education investments, disregarding the decision of the district council. Such kinds of disagreements were also reported in Sironko, Oyam and Buliisa districts.

A similar challenge was also presented by the Ministry of Works, Transport and Communication (MoWTC) and Butaleja district. The MoWTC had unique standards for the determination of interventions under PRDP in the road sector. Whereas trunk/national roads remained the responsibility of MoWTC, districts continued to manage and plan for community/access roads and district/feeder roads under PRDP. However, the case of Butaleja district and MoWTC planning to rehabilitate the same Nampologoma-Mawaga-Kaiti-Hasahya road in Kachonga-Naweyo sub-counties raised a question about the clarity of mandates.

5. Conclusion and recommendations

The PRDP as a post-conflict recovery strategy for building sustainable peace, eradicating poverty and improving the welfare of the people of northern Uganda is a good programme. It is the overall plan for accelerating development in northern Uganda above the regular national budget within the National Development Plan (NDP). In the past two years of the implementation of the

Horizons of peace and development in northern Uganda

plan, a remarkable amount of social service infrastructure has been built to support the return of the IDPs. The objective of this component is to improve access to basic socio-economic services through rehabilitation and improvement of existing community infrastructure such as schools, water points, skills training centres, health centres, teachers' houses and sanitation facilities.

Despite the remarkable progress, northern Uganda still lags behind the rest of the country in health, education and general infrastructure. Conceptual and capacity problems continue to pose a serious threat to the government's commitment to support the recovery of northern Uganda. The major PRDP investment was devoted to the rebuilding of the physical components of the region while only a negligible investment was made towards rebuilding people's lives. The objective 4 of the PRDP, which provides for peacebuilding and reconciliation has fallen short of the envisioned output. The plan is ill-equipped to comprehensively address the over two decades of deep-seated human anguish, devastation and psychosocial trauma caused by the civil war. PRDP lacks the mechanism to institute social justice through non-discriminatory and equitable accountability of the state and non-state parties to women, men and children in northern Uganda.

The envisioned outcome of the PRDP is to ensure continuous prevalence of peace in northern Uganda. The peacebuilding and reconciliation process requires increasing access to information, enhancing counselling services, establishing mechanisms for communal and national conflict resolution and reinforcing the integration of IDPs and ex-combatants in their communities. There should be a deliberate effort to strengthen the capacity of local governments and informal leadership structures to deliver services to returning populations.

At the moment, monitoring the implementation of the PRDP is being done at various levels. The OPM has generated results matrices for monitoring the implementation of the various programmes within the plan. The donors and donor working groups have also developed matrices for monitoring peace and development impacts. Local civil society and other international civil society groups have also put in place mechanisms to monitor the implementation of projects at district, sub-county and village level. All these initiatives are

important to ensure that services are provided as planned and that they fit within the objectives of the PRDP.

Furthermore, resource allocations should be conflict-sensitive and ensure that the sector plans to improve the delivery services relate to addressing the deep-seated conflict situations in the regions. Attention should also be given to building the capacity of the local governments to enable them to deliver accountable and unbiased service of the best possible quality. This calls for comprehensible guidelines and monitoring mechanisms that can eliminate duplication and corruption. Perhaps in some cases there is need for an appropriate sequencing of result-oriented interventions. Free flow of information and community participation will create a sense of legitimacy, ownership and sustainability of the PRDP.

Finally, it is well known that rebuilding war-ravaged areas need a lot of resources. It is an area to which the government must give priority in order to improve development outcomes in the impoverished region. Preventing and ending conflicts, and ensuring that they do not recur should be the core agenda of the PRDP. Therefore, contextual analysis of the overall recovery process, evidence-based advocacy and technical support to improve the recovery and peacebuilding impact should support the implementation process. These responsibilities cannot be met by relying on humanitarian agencies and development partners to provide core functions such as health, education, water and agricultural support. The government should be at the frontline and must demonstrate the will to comprehensively address the recovery of northern Uganda.

Sources

- Allen, Tim 2006. *Trial justice: The International Criminal Court and the Lord's Resistance Army*. London, Zed Books.
- Bailey, Sarah, Sara Pavanello, Samir Elhawary and Soreha O'Callaghan 2009. *Early recovery: An overview of policy debates and operational challenges*. Humanitarian Policy Group Working Paper. London, Overseas Development Institute.
- Claussen, Jens, Randi Lotsberg, Anne Nkutu and Erlend Nordby 2008. *Appraisal of the Peace, Recovery and Development Plan for Northern Uganda*. Oslo, Norwegian Agency for Development Cooperation.

Horizons of peace and development in northern Uganda

- Das, Rekha and Anne Nkutu 2008. *Evaluation of general food distribution in Northern Uganda: Gulu, Amuru and Kitgum Districts 2005–2008*. Kampala, Norwegian Refugee Council.
- Doom, Ruddy and Koen Vlassenroot 1999. Kony's message: A new Koine? The Lord's Resistance Army in Northern Uganda. *African Affairs*, 98, pp. 5–36.
- Gersony, Robert 1997. *The anguish of Northern Uganda: Results of a field-based assessment of the civil conflict in Northern Uganda*. Kampala, USAID.
- Government of Uganda (GoU) 2006. *A rapid assessment study for support to local governments in Northern Uganda*. Kampala, Ministry of Local Government.
- Government of Uganda 2007. *Peace, Recovery and Development Plan for Northern Uganda 2007–2010*. Kampala, Ministry of Finance, Planning and Economic Development (MoFPED).
- Government of Uganda 2010. *Reconstructing Northern Uganda takes shape: Achievements of the full-scale implementation of PRDP during FY 2009/2010 accountability*. Kampala, Office of the Prime Minister.
- Government of Uganda 2011. *Peace, Recovery and Development: How far and which way?* Kampala, Office of the Prime Minister.
- Hickey, Samuel 2003. The politics of staying poor in Uganda. CPRC Working Paper 37. Manchester, Chronic Poverty Research Centre.
- International Alert 2010. Changing fortunes: Women's economic opportunities in post-war Northern Uganda. *Investing in Peace*, Issue No. 3.
- Isis-WICCE 2000. *Documenting women's experiences of armed conflict situations in Uganda: The case of Gulu district, 1986–1999*. Kampala, Isis Women's International Cross Cultural Exchange.
- Kasozi, Abdu B.K. 1994. *The social origins of violence in Uganda 1964–1985*. Montreal, McGill-Queen's University Press.
- Latigo, James Ojara 2008. Northern Uganda: Tradition-based practices in the Acholi region. In: Huyse, Luc and Mark Salter eds. *Traditional justice and reconciliation after violent conflict: Learning from African experiences*. Stockholm, International IDEA.
- Mamdani, Mahmood 1999. *Politics and class formation in Uganda*. Kampala, Fountain Publishers.
- Martin, Ellen 2010. Capacity-building and partnership in Northern Uganda. *Humanitarian Practice Network*, Issue 46, March 2010.
- Omara, James 2009. Lira plans to build airport and modern stadium using PRDP funds. Available from: <<http://www.adungu.org/?cat=33>> [Accessed 5 December 2010].
- Pham, Phuon, Patrick Vinck, Marieke Wierda, Eric Stover and Adrian di Giovanni 2005. *Forgotten voices: A population-based survey of attitudes about peace and justice in*

- Northern Uganda*. Berkeley, The International Centre for Transitional Justice and the Human Rights Centre.
- Salborn, Etienne 2010. *Requirements for successful return and resettlement after long-term internal displacement*. Nordstedt, GRIN Verlag.
- Tripp, Aili Mari 2010. *Museveni's Uganda: Paradoxes of power in a hybrid regime*. Boulder/London, Lynne Rienner Publishers.
- Uganda Bureau of Statistics (UBOS) 2003. *Uganda National Household Survey 2002/2003 Report on the Socio-economic Module*. Kampala, UBOS.
- Uganda Bureau of Statistics 2006. *Uganda National Household Survey 2005/2006 Report on the Socio-economic Module*. Kampala, UBOS.
- United Nations Development Programme (UNDP) 2007. *Uganda Human Development Report 2007: Rediscovering Agriculture for Human Development*. Kampala, UNDP.
- United Nations Development Programme 2008. *Committed to Northern Uganda's recovery. Special Edition: Crisis Prevention and Recovery programme*. Kampala, The United Nations Development Programme in Uganda Communications Group Newsletter.
- United Nations High Commissioner for Refugees (UNHCR) 2010. 6th December 2010, *Camp phase-out update for Acholi, Lango, Teso and Madi Sub-regions*. Kampala, UNHCR.

Labour arbitration effectiveness in Zimbabwe: Fact or fiction?*

*Pharaoh Maitireyi and Richard Duve***

Abstract

This paper is based on a research project done in the retail sector in Zimbabwe in the Bulawayo metropolitan province. The research noted that disputes between employees and employers unavoidably arise because of differing class interests. Because of the inevitability of these class disputes between labour and capital, there is need for the state to put in place labour dispute resolution mechanisms that are cost effective and also flexible in terms of procedure and speed. The Zimbabwe Labour Act (28.01), as amended, provides a framework for resolving labour disputes through arbitration. The research sought to investigate the effectiveness of the labour arbitration process in Zimbabwe. The three main criteria for evaluating effectiveness of arbitration, namely accessibility, speed and expertise, were subjected to an empirical test in the Zimbabwean context. The article concludes that the labour arbitration system in Zimbabwe is largely ineffective due to reasons of prohibitive costs, complexity of procedures and the perceived incompetence of arbitrators. The lack of transparent arbitrator appointment criteria also compromises the arbitration system in Zimbabwe. The

* The article is a follow-up to an unpublished dissertation by P. Maitireyi, supervised by R. Duve, entitled 'An investigation into the effectiveness of labour arbitration systems in Zimbabwe'.

** Pharaoh Maitireyi has a Master's Degree in Business Administration at the Graduate School of Business Leadership, Midlands State University, Gweru, Zimbabwe, and Richard Duve is Lecturer and Chairperson of the Department of Marketing Management at the same university.

research further revealed that, though arbitration can serve a very good purpose as an alternative to costly and lengthy litigation, its effectiveness relies to a great extent on its flexibility and transparency as well as the qualifications, expertise and integrity of the people who preside over it.

Introduction

The history of the conflictual relationship between master and servant dates back to ancient times. The industrial revolution further polarised the class interests of the privileged owners of the means of production and the less fortunate providers of labour. Because of these conflicting interests, industrial disputes became inevitable. However, the privileged status of owners of capital put them in a more advantageous position that enabled them to subjugate the workers. Power of this class was exercised through the manipulation of the ‘stick and carrot’ technique as well as the court system, which for all intents and purposes, represented the voice of capital. The system of colonialism also perpetuated the stratification system that favoured the owners of capital. In the colonised territories, the court system was used more as an instrument of civilised repression than as a fountain of justice. As a result, it could not be relied upon by the working class. However, the twin developments of the unionisation of the labour force and the international democratisation of workplaces gave impetus to a reordering of industrial relations. These developments significantly leveraged the influence of labour and empowered its voice in employment relationships.

Because labour movements fought alongside revolutionary movements, the attainment of independence by formerly colonised states such as Zimbabwe ushered in an industrial order in which the labour movements gained significant power and influence over capital. This resulted in the repeal of oppressive legislation and substituting it with a structure that gave both capital and labour an equal footing in managing employment relationships. The new order recognises the fact that industrial disputes arise, by and large, over interpretation of employment contracts and conditions of service at shop floor level and hence requires a system that facilitates mutual engagement. The adjudicatory court system is not only costly and lengthy, but also not ideal for reconciling shop floor disputes. Arbitration came in as a necessary substitute that gives disputing

parties an opportunity to settle their differences in an informal, flexible and non-adversarial manner.

However, the arbitration process has its challenges. Though it serves a very good purpose in resolving labour disputes, it has to be practised by qualified people with the necessary expertise and integrity. It also has to be easily accessible to an offended party and able to resolve disputes in an expeditious manner. The system of appointing arbitrators also has to be highly transparent and well coordinated. It is within this context that this paper is presented, the goal being to examine the effectiveness of the labour arbitration system in Zimbabwe.

Historical development of labour arbitration systems in Zimbabwe

The history and development of labour arbitration systems in Zimbabwe cannot be understood fully without analysing the legal statutes that regulated labour relations in both pre- and post-independence Zimbabwe. The state's influence on the industrial sphere shaped the character of labour relations, particularly the conduct of dispute resolution. In the early stages of colonialism, the Rhodesian colonial government through the Masters and Servants Act (MSA) of 1901 specifically targeted the control of labour (Cheater 1991). This piece of legislation did not provide any platform for industrial bi-partyism as its essence was to curtail the freedom and independence of the working class.

Arbitration law was first introduced through the 1934 Industrial Conciliation Act. However as Gwisai (2007) notes, it remained a secondary method hardly used throughout the colonial period. As the industrial base grew, a series of reforms culminated in the enactment of the Industrial Conciliation Act (ICA) of 1945 in an attempt to exert more control over employment matters. As Cheater (1991) notes, the motive behind the ICA was the state's perception of conflict between labour and industrial capital. The state's view was that this perceived conflict required a system of bureaucratized adjudication. Although the state had the ultimate responsibility over the stability of the industrial sphere, it ensured that the negotiations and outcomes were between parties to the disputes.

Cheater (1991) observed that the ICA established a two-tier adjudication hierarchy, one dealing with registration of trade unions and employment associations and the other dealing with resolution of industrial conflict through bureaucratized procedures in the form of Industrial Tribunals, Industrial Councils and Conciliation Boards. The representation on these bodies embraced both labour and capital. However, since the ICA regarded employment and dispute resolution as strictly private affairs (Cheater 1991), the disproportionate weight of industrial capital over labour during this period meant there was no meaningful participation of labour in resolving industrial disputes. As a result, the outcomes of conciliation and arbitration of labour disputes predominantly favoured employers. Chapter 3 of the ICA provided that the Act would not bind the state, thereby leaving the Minister of Labour incapacitated from actively intervening in industrial matters to the detriment of workers whose status and power were inferior to industrial capital.

Though it remained a hindrance to participative dispute resolution, the ICA at least recognised the status of labour and its relevance in promoting and safeguarding industrial harmony. The post-independence government realised the need to politicise labour relations in recognition of the existing class antagonism. With the promulgation of the Labour Relations Act (LRA) of 1985, arbitration became the preferred method of settling collective labour disputes in order to avoid collective job actions. The LRA brought in a new dispensation to the labour relations sphere. Apart from clearly defining the fundamental rights of employees and unfair labour practices, it went further to provide regulations governing conditions of employment and other related matters which was a revolutionary departure from the colonial legislation.

Dispute resolution was entrusted to state functionaries who, by and large, were an extension of the responsible Minister's political power. Conciliation and arbitration decisions by Labour Officers and Industrial Relations Boards (IRBs) largely reflected the political and economic interests of the state. The autonomy of these adjudicatory structures was limited under the LRA principally because of the overall political authority which the appointing Minister exercised. Section 117(1) of the LRA provided that, where compulsory arbitration was ordered by a Senior Labour Relations Officer, the Minister had to be notified without fail. The

Labour arbitration effectiveness in Zimbabwe: Fact or fiction?

Minister had the sole responsibility and power to refer the matter to the Labour Relations Tribunal (LRT) or to appoint an independent mediator. This made the whole system of arbitration and dispute resolution subordinate to political control and far removed from the shop floor.

With the increasing unionisation of the labour force and the changing political landscape, both locally and globally, greater pressure was exerted on the government to reform its labour legislation for it to comply with international best practices. A series of legislative repeals and amendments of the LRA culminated in the enactment in 2003 of the current Labour Act (LA) Chapter (28.01) as amended. The LRA amendments of 2003 and 2005 which gave rise to the current Labour Act, further refined conduct of labour arbitration by reinforcing its use in settling disputes of interests. This act provides for more meaningful worker participation and less political control of the industrial relations sphere by the state. The LA significantly amended sections 93 and 98, and repealed sections 95, 96, 97, 99 and 100 of the LRA Chapter 28.01 which collectively dealt with the power and conduct of Labour Officers and arbitration procedures. Whereas sections 93, 95 and 96 of the LRA gave powers to Labour Officers and Senior Labour Officers to make final decisions on labour disputes, the LA reduced the authority of these government bureaucrats to merely conciliate disputes.

The current labour arbitration practice in Zimbabwe

As already mentioned, the LRA and the LA, as amended, ushered in a new dispensation on labour dispute resolution in general and arbitration in particular. As already alluded to in the preceding pages of this paper, the responsibility of handling arbitrations is entrusted to the hands of arbitrators appearing on a list compiled by the Minister of Labour and Social Welfare.

Sections 93 and 98 of the Labour Act provide that when a Labour Officer or Designated Agent of a National Employment Council (NEC) has failed to conciliate a dispute and issues a certificate of no settlement, he appoints an Arbitrator after consulting the most senior Labour Officer in his region of jurisdiction. Unlike in other jurisdictions such as South Africa, in Zimbabwe, the arbitrator is not an institution. The appointed arbitrator is mandated to arbitrate the dispute in terms

of the Zimbabwe Arbitration Act (17.05). Section 90A of the Labour Act makes it explicit that the arbitrator shall not be bound by the strict rules of evidence relating to its admissibility in proceedings. (**Figure 1** shows the labour arbitration flow diagram under the Labour Act (28.01)).

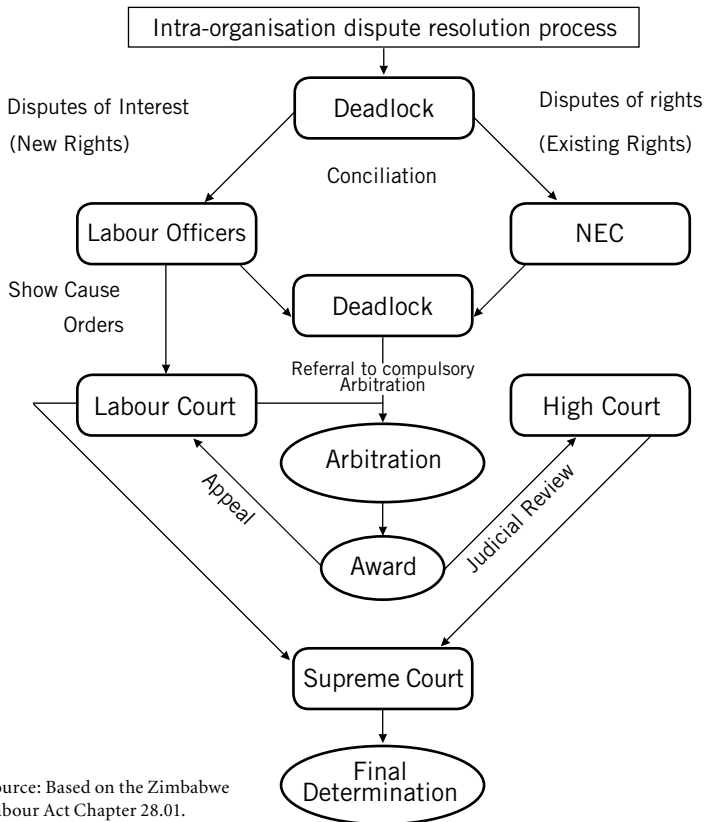
Areas that differ from jurisdiction to jurisdiction relate to the payment of arbitration costs and the timelines prescribed in the process. In Zimbabwe (Mariwo 2008; Gwisai 2007), as in North America (Trudeau 2002) and China (Shen 2006), the arbitration system provides that the costs are borne equally by the disputants. In other regional jurisdictions like South Africa, Lesotho and Swaziland (Bhorat et al. 2009; Khabo 2008), the costs of the arbitrator are borne by the state. In the Zimbabwean case, there are no regulations governing the determination of costs. Whereas elsewhere, systems provide for timeframes within which disputes are resolved by arbitration, the Zimbabwean system is silent in this regard. The Labour Act does not give time prescriptions on arbitration as it does in other appeal processes. Consequently, there are many arbitration cases pending in the security industry in Zimbabwe, as was observed by Mariwo (2008).

In a significant departure from the previous legislation, the Act brought with it a new system that makes it easy for disputants to resort to arbitration for resolving labour disputes. The role of Labour Officers has been confined to conciliation, so that they could no longer wield considerable authority in deciding cases. Gwisai (2007) opined that the state had probably realised that the old system of dispute resolution was unnecessarily laborious. The new legislation whittled down the Minister's political power and involvement in the arbitration of labour disputes. Whereas section 100 (subsections 1 and 2) of the LRA empowered the Minister to refer a dispute to the LRT for arbitration or appoint a mediator, the LA shifted that responsibility to the less political civil servant (the Labour Officer). The Labour Officer or the Designated Agent now has authority to appoint an Arbitrator selected from a list of arbitrators prepared by the Minister in consultation with the President of the Labour Court (Section 98, subsections 5 and 6). In allowing for further democratisation of labour relations, Section 98(4), unlike the LRA, provides that the Labour Officer or Labour Court in referring a dispute to compulsory arbitration 'shall determine the arbitrator's terms of reference after consultation with the parties to the dispute'.

Labour arbitration effectiveness in Zimbabwe: Fact or fiction?

This is a major departure from the LRA which empowered the Senior Labour Officer to state the issues which in his opinion had to be decided by arbitration. This new dispensation on determination of terms of reference is significant in a number of ways. It is the parties themselves who define, in their own language, the points of difference and the actual dispute elements to be arbitrated. This flexibility ensures that the arbitrator is appropriately guided and decides on the exact issues that have to be decided about. In addition, the disputants mutually agree on what they want the arbitrator to decide about. As a result, there is no ambiguity on the nature of the dispute or the elements for which the disputants seek a resolution. See the flowchart below.

Figure 1: Dispute Resolution Flow Chart.



Source: Based on the Zimbabwe Labour Act Chapter 28:01.

The arbitration system under the preceding legislations was open to abuse and manipulation by disputants. Gwisai (2007) noted that the LRA created conducive conditions for achieving finality to litigation as any disputant could appeal against an award on frivolous grounds to buy time or evade culpability. This state of affairs rendered arbitration largely irrelevant to dispute resolution as the majority of the awards ended up being contested in the higher courts. As a result, the Labour Tribunals were flooded with cases that arbitration was expected to have resolved, thereby clogging the judiciary system. In order to arrest this administrative malaise, the Labour Act refined the appeal mechanism to make it difficult for disputants to appeal on frivolous grounds. Section 98(10) of the LA stipulates that ‘an appeal on a question of law shall lie to the Labour Court from any decision of an arbitrator’. Alternatively an appeal for review of an arbitration award can be lodged with the High Court under the strict provisions of the ‘*Model Law*’ of arbitration. These concepts will be discussed in turn.

Question of law: This term is not defined in the LA itself, but the Supreme Court in *Muzuva v United Bottlers 1994 ZLR 217(S)* adequately defined it in several simplified ways. According to this judgment, as summarised by Gwisai (2007:285), a question of law was held to mean:

- a question which the law itself has authoritatively answered to the exclusion of the right of the tribunal or court to answer the question as it thinks fit in accordance with what it considered to be the truth and justice of the matter;
- a question as to what the law is;
- a question which is within the province of the judge instead of the jury;
- misdirection on the facts or evidence before the arbitrator that is ‘so outrageous in their defiance of logic as to amount to serious misdirection’;
- a case where the making of an award is in violation of grounds specified under article 34 of the Model Law.

Model Law: The model law on arbitration is a legislative text that the United Nations Commission for International Trade Law (UNCITRAL) recommends to states for enactment as part of their national law. Article 34 of the Model

Labour arbitration effectiveness in Zimbabwe: Fact or fiction?

Law (United Nations 1994) states that an arbitral award may be set aside by an appropriate court of appeal in the country concerned if

- one of the parties to the agreement ‘was under some incapacity’ or the agreement was not valid under the law;
- the aggrieved party was not given proper notice or could not properly present its case;
- the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration;
- the composition of the arbitral tribunal or the procedure was not in accordance with the agreement of the parties;
- the subject matter of the dispute is not capable of settlement by arbitration under the law of the state; or if
- the award is in conflict with the public policy of the state.

These provisions were enacted into the Labour Act with the intention of making arbitration achieve its goal of bringing final and binding resolution to labour disputes without involving the courts. The act has achieved this goal with minimal success as labour cases in Zimbabwe still find their way into the adjudicatory courts in high numbers, a sign that the arbitration system still faces challenges.

Theoretical and conceptual framework

According to Hagglund and Provis (2005), labour arbitration can be conceptualised as the resolution of disputes outside the litigation court system when neutral and unconnected third parties come in to resolve disputes by making determinations which bind the parties. Arbitration recognises the fact that court proceedings are too technically complex for resolving industrial disputes. Shen (2006) further observes that labour disputes essentially arise over interpretation of contracts of employment and conditions of service, and for these reasons, they should, as much as possible, be settled outside the courts. In most jurisdictions, arbitration is preferred as an alternative to litigation in the courts where proceedings are technically complex.

Theoretically, the concept of labour arbitration, as conceptualised by Sally Falk-Moore (1965), cited in Mumme (2008), derives from the concept called ‘social semi-autonomy’ which deals with the operation of social and quasi-legal processes with some degree of autonomy from the state’s judicial institutions. Mumme (2008) postulates that Falk-Moore’s idea was to move away from the prevalence of the state as the centre of social study in which the law is viewed as hierarchically superior to society.

It was observed by Falk-Moore that there are areas of social life that have the power to order their own sphere and operate in the shadow of state law. One such area is the employment relations domain where contractual relations are said to create a ‘law of the shop’. Because these are laws of interactional and relational engagements, Falk-Moore argues, the role of the state law in these spheres is limited in its capacity to regulate relations. It is in this context that labour arbitration in Zimbabwe can be conceived in this article.

Gross (2008), cited in Slinn (2010), argues that arbitration is a departure from the traditional concept of legal centralism, a concept that puts the state at the centre of dispute resolution through the courts. Legal centralism has been criticised for being insensitive to the feelings of its subjects. Clarke and others (2008) argue that pursuit of litigation in resolving labour disputes cannot satisfactorily achieve the desired ends. In arguing the case for labour arbitration, they posit that the work place is the real playground for employment relations issues where class differences can be fully understood. In the same context, labour arbitration is conceived by Mumme (2008:6) as

a method of dispute settlement that escapes from the formality and entrenched class differences of the state’s legal system, focused on implementing the self governing rules of workplaces and the ongoing relationship of the parties.

Arthurs (1999), cited in Mumme (2008), further supports this legal pluralist approach arguing that labour arbitration cannot operate on its own in isolation from the state’s legal systems. There has to be a linkage between shop floor rules and the state legal system for easy regulation of employment relationships.

Giving further support to the legal pluralist view, Howlett (1967) argues that for arbitration to command respect and facilitate the enforceability of its decisions, it must take a sufficient role in interpreting the general law of the state. Therefore arbitration has to work within the state's legal framework and distinctively outside the centralist state court system. The view point taken in this paper's analysis of the arbitration system in Zimbabwe as enunciated in the Labour Act squarely falls within the realm of the pluralist approach. The legal pluralist approach as described above was termed by Summers (1967), cited in Mumme (2008), as the 'Industrial policy-maker' model in view of its approach that advances the needs of industrial peace on behalf of the state.

Criteria for arbitration effectiveness

Scholars have not had a unified measurement criterion for the effectiveness of an arbitration system. This is so because, invariably, scholars give emphasis to different parameters. Whereas, traditionally, most scholars place emphasis on statistical measurement based on the statistics of the case outcomes, more contemporary thinkers like Trudeau (2002) came up with a non-statistical framework. The framework looks at three factors that can be used as yardsticks in determining effectiveness of a system.

The first factor is *accessibility*. Arbitration is accessible if parties have full knowledge of how it works as well as how readily the facilities can be accessed. This includes the knowledge of the procedures and the system in general. Enabling legislation also plays a part in making the system accessible. According to Trudeau (2002), accessibility further refers to the ease with which disputants can resort to the process without the complication of technical considerations and complex legal paperwork. Arbitration is also not accessible if the costs of resorting to it are prohibitive.

The second factor is *speed*. The speed with which a system operates in dispensing justice is a paramount feature of justice delivery and a key feature of effectiveness. According to Trudeau (2002), the system of dispute resolution should not be cumbersome. It should allow for expeditious resolution

of disputes by not lengthening the dispute resolution process. Justice delayed is justice denied.

The third and last factor is *expertise*. Expertise means the competency of the principal actors in the arbitration process. The principal actors presiding over the process should be unquestionably competent and experienced in the field in which they operate. They should also be disinterested and neutral parties (Bishop and Reed 1998). Decisions of arbitrators should not end at being merely reasonable; they should further satisfy the requirement of fairness.

The principle of finality to litigation is realised if justice is perceived by parties to have been administered fairly. The judiciousness of a decision determines whether parties accept it. It therefore goes without saying that the decision to appeal against an award by any of the parties is directly related to their perception of its judiciousness. A decision which is perceived to be unjust and unfair is likely to be appealed against, thereby prolonging the dispute. Therefore arbitration calls for high levels of competency and expertise on the part of the arbitrators.

In Zimbabwe, arbitration judgments are protected by both the Labour Act and the Model Law under the Arbitration Act. Recourse to appeal or review of an arbitration award is very restricted in the Zimbabwean statutes. The grounds upon which a disgruntled party can appeal or apply for a review at the Labour and High Courts respectively are very restricted and thus a formidable onus rests on a party to justify such action. This means that, if arbitrators do their homework properly and operate according to the rules, their determinations can in most cases effectively bring finality to litigation. One of the fundamental expectations in an arbitration process is the religious adherence to procedures. In the Zimbabwean context, arbitrators are expected to be conversant with provisions of the Model Law as enunciated in the preceding paragraphs. Failure to take cognisance of these has the potential effect of rendering the whole process academic.

In this article, the researchers adopted the above framework in analysing the effectiveness of the labour arbitration system in Zimbabwe. The above three factors and their attendant elements were used as barometers of assessment.

Methodology

A descriptive research design was employed in the research inquiry and it yielded several findings which the ensuing paragraphs present and discuss. According to Marsh (1982:125), descriptive research answers the question: 'what is going on?'. He further adds that 'competent description can challenge accepted assumptions about the way things are and can provoke action'.

Descriptive research design is a scientific method which involves observing and describing the behaviour of a subject without influencing it in any way. Descriptive survey allows the researcher to generalise from a sample to a population so that inferences can be made. Data collection techniques under this design include the administration of questionnaires to respondents, interviews and perusal of secondary data sources. Descriptive design has the advantage that the subjects are observed and interviewed in completely natural and unchanged environmental settings (Meloy 2002). In these settings, there are fewer chances of external factors influencing responses. Data collection techniques are also flexible. However, one distinct limitation of descriptive research, cited by many researchers and scholars, is its inability to produce results that are replicable in other settings as experiments do. There is also little room for manipulation of variables, which makes statistical analysis of the data difficult.

However, despite the above shortcomings of descriptive research, the researchers found the method most ideal for conducting this research. The research problem was centred on a social and quasi-legal legal system in which people are the dominant subjects. The evidence required to answer the research questions and address the research problem influenced the choice of research design.

The data were collected from carefully selected samples. According to McMillan and Schumacher (2000), a sample consists of individuals selected from a larger group of persons called a population. It is a principle that the sample can then be used to draw inferences about the complete group. According to Sarantakos (2000), the use of sampling in qualitative research is relatively limited. The purpose of sampling is to obtain research information from a sample of sufficient size to represent the research population.

De Vos and others (2002) define a research population as any group of individuals that have one or more characteristics in common that are of interest to the researcher. Creswell (2003) concurs with this definition when he argues that a research population is a collection of items of interest in research. The population represents a group that a researcher wishes to generalise the research to. Research populations are often defined in terms of demography, geography, occupation, time, care requirements, diagnosis, or some combination of the above. Lofland and Lofland (2002) conceptualise a research population as the totality of persons, events, organisational units, case records or other sampling units with which a research problem is concerned. In this study, the target population was the Bulawayo metropolitan retail sector managers as company representatives, retail sector workers and Commercial Workers' Union of Zimbabwe (CWUZ) union officials, labour officers and designated agents as custodians of the labour laws, and arbitrators as experts in the subject matter.

In a research project where sampling is used, though all individuals or units within the research population have an equal chance of being selected, not all of them are subject to observation and measurement because of time and cost constraints. The researcher has to select a representative sample of a manageable size. In this study, questionnaires were administered to twenty managers, forty employee representatives and one hundred employees – all drawn from different retail companies. The researcher also interviewed two labour officers, one designated agent, two trade union officials and one arbitrator. In sampling the research subjects, the researcher used various methods.

One of the methods used was convenience sampling. This method makes use of contacts that are easy to reach. The sample was targeted at respondents that were convenient for the researchers. It also involved the selection of subjects where the researchers had direct and easy access. This method was used for the selection of managers for the reason of saving on time and cost of data collection.

Use was also made of judgmental sampling. This method involved selecting a group of people because they had particular traits that the researchers wanted to study. It also involved the assembling of a sample of persons with known or

Labour arbitration effectiveness in Zimbabwe: Fact or fiction?

demonstrable experience and expertise in the area of focus. Often, such a sample is convened under the auspices of a 'panel of experts' (Trochim and Donnelly 2006). In other words, the researchers used their expert judgement about who to include in the sample frame. This choice was informed by the evidence required to answer the research questions. The researchers used this method to sample Workers Committees and labour union representatives because of their involvement in labour dispute settlements. The method was also used to target labour officers, designated agents, and arbitrators because it was the best way to elicit the views of persons who have specific expertise in labour relations issues.

In any research, the quality of data is directly related to the quality of the instruments used to collect the data. Data are the facts, figures and other materials, past and present, that serve as the basis for study and analysis. In other words, they are the raw materials for analysis to draw specific inferences on issues and problems. According to Yin (2006:29), the research question calls for evidence that answers the questions or theory in a convincing way. The data collection instrument should be appropriate for the purpose, that is, the questions it asks and the experiences it examines should coalesce with the researchers' research problem. In this study, the researchers used two main data collection methods namely, interviews and questionnaires. Questionnaires were used on managers, workers committees, employees and the arbitrator while interviews were used on labour officers, the designated agent, union officials and again on the arbitrator.

Questionnaires were chosen for the identified sample because of their advantage of ensuring privacy and anonymity of respondents. A questionnaire does not reveal the identity of the respondent, thereby ensuring that the responses are given freely and without any fears of identification. It was also cost effective to use this method of data collection compared to other methods because of the numbers of respondents involved. A questionnaire is also able to extract very rich data that is undiluted by the manipulation of the research setting or environment. Respondents were contacted in their natural settings. The researcher ensured that the research questions were clear, unambiguous and written in simple language. Interviews were also employed for the sample

categories stated above because the researcher wanted to probe further into feedback obtained from the questionnaires.

Research findings

The research sought to explore the effectiveness of the arbitration system using a framework propounded by Trudeau (2002) as discussed in the preceding paragraphs. The framework, that encompasses accessibility, speed and expertise as yardsticks for measuring effectiveness, was subjected to an empirical test in this research and the findings are reflected in the paragraphs that follow.

Accessibility

It was found that both employers and employees largely recognised and acknowledged the existence of arbitration procedures in labour dispute resolution: 71% of employer and 68% of employee respondents professed knowledge of the arbitration process. More than 50% of both employer and employee respondents also agreed that arbitration procedures were employed in resolving disputes in their respective organisations. In fact, they both acknowledged that arbitration procedures were enshrined in their codes of conduct. However, their differences lay in their levels of understanding of the procedures. Most (60%) of employee respondents pointed out that they did not understand the procedures well, and raised questions on whether, against this background, the process could achieve the desired ends. This observation calls for the effective training of employees in this area.

Arbitration Costs

The cost of arbitration to parties is a fundamental determinant of the accessibility of the arbitration system. Where the cost of arbitration is prohibitive, it becomes a barrier to accessibility. Whereas a slight majority of employers believed that the cost of arbitration was affordable, 71% of employee respondents believed that the cost was unaffordable and therefore prohibitive to arbitration accessibility. This finding points to a problem of class differences based on financial means. Given that parties to a dispute share the costs of arbitration on a 50-50 basis, it goes without saying that the pricing of arbitration services unfairly favours

Labour arbitration effectiveness in Zimbabwe: Fact or fiction?

employers who have a better financial footing than employees. This may create an unenviable situation where unscrupulous employers abuse their financial advantage by frequently and deliberately declaring disputes in order to squeeze employees financially. This finding calls for a more flexible arbitration system that does not disadvantage the weaker party.

The research findings also noted that the absence of arbitration fee guidelines lends itself to abuse and profiteering on the part of arbitrators. When there is no legislated fee structure, arbitrators may be tempted to reap rich pickings from disputing parties especially where big companies are involved. The research also found that in Zimbabwe the arbitrators arbitrarily fix their fees without even negotiating with the parties. This inevitably inflicts heavy burdens on the disputing parties to the extent that the whole system may become a costly expedition. This tends to restrict access of parties to the arbitration process, and makes arbitration in Zimbabwe largely inaccessible.

Speed

Whereas other researchers such as Mariwo (2008) bemoaned the delays encountered in resolving disputes through arbitration in the private security sector, the research under review found that both employers and employees were satisfied with the time it takes to conclude arbitration cases. This is a significant finding because in the Labour Act 28.01, there are no time prescriptions on arbitration cases. However, although the concluding times were given a thumbs up by the respondents, in the majority of cases, arbitration did not bring finality to the disputes. It can be inferred from these findings that speed on its own does not necessarily render a process effective. However, the above notwithstanding, some scholars such as Trudeau (2002) argue that speed is a positive factor in the resolution of disputes. This paper however argues that speed of process without resolution of the underlying dispute is meaningless. The concluding of arbitration cases can only be a positive development if the outcomes bring finality to the underlying dispute. In as much as arbitration processes are expeditious, they may run the risk of being useless motions which do not yield the result that they were intended to yield. Speed has to be accompanied by substantive relevance of the process for it to be a positive indicator of effectiveness.

Expertise

The competency of arbitrators is paramount in making arbitration effective. The research found that the majority of both employers and employees did not have confidence in the competency and integrity of arbitrators. The majority of employers (65%) believed that arbitrators were almost always biased in their judgments whilst 68% of employees said they were not prepared to accept any arbitration rulings against them. As a result of this negative perception, both employers and employees believed that the arbitration system was not a conclusive process of dispute resolution.

Most employers also felt that most arbitrators did not pay due regard to the financial circumstances of companies. The majority of employers viewed arbitrators' decisions on conditions of service matters devoid of sensitivity to the financial predicaments of companies, and they cited the problem of a mismatch between an organisation's affordability and the awards made by arbitrators. Other respondents from both the employer and the employee sides also pointed out the possibility of arbitrators' lack of independence from improper influences. Respondents further pointed out the vulnerability of arbitrators to conflict of interest where they had a financial interest in the outcomes of some cases.

The above findings point to a very negative picture of arbitration in Zimbabwe. The intention of legislators in crafting the arbitration procedures was to allow swift administration of justice and resolution of disputes. Section 2A subsection 1(f) of the Labour Act (28.01) provides that the purpose of the Act is

to advance social justice and democracy in the workplace by ... securing the just, effective and expeditious resolution of disputes and unfair labour practices.

An analysis of the Act's purpose reveals that the intention is to, as much as is practicably possible, bring finality to labour disputes within the confines of labour dispute settlement structures. That is why, for instance, section 98(10) of the Act restricts the appeals against awards to only a narrow scope of *a question of law*. A question of law eliminates factual arguments which often dominate proceedings at arbitration level. While a party dissatisfied with an arbitration

Labour arbitration effectiveness in Zimbabwe: Fact or fiction?

award may apply for a review by the High Court in terms of Section 34(3) of the High Court Act, the grounds of review are very narrow and technically restrictive. As Gwisai (2007) observed, the party applying for the review of an arbitration award has a formidable onus to satisfy the statutory criteria. The author further observed that the main bases for reviewing awards are those pertaining to procedural fairness or to a very narrowly defined concept of public policy.

The fact that, in spite of the existence of these legal gate keeping clauses to prevent unnecessary appeals or applications for review, arbitration awards have largely been successfully challenged in the higher courts exposes the weaknesses and shortcomings of arbitrators. This fact on its own is a serious indictment against the quality and credibility of arbitration rulings. It can be safely inferred from the findings of this research that most arbitrators are largely incapable of making judgments which meet the intentions and purposes of the Labour Act. The fact that most appeals and applications for reviews are admitted in the Labour Courts and High Courts respectively, point to the fact that the judgments are probably fraught with injudicious inconsistencies and gross misdirections. If the end product of the arbitration process is such that it does not yield the outcome that the process intended it to yield, then it is undoubtedly ineffective.

Appointment of arbitrators

One of the shortcomings that the research uncovered was that there were no clear guidelines on the appointment of the arbitrators. Both employers and employees believed that the latitude of discretion conferred on the labour officer in appointing an arbitrator was too wide and gave rise to the possibility of favouritism and collusion. The Labour Act (28.01) does not provide the specific statutory guidelines for appointing arbitrators save for the provision that the person has to appear on the register approved by the Minister of Labour. This lack of clear guidelines inflicts a heavy blow on transparency.

The subject of arbitrator appointment has generated a lot of debate in the international arena. Wendy (2002) reveals that though there are various approaches used by different jurisdictions on the appointment of arbitrators,

there are underlying similarities, particularly in the criteria employed. The near universal attributes considered include the arbitrators’

- expertise in their own fields
- record of good judgment
- fairness
- integrity
- specialised knowledge
- knowledge of applicable procedures.

Another perspective on the appointment of arbitrators relates to their qualifications. Though most jurisdictions do not categorically specify that the prospective candidates be lawyers, the underlying language assumes that such people should have legal knowledge. Wendy (2002) made an observation that most jurisdictions tend to assume that a lawyer or legally qualified person has the ability to conduct arbitration in accordance with the rules. This assumption is premised on the fact that the enforceability and validity of arbitrators’ decisions are reviewed by judges. Other jurisdictions are very explicit when it comes to qualification criteria for arbitrators. The New South Wales Bar Association, for example, explicitly states that applicants for arbitrator appointments should be lawyers of seven years of good standing while the Spanish Arbitration Act (1998) also stipulates that arbitrators should be lawyers.

The most critical aspect to be considered when appointing arbitrators, which the Zimbabwean arbitration system misses, is the consideration of conflict of interest. In Singapore, the SIAC conducts an audit for possible sources of conflict of interest so that the arbitrator appointed in any given case is not only independent and impartial but also perceived by parties to be so (SIAC Practice Notes 2007). Parties’ perceptions of the independence and impartiality of an arbitrator have a strong bearing on the acceptability of awards.

Recommendations

This research recommends:

- That employers invest in the capacity building of employees on dispute resolution procedures. Amendment of the Labour Act to make it compulsory for employers to fund the said capacity building exercise will be most ideal.
- That the government regulates and gazettes the arbitration fees to make them more affordable instead of prohibitive.
- That the government crafts rigorous admission criteria for arbitrators which should not only consider qualifications but also other factors such as an individual's maturity, professional standing, specialised knowledge, record of good judgment and public profile. The relevant ministries should come up with a manual for arbitrators which should include all facets of industrial life such as finance, production, profitability indices and labour law among others. This is necessary to ensure that arbitrators understand the context of cases so that they make judgments that are sensitive to organisational realities.
- That arbitrators go through a rigorous accreditation system involving examinations and public interviews that are administered by a panel of eminent persons comprising retired judges, captains of industry and labour economists so that only men and women of integrity are accredited into the arbitrators' pool.
- That the arbitrary appointment of arbitrators by labour officers be corrected by a piece of statutory regulation. It is suggested that the responsible ministry draws up statutory guidelines for appointing arbitrators. The guide should clearly specify that arbitrators can only handle matters whose nature of dispute lies in their area of expertise, experience and qualifications. The appointing authorities should also strive to conduct mandatory audits to clear the prospective appointee of any possible conflict of interest or circumstances which may lend credence to parties' perceptions that the appointee is not independent and impartial.

- That the current arbitration system be overhauled and replaced with a unified statutory agency. This entails setting up a state functionary in the mould of the South African Commission for Conciliation, Mediation and Arbitration (CCMA). The advantages of this suggestion are many. An agency will have permanent arbitrators who, like judicial officers, are far removed from the politics of the shop floor. Permanent status guarantees continuity, fosters professionalism and leads to continuous improvement. Government funding of this agency will inevitably promote neutrality of arbitrators as there will be less chances of them having financial interest in the outcome of the cases. State funding also removes the cost burden from the parties, especially employees. A government agency will also meticulously sift through cases to weed out malicious litigations, compile statistics and set standards for the advancement of industrial harmony.

Conclusion

It is apparent that the arbitration system in Zimbabwe is largely ineffective due to challenges around arbitrator costs, complex procedural technicalities and the perceived lack of integrity of the arbitrators. The research therefore leaves room for further research.

Sources

- Bhorat, Haroon, Kalie Pauw and Liberty Mncube 2009. Understanding the efficiency and effectiveness of the dispute resolution system in South Africa: An analysis of CCMA data. Development Policy Research Unit Working Paper 09/137, University of Cape Town.
- Bishop, D. and L. Reed 1998. Practical guidelines for interviewing, selecting and challenging party appointed arbitrators in international commerce. *Arbitration International*, 14 (4), pp. 386–459.
- Cheater, Angela P. 1991. Industrial organization and the law in the first decade of Zimbabwe independence. *Zambezia*, XVIII (i).
- Clarke, Graham and Sara El Sonbati 2008. Labour Boards' use of mediation-arbitration procedures. *Advanced Administrative Law and Practice*, The Canadian Institute, Ottawa.
- Creswell, John W. 2003. *Research design: Qualitative, quantitative and mixed method approaches*. 2nd edition. Thousand Oaks, CA, Sage Publications.
- De Vos, A.S., H. Strydom, C.B. Fouché and C.S.L. Delpont 2002. *Research at grass roots for social sciences and human service professions*. 2nd edition. Pretoria, Van Schaik.

Labour arbitration effectiveness in Zimbabwe: Fact or fiction?

- Gwisai, Munyaradzi 2007. *Labour and employment law in Zimbabwe: Relations of work under neo-colonial capitalism*. Harare, Zimbabwe Labour Centre and Institute of Commercial Law, University of Zimbabwe.
- Hagglund, G. and C. Provis 2005. The conciliation step of the unfair dismissal process in South Australia. *Labour Studies Journal*, 29 (4), pp. 65–86.
- Howlett, Robert G. 1967. The arbitrator, the NLRB, and the courts. In: Jones, Dallas L. ed. *The arbitrator, the NLRB, and the courts: Proceedings of the Twentieth Annual Meeting, National Academy of Mediators*. Washington, D.C., BNA Books. pp. 67–110.
- Khabo, Fumane 'Malebona 2008. *Collective bargaining and labour disputes resolution – Is SADC meeting the challenges?* Issue Paper No. 30. Harare, ILO (International Labour Organization) Publications.
- Lofland, John and Lyn H. Lofland 1995. *Analyzing social settings*. 3rd edition. Belmont, CA, Wadsworth.
- Mariwo, Tsitsi 2008. Working conditions and labour relations in the private security industry in Zimbabwe: A research paper. Issue Paper No. 27. Harare, ILO Publications.
- Marsh, Catherine 1982. *The survey method: The contribution of surveys to sociological explanation*. London, Allen and Unwin.
- McMillan, James H. and Sally Schumacher 2000. *Research in education: A conceptual introduction*. Paperback edition. Boston, Allyn and Bacon.
- Meloy, Judith M. 2002. *Writing the qualitative dissertation: Understanding by doing*. 2nd edition, Hillsdale, NJ, Lawrence Erlbaum Associates Inc.
- Miles, Wendy 2002. International arbitration appointment. *Dispute Resolution Journal*, Aug–Oct 2002.
- Mumme, C. 2008. Labour arbitration as transition: The transformation of Canadian labour arbitration in the twentieth century from semi-autonomous institution of the shop to an institution of the state. Ph.D. dissertation, Osgoode Hall Law School, Toronto.
- Sarantakos, Sotirios 2005. *Social research*. Paperback edition. Basingstoke, Palgrave Macmillan.
- SIAC (Singapore International Arbitration Center) Practice Notes 2007. Available from: <<http://www.siac.org.sg/cms/images/stories/documents/code-of-practice/Cop-adhoc.pdf>> [Accessed on 5 January 2011].
- Shen, Jie 2007. The labour dispute arbitration system in China. *Employee Relations*, 29 (5), pp. 520–539.
- Slinn, Sara 2010. *The limitations of pieces of paper: A role for social science in labour law*. Kingston, Canada, Queen's University Publications.
- Trochim, William M.K. and James P. Donnelly 2006. *The research methods knowledge base*. Mason, OH, Atomic Dog Publishers.

Trudeau, Gilles 2002. The internal grievance process and grievance arbitration in Quebec: An illustration of the North American methods of resolving disputes arising from the application of collective agreements. *Managerial Law*, 44 (3), pp. 27–46.

United Nations 1994. UNCITRAL Model Law on International Commercial Arbitration, as adopted by the United Nations Commission on International Trade Law, 21 June 1985. United Nations document A/40/17, Annex 1.

Yin, Robert K. 2006. *Case study research: Design and methods*. 3rd edition. Applied Social Research Methods Series, Vol 5. Thousand Oaks, CA, Sage Publications.

Laws referred to:

The Rhodesian Industrial Conciliation Act (1945)

The Rhodesian Masters and Servants Act (1901)

The Zimbabwe Government Guide to the Labour Relations Act (1997)

The Zimbabwe Labour Act Chapter 28:01 (2006)

The Zimbabwe Labour Relations Act (1985)

Book review

Walk with us and listen: Political reconciliation in Africa

Villa-Vicencio, Charles 2009*

Washington, D.C., Georgetown University Press, 225 pages
ISBN 978-1589015722

*Reviewed by Allard Duursma**

In *Walk with us and listen*, Charles Villa-Vicencio addresses in 225 pages one of the most significant current issues in the field of Conflict Resolution: examining how to achieve a balance between reconciliation and punitive justice in post-conflict environments. Charles Villa-Vicencio was born in South Africa in 1948 and was raised to believe in the superiority of whites. In time, however, he developed a deep sense of the injustice of such an ideology, and subsequently became increasingly involved in the political struggle against apartheid. He has also participated in peace initiatives in several other African countries. Villa-Vicencio draws on these experiences in his book, which makes the book well-grounded in practice.

* Dr Charles Villa-Vicencio is Emeritus Professor of the University of Cape Town and Senior Research Fellow at the *Institute for Justice and Reconciliation* in South Africa.

** Allard Duursma is a research intern in the Department of Knowledge Production at ACCORD and is a second-year Masters degree candidate in Peace and Conflict Studies at Uppsala University, Sweden.

According to Villa-Vicencio, there has been a shift in recent years from blanket amnesty as standard prescription for overcoming armed conflict to an approach in which all those bearing responsibility for crimes against humanity are prosecuted. As a response to this shift, Villa-Vicencio argues that a balance needs to be found between justice and reconciliation. This means in practice that the international community does not necessarily have to refrain from prosecutions, but it does have to become more involved in post-conflict reconciliation. As Villa-Vicencio puts it, 'An imposed form of justice that fails to enjoy local ownership and that fails to build positive and constructive relationships between former enemies as basis for redressing past wrongs is unlikely to stand the test of time. By the same token, reconciliation is not possible where the rights of individuals are not protected and those responsible for their suffering are able to prosper in their impunity'. Although this may seem like a truism, Villa-Vicencio illustrates in his book that the realities on the ground in many post-conflict environments often belie this fundamental truth.

The book is comprised of eight chapters that follow each other in a logical and structured manner. After a brief introduction and a theoretical prologue on justice and reconciliation, the first chapter discusses the context in which addressing injustices and reconciliation take place on the African continent. One of the issues raised in this chapter is how Africa's colonial history has shaped African perceptions towards Western intervention on the continent. Besides considering the colonial past, many other issues relating to how African countries seek political fulfilment are addressed, which sets the stage for the rest of the book. Next, in chapter 2, the complexities surrounding peacemaking in Africa are considered. By drawing on many studies concerning peace mediation, the author illustrates that the insights of this vast body of literature are often in line with African peace endeavours. He argues, for instance, that South Africa's experience with regard to transitional justice highlights that without qualified amnesty, political change would not have been possible. Both by drawing on state of the art mediation theory and telling examples on the African continent, Villa-Vicencio illustrates the complexities surrounding peacemaking and concludes that peacemaking processes need to be cumulative and inclusive in their focus and multileveled in their scope, that everybody needs to profit from the peace, and that peace needs to be shared.

Chapter 3 addresses the issues raised in the previous chapter in a more specified way by focusing on how for peace to prevail, the war ultimately needs to be fought in words across a table between parties who recognise each other. What makes this chapter exceptionally rich is that Villa-Vicencio draws on many African ideas to explain how essential active talking and listening are to the peacemaking process. For example, when discussing the importance of recognising one another in peace talks, Villa-Vicencio reminds us that the Zulu greeting *sawubona* is more than a greeting; rather it means 'I see you'. With regard to the importance of talking for peacemaking, he mentions the Dinka term *Nginy e we*, which loosely means 'knowing the words'. *Nginy e we* implies that words can be used both for fighting and restoring harmony.

While the first three chapters focus on negotiation and peacebuilding practices on the continent, the final five chapters address issues pertaining to political reconciliation in a more specific way, focusing particularly on transitional justice. In chapter 4, a case study of the transitional justice process in South Africa is put forward. However, South Africa's journey toward political reconciliation is not examined for the purpose of acting as a blueprint for other countries, rather it is used as a means to explore options with regard to transitional justice. This illustrates Villa-Vicencio's sensitivity to the many different contexts in which transitional justice takes place. Central to chapter 4 is what the author calls 'The South African Dialogue', which the author, interestingly, uses to explain both the success of the initial peace process and the current problems in South Africa. While the dialogue initiated by the Truth and Reconciliation Commission (TRC) broke the silence of the past in a restorative way, the different parties in South Africa have failed to engage in meaningful dialogue after the TRC report was concluded. According to Villa-Vicencio, this unfinished conversation makes it problematic to go beyond past divisions. In order to overcome the divisions between white and black and rich and poor, a renewed sense of truth telling is necessary that reflects more rigorously the origins of the gross human rights violations during the Apartheid era. This focus on dialogue makes chapter 4 refreshing in the sense that its author, unlike many other observers, does not focus predominantly on the amnesty part of the South African peace process, but also on the issues of truth and reconciliation. Additionally, it considers reconciliation in South Africa as an open-ended process.

Building on the author's argument in chapter 4 on how honest dialogue can contribute to durable peace, chapter 5 addresses the idea that is at the heart of this argument: *Ubuntu*. The essence of *Ubuntu* is that we are who we are in relation to those around us. Hence, *Ubuntu* presupposes a sense of belonging within which people in conflict can interact with honesty despite their different interests. The way the author discusses *Ubuntu* is a telling example of how Villa-Vicencio critically analyses the issues raised in his book. Villa-Vicencio argues that *Ubuntu* is not the romantic notion that it is often thought to be, but one that challenges the individualism of many post-conflict societies. The fact that *Ubuntu* formed the underlying ethos of the South African transition highlights the possibility that the idea of *Ubuntu* can greatly contribute to a shared peace which is more sustainable.

The discrepancy between the notion of *Ubuntu* and international law leads Villa-Vicencio to wonder whether international law is, indeed, international at all. Chapter 6 delves deeper into this question by examining how traditional mechanisms of justice and reconciliation in Africa fit into the established forms of international justice. By moving the discussion from *Ubuntu* in South Africa to *Ubuntu* in Africa, this chapter adds significantly to the relevance of this study for Africa and indeed beyond the continent. Particularly Western-trained human rights workers can therefore benefit from the complementary or sometimes even alternative transitional justice methods discussed in this chapter. The take-home lesson is that linking justice and reconciliation can be highly advantageous since it will hold particular individuals responsible for specific acts, as well as address the need for all citizens to take responsibility for the creation of a peaceful society.

On the basis of the previous chapters, it is argued in chapter 7 that political reconciliation is at the heart of any viable political transition. Villa-Vicencio starts this chapter by stressing that his concept of political reconciliation is not the same as forgiveness, hence the adjective 'political'. While, according to the author, forgiving implies the healing of the psychological and spiritual scars of past suffering, political reconciliation only involves a minimum level of political harmony and cooperation between former enemies as a basis for pursuing holistic justice. It is thereafter argued that if former warring parties fail to engage in a meaningful discussion, the prospects for durable peace will be bleak. Indeed,

dialogue enables former enemies to explore joint solutions to the cause of their conflicts. True reconciliation cannot be based on silence.

Chapter 8 concludes, but goes beyond merely summing up the main points of the book. It provides several valuable suggestions as to a possible consensus between international law and traditional African notions of reconciliation and justice. These suggestions offer much insight in how to find a point at which justice and reconciliation sustain one another.

In *Walk with us and listen*, Villa-Vicencio goes beyond the peace *versus* justice debate. It is neither argued that there is an obligation to prosecute those allegedly guilty of violations of international humanitarian law, nor is it argued that blanket amnesty and complete forgiveness are necessary to make peace. Instead, the author argues that the need for prosecutions needs to be balanced against the need for political stability. Villa-Vicencio also goes beyond the peace *versus* justice debate by addressing justice in a holistic manner. He argues that justice should be linked to reconciliation since durable peace can only emerge when it is negotiated by those who have to live with its consequences. In this sense, reconciliation is the essence of an inclusive sense of justice. The political transition of a post-war country is more likely to succeed if the former enemies engage in a political dialogue which allows them to tackle the underlying issues of the conflict. This is why linking traditional African reconciliation practices to international law practices can have the advantage of linking the individual responsibility for violations of international humanitarian law to the collective responsibility of a society to build peace. In sum, Villa-Vicencio manages to bridge the gap between the field of transitional justice and peacebuilding, as well as the gap between traditional approaches and modern forms of transitional justice methods.

Villa-Vicencio writes in the introduction of this book that throughout his career, he has sought for the link between theory and practice, which he never quite found. By putting forward this holistic notion of political reconciliation he may very well have found the perfect fit for which he was looking so long. Hence, this book is highly recommendable to both scholars and practitioners working on issues pertaining to transnational justice and peacebuilding.

Book review

Guarding the guardians: Civil-military relations and democratic governance in Africa

Houngnikpo, Mathurin C. 2010*

Farnham (Surrey, UK) and Burlington (VT, USA), Ashgate 218pp.

ISBN: 9781409404149 (hbk)

ISBN: 9781409404156 (ebk)

Reviewed by Jannie Malan (Senior researcher, ACCORD)

According to the author, the thrust of this book is to explore the question ‘whether African militaries can ever accept civilian control’ (p. vi). The fact that he phrases the essence of this publication in the form of a question – on the first page of the preface – reveals the probing way in which he approached his crucially important topic. His orientation towards searching for understanding is underlined by the first part of the title, which is based on a Roman satirical poet’s ever-relevant *question* of twenty centuries ago: ‘Who will guard the guardians?’

* Dr Houngnikpo is the Academic Chair of Civil-Military Relations at the Africa Center for Strategic Studies, National Defense University, USA).

Throughout the book the reader, therefore, finds thought-provoking descriptions and discussions. The author does not merely elaborate on the core message that African democracy can only succeed if civil-military relations are transformed and if security forces operate under democratic governance. He explores perspectives and phenomena of the past (pre-colonial, colonial and post-independence) and of the present, and draws conclusions for the future.

With regard to the concept and the reality of democracy, for instance, he takes the reader through questions, discussions and definitions since the Greek democracy of twenty five centuries ago. Who are the people, and how should they rule? Have there been cases in pre-colonial Africa where the will of people was taken into account? Did 'democratic' colonialists import real or 'pseudo-democracy'?

More than once in his discussions of concepts and issues, the author shows his ability to think himself into the mindsets of others. He writes, for instance, that 'democracy's appeal has yet to attract African leaders in general and military ones in particular' (p. 16). In fact, many African leaders seem to fear democracy and therefore counteract it while perhaps appearing to support it. Referring to the track records of the military in African politics, he states the apparent reality that 'it is difficult, indeed malapropos, to think of the military as a force that might subscribe to democratization, even for the sake of its own interests' (p. 15). And with regard to the people, who are supposed to play a pivotal role in a democratic context, he emphasises: 'Early *coups d'état* were welcomed – if not praised – by Africans ... fed up with the deplorable political, economic and social conditions of their continent ...' (p. 59).

It is with such penetrating insight into situations, thought patterns and external influences that Hounnikpo writes about theoretical issues and actual happenings with regard to military intervention in politics in Africa. He reviews the literature on civil-military relations in Africa, in which various approaches and arguments are found, but which is mostly concerned with the issue of securing and maintaining civil supremacy over the military. There is the possibility of civilian power influencing the military, but there is also the propensity of the military to interfere in civilian affairs. He shows how patterns discernible in civil-military relations may be traced back to pre-colonial warfare

and militarism which undoubtedly existed, to colonial conquests and military organisation, and to the post-independence continuation of colonial practices as well as the introduction of revolutionary changes.

Attempted explanations of military takeovers and military interference are discussed in a chapter with the heading 'Explaining Army Intrusion in African Politics: An On-going Debate'. Possible motives for military intervention have been suggested: the disposition to intervene, the opportunity to intervene, the ability to intervene, and outside pressurising to intervene. Justification was sought, during the early post-independence phase, in the rationale that the army, with its technological and administrative expertise, could function as a 'modernising' force and play a role in political life. Other causative factors behind military intrusion in politics have been considered, ranging 'from economic crisis, persistent poverty, regional or ethnic rivalries, government repression and corruption, mal-administration, to personal and corporate ambitions' (p. 87). But in the last part of this chapter, the author calls military intervention 'an enigma' and admits that its causes and motives have eluded scholars. An obvious problem is that one cannot rely on the reasons adduced by the military themselves. A further problem is that it is often 'practically impossible to distinguish bad from good reasons for intervention' (p. 99). The debates in this regard are therefore to be continued.

About other aspects of military intervention, however, more clarity can be found. In his chapter on the African military and modernisation, the author unpacks the theories, expectations and disappointments around the phenomenon of 'modernising'. Liberally minded social scientists were promoting development towards modernity in Africa. What was envisaged was that socio-economic development and political development would reinforce each other. Predominantly agricultural societies would become industrialised, and at the same time oligarchic authoritarianism would be replaced by pluralist democracy. With regard to realising this scenario, the trend, especially in the Western capitalist context, was to fix hopes on the military as an agent of change and a counter-agent of Communism. It became clear, however, that the military could not and did not fulfil such roles. Many military leaders reverted

to retribalisation, and many military governments became as dictatorial and corrupt as the regimes they had overthrown – or even more.

In the next chapter, the author compares and assesses the performance of civilian and military governments and leaders – and finds ‘different methods same outcome’ (p. 119). He acknowledges the bad start with which independent states were compelled to begin, due to, for instance, the legacy of authoritarian colonial rule, the problems caused by boundaries splitting up and/or forcibly combining ethnic groups, and situations of small groups of Western-educated elite in huge populations who had grown up according to their traditions. Although deplorable, it is therefore understandable that leaders – civilian and military – could not resist the temptations of monopolising power and accumulating wealth. In light of the history of civilian dictatorships and failed states on the one hand, and military coups and unkept pledges on the other, it is then also understandable that civil-military relations deteriorated from indifference and some mistrust to increasing mistrust and antipathy.

In the second last chapter, the author shows how civil-military relations that can facilitate and promote democracy need to have both a structural and an attitudinal component. Mechanisms should be in place to restrict the military to its original role of defending the state (and not merely the regime) against external threats, and to prevent the military from intruding into the political sphere. But, although constitutions, laws and structures are important, ‘the crux is psychological’ (p. 140). Appropriate perceptions and attitudes have to be cultivated. Civilian officials and civil society should respect the military in its professional capacity, and the military should respect civilian leaders as elected representatives in the political domain.

The final chapter ‘calls not just for civilian control of the military but rather democratic oversight of the security forces in Africa with the assumption that the civilian leadership itself enjoys some legitimacy’ (p. 146). The issue of legitimacy is discussed with regard to both military and civilian leadership. In each case appropriate structures, mechanisms and procedures have to be in place and have to be effectively implemented or even firmly imposed where necessary. Once again, however, it is not merely a matter of restricting the two sets of leadership

to their respective spheres of influence and performance. For an appearance of oversight to become a reality, an attitudinal shift should take place – from ‘mutual suspicion and competition’ to ‘mutual trust and collaboration’ (p. 155). It is in this way that a legal framework for subordinating the security sector to democratic oversight can indeed rest on the core values of accountability and transparency.

In his conclusion, the author emphasises that ‘not a single country managed to introduce and sustain democratic transition in Africa against the will of the military’ (p. 168), and therefore ‘the ideal democratic military-civil relationship is to have militaries unconditionally subordinate to civilian power’ (pp. 169–170). The common goal that both civilian and military leaders should be pursuing is the well-being of their populations, and towards achieving this goal the author gives a clear list of specific recommendations. Just before this list, however, he captured the general recommendations emerging from his discussions throughout the book in a few key words: dialogue, accommodation, shared values and objectives.

This well-planned and well-documented book (41 pages of bibliography) can be strongly recommended, not only to military and civilian leaders and civil society organisations, but also to researchers and students in the fields of political and military sciences and conflict studies. Here and there the reader stumbles on a missing word, but apart from these few exceptions, the lay-out is of a very high standard.