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ACCORD
THE AFRICAN CENTRE FOR THE CONSTRUCTIVE RESOLUTION OF DISPUTES

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.

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>.

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Foreword

Shauna Mottiar, Angela Ndinga-Muvumba and Jannie Malan

The year 2009 marks the tenth anniversary of the *African Journal on Conflict Resolution* (AJCR). Looking back over the 16 issues in which 81 articles and 26 book reviews were published, we are reminded of the original vision held for the journal – that of developing the academic field of conflict resolution in the context of Africa. Our objective was to contribute to theoretical perspectives and suggestions towards adapting and improving conflict resolution.

We also hoped to provide a genuine space for academics and students to exchange and record ideas, debates, discoveries, insights and trends within the fields of conflict resolution on the continent.

Over the decade, the journal has dealt with issues pertaining to conflict resolution and peacebuilding across the African continent, including South Africa, Lesotho, Zimbabwe, Botswana, Mozambique, Kenya, Tanzania, the Democratic Republic of the Congo (DRC), Rwanda, Uganda, Ethiopia, Eritrea, Sudan, Nigeria, Burundi, Somalia and Sierra Leone. Contributors have written on resource-related conflict issues such as access to water, agriculture and oil; cattle rustling; conflict and environmental degradation; ethnicity and conflict; women in conflict and peacebuilding; and the issue of child soldiers. Further areas covered since 1999 include mediation at regional and international levels as well as peacebuilding and transformation from below; truth and reconciliation

commissions and the International Criminal Tribunal for Rwanda; and the media, social capital and contexts of democracy and development. There have also been three special issues of the journal devoted to the specific themes of electoral systems, elections and conflict mitigation in southern Africa (2004, 4.2); African identity and cultural diversity in conflict resolution (2007, 7.2); and Nigeria, Africa's most populous state (2008, 8.2).

The 2004 special issue on elections focused on electoral systems, constitutionalism and conflict management in southern Africa. Khabele Matlosa reminded us of how elections, electoral systems, constitutionalism and conflict management enhance or undermine democratic governance. Lloyd Sachikonye, profiling Zimbabwe, warned that 'Zimbabwe finds itself at a crossroads in electoral and constitutional terms. …The country continues to be in the…spotlight largely because of the concern that if reforms and political compromise remain elusive, the country could experience greater instability'. Mpho Molomo, writing on Botswana, pointed out that although the country does not experience electoral violence or political instability, its first-past-the-post electoral system impacts on fair political competition. Francis Makoa, profiling the Lesotho electoral system, highlighted a need for moving beyond a written constitution to inculcating democratic attitudes. The Mozambique case study by Irae Lundin profiled a country emerging from sixteen years of armed war with its first democratic elections taking place in 1994. Dren Nupen, writing on the South African electoral system, pointed out that the proportional representative method of elections utilised at provincial and national level constricts contact between citizens and their elected representatives. It also may affect the oversight responsibility of parliamentarians who are at the behest of party leadership. The Tanzania case study, authored by Hassan Kaya, dealt with authoritarian tendencies which emerge when a constitution is frequently amended to favour the executive branch of government.

In the special issue on identity and cultural diversity, published in 2007, Gerard Hagg and Peter Kagwanja argued that the emergence of intra-state wars based on identity requires a reconfiguring of existing conflict resolution mechanisms. The special issue profiled identity-based conflict in Sudan – 'the bridge between the Arab Muslim world and Black Africa'; historical state identity and inter-identity

relations in Ethiopia; cultural diversity in Somalia; ethnicity, African nationalism and political cohesion in South Africa; 'ethnic competition' and resource-related conflict in the Niger Delta; latent cultural and linguistic diversity in Cameroon; ethnicity in the DRC; and the 'blood feud' in Burundi.

In 2008, a special issue on Nigeria was inspired by the way the country's complexities, challenges and prospects for long-term peace mirror the rest of Africa's current socio-economic and political climate. Despite significant natural resources and political as well as economic reforms, many countries in Africa continue to struggle with conflicts around socio-economic inequalities, environmental and natural resources and access to political power. The special issue dealt with the protracted conflict in the Niger Delta where profits from oil production are channelled to oil companies and politicians and do not benefit local communities already frustrated by under-development and a degrading environment. It also highlighted the shrinking of Lake Chad in the Sahara desert, which poses a serious environmental threat. The issue further focused on political threats to peace, democracy and social justice as well as on methods of dealing with conflict through arbitration.

Looking forward to the next ten years of the *African Journal on Conflict Resolution*, we hope to further establish the objectives of the journal and are particularly dedicated to exploring areas in which the African Centre for the Constructive Resolution of Disputes (ACCORD) engages. These areas include not only conflict resolution, negotiation and mediation but also issues relating to peacemaking and peacebuilding on the African continent. To this end, the journal would ideally like to engage with research and practical experiences on the fault lines and triggers for conflict; leadership (positive and spoiler); mediation, dialogue and peace processes; land disputes; environmental conflict; resource-related conflict; conflict, power sharing and elections; and the nexus between development and conflict.

The journal has expanded its guidelines for authors in order to meet its objectives. Its Editorial Board at ACCORD, and its Peer Advisory Panel will work to enrich the publication through more intensive collaboration with authors. The Editorial Board has also formally stated the journal policy and outlined the

greater ACCORD vision in the hopes that contributors and readers alike can contextualise the debates raised accordingly.

We therefore welcome submissions by authors new and old as we strive to contribute to contemporary theoretical debates in the field of African conflict resolution and hope to impact upon efforts towards the consolidation of peace in Africa.

We take this opportunity to thank all our past contributors, editorial staff and advisors. The following members of our advisory panel have rendered their valued services for the numbers of years indicated after their names: Prof Cleophas Lado (4), Prof Makumi Mwagiru (4), Prof Mahmood Mamdani (5), Prof Tandeka Nkiwane (9), Prof Jane Parpart (9), Dr Alejandro Bendaña (10).

We would like to pay particular tribute to Professor Jakes Gerwel, a member of the ACCORD Board of Trustees, who is one of the founding editors of the journal. Without his insight and dedication, the vision of producing an *African Journal on Conflict Resolution* would not have been possible.

Resolving African crises: Leadership role for African States and the African Union in Darfur

*Kelechi A. Kalu**

Abstract

The article examines the intersections between politics and economic development issues in the violence-ravaged Darfur region of Sudan. Also, the constraints and opportunities available to the United Nations, the African Union, and other entities to help bring the violence to an end are analysed. Within the context of the Responsibility to Protect argument and the new African Union's desire to protect citizens against government violence in Africa, the question is: Does the AU have the capability to protect citizens against government violence? With a specific focus on Sudanese Darfur, the article offers a strategic vision for reducing and hopefully ending human rights violations that have ravaged much of sub-Saharan Africa. I argue that in order for the UN and AU to fully protect citizens against government-sponsored violence, the self-empowerment of African States, regional African Organisations, non-governmental organisations, citizens and the African Union must be recognised as the first lines of defence

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against government and government-sponsored atrocities against citizens. The article concludes with recommendations for ending the violence in Darfur.

Introduction

The organisation of the international political system as it currently exists privileges the rights of the state over those of individuals. The state's capacity to protect while simultaneously constraining citizens' rights reigns supreme over its territory. This relationship between the state and the citizens has made it possible for governments to claim sovereign authority over their territories – including the sovereign right to relate to their citizens peacefully or with coercive force. The latter has frequently resulted in gross violations of human rights across the globe. In many African states (such as the Democratic Republic of the Congo, Sierra Leone, Liberia, Nigeria, Apartheid South Africa, Sudan, Ethiopia and Rwanda), these violations intensified following political independence and the development of the unwritten rule of non-interference in the internal affairs of member states by the moribund Organisation of African Unity (OAU). Intrastate conflicts, especially the Rwandan genocide, awakened Africans and their leaders to a central norm across the continent: the inviolable essence of human life.

Many of the states experiencing this awakening are currently ravaged by violence, disease, poor public policies and, in many instances, state incapacity to carry out the basic function of maintaining law and order to protect the citizens. Consequently, Africans and members of the international community continue to advocate for the human rights of individuals trapped within the boundaries of corrupt and inefficient states – states that are unwilling or unable to carry out their basic security functions to protect their citizens. However, both groups have largely failed to implement viable and sustainable solutions to the intractable crises in many African states. The problem is not whether some Africans and their external supporters see human rights protections, stable political systems with free market economy, and constitutional liberalism as positive variables for ending endemic crises like those in southern Sudan, Darfur, but rather the lack of sustainable and institutionalised strategies for effective governance. This article offers a strategic vision for reducing and hopefully ending gross human

rights violations within the context of intrastate crises that have ravaged much of sub-Saharan Africa. The expected peace dividend from the end of the Cold War never materialised in sub-Saharan Africa where Western governments' preference for stability continues to privilege autocratic leaders who ascend to power through fraudulent electoral results and/or violence; e.g. the Democratic Republic of the Congo, Nigeria, and the Sudan.

The international community stood by in 1994 while over 800 000 Rwandans were slaughtered with the full knowledge and support of their government. Today it has responded to the crisis in Darfur. But that response has been practically irrelevant as women, children and men are raped, dehumanised and killed on a daily basis while the major powers debate the semantics of genocide. A brief background is in order.

The context of the Darfur crises

In Sudan, like most other multi-ethnic states in Africa, the struggle for political independence rendered ethnicity quite fluid as the goal for the nationalists was the attainment of political independence from Britain and Egypt. Sudan gained her independence in 1956. However, 'seeking […] first the political kingdom,' as Kwame Nkrumah asked Africans to do in the 1950s, did not result in statewide development – because political independence revealed the dark side of tribalism. In Sudan, and consistent with colonial practices elsewhere, the result was sustained development in one part of the country, the northern part. Scarce resources and uneven development policies and strategies caused western Sudan, Darfur, to become the worst neglected region.

M.W. Daly notes that Sudan's first scientific and only nation-wide census was conducted in 1955-56. Population data yield information that should inform policy makers of the magnitude of development problems and therefore serve as a basis for policy planning and action. But the data, as revealed from the 1955-56 census in Sudan, were fraudulently interpreted and used to privilege the Muslim North by exaggerating their representation in the national population/institutions. The census played down ethnic differences and therefore under-reported the proportion of other groups in the state for purposes of power and

resource allocation. The resulting tension was not resolved through the political process and led to the intractable civil war in contemporary Sudan.

> The census reported the Sudan's population as 10,263,000. Darfur's 1.35 million ranked third only to Blue Nile (2.7 million) and Kordofan (1.76 million); the six northern provinces comprised about 7.5 million, or 72 percent of the total, and Darfur therefore almost 18 percent of the north's and 13 percent of the Sudan's population. Of females over puberty but of childbearing age, Darfur had the highest percentage of any province – 24.6 percent – and between the ages of five and puberty also the highest – 11.4 percent…. The census found that a bare majority of Sudanese (51 percent) spoke Arabic at home, followed by Dinka (11 percent). Arabic was also the majority language in Darfur (55 percent); Fur (classified for census purposes as three dialects of one language, North, South and West Darfurian), was spoken at home by 42 percent (5.6 percent of the Sudan's population), and the rest spoke other languages, none of which accounted for more than 1 percent of the province's total (Daly 2007:179-180).[1]

Furthermore, in terms of tribe or 'nationality', the census found that 375 000 of Darfur's people were Arabs (of whom 269 000 were Baqqara) and 758 000 'Westerners' (Fur, Masalit). Among many things, these figures indicate that Arabic had become the first language of roughly a third of those considered ethnic Fur. These and other figures relating to ethnicity, tribe, and language would later assume much more prominence in contemporary Sudanese politics (Daly 2007:180; Republic of Sudan, Ministry of Social Affairs 1958:23-24).

Population distribution was not the only factor contributing to instability in Sudan. The education and employment statistics remain relevant to today's events.

> In terms of the highest school attended (by people over the age of puberty), no province of the Sudan, including even the South, had a lower percentage for intermediate school than Darfur: 0.2 percent; the figure for female was 0.

1 See also Republic of Sudan, Ministry of Social Affairs 1958:4, 5, 7, 10.

> Likewise for secondary school attendance, no province had a worse record: the Bahr al-Ghazal and Upper Nile matched Darfur at 0.1 percent. For the Sudan as a whole, 78 percent of males over the age of puberty had received no formal schooling, and 97.3 of females; for Darfur, the figures were 65 and 99 percent respectively (Daly 2007:180).[2]

The data provided the government with the necessary ammunition to produce an effective national policy for all its citizens. The data should have been used for development planning, including job creation and building an intellectual infrastructure that would sustain not just Darfur and the southern Sudan, but the entire country.

> Of Darfur's 350,000 males over the age of puberty, 232,000 were farmers, 38,000 nomadic animal owners, and 31,000 shepherds. There were 158 male and 37 female primary and intermediate school teachers in the entire province. Among medical practitioners, 2 were classified as 'professional' and 281 as 'semi-professional' (including 63 women). There appear to have been 783 policemen and prison wardens (4 of whom were women), 1 professional accountant, and 2 (males) in the field of 'entertainment.' Most women – 79 percent – were classified as 'unproductive,' and the only field in which they outnumbered men was 'Unemployed, beggars' (Daly 2007:179-181).[3]

Given that civil war has been the norm in southern Sudan for these decades, it is reasonable to assume that not much has changed in terms of development since the sole census in 1995-56. The discovery of crude petroleum in southern Sudan has not improved the situation. However, as with other African states, the industry is largely based on expatriate employment – in this case, Chinese. Consequently, over time, with the lack of external and internal support, the historical neglect of Western Sudan by the central government ignited and intensified ethnic consciousness and marginal identity in the periphery. The strong nationalistic

2 See also Republic of Sudan, Ministry of Social Affairs 1958:19.

3 See also Republic of Sudan, Ministry of Social Affairs 1958:38-40, 54-55.

consciousness that preceded independence died because of poor development policies by the central authorities, especially their lack of vision for building a truly nationalistic Sudanese state. The personalisation of power by the Muslim Arabs in Khartoum and their efforts to create a homogeneous Sudanese culture without requisite developmental infrastructure exacerbated the needs and desire for ethnic ties and consciousness. These expectations for ethnic unity were manifested in the formation of different groups who hoped to achieve for themselves what the dominant group within the central government historically denied them – effective and significant decision-making capacity.

The 2003 formation of the Sudan Liberation Army/Movement (SLA/SLM) in loose association with the Justice and Equality Movement (JEM) intensified the use of ethnic consciousness as a framework for demanding a seat at the national decision-making table. However, SLA/JEM strategy has changed from engaging the political process to violent attacks of government targets outside of Khartoum. Arguably, the changed strategy from negotiation to violence by peripheral groups like SLA/JEM is explained by their fear that Darfur and the Western region would be left out of the power-sharing agreements that the Government of Sudan was negotiating to end the civil war in southern Sudan. Such fear was based on the fact that the central government had repeatedly ignored requests for meetings on how best to include the Darfur region on the national development agenda.

The intensified ethnic consciousness born of political struggle for scarce resources expanded to include charges of racism against the central government, and violence targeting government facilities by 'rebels' who defended their actions by accusing the government of oppressing *black Africans* in preference of *Arabs*. The Government of Sudan responded to the informal politics and strategies by the rebels with crushing air raids targeting villages believed to be rebel strongholds. The government also enlisted the assistance of former criminals, bandits, and members of tribes with land conflicts against *African* tribes in Darfur. In addition to providing arms, the government did not object to other groups and individuals with different agendas who sought to exploit the crisis by joining the 'Janjaweed' in terrorising the Darfurians. The Janjaweed, or 'devils on horseback', have been labeled 'Arab' because the majority of their

ancestry is more Arab than African – further intensifying the rigidity of the alliances in the conflict.

Originally created and supported by Libya in Western Sudan for attacking Chad, the Janjaweed are responsible for the burning and looting of villages across Darfur as well as raping, murdering, and kidnapping civilians. There are reports of instances where air raids by Sudanese Government forces are strategically followed by mop-up operations by the Janjaweed, indicating coordination between the government and the Janjaweed, contrary to government claims that armed criminals are responsible for most of the Darfur killings. Fear of the Janjaweed has forced Darfurians to leave their possessions and homes and relocate to camps for Internally Displaced Persons (IDPs), mostly in northern Darfur, and some to refugee camps in neighbouring Chad. The rise in IDPs and refugees has created what numerous groups have labeled the worst humanitarian crisis in the world. Racial and ethnic slogans, chants, and the Janjaweed's motivations as they taunt, capture, and kill the Darfurians cause many, but especially the US government, to go so far as to label the situation as genocide. A United Nations Security Council (UNSC) report on Sudan (United Nations Security Council 2007) highlights the awful results of the conflict:

> The humanitarian situation in Darfur has suffered from persistent violence and overall insecurity. Over two million people are now internally displaced, while 1.9 million conflict-affected residents remain largely dependent on external aid. Approximately 107,000 civilians were newly displaced by insecurity [in] fighting between 1 January and 1 April [2007].

Thus, the Government of Sudan's policy in Darfur is to bring the conflict to an end on its own terms – largely homogenising all the ethnic groups consistent with the cultural, language and ethnic consciousness of the ruling northern elite. More significantly, given the government's willingness to negotiate a comprehensive peace treaty with the South to end the civil war, it seems clear that the strategy adopted by the Darfurians for a share of the national wealth and the government's heavy-handed response suggests the government might be more concerned about regime stability than ethnic cleansing or genocide.

In this sense, the government's violent reaction to the Darfuri rebels might be a calculated strategy to discourage other potentially marginalised and neglected groups from taking up arms against the government. To ensure that the Darfuris are not protected from the government and the Janjaweed, the violence sponsored by the government extends to the aid and humanitarian workers in the region whose work is directly aimed at assisting civilians and providing succour. The emergence of the African Union to replace the now defunct OAU – and its odious principle of *non-interference in the internal affairs of member states* – thus greatly pleased the international community. The AU is seen as a new body with a new philosophy of responsibility toward citizens whose governments have failed to protect in the midst of violent crises. This so-called humanitarian intervention thesis is addressed later.

Darfur and the African Union

The African Union (AU) was established in 2002 as the successor of the Organisation of African Unity (OAU), which was established in 1963. Consistent with African leaders' general tendency to emulate Africa's former colonisers, the AU was the natural successor to the OAU, similar to the European Union succeeding the European Community. One wonders whether the AU is truly African in spirit and form. The OAU was established in 1963 by 31 newly independent African states in a spirit of pan-Africanism that aimed to promote economic unity, collective security (Zweifel 2006:147), and eventually, political unity. Its main strategy for dealing with African problems was to stress the principle of 'peaceful settlements of disputes' (Murray 2004:118). Without effective institutional structures and visionary leadership, its poor record on conflict resolution and management was compounded by financial, logistical, and political problems. Much of the OAU's failure was due to its policy of non-interference in states' internal affairs which weakened its ability to prevent and manage conflicts, especially civil wars. Now with 53 African states as members of the AU, the added features of intervention, independence, checks and balances, and monitoring make the AU potentially a 'more effective, democratic, and autonomous organization' (Zweifel 2006:148). According to the former OAU Secretary-General (and current AU Special Envoy), Dr. Salim Ahmed Salim, the promise of the AU is its objectives of 'enhancing unity, strengthening co-operation

and co-ordination as well as equipping the African continent with a legal and institutional framework, which would enable Africa to gain its rightful place in the community of nations' (Francis 2005:29). These hopeful objectives are rooted in a desire and motivation to 'enhance the cohesion, solidarity and integration of the countries and peoples of Africa' (Francis 2005:30). The core instrument for achieving the above objectives is the Constitutive Act of the African Union.

The Constitutive Act empowers states to intervene where countries fail to protect their citizens from internal conflicts. Specifically, Article 4(h) of the Principles provides: 'The right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely war crimes, genocide and crimes against humanity' (African Union 2000:art 4(h)). This Act must not and cannot be impeded by excuses of sovereignty which were used to avoid responsibility and action in past instances where intervention would have saved millions of lives. Some argue that member states have essentially accepted external intervention in their internal affairs in times of serious or extreme crisis by signing this Act that runs against the standard practice of non-intervention in the UN Charter (Murithi 2005:97). This document, however, while continuing to reiterate the importance of promoting peace, security, and stability for individuals and the continent also contains clauses which affirm the sovereignty, territorial integrity and independence of states exclusive of grave violations of human rights and goes so far as to prohibit the use of force or threat under the basis of non-interference (African Union 2000:art 3, 4). Despite these improvements, the AU has inherited many of the problems of its predecessor. Sceptics thus warn against prematurely assuming this new organisation will 'significantly enhance the project of uniting Africa or strengthen the capacity of states to respond to peace and security issues on the continent' (Francis 2005:30). Perhaps this fear is why the AU established the Peace and Security Council (PSC or AUPSC) to prevent, manage, and resolve conflicts in the continent. As is profoundly evident in the case of ongoing massive slaughter and displacement of certain sections of Sudanese citizens or crimes against humanity in Darfur, the strategic question – how to mobilise

and deploy collective resources in the continent for realising the goal of conflict prevention and management – remains to be substantively unresolved.

Comprised of 15 rotating members (for either two or three year terms), the PSC has 'powers to anticipate events that may lead to genocide and crimes against humanity, recommend the intervention…impose sanctions…and follow up in terms of conflict prevention issues of human rights, among other things' (Murray 2004:125). The question may be asked, however, given the hegemonic intent in establishing the PSC and its expressed powers, what significant and substantive instrument exists to carry out its functions without constraints. That is, what functional or institutional power does the PSC have over the sovereign leaders of states who may not wish close scrutiny within their 'sovereign territory'? That Article 7 forces African leaders to realise that sovereignty does not forever remain a 'shield from intervention' (Levitt 2005:226) is not sufficient without compelling strategic military and political instruments of statecraft at the disposal of the AU to realise its stated goals of ensuring peace, security and individual human rights. Through the PSC, the AU has also authorised the creation of the African Standby Force (ASF) made up of strictly African soldiers whose responsibility, among others, is to intervene in member states where crimes against humanity as outlined in Article 4(h) above occur (African Union 2002:art 13). Again, we must ask: Based on what vertical decision structure and with what kind of logistical and human resource base will the ASF carry out its functions? Indeed, given their current role, which is limited to that of humanitarian assistance and 'alleviating the suffering of civilians in conflict areas' (African Union 2002:art 13), it is most urgent that the AU with the full endorsement of African governments, clarify the strategic vision it hopes to deploy for its lofty goals before it becomes irrelevant from incapacity as the case of Darfur is already demonstrating. However, the establishment of the PSC shows the AU's commitment to ending conflicts through the legal and political processes that protect civilians against government and government-sponsored violence. Thus, while political and financial enforcement mechanisms in the AU and PSC guidelines are clearly specified, the test of the AU's effectiveness will be the extent to which these important steps are tangibly implemented. More

significant however, is the strategic process that moves key actors from violence to political negotiation, for example in the case of Darfur.

Given that the current structure of the AUPSC and the ASF places state sovereignty above the obligation to protect individuals, it is doubtful that the PSC will be able to carry out its functions or that the AU can intervene in a state where genocide is occurring if the state government refuses such intervention. Consequently, to achieve the goals of protecting individuals against state violence, the AU is more likely to succeed if it establishes an African Union Security Command (AU-SC) with a standing rapid reaction force for military intervention where the AU identifies genocide and/or other state-sponsored crimes against humanity in Africa as the first step toward engaging the political process. The AU-SC can stand alone or complement other activities by the AUPSC and the ASF. Armed and under the command of a reputable and competent leader, the rapid reaction function of the AU-SC is more likely to result in the realisation of the AU charter by elevating individual rights over state rights, thereby ensuring consistent protection of human rights in the continent.

Substantively, while state sovereignty remains essential against non-AU threats, sovereignty and human rights are enhanced within the continent to the extent that AU access to intrastate human rights struggles is not blocked by autocratic claims of state sovereignty. In other words, for a political process that privileges peace and robust resolution of issues of human rights, force must be compelling when government-sponsored violence remains a major obstacle to getting the actors to the negotiation table.

The effective functioning of the African Union and its constitutive units is needed to curb the crisis in Darfur. Thus, while the AU has worked closely with the international community, primarily the UN, in attempting to alleviate some of the humanitarian conditions and convince the al-Bashir Government to allow a peacekeeping force in Darfur, the AU has only served as monitor of cease-fire since 2004 because it lacks the robust logistical and personnel presence to be effective. The argument for a more robust AU through the AU-SC is in recognition of both the African governments' desire and the international

community's professed preferences for collective action to end genocide and government-sponsored violence against innocent civilians.

While the capacity for collective action in the international community, especially the UN, has always existed, it has not been deployed for the protection of individuals against their governments in Africa. It seems, however, that the UN has been awakened from its slumber to the suffering of Africans at the hands of their own governments, for 'at the United Nations World Summit on 17 September 2005, world leaders agreed, for the first time, that states have a primary responsibility to protect their own populations and that the international community has a responsibility to act when governments fail to protect the most vulnerable' (Jentleson 2007:582). The Responsibility to Protect international doctrine pledges 'to take collective action if national authorities manifestly fail to protect their population from genocide, war crimes, ethnic cleansing and crimes against humanity' (Jentleson 2007:583-584). While the doctrine provides hope and an enabling framework for collective action to hold governments claiming sovereignty without responsibility accountable for the atrocities committed against their own citizens, the question is: How can this collective responsibility be achieved in situations where governments fail to protect their citizens or are complicit in the atrocities committed against them?

I argue that at the core of realising the UN and AU desires to protect citizens against government-sponsored violence is recognising that the self-empowerment of African States, regional African Organisations, non-governmental organisations, citizens and the African Union are the first lines of defence against government and government-sponsored atrocities against their own citizens. Internal initiation of an accountability process for the maintenance of sovereignty would make it possible for non-African states, organisations and citizens to offer effective aid for bringing genocide and other human rights violations in places like Darfur to an end.

While the African Union has its peace security functions and the desire to form a union government, it seems conflicted on the nature of the relationship between African States and their citizens. Additionally, despite its desire to, the AU lacks the logistical and political will to end crimes against humanity in

Darfur. Cognisant of the international reality that the UN Security Council is responsible for global security and stability, African States formed the African Union Mission in the Sudan (AMIS), the only external entity on the ground in Darfur with the responsibility to protect civilians. However, because of poor capacity and lack of resources, AMIS has failed to competently execute its mission as evidenced by the continuing atrocities in the Darfur region and in the refugee camps in neighbouring states. That said, most important about AMIS is that for the first time since decolonisation, African leaders seem aware of their responsibilities to Africans as evidenced by their decision (albeit poorly executed thus far) in Darfur.

While the issues in Darfur as illustrated below are mostly economic and political in nature, they lend themselves to verifiable efforts through good faith negotiation followed by national policies aimed at their effective resolution, if the political will exists in Khartoum to do so. We will first identify the intersecting issues – national and international – in the conflict in Darfur and then offer robust strategies for how African States and the African Union can start the process of protecting the victims of human rights abuses and other atrocities in the continent.

Intersecting issues in the Darfur crisis and recommendations

The crisis in Darfur is born of several intersecting, yet separate conflicts. As Scott Straus insightfully notes, the crisis is traced to the civil war between the Islamist, Khartoum-based national government and two rebel groups – the Sudan Liberation Army and the Justice and Equity Movement – based in Darfur.[4] As previously noted, the rebel groups are fighting because of economic and political marginalisation by the national government. In a sense, if the government in Khartoum had engineered a national economic and political development plan that did not marginalise any section or group in the Sudan, the SPLA/JEM would not have had verifiable reason to attack government facilities in 2003 – resulting in the national government's arming of irregular militias to quell the violence that escalated to the current level in Darfur. Similarly, the crisis in Darfur is

4 Unless otherwise noted, the discussion in this section relies on Straus 2005:123-133.

related to the civil war that has raged in Sudan since its political independence in 1956, in which the Arab-dominated national government and its cultural and linguistic homogenisation policies in Sudan created a dyadic civil conflict that has been simplistically explained as North-South and Arab-Christian conflict in contrast to the core issue of economic and political marginalisation of the South by the northern-based government of Sudan. Under the auspices of the Intergovernmental Authority on Development (IGAD), the Sudanese government entered into negotiations with the southern rebel groups – which did not include Darfuri representatives. The peace negotiation resulted in the Comprehensive Peace Agreement that promised an end to the longest civil war in Africa. Consequently, the Darfur rebels attracted attention to their own cause of marginalisation as a strategy to mobilise ethnic, regional, continental and global attention to the poor economic and political condition.

The other dimension of the crisis is the localised nature of the race/ethnic dimensions of the conflict. As Scott Straus (2005:126) notes:

> Darfur is home to some six million people and several dozen tribes. But the region is split between two main groups: those who claim black 'African' descent and primarily practice sedentary agriculture, and those who claim 'Arab' descent and are mostly semi-nomadic livestock herders. As in many ethnic conflicts, the divisions between these two groups are not always neat; many farmers also raise animals, and the African-Arab divide is far from clear. All Sudanese are technically African. Darfurians are uniformly Muslim, and years of intermarriage have narrowed obvious physical differences between 'Arabs' and black 'Africans.' Nonetheless, the cleavage is real, and recent conflicts over resources have only exacerbated it. In dry seasons, land disputes in Darfur between farmers and herders have historically been resolved peacefully. But an extended drought and the encroachment of the desert in the last two decades have made water and arable land much more scarce. Beginning in the mid-1980s, successive governments in Khartoum inflamed matters by supporting and arming the Arab tribes, in part to prevent the southern rebels from gaining a foothold in the region. The result was a series of deadly clashes in the late 1980s and

> 1990s. Arabs formed militias, burned African villages, and killed thousands. Africans in turn formed self-defence groups, members of which eventually became the first Darfur insurgents to appear in 2003.

That 'Khartoum instructed the militias to "eliminate the rebellion," as Sudan's President Omar al-Bashir acknowledged in a December 2003 speech…. [And that] Army forces and the militia often attacked together, as *janjaweed* leaders readily admit… and in some cases, government aircraft bomb areas before the militia attack, razing settlements and destroying villages' (Straus 2005:126-127) clearly establishes the connection between the government *decision* to eliminate a segment of its population by virtue of who they are perceived to be – black African farmers. The ethnic cleansing, massive human rights violations and genocide evidenced by the inability of the Darfurians to protect themselves against such massive government violence calls for international protection consistent with the expressed goals of the United Nations and those of the African Union. Documents in the possession of the AU peacekeeping force in Darfur indicate the Sudanese Government is directly involved in organising and supporting the violence against the Darfurians.

According to Nicholas Kristof, one document directed the regional commanders and security officials to ensure the 'execution of all directives from the president of the republic …. [and to c]hange the demography of Darfur and make it void of African Tribes …' [by] 'killing, burning villages and farms, terrorizing people, confiscating property from members of African tribes and forcing them from Darfur' (Jentleson 2007:446).[5] From all accounts, while Darfur like the rest of Sudan has been involved in various levels of conflict since the 1950s, the intensity of the current conflict measured by the number of casualties – estimated at over 300 000 deaths and over one million IDPs with hundreds of thousands more in various refugee camps outside of Sudan – was ignited by the Sudanese Liberation Army's 'surprise attack on the airport at El Fasher, the capital of North Darfur State' (Kasfir 2005:196). The Sudanese Government's swift and intense response to the SLA attack in 2003 led to an outcry of genocide in Darfur. As Gerard Prunier notes, the massive killing in Darfur have a number of explanations: (1)

5 See also Kristof 2005 and Kasfir 2005:197.

ancient tribal conflicts reignited by droughts, (2) a counterinsurgency campaign by the government of Sudan gone wrong, (3) a deliberate policy of ethnic cleansing of African tribes to make room for Arab nomads, and (4) 'genocide … supported by evidence of systematic racial killings' (Prunier 2006:200).

While these explanations are important singularly, collectively the timing and intensification of the killings suggest deliberate policy, strategy and motive by the Government of Sudan to consolidate its power within the country by using the SLA/Darfuris rebellion to demonstrate its resolve against other marginalised groups' future efforts to demand a peace negotiation and therefore a share of national wealth and power similar to the generous provisions in the Comprehensive Peace Agreement with the Christian South. And, as Kasfir succinctly summarises, 'One problem in isolating the government's motives is that the Darfur crisis grows out of many conflicts at the local, regional, and national levels. These conflicts involve responses to diminished natural resources, to ethnic and cultural conflict, to negotiations and the peace agreement in southern Sudan, and to the relationship of the national government with impoverished and marginalized groups throughout the country' (Kasfir 2005:197).

The foregoing makes clear that the government of Sudan organised and aided the Janjaweed – drawn mostly from marginalised Arab/Muslim communities in Darfur to attack, slaughter and displace the non-Arab Darfuris – mostly Africans but predominantly Muslims. Arguably, it is also clear that the government chose this high-handed approach to the rebels because it was already engaged in a peace negotiation process in 2003 with mostly Christian southerners against whom it had fought since 1956 and did not want to repeat the process with other marginalised groups and regions in the future.

Interestingly, the *political* dimension of both the Darfuri rebellion and the government's response holds the key to an effective solution to the crisis in Darfur. As articulated by intellectuals from southern Sudan, 'the central problems that pose a threat to peace and unity in the Sudan are attributable to three basic causes: (1) the dominance of one nationality over the others; (2) the sectarian and religious bigotry that has dominated the Sudanese political scene since independence; and (3) the unequal development in the country' (Akol 1987:15).

The question is how to proceed toward the realisation of peace and stability throughout Sudan to enable its people to pursue their lives and interests. Given the intensity of the violence in Darfur, the Comprehensive Peace Agreement signed in January 2005 between the North and South, as well as the commitment of the Government of Sudan to maintaining power, resolving the Darfur crisis and indeed, fully upholding the CPA would require robust international and regional mediation between the various factions in Sudan.

Toward resolution

The international dimension of the Darfuri rebellion and therefore its partial solution is evident in the fact that the peace settlement between the Muslim government of Sudan and the Christian southern rebels was already in the minds of Washington (with the appointment of Andrew Natsios in May 2001 as Special Humanitarian Coordinator for Sudan and Senator John Danforth on September 6, 2001 as Special Envoy for Peace in Sudan – both part of President George W. Bush's conservative Christian constituency). Any hesitation on working together to resolve the age-old civil war on the part of both Washington and Khartoum was shelved following the terrorist attacks against the US in 2001, which provided President Omar al-Bashir's government – whose human rights record was largely seen as repugnant – with an unprecedented but grotesque opportunity to play the hero's part in the fight against terrorism. The Sudanese government's enthusiastic offer of support for the anti-terrorist policy can only be read as al-Bashir's government's desire not to repeat its earlier strategic error of siding with Saddam Hussein in the first Gulf War, and therefore, avoiding the polarisation of its civil war into Arab-Muslim government versus Christian southern rebels that would have increased global support to the rebels, especially from Washington if it did not make the correct choice of denouncing terror and terrorists on the global stage. As Clement Adibe (2007:26) notes,

> When September 11 attacks occurred … President Bashir firmly denounced Osama bin Laden and al Qaeda and pledged to cooperate with Washington in rooting out the terrorist menace. In Washington, Bashir's unsolicited support, like Ghaddafi's, was especially well received by Powell's State

> Department which was saddled with the task of putting together a 'coalition of the willing' on a very short notice. … [And] 'Since 9/11, Bashir has provided the U.S. with a steady stream of much-vaunted intelligence' which has been used to track and target al Qaeda networks and funds.

Consequently, Washington rewarded the Sudanese government by supporting '… the lifting of UN sanctions against Sudan on September 28, 2001 ... and quietly quelled pending legislation for imposition of capital market sanctions … [and for] the next two years, the Bush administration treated Khartoum as an ally in its war on terror while Bashir's security and the Janjaweed roamed Darfur with greater impunity' (Adibe 2007:26). The foregoing indicates that the United States has the moral and military force capability and credibility – multilaterally or unilaterally – to nudge others toward resolving conflicts like the Darfur crisis. I would argue that the United States fails to consistently use its capacity to enhance peace and security missions in Africa; or more specifically, fails to forcefully use regional and international organisations such as the African Union and the United Nations in such projects because there are no consistent *national interest* imperatives in United States foreign policy toward Africa. Certainly, there is no consistent African constituency with voting power at the congressional district levels to compel action on behalf of Africa.

Similarly, the United Nations and the former Organisation of African Unity did not, as collective action institutions, intervene in the internal affairs of an African state in protection of the rights of individuals as individuals or as members of a group. Even when such intervention would likely have saved hundreds of thousands of lives as the case of Rwanda showed, the two institutions did nothing beyond engaging in rhetorical debates over state responsibilities to their citizens and whether the atrocities qualified as genocide because the interests of the elites in these institutions are largely devoid of compassion and commitment to the resolution of issues on behalf of the marginalised and disorganised victims of both structural and state-supported violence. The role of the AU, however, can be more constructive than the conflict-avoidance strategies employed by much of the Western world in Africa, and the inaction that plagues the veto-hobbled

Security Council organ of the United Nations and the non-interference excuse for inaction by the defunct OAU.

Progressive responsibility to protect argument

While sovereign states are notorious for protecting their rights to internal action, multilateral institutions such as the United Nations with codified collective security principles have been notorious for insisting on invitation from states before intervening in a nation's internal affairs to protect entrapped citizens facing extermination as in Rwanda and the former Yugoslavia. But while powerful states such as the United States in collaboration with regional organisations such as the North Atlantic Treaty Organisation (NATO) will, if their interests are at stake, violate the UN principles as was the case in Kosovo in 1999, less powerful states and organisations such as those in sub-Saharan Africa are left to fend for themselves based on the inviolability of the principles of sovereignty – at the expense of unprotected citizens in Rwanda in 1994. It is illuminating that the US-NATO action in Kosovo in 1999 resulted in '… an unusual distinction when an independent international commission called the US-NATO intervention *illegal* in the sense of not having followed the letter of the UN Charter but *legitimate* in being consistent with the norms and principles that the Charter embodies' (Jentleson 2007:439, my italics).[6]

Perhaps the foregoing insight led to the formation of the *International Commission on Intervention and State Sovereignty*, whose 2001 report provides a theoretical basis for the responsibility to protect argument. The responsibility to protect argument (Jentleson 2007:439; Independent International Commission on Kosovo 2000) is based on the core principles that 'state sovereignty implies responsibility' and that the primary responsibility of a state is the protection of people within its territory. In situations 'where a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect' (Jentleson 2007:439). The responsibility to protect argument further provides

6 See also Independent International Commission on Kosovo 2000.

for *prevention* of 'large scale loss of life' as its priority with as little coercive force as possible; and emphasises that the motive for intervention should be to avert human suffering.

Furthermore, the five permanent members of the UN Security Council should agree not to veto resolutions authorising the use of military force when their interests are not directly involved. Specifically, it says, 'The Security Council should take into account in all its deliberations that, if it fails to discharge its responsibility to protect in conscience-shocking situations crying out for action, *concerned states may not rule out other means to meet the gravity and urgency of that situation* – and that the stature and credibility of the United Nations may suffer thereby' (Jentleson 2007:439, my italics). Given that the United Nations accepted the responsibility to protect argument after both genocide and ethnic cleansing occurred in Rwanda, Bosnia and Kosovo, the Darfur crisis is the first test case for this important international norm and obligation. Thus far the test has failed either because Russia and China have material interests in Sudan and/or because the United States has a verifiable national interest in working with the al-Bashir administration whose support for the United States' war on terrorism compels the United States to be diplomatically lenient with its allies.

An added dimension is the negotiated peace between the Sudanese government and the southern rebels to which the United States, the United Nations and the African Union were party. As a result, all three are cautious about forcing the hands of the Sudanese government, lest it renege on the provisions in the Comprehensive Peace Agreement, since the consequence would be a return to a massively destabilising war for the country and region. The problem is that the African Union's presence and argument of 'African solutions to African problems' free the United States, China, Russia and, by extension, other western powers from doing much about Darfur beyond diplomatic talk. With its 7 000 troops and lacking logistical capability in Darfur the AU is unable to provide robust and credible protection for its troops or the Darfuris, some of whom continue to be killed by Sudanese government forces, rebels and the Janjaweed.

What to do?

Clearly, the responsibility to protect argument lacks teeth and the African Union lacks the necessary force and capability to significantly help the Darfuris as is evident by the partial arrival of the negotiated 20 000 additional troops in January 2008. However, it is not a cliché to say the failure to protect the Darfuris is the failure of African governments to assume full responsibility for the peoples of Africa. If we assume the AU is serious about privileging African peoples over state and sovereignty claims, the right to protect does provide for an effective role for a regional organisation such as the AU in cases where the UN Security Council proves ineffective. The question becomes: What does the AU need to do?

First, there has to be a peace to keep before peacekeeping forces can be brought into the region. Therefore, the constraint on reaching and keeping peace in the Sudan is directly related to the asymmetry of force between the government of Sudan and the Janjaweed on the one hand, and the fragmented and disorganised Darfuris and its various splinter groups on the other. Given the core issues for the southern Sudanese – autonomy with the right to vote for independence in a couple of years from the larger Sudanese state – peace may eventually be settled in battle. For Darfuris, economic development and political justice constitute the core issues, which unarguably lend themselves to political negotiation. Therefore, creating the space for political negotiation requires a cease-fire between the combatants. Strategically, then, deploying troops (Africans and non-Africans) with robust logistical support to force an end to the fighting is the first step to engaging in peace negotiation and implementation. In this sense, force activation and deployment are predicted to lead to acceptance of a cease-fire by both the Government of Sudan and its collaborators and the Sudanese Liberation Army and their collaborators as a precondition for peace and the concomitant negotiation/resolution of issues about justice. For an effective outcome, neither the government nor the rebels should have the power to veto the source of the troops and/or the type of logistical support available to the military intervention force.

Following the military intervention force, the AU must take decisive steps toward bringing the Government of Sudan, the Darfur representatives, the Sudanese Liberation Army, and the Justice and Equity Movement groups together to negotiate and correct whatever identified problems exist within the framework of Sudanese law and public policy. This must include the option of comprehensively federalising the provisions of the Comprehensive Peace Agreement with southern rebels to the rest of the country. Acting boldly in convening the groups in the Darfur crisis in its headquarters or another suitable location will establish the AU at the forefront of the responsibility to protect protocol provisions of both the UN and the AU. It will also ensure that the AU spearheads any final peace talks and will confirm to all the dedication of African governments to the guidelines of the AU charter and its commitment to avoiding the failures of the OAU.

Given that the Sudanese government is reported to be '… inviting Arab tribesmen from Niger and Chad to occupy the lands vacated by the refugees' (*The Economist* 2007:55-56) in Darfur indicates at least its intent to ethnically cleanse the region and at worst, commit genocide. Because the Darfur crisis is an African problem with global implications, a basic responsibility for the AU would be to boldly and unequivocally label the crisis in Darfur as *ethnic cleansing/genocide*. This would include labeling the crisis a grave situation and a crime against humanity – a clear warning to the Khartoum-based Sudanese government and the Janjaweed leadership that failure to stop the large-scale violence will bring them up for charges on crimes against humanity consistent with the International Criminal Court provisions. This would have two immediate results: first, it would activate Article 4(h) of the AU's Constitutive Act requiring the organisation to take action; and second, it would avoid the definitional conflict over the term *genocide* and compel African governments to clearly identify their support for the AU's

Constitutive Act to which they are signatories.[7] With clear identification of the crisis as genocide/ethnic cleansing and with the presence of robust military intervention for purposes of establishing a cease-fire in the region, the AU should then place travel restrictions on the top leaders of the Government of Sudan and rebels responsible for atrocities, except for travel related to negotiation and resolution of the conflict. The strategy should include: freezing the bank accounts of all affected individuals and groups, imposing sanctions on Sudanese companies deemed to be complicit in any atrocities that the AU is attempting to bring to an end and compensating those whose actions help bring an end to large-scale violence.

In addition, recognition and recognition withdrawal can be powerful and effective tools available to the African Union for carrying out its responsibility to protect vulnerable people in situations where African governments have failed to protect the people within their territories. In this case, and beyond, social primordial identities, and therefore group identities are constructed to create space for inclusion and exclusion. This approach ensures that the Fur or Arabs will remain who they are; however, the Sudanese state may or may not survive an identity reconstruction if war erupts across the country. Thus, while states in Africa as well as their membership in the African Union may eventually survive or die, it is individual primordial identities[8] that are sustained over time as the basis for recognition of our individual existence. Furthermore, the artificially or socially constructed identities are political tools that can be used for purposes of ending conflicts like those in Sudan. In the formation of social or group identities, there is always an in-group such as the African Union or the United Nations which represents the desired group identity, and the non-group members such as states that have to adjust if admitted in order to remain members of the

7 Clearly, an immediate implication of this bold action might be a threat to break up the organisation by some members, which might actually lead to the disintegration of the African Union. But it might also, on grounds of public opprobrium and support of civil society organisations, force member states to vote consistent with the provisions of the Constitutive Act to protect individuals/groups whose governments have chosen to ignore and/or violate their human and peoples' rights – a welcome relief for the emergence of truly politically independent African states!

8 This section relies on the excellent explication of Al-Baqir al-Afif Mukhtar (2007).

group. Thus, the African Union is the core group for African states who desire membership in the group. It occupies the centre stage of the group identity, and group membership for states such as Sudan or Nigeria should depend on their behaviour. The privileges of membership should draw the non-group states to seek inclusion. As such, the AU has the power to legitimise or de-legitimise the public behaviour of states, especially with regard to their policies toward the people in their territories. The power of recognition and its withdrawal then becomes a tool that enables the AU to monopolise the power to recognise or withdraw diplomatic recognition from members whose actions are judged repugnant to civilised standards – especially, when such actions include ethnic cleansing and/or genocide. Indeed, the power of recognition or its withdrawal seems to be the most powerful diplomatic tool available to the AU and members of the UN Security Council such as the United Kingdom and France who desire to do something to end large-scale violence characteristic of ethnic cleansing/ genocide without necessarily participating in joint military intervention with the AU forces.

The power of recognition is not new as evidenced by the capacity of the United States' legislature to include or exclude states on its 'list of terrorist supporting states'. The Sudanese government was placed on this list in the 1990s and thus it sought to be excluded again when it pledged support for the war against terrorism after September 11th. Such diplomatic tools should be used by the African Union to recognise and/or withdraw recognition of African states and others whose actions support large-scale violence in the continent either through the supply of arms, the threat of the use of veto to obstruct the passage of UN Security Council resolutions on military interventions, and/or the use of state power in any form to undermine the responsibility to protect obligations of both the UN and the AU within Africa.

Structurally, the current trials by the International Criminal Court (ICC) over the 1994 Rwandan Genocide offer a precedent and an avenue for the forthcoming AU Court of Justice to be the venue and structural platform for any future trials of Africans and their leaders who commit offences against humanity as codified in the Geneva Conventions. Such sanctions and legal actions within the continent

are likely to have a large positive impact, albeit symbolically; but they also signal Africans' strong disapproval of existing policy and behaviour in Darfur.

Similar to the grassroots efforts at divestment during the struggle against the Apartheid regime in South Africa, the movement for divestment in Sudan, mostly by groups in western countries is also important but should be complemented by similar movements sponsored by civil society organisations with help from the AU headquarters where appropriate. Non-governmental organisations receiving funding from companies and/or organisations whose income are derived from investment in the Sudan should refuse such funding in solidarity with the Darfuris. Collectively, African nations should not only cease doing business with companies identified as enhancing the capacity of the Sudanese government's unwillingness to negotiate in good faith, but divest from them, going so far as to freeze the accounts of Chinese, Malaysian, Indian, and other states' corporations that do not end their business with the government of Sudan. Recalling African ambassadors from major states – especially China and Russia, which are involved in the sensitive business of oil exploration, providing arms, weapons, and other support indirectly to the Janjaweed through the government of Sudan – would constitute a form of recognition withdrawal that will signal the seriousness of the AU's desire to end large-scale conflicts in the continent. Additionally, a bold move against the Sudanese government would be the withdrawal of all AU member ambassadors and diplomats from Khartoum. In a sense, African de-legitimisation of the Sudanese state is predicted to intensify a crisis of identity for the ruling elites and might hasten an internal change of government for a more progressive one willing to work within the principles of the AU to protect the rights of all citizens within its member states. The recent AU decision to deny Sudan its bid to serve as the chair of the Union is a positive example of a unified strategy for sending a message of disapproval. Similar actions as suggested above would throw Sudan into shock. The AU must look to approve and encourage any and all possible strategic moves within its power and charter to force the parties back to the negotiating table on the Darfur Peace Agreement (DPA) signed May 5, 2006.

Since both the Government of Sudan and the Sudanese Liberation Army/ Movement that signed the document have broken and violated its provisions

several times and since many of the Darfuris rebels have splintered into different factions, the AU must facilitate a renegotiation of the agreement. This effort assumes that a cease-fire as previously argued is enforced. As several reports as well as the continuing violence indicate, the growing factional divide since the drafting of the DPA shows a lack of political will and faith in its implementation. Therefore, the AU must take the lead in negotiations and diplomatic efforts to consolidate the numerous existing efforts (by Chad, Libya, Eritrea, and the UN) into a single plan under the AU umbrella. A recent Human Rights Watch report reiterated the need for the UN, Arab League, Government of Sudan, EU, and others to support the efforts of the African Union to maintain and expand its efforts of achieving peace in Darfur as well as keeping the organisation's effective existence afloat (Human Rights Watch 2006:9-10). Again, the importance of the AU's role in bringing about a successful result to any agreement requires maintenance and expansion of their current monitoring role to one of cease-fire enforcement. The AU will succeed in its efforts at cease-fire enforcement and peaceful negotiation that ends the conflict and paves the way for political settlement of the Darfur crisis if practical strategies include confidence building among members of the various factions and communities within a familiar framework of local traditions. As Murithi (2005:76) notes, 'For peace to be sustainable there needs to be a process of consultation and involvement of local grassroots populations as part of the process of re-emphasizing the inherent worth of traditions'. This will encourage confidence building and the establishment of trust and credibility for both the cease-fire enforcement and the eventual process of negotiating a lasting and sustainable peace in Sudan. Indeed, not paying attention to existing traditions and structures is the very problem that has plagued most of the approaches to development, economics, and politics in the continent. Ignoring existing structures and traditions implemented to deal with diverse situations as was the case in Darfur only intensifies conflicts whose origins and solutions are alien to the people whose lives are supposed to be transformed. By learning from and including traditional methods, the AU can capitalise on the rich history of enduring African cultures and methods of conflict resolution and management, and revitalise them as a parallel to formal

AU approaches to conflict management and peace enforcement, especially in less developed regions of the continent like Darfur.

The African Union already has an ally on the ground to effectively begin a robust counter-strategy to the Sudanese government's policies of reneging on the responsibility to protect obligation. Reports from the Christian Science Monitor indicate that, after promises of land, cattle, and money proved to be worthless, 'dozens of Janjaweed commanders [and their troops] are joining the struggle against the Sudanese government' (Crilly 2007). This is a clear indication that if salient issues for each party, as previously argued, are identified and addressed, the crisis could be controlled. These defectors have played a crucial role in helping protect the roads from attacks, allowing convoys of food and humanitarian aid through to rural and formerly dangerous areas. By tapping into this group of sympathetic Sudanese Arabs, particularly those who have disassociated themselves from the Janjaweed and are working to protect civilians or defending them by joining SLA or JEM, the AU can identify those who still have ties to the Janjaweed and central government and place pressure on them to prepare for meaningful talks. These defectors and many other Sudanese 'Arab' tribes exist within the Darfur region and have continuously opposed the Government of Sudan policy and refused to take part in the actions of the Janjaweed (Crilly 2007). Comprehensive talks would require these Arab groups to be involved and represented as a show of Darfurian unity and rejection of the entirely 'ethnic' nature of the conflict; as Prunier aptly notes, ethnic tensions 'were the raw materials, not the cause' (Prunier 2006:200) of the large-scale violence in Darfur.

Clearly, there are strategic religious dimensions to the conflict in Darfur, but these need to be clarified to make sense of the recommendation below. The North-South conflict in Sudan since 1956 pitted Arab Muslims (north) against Black Christians (south); but the case of Darfur is different because the National Islamic Front (NIF) that controls the government of Sudan is engaged in a large-scale violence against Darfuris who are mostly Africans, but also Muslims. Therefore, considering the Islamist roots of the NIF and al-Bashir's regime, the AU should counter its religious basis for power by strategically and diplomatically making the case that another Muslim-versus-Muslim conflict would shadow

the sectarian violence in Iraq. Also, the looming civil war among Palestinians is an affront to Islam and the unity of the 'ummah' or Muslim world. This is important since the NIF balks at claims of rape by Janjaweed members, or at least government support for it, as impossible and 'un-Islamic'. This requires the inclusion of predominantly Muslim African nations such as Libya, Egypt, Tunisia, Algeria, and others who also hold seats in both the Arab League and the AU to use their influence in discussions with Sudan to compel the al-Bashir regime to ensure the protection of the Darfuris against rape, torture, murder and ethnic cleansing by other Muslims. The same can be said of Christian on Christian violence, as was the case in Rwanda.

In the end, the various actors in the Darfur crisis, especially states, are only likely to act when compelled by either positive or negative incentives to change their behaviour; and in contemporary international politics, only the US has the capability and credibility of action to effectively engage the various actors to resolve the Darfur crisis. But as was painfully pointed out by a guest on Wolf Blitzer's *Situation Room*, in the realist world of politics, countries, including the US, never choose friends, but rather whatever is in their national interest at the time (Blitzer 2007). The question is: Does the responsibility to protect factor into the national interest of the United States, Russia, China and other capable major powers who are directly or indirectly involved with the Government of Sudan? The answer for now is no!

Therefore, the responsibility to protect, especially Africans, falls to the African Union. Its potential for doing well is boundless. At the least, the AU can succeed in establishing optimism and 'override the sense of inevitability of crisis which has framed the way Africans and non-Africans have viewed the continent for decades' (Murithi 2005:106). Its premise of Pan-Africanism and unity can be a way for the AU to convince Sudan to take strong steps to end the terror of the Janjaweed and prepare for a viable end to the conflict. In the meantime, 'focusing on stabilizing Darfur in time for the 2009 midterm elections, security, political, and humanitarian assistance efforts must be supported by adequate funding and logistical support' (United Nations Security Council 2007)[9] by African states,

9 See also Murray 2004:268.

especially South Africa, Nigeria, Egypt and Libya that have professed a desire to see an end to the violence in Darfur.

The AU has the tools it needs to become a solid entity in mediating African issues. It gains strength from the collective desire to uphold the responsibility to protect principle enshrined in both the UN and AU pronouncements. For the international community, especially members of the EU, NATO and the UN and for capable states such as the United States of America, the African Union has shown the desire to uphold the responsibility to protect. This is evidenced by their willingness to supply the troops for peace enforcement, but the AU lacks what those groups and nations have – robust and credible logistical equipment like helicopters, weapons and money to pay an over-stretched, underpaid, and unprepared African force – to succeed in an action that is clearly the collective responsibility of the international community if the UN Charter is to remain credible. For the AU, success can occur through logistic and financial support for the proposed hybrid UNMIS/AMIS force as well as the restart of peace talks as specified above. However, for a sustained capacity to influence external entities to help with African problems, or at least to not block action, especially at the Security Council, the AU should not hesitate to look beyond Africa for pressure and influence to force parties back to the table to make real decisions. Thus the AU maintains its position of leadership. An international community which focuses on African issues should be strategically institutionalised by funding an Africa Advocacy group in various countries – especially in those countries whose citizens and corporations are likely to be spoilers for African issues and policies in the international system. In the end, the assertion that only when Africa is neglected will it look to solve its own problems (Francis 2005:123), may be true here as the large-scale violence in Darfur did not become a major issue in much of the press in Africa until the international media picked up the cause in 2004. However the issue came to be a major event for Africa, its resolution requires the collective efforts of Africans, civil society organisations, governments, media, intellectuals and yes, external actors and organisations like the African Union to find a sustainable solution to crimes against humanity in the continent; so rather than yet again in Africa, we can say, NEVER AGAIN!

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The end of humanitarian intervention: Evaluation of the African Union's right of intervention

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Abstract

The right to intervene under the AU Act is a radical departure from, and in stark contrast with, the principle of State sovereignty and non-intervention, the very cornerstones of the erstwhile OAU. Although intervention has traditionally been opposed by African States and regarded as imperialism; under the AU Act, AU Member States have themselves accepted sovereignty not as a shield but as a responsibility where the AU has the right to intervene to save lives from mass atrocity crimes. Today, human rights are not a purely domestic concern and sovereignty cannot shield repressive States. Thus, if a State is unable or unwilling to protect its people the responsibility falls on other States. What is certain is that the thresholds for intervention are serious crimes under international law, which are subject to universal jurisdiction. Therefore, Article 4(h) can be viewed as providing for statutory intervention in form of enforcement action by consent to prevent or halt mass atrocity crimes. However, yet to be answered is how to reconcile the AU right to intervene with the provisions of the UN Charter, especially where the AU exercises military intervention. Nonetheless, the AU

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should reduce the need for costly intervention and focus more on preventive strategies.

1. Introduction

The genesis to the discussions of emerging African capacities to protect populations at risk of grave human rights violations is the failure of the international community to respond appropriately to tragedies such as the collapse of the Somali state, genocide in Rwanda, the protracted conflict in the Democratic Republic of the Congo (DRC) and the current crisis in Darfur. Commentators indicate that the inability or unwillingness of the United Nations (UN) and the international community as a whole to protect Africans in these situations 'shattered illusions of a post-Cold War peace dividend and prompted many to search for new protection mechanisms' (Powell & Baranyi 2005:2).

The question Africa has grappled with is how African States can best address the circumstances that might warrant external intervention in internal situations. However, the broader international community has focused on the particular question of whether humanitarian emergencies may provide an additional exception to the prohibition in international law of the use of force by states. This dichotomy challenges the normative framework on the issue of intervention. The debate about the controversial notion of humanitarian intervention is about the manifest failure of the international community to respond in a coherent and effective manner to the humanitarian crises that have unfolded in Somalia, Rwanda, Bosnia, Kosovo, Darfur and so forth.

For Harhoff, 'if the assumption is accepted that international law is currently incapable of providing a clear legal position in respect of the lawfulness of humanitarian interventions', which seems to be the correct assumption, 'the question then remains what international legal theory can or should do to bring about clarification of the law' (Harhoff 2001:107; cf Cassese 1999). However, the lacuna for a clear position on humanitarian intervention should not be seen as a shortcoming in international law, but rather as an assertion of the fact that international law evolves from the challenges which emerge out of contentions and conflicts between states (Harhoff 2001:106-108). Yet, the 1991 unauthorised

intervention in Iraq led by the United States (US) and the United Kingdom (UK), the Economic Community of West African States (ECOWAS) intervention in Liberia and the 1999 North Atlantic Trade Organisation (NATO) intervention in Kosovo are part of a larger trend that have seen states give increased weight to human rights and humanitarian norms as matters of international concern. As a result, the Security Council may now characterise these concerns as threats to international peace liable to enforcement measures under Chapter VII of the UN Charter (Kaplan 2000:25-27).

The genocide in Rwanda and NATO's action in Kosovo lifted the debate of humanitarian intervention to the top of the international community's agenda, exposing the need to develop a more comprehensive position on the lawfulness of such interventions in international law. Against this backdrop, the African Union (AU) provides for unprecedented powers of intervention in a Member State as an exception to the principle of state sovereignty. Yet, the normative status of the doctrine of humanitarian intervention is still a grey area and a contentious issue in international law. The pertinent part of Article 4(h) provides for 'the right of the [AU] to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity'. The AU right to intervene under Article 4(h) and (j) of the Constitutive Act of the African Union (AU Act), like the doctrine of humanitarian intervention, presupposes an exception to the general prohibition on the use of force in international relations. For such intervention to have a genuinely humanitarian character, the intervening states must not act out of any element of self-interest and therefore the beneficiaries of intervention must not be nationals of the intervening state (Sunga 2006:44-45). This progressive mandate reflects the AU's acknowledgement of the 'responsibility to protect' (R2P) – the universal notion that the international community has a duty to intervene to protect a population from mass atrocity crimes if governments abdicate their sovereign responsibilities (UN 2005:para 138-139).

While it is seemingly sound that protection of human rights of citizens should prevail over state sovereignty, the problem was, and still is, that challenging the notion of sovereignty also amounts to questioning the cornerstones of the UN Charter in Articles 2(1), 2(4) and 2(7) that guarantee, *inter alia*, territorial

sovereignty of all Member States and outlaw war. The right of intervention faces challenges ranging from violations of state sovereignty to questions of national interest and political will and the violations of human rights that so often accompany them. As the Darfur crisis has shown, financial and institutional incapacity exacerbates the problems for the AU to implement the right to intervene in a Member State. The challenge therefore is to weigh the legal norms of state sovereignty, non-intervention and non-use of force against the duty for collective action to protect human rights.

The framers of the UN Charter did not discuss whether humanitarian intervention had been previously allowed under customary international law or would be permissible or prohibited under the Charter (Lepard 2002:334). Despite its origins in ethical principles, the doctrine of humanitarian intervention has crystallised from a principle of 'pure morality' into a legal principle. Therefore, rather than seek guidance on relevant ethical principles in a particular philosophy, an evaluation of the merits of humanitarian intervention needs to be juxtaposed against the UN Charter and contemporary international law. As a guidepost, the focus should be on the prohibition of force in international law and the twin principles of non-intervention and state sovereignty under the UN Charter. In this connection, the threshold question relates to the normative status of the right of intervention by the AU. Therefore, this article examines the applicability of the right to intervene by the AU in Article 4(h) against the background of the UN Charter.

2. Enforcement by consent: The congruence of Article 4(h) of the AU Act and the responsibility to protect

In light of their colonial experiences, many African and Asian countries have been sceptical about Western justifications for intervention, and thus these states are less inclined to view intervention as legitimate, even if it is meant to stop grave human rights abuses. Together with Russia and China, the States from the Southern hemisphere have insisted on UN authorisation as a prerequisite for intervention. Given the importance attached to their sovereignty by the relatively young African States, most of which became independent in the

process of decolonisation after World War II, their recent emphasis on the notion of sovereignty as responsibility' (Deng 1993) and the concomitant policy of non-indifference (Kioko 2003:817) is a quantum leap towards the prevention of serious human rights violations. Given the experience with mass atrocity crimes on the continent, the posture of collective enforcement action with or without authorisation of the UN is easy to explain. This point is strengthened by the OAU Secretary-General's report which recommended that given the failure of the UN to forestall conflicts in Africa and the robust intervention provisions in the AU Act, the mandate of the OAU Mechanism for Conflict Prevention, Management and Resolution should be enlarged to provide for deployment of peacekeeping forces and peace enforcement in circumstances provided in Article 4(h) and (j) of the AU Act (Levitt 2003:115).

The UN General Assembly too has endorsed this emerging norm in its 2005 World Summit Outcome document. As UN Members, AU States have also unanimously endorsed that in the face of mass atrocity crimes the international community has a responsibility to protect (R2P) the population, be it with a State's consent or not. Given this experience, it is obvious that implementing the right to intervene and putting the concept of R2P into practice should be at the heart of African legal, political and decision-making machinery. A 'sense of shame at the passivity of the international response' has been hugely important to the evolution of the AU right of intervention with the resultant political commitment of R2P (Williams 2007:23). The inaction of the Security Council in Rwanda in 1994, the codification of enforcement by consent in Article 4(h) is a milestone in the protection of human rights in Africa as the AU may be seen to surmount the potential impasse in the Security Council, towards an independent mechanism to respond to crises in Africa. Rather than a revolution, it is an evolution, because the AU has overturned the non-interference principle of its predecessor the OAU, and declared that Africans can no longer be 'indifferent' to mass atrocity crimes on the continent. In this way, claims of sovereignty cannot be a shield against multilateral enforcement action under Article 4(h) of the AU Act.

Although Article 53 (1) of the UN Charter requires that any enforcement action by a regional body should have authorisation, the AU establishment of a 'right'

of intervention is by consent. States party to the AU Act legally acknowledge the existence of this right, and create a series of representative institutions designed to give it force. It is also necessarily multilateral. No particular state is endowed with the right to intervene. Rather, this right is conferred upon the AU itself, pursuant to a decision by the Assembly of Heads of State. However, Article 103 of the Charter invalidates any treaty obligation that conflicts with obligations of UN Member States under the UN Charter. However, a case can be made that Article 4(h) constitutes enforcement action by consent to prevent or halt mass atrocity crimes, an obligation which seems to be outside the scope of Articles 53 and 103. The reasoning being that the obligation under Article 4(h) is not in conflict with obligations under the UN Charter. In addition, while Article 53 does not say whether authorisation can be prior to or after the fact, the UN Security Council has a practice of giving post facto endorsement to sub-regional organisations such as ECOWAS in Liberia and Sierra Leone in the 1990s. However, this is not to say the enforcement action under Article 4(h) does not require Security Council authorisation.

Today, the doctrine of state sovereignty must be interpreted in the context of the changing value systems of the international community, whereby sovereignty is increasingly viewed as hinging on a state's responsibility to protect its citizens and that failure by a state to do so automatically invites intervention by the community of States in various forms, including forcible military intervention. Sovereign rights should be dependent upon the protection of minimum standards of common humanity. The normative basis of R2P lies in the obligation inherent in the concept of state sovereignty itself; the responsibility of the UN Security Council under Article 24 of the UN Charter to maintain international peace and security; specific legal obligations under human rights and international humanitarian law, national law; and, developing state practice, and the practice of the UN Security Council itself (Kindiki 2007:vi; ICISS 2001:xi). The norms underpinning the AU's right to intervene reflect the elements of the protection framework embodied in the principle of R2P. From another angle, by endorsing the notion of R2P, the world community confirms a trend to protect populations at risk pioneered by the ECOWAS Protocol in Article 25(d) as evidenced by a number of ECOMOG interventions as well as the

SADC Protocol. The codification of the right to intervene by the AU confirms a shift from sovereignty as a right to sovereignty as a responsibility. The ICISS Report (2001:8) sets out an elaborate illustration of this paradigm shift:

> [S]overeignty implies a dual responsibility: externally – to respect sovereignty of other states, and internally, to respect the dignity and basic rights of all the people within the state. In international human rights covenants, in UN Practice, and in state practice itself, sovereignty is now understood as embracing this dual responsibility. Sovereignty as responsibility has become the minimum contents of good international citizenship.

The consistence of codification of the right of intervention by African States may also be easy to see, considering that it is generally regarded that 'national borders' are regarded as artificial since they were imposed from Berlin in 1883, dividing families, clans, villages, tribes and so forth. African international society 'is intended to provide international political goods that guarantee the survival, security, identity and integrity of African states, which the majority of African states cannot provide individually' (Jackson & Rosberg 1982:19). As such its existence assumes a degree of regional awareness and collective identity to the extent that Africa became a 'cognitive region' (Adler 2007:8). Williams (2007:8-9) informs that 'African state leaders and diplomatic elites perceive themselves to be members of an "African" international society based on a degree of shared historical experience and cultural ties'. In this version, 'Africa' is seen as a 'political idea' as well as a 'geographical fact'. 'At its heart', the saying goes, 'was the ideology of African nationalism' (Williams 2007:9, footnote 25). The foregoing argument also derives credence from the Preamble of the AU Act which sets out that the AU was a practical expression of the dreams of 'generations of pan-Africanists in their determination to promote unity, solidarity and cooperation among the peoples of Africa and African states' and by the desire to tackle the 'multi-faceted challenges that confront our continent and peoples in the light of the social, economic and political changes' happening in the world (Sesay 2008:11). This 'general commitment to place people at the centre of political discourse in Africa is backed up by a specific commitment to intervene when people and communities are put in grave danger by the actions or inaction of their own

governments. The AU Act is the first international agreement to codify a right to intervene in the face of mass atrocity crimes.

Like the incorporation of the AU right to intervene in the AU Act, the general acceptance of R2P by the UN Member States is a quantum leap towards bridging the gap between sovereignty and humanitarian intervention. However, the ambivalent cooperation of the Government of Sudan towards solving the Darfur crisis shows that there is still a gap between this normative commitment and the actual state practice. The challenge is operational, as to how to actually protect civilians from mass atrocity crimes (Mepham & Ramsbotham 2007:ix). Both the AU right to intervene and R2P, are pro-sovereignty doctrines since they assign high priority to the sovereignty and territorial integrity of its Member States. However, the AU Act places limitations on state sovereignty regarding 'sovereignty as a responsibility'. It is based on the premise that sovereignty is conditional and is defined in terms of a State's willingness and capacity to provide protection to its citizens. Consistent with the duty of all States to fulfil their common and recognised responsibilities under international law, the AU Act obligates its Members to prevent mass atrocity crimes through Article 4(h).

The AU right to intervene is, by and large, on all fours with the notion of R2P. The confluence of both humanitarian streams is shifting the paradigm from sovereignty as a right to sovereignty as a responsibility. Both notions seem to impose an obligation to protect populations from mass atrocity crimes. Puley (2005:12) also notes that both put 'the cardinal emphasis on the overriding importance of prevention'. When all other measures have been exhausted and humanitarian disaster is imminent or underway, both make provision for the use of military force to stop mass atrocities, with or without the consent of the target state. Thus, like the normative commitment of R2P, Article 4(h) acknowledges that the State has the principal responsibility for protecting its citizens from avoidable catastrophe, but when they are unable or unwilling to do so, that responsibility must be borne by the wider community of States, in particular the AU. This view conforms to Judge Alvarez's opinion in the *Corfu Channel* case (ICJ Reports 1949:43) that sovereignty is no longer absolute but rather an institution which has to be exercised in accordance with international law. According to Stacy (2006:4):

> National governments must discharge their duty of care towards their citizens, and the 'court' of international opinion passes judgment. The international community acts as proxy for a state's citizens in judging its care for them. If the sovereign fails to treat its citizens, and by that government's own standards, the social contract between the ruler and the ruled collapses, an assessment of the government's failings becomes a tripartite negotiation between sovereign, citizens, and the international community.

Today, sovereignty encompasses both the rights and responsibilities of States and underlies the rights and freedoms of peoples and individuals. With the idea of sovereignty as a responsibility follows ideas that other States could have a responsibility to react to the needs of populations suffering from their own States' failure to act responsibly. The principle of 'sovereignty as a responsibility' connotes that one of the most important functions of governments, and authorities in general, is to uphold the rights and dignity of community members (Lepard 2002:59). Although the UN Charter provides a robust conception of sovereignty, the trust theory of government and its concomitant principle of limited state sovereignty are implicit in evolving norms of international human rights law. According to Article 29(2) of the Universal Declaration, governments are entitled to impose only such limitations on rights 'as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society'. This provision implicitly endorses a trust concept of government under which all laws must secure 'due recognition' of the rights of citizens, must be for the benefit of citizens, and must, moreover, be consistent with a democratic society (Stacy 2006:60).

The Security Council can, within the framework of Article 39 of the Charter, 'do away' with the international dimension in situations which involve grave human rights violations (Österdahl 1977:241–271). As Annan (1998:2) has put it, the UN Charter was issued in the name of 'the people, not the governments of the UN. The Charter protects the sovereignty of peoples. It was never meant as a license for governments to trample on human rights and human dignity. Sovereignty

implies responsibility, not just power'. This is also evident in other provisions of the Charter, such as Article 3, affirming that 'everyone has the right to life, liberty and the security of person'; Article 55 that commits the UN to 'promote [...] universal respect for, and observance of, human rights and fundamental freedoms'; and Article 56 that pledges all Members 'to take joint and separate action' toward this end. Further affirmations of the responsibilities of sovereignty are manifested in the Genocide Convention, the Universal Declaration of Human Rights, and other international covenants that make no distinction on whether the offender is a foreign invader or one's own government.

Despite normative movement from 'non-intervention' to 'non-indifference' and the corresponding concept of 'sovereignty as responsibility', there is fear that could potentially allow powerful States to intervene in countries without a clear legal mandate (Centre for Conflict Resolution 2005:27). However, the AU has reaffirmed that the use of force should comply with the provisions of Article 51 of the UN Charter which authorises the use of force only in cases of legitimate self-defence. This concern, however, raises the need for clear-cut criteria for intervention. Indeed, most third world countries, many of them African States, abhorred attempts to expand the notion of intervention at the cost of sovereignty for fear that it would be reserved for the most powerful States. Now it is the African States themselves expressing that state sovereignty cannot be total in the sense that States can do whatever they want with their citizens without regard to the interest of other States. By incorporating the right of intervention in the AU Act, the AU States consented that sovereignty carries with it the responsibility of States to provide for the security and well-being of those residing on their territories. Notably, the preceding Article, 4(g) of the AU Act, establishes the principle of '[n]on interference by any Member State in the internal affairs of another.' Although these provisions may initially appear contradictory, Puley (2005:9) is of the view that 'they are in fact complementary: 4(g) warns against unilateral intervention, while 4(h) provides for a doctrine of non-indifference in the form of multilateral action based on a decision of the Assembly of Heads of State'. Still to be answered is the question of what if the Security Council is unable or unwilling to act as was the Rwanda case. Put differently, the issue is

what is the legality of the AU's right to intervene without authorisation of the Security Council due to the use or rather abuse of veto powers.

2.1 Is authorisation by the AU authorised authorisation for intervention under Article 4(h)?

The Security Council has a legal right to authorise humanitarian intervention under Chapter VII of the UN Charter (Wheeler 2004; Bellamy 2005:33). Although it is sometimes argued that there is a moral right to intervene without council authorisation in extreme cases, the issue of a 'moral right' is of no concern for lawyers in view of the positive law of the UN Charter. The issue that has been subject of the differences in the crystallisation of the notion of R2P is the question as to what if the Security Council is unable or unwilling to act. The International Commission on Intervention and State Sovereignty (ICISS) left open whether and under what circumstances an intervention not authorised by the Security Council or the General Assembly would be valid from a positive law perspective. While there is consensus that intervention on the part of regional organisations should be under UN authorisation, both the AU Act and the Peace and Security Council (PSC) Protocol are silent on what will happen if the UN will not authorise intervention. The *Ezulwini Consensus*, however, gives guidance that such approval could be granted 'after the fact' in circumstances requiring 'immediate action' (AU 2005). However, intervention not authorised by the UN Security Council is 'action under risk'. If other States generally accept that there was a valid case for humanitarian intervention, the action will be condoned *ex post* by way of acquiescence. Its legality remains pending and has to be determined conclusively at a later stage. It may be regularised *post hoc* (or not) according to the reactions of the international community (Kolb 2003:133-134).

Authorisation by the UN Security Council has important legal and practical consequences. The solid foundation of the non-intervention rule has been a concern about States acting unilaterally, pursuing their own interests, dominating other societies, and getting into wars of aggression with each other (Roberts 2000:37). The AU Act has clearly outlawed such unilateral intervention 'by any Member State in the internal affairs of another' in Article 4(g). The AU Act has spelt out the conditions for first-tier intervention in Article 4(h) as

being serious international crimes that are subject to universal jurisdiction. It follows, therefore, that if an intervention is authorised by such a regional body, and has specific stated purposes, the concern for ulterior motives in unilateral interventions would seem to fade (Roberts 2000:37). Therefore, if a regional body such as the AU provides legitimation for intervention pursuant to Article 4(h) without authorisation of the Security Council, it is not necessarily because of the Charter provisions about regional arrangements under Articles 52 and 53 of the UN Charter, but because strong regional support for an intervention under Article 4(h) would be evidence, albeit not conclusive proof, that it represents a legitimate cause (Roberts 2000:39).

It appears correct to contend that by consenting to Article 4(h) of the AU Act, AU States have transferred a certain part of their sovereignty to the supranational organ the AU. While the prohibition of the use of force has the status of *jus cogens* and thus cannot be contracted out by States, AU States waived their right to be free from intervention by the AU as a multilateral body in the face of mass atrocity crimes. Kunschak (2006:207) argues that Article 4(h) can be interpreted as a general *a priori* invitation to intervene to stop mass atrocities. Thus, AU States agreed in advance that the AU is entitled to help them, should a situation of genocide, war crimes or crimes against humanity arise. This acceptance implies a shift from sovereignty as a right to sovereignty as a responsibility. It follows that a government that seriously violates its duties towards its citizens loses its representative function and may not object to such intervention. The rationale is that it is not the abusing governments that are protected, but the citizens.

2.2 The conundrums of conditions for intervention under Article 4(h) of the AU Act

The conditions for intervention under Article 4(h) of the AU Act are mass atrocity crimes, namely, war crimes, genocide and crimes against humanity. These thresholds imply that not all violations of international human rights and humanitarian law could justify AU intervention. It is easy to notice that intervention under Article 4(h) is activated not only because the thresholds are serious crimes internationally punishable but also because the crimes invariably involve a government's action against its own citizens. Roberts (2000:21) informs

that 'the slaughter by a government of its own populations cannot be allowed to go unpunished because of an excessive deference to the idea of sovereignty'. Such intervention is justified largely in terms of saving lives that might otherwise be lost. As such, the rationale for intervention must depend crucially, not on actual crimes or hard numbers, but the culpability of the national government in either causing or tolerating such mass atrocity crimes. Under what Stacy (2006:6) calls the 'theory of relational sovereignty', extreme harm to citizens is evidence that sovereignty is no longer an absolute shield against international intervention (Stacy 2006:6).

Article 7(1) (e) of the PSC Protocol informs that the PSC shall recommend to the AU Assembly, intervention in a Member State in respect of 'grave circumstances' under Article 4(h) as 'defined in relevant international conventions and instruments'. The AU is bound to adopt the definition of 'war crimes', 'crimes against humanity' and 'genocide', as enshrined in the Rome Statute of the International Criminal Court (ICC), the Genocide Convention, the Geneva Conventions and Additional Protocols or the tried and tested definitions in the Statute of the International Criminal Tribunes of Yugoslavia and Rwanda. However, the lacuna on a common definition of what constitutes genocide or the threshold of 'grave circumstances' involving war crimes and crimes against humanity, may cause paralysis in deciding on intervention under Article 4(h) of the Act. Defining when abuses are 'grave' is highly subjective and the nature of the decision would inevitably be highly politicised. If intervention under Article 4(h) aims at prevention of mass atrocity crimes, it seems contradictory to require 'grave circumstances' before lives are saved. Considering the speed with which mass atrocity crimes occur, the AU should prioritise intervention over legal ascertainment of Article 4 threshold (Abass (2007:52). It is not necessary to prove beyond doubt that war crimes, genocide or crimes against humanity have been committed before action is taken. However, noting that the AU right of intervention is contingent on the existence of these crimes, any intervention taken prior to the requisite assessment will be legally deficient. To overcome such a legal quagmire, the AU may need to broaden the frontiers of the thresholds by viewing them as mass atrocity crimes for purposes of intervention. This view is supported by Scheffer (2007:395-397) who has argued that the generic term

'mass atrocity crimes' should be used for all policy discussion purposes but that it should be left to the prosecutors and judges, 'to work out which tag is most legally appropriate for a particular case'.

The downside of expanding the interpretation of the thresholds as mass atrocity crimes would add a new meaning to the provisions which the signatory States to the respective conventions prescribing the serious international crimes had not intended. A general formulation would also open up too wide a door for action by outsiders. However, it should be noted that intervention under Article 4(h) does not entail military intervention. More so, it is more accurate today to assert that the creation of a vast body of international human rights law, regulates how States behave towards their citizens, and elevates the protection of human rights as a matter of concern for the international community as a whole. Even the interpretation of the *ad hoc* tribunals on the thresholds has become more expansive, rather than more restrictive (*Akayesu* case, ICTR 1998; *Kristic Judgment,* ICTY 2001). If based on the extent of crimes actually committed or the numbers of casualties, these thresholds fail to take into account the fact that intervention pursuant to R2P, and by extension Article 4(h), has a preventive function. The objective of Intervention under Article 4(h) should be to prevent mass atrocity crimes. As such, the rationale for intervention must depend not on actual crimes or hard numbers but the culpability of local authorities in such crimes as well as their inability to uphold legal order (Stacy 2003:6).

2.3 Deterrence: The missing link between AU intervention and universal jurisdiction

The way to apprehend and punish the perpetrators of mass atrocity crimes is through an international legal framework that establishes the notion of universal jurisdiction. In *Pinochet (No. 3)*, Lord Phillips didactically reasoned that 'the exercise of extra-territorial jurisdiction overrides the principle that one State will not intervene in the internal affairs of another'. His Lordship was of the view that '[a]n international crime is offensive, if not more offensive to the international community when committed under colour of office' ([1999] 1 AC 147:289). Such international crimes are subject to extra-territorial jurisdiction because each State is deemed to have a common interest in the international legal

and social order and in international peace and security. Where public officials perpetrate serious international crimes, the arguments for upholding immunity are weak. In such cases, the arguments for universal criminal jurisdiction as a less invasive form of humanitarian intervention may be compelling. The pragmatic rationale for universal jurisdiction is justified where the perpetrators of the crimes would otherwise go unpunished. In *R. v. Finta*, Judge La Forest held that the extraterritorial prosecution of war crimes and crimes against humanity was of 'practical necessity' because the central concern is state-sponsored or sanctioned persecution and, in such cases, the state is unlikely to prosecute and the perpetrators are often dispersed or exiled ([1944] 1SCR, p. 701). This applies to the crime of genocide.

Nonetheless, universal jurisdiction does not seem to be purely preventive given that it cannot normally be exercised before any crimes have been committed. It would thus be principally a responsive measure. The anchor of the notion of R2P is the responsibility to prevention which rests upon the firm legal foundation grounded in the international human rights and humanitarian law treaties. Likewise, the goal of the right to intervene by the AU should be to prevent mass atrocity crimes. In the *Bosnia and Herzegovina v. Serbia* judgment, the International Court of Justice (2007) firmly established that the Genocide Convention, which is a peremptory norm of international law, requires under certain circumstances that States act to prevent genocide even outside their own border. Similarly, the 1949 Geneva Conventions assign collective responsibility to all States Parties to the Conventions for ensuring compliance with their provisions to ensure that international humanitarian law is respected 'in all circumstances'. This principle is embodied in Article 1 common to the Geneva Conventions and is considered to be customary law.

The key to addressing this problem lies in reconciling intervention and universal jurisdiction in order to appreciate their potency, not simply as reactive or remedial legal devises, but to deter potential perpetrators. The AU right of intervention and universal jurisdiction have the potential to give deterrence credibility and validity. If the possibility of prosecution makes potential perpetrators less likely to commit mass atrocity crimes that is deterrence. Article 4(h) in its present formulation seems to suggest that intervention will occur upon the commission

of war crimes, genocide and crimes against humanity. This reactive theory is not in line with the preventive agenda in the protection of human rights. It is for this reason that the AU needs to link the intervention under Article 4(h) to Article 4(o) of the AU Act which provides for ending impunity. Institutionalising deterrence is perhaps one of the most effective ways to give meaning to the right of intervention under Article 4(h). As such, there is need to align the AU right to intervene to bring it into congruence with the extant legal paradigms of sovereignty as a responsibility and universal jurisdiction for such crimes that are invariably committed with the complicity of states.

3. Conclusion – From humanitarian intervention to statutory intervention

The provision of the right to intervene under the AU Act is not only a stark departure from the traditional notions of the principle of non-interference and non-intervention in the territorial integrity of nation States but it is also in sharp contrast with the long-standing principle of state sovereignty. Through Article 4(h), the AU created a regional normative framework for sovereignty as a responsibility congruent to R2P as embraced by the World Summit Outcome Document (UN 2005:para 138-139). The consensus endorsement of the R2P reoriented the debate on humanitarian intervention by focusing on the responsibilities of individual States and, if necessary, the UN and its Member States. The notion of R2P falls squarely within the objective of Article 4(h) of the AU Act which is intended to protect populations facing mass atrocity crimes.

Going by Article 4(h), the contemporary view in Africa is that of protection of human rights from mass atrocity crimes, rather than state sovereignty. This explains the endorsement of the statutory right to intervene in a Member State by the supranational body, the AU. Given the prevalent mass atrocity crimes in Africa, Article 4(h) of the AU provides additional instruments to protect human rights and humanitarian norms on the continent. The AU is a trailblazer in this regard by introducing enforcement by consent in the form of the right to intervene in Article 4(h). Article 4(h) may be seen as a complement

and a valuable contribution, not a substitute for the existing structures and instruments obtaining under the UN Charter. In this case, Article 4(h) offers a wider menu of legal options to respond to mass atrocity crimes which is self-evidently essential. However, financial and institutional incapacity stand in the way (Levitt 2003:122).

Yet to be answered is how to reconcile the right to intervene under the AU Act with the UN Charter. Article 4(h) of the AU Act can be interpreted as a general *a priori* invitation to intervene in the face of mass atrocity crimes. While the Security Council remains the bedrock of international peace and security, the AU has a ready, steady and wide range of military and civilian options to timely respond to crises in Africa. The AU right to intervene under Article 4(h) can and should co-exist with the Security Council's primary responsibility for the maintenance of international peace and security in Article 24 of the UN Charter. The merit of this view is derived from the AU's PSC Protocol which articulates that the UN has the primary responsibility for maintaining international peace and security, but it also notes that the AU has the primary responsibility for peace, security and stability in Africa. As a consequence, when a State cannot accept the help from competent external organs to protect its citizens, it will ultimately be held accountable without being able to invoke Article 2(7) of the UN Charter. The AU was created in accordance with the principles of the UN Charter and it recognises the primary responsibility of the Security Council for maintaining peace and international security under Article 24 of the UN Charter. The obligations prohibiting the mass atrocity crimes in Article 4(h) are held to the international community as a whole and not only to individual states. The right to intervene under Article 4(h) is laid down in a multilateral treaty, and as such firmly rooted in consensualism.

The AU right to intervene is a useful mechanism to fill critical gaps in the UN's human security protection regime on the African continent. The AU right of intervention can be seen as an increase in the range of instruments available to African States for responding to crises in Africa (Banda 2007:21). By incorporating Article 4(h), AU States sacrificed their autonomy as far as ending mass atrocity crimes is concerned. African leaders have consciously and willingly contracted away sovereignty for greater aspirations of protection of population at risk of

war crimes, genocide and crimes against humanity. While it is true to say that sovereignty can no longer be used as an excuse for not addressing mass atrocity crimes, this understanding of the limits of sovereignty does not necessarily warrant armed intervention. The goal of protective intervention under Article 4(h) is not to wage war on the target State in order to destroy it and eliminate its statehood, but to protect populations from mass atrocity crimes. Article 4(h) was adopted with the sole purpose of enabling the AU to resolve conflicts more effectively on the continent (Kioko 203:817). A functioning AU should not be viewed as a replacement for, but as complementary to, the UN and the international community in fulfilling their responsibility to protect populations at risk of mass atrocity crimes (Ekiyor 2007:6).

Article 4(h) gives the AU a strong legal basis for intervention in the face of mass atrocity crimes. This is statutory intervention, which removes the need to justify intervention on moral and ethical grounds, i.e., the end of 'humanitarian' intervention. The AU right to intervene cannot be viewed as a euphemism for humanitarian intervention but as a normative commitment of AU States to prevent mass atrocity crimes on the continent. By consenting to Article 4(h), AU States understood themselves to be granting a responsibility to the AU and the international community to intervene where a Member State is unable or unwilling to undertake to protect its population from mass atrocity crimes. In a quest to avoid a repeat of inaction in Rwanda in 1994, now the legal basis has been laid for the continent to move from a culture of paralysis to a culture of protection. This intervention regime ought to culminate into a culture of prevention and compliance. The conditions for intervention under Article 4(h) are mass atrocity crimes which are subject to universal jurisdiction. The non-interference principle in the internal affairs of States embodied in Article 4(g) is qualified by Article 4(h), since mass atrocity crimes are of legitimate concern to the international community, and give rise to prosecution under the principle of universal jurisdiction.

The AU right to intervene is not just a political slogan but a legal obligation for action by the AU in the face of mass atrocity crimes. The AU has bound itself in advance to an obligation to intervene in prescribed circumstances. As responsible Members, by signing the AU Act with the right to intervene under Article 4(h),

AU Member States accepted responsibilities of membership flowing from that signature, as well as a *de facto* redefinition – from sovereignty as a right of exclusivity to sovereignty as responsibility in both internal functions and external duties. While the host state has the default 'responsibility to protect', a residual 'responsibility to protect' also resides with the broader AU, which is activated when the host state either is unwilling or unable to fulfill its 'responsibility to protect'. The AU right of intervention may be seen as a natural corollary of the extant norm of 'sovereignty as a responsibility', which encompasses the duty of States to uphold human rights and humanitarian norms.

Intervention under Article 4(h) should not be equated with, or be seen through the prism of, military force but rather as a focus on the entire spectrum of preventive strategies. The AU should reduce the need for costly intervention and focus more on dealing with the causes of crisis rather than its symptoms. The AU should focus more on improving human security and promoting rule of law, good governance and economic development in AU States. The challenge for the AU is to develop a political-normative framework that promotes a culture of prevention and a climate of compliance with international obligations. Since the causes of mass atrocity crimes are complex, they need to be addressed in a comprehensive and coherent manner. It is more cost effective to respond when early warning shows that people are vulnerable, than fire-fighting to manage an emergency response. The AU should embrace a calculus of 'persuasive prevention', whose objective is to influence compliance with obligations to prevent mass atrocity crimes (Kuwali 2009). The idea is to stigmatise the commission of such atrocities and ostracise the perpetrators of atrocities considering the institutional, financial and political challenges faced by the AU to implement Article 4(h) and R2P.

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Strategic culture of the Southern African Development Community: Militarised pathways to security?

*Francois Vreÿ**

Abstract

Parading elements of the Southern African Development Community's (SADC) Brigade took pride of place at the opening of the 2007 SADC Summit in Lusaka, Zambia. This SADC Brigade is tied in closely to both the security architecture of the African Standby Force (ASF) of the African Union (AU) and the SADC Mutual Defence Pact. In the recent past (1998), military interventions by SADC members into Lesotho and the Democratic Republic of the Congo (DR Congo) caused the SADC to become known for its military (ad)ventures rather than for amicable progress towards a security community committed to development. In part, internal war in the DR Congo and other war-legacies such as those in Angola still taint the strategic landscape of the SADC. In addition, very sophisticated ships and aircraft are being delivered to South Africa while political militancy plays a prominent role in the 2008 Zimbabwean crisis. Are these events indicative of a militarised SADC strategic culture as opposed to the declared pacifist preferences to resolve conflicts?

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Introduction

In a debate that reflects more disagreement than consensus, Neumann and Heikka (2005:5-23) argue that state behaviour and strategic culture stand in close proximity. In this regard Snyder (1977) used strategic culture initially to explain different approaches, attitudes and preferences by the United States (US) and the former Soviet Union for possessing and if needed, for employing nuclear weapons. The close nexus between state behaviour and strategic culture also features prominently in the earlier literature on strategic culture by Gray (1999), Johnston (1995), Howlett and Glenn (2005), and Klein (1991). Although first-wave literature strongly focused upon the state-strategic culture nexus, the saliency of regional security and regional arrangements increased as the Cold War faded. In effect, the state-centric focus obscured the growing interplay between strategic culture and regional arrangements to prevent conflict in the international system or to contribute to the resolution of such conflict. At the turn of the 20th century the European Union (EU), the African Union (AU), and the Asia-Pacific region drew increased scholarly attention (Cornish & Edwards 2001; Haacke & Williams 2007a; Haacke & Williams 2007b; Booth & Trood 1999).[1] Decision-makers also seem to judge the regional level of security all the more significant (Haacke & Williams 2007b:2) as the use of coercive power in its most threatening form – military power – (Adler & Barnett 1998:428) remains a lingering option that tends to unfold regionally first.

Regional security arrangements typically deal with external threats, but internal instabilities may be a motivating factor as well (Adler & Barnett 1998:425). As an emergent regional security community, members of the SADC have little to fear from external military threats.[2] In effect, SADC appears to follow a normative preference for moving from enmity towards amity to prevent a possible intraregional war. Preferably the SADC migration from enmity to amity should

1 The work by Haacke and Williams culminated in the paper they presented to the Standing Group on International Relations of the European Consortium for Political Research Conference in Turin, 13-15 September 2007 (Haacke & Williams 2007c).

2 SADC comprises the following countries: Angola, Botswana, DR Congo, Lesotho, Mozambique, Malawi, Mauritius, Namibia, South Africa, Swaziland, Tanzania, Zambia, Zimbabwe.

progress at the declaratory as well as operational levels with the ultimate aim of promoting human security.

In this article, the author pursues the matter of an SADC strategic culture and seeks to demarcate indicators of militarisation. The first section of the article briefly attends to regional security and security communities, security culture as well as strategic culture and militarism. The second section explores strategic culture at the regional level and some contours of an evolving SADC strategic culture are demarcated. The third section comprises an attempt to isolate certain indicators of militarisation in certain SADC countries. Both regional, as well as country-specific indicators of possible militarisation are explored. In conclusion, a brief summary and concluding remarks on militarisation within the SADC are offered.

Regional security, security culture and strategic culture

Security theorists, such as Buzan (1991), Buzan, Weaver and De Wilde (1998) but also Lake and Morgan (1997), underline the growing importance of the regional level of security. Regional entities harness the potential and the contributions of members through cooperative, collective or common security arrangements. The EU, the Association of South-East Asian Nations (ASEAN) in Southeast Asia and the AU are some examples of regional organisations that now harvest the inherent potential of regionalism towards more security for member countries. The Shanghai Cooperation Organisation (SCO) in Central Asia, with Russia and China as its most prominent members, also draws increasing attention from analysts (De Haas 2007). Furthermore and in spite of some apprehension, the United Nations (UN) continues to view regional organisations as gateways for promoting security and settling conflicts in their respective communities (United Nations 1992).

Security features at the heart of regional communities and, in the words of Adler and Barnett (1998:4), 'who is inside and who is outside, matters most'. Snyder (1999:102-103) alludes to the different cooperative and collective arrangements for states, and inadvertently the role of military force remains part of the picture in the light of its contributions to prevent or terminate armed conflict. Adler

and Barnett (1998:30), however, point out the difficulty for a community of states to assume shared norms, values and symbols and a subsequent common pacifist disposition to shape their security – a feature not uncommon to the SADC, as explained below (Nathan 2006:605-622). Ultimately, however, the eradication of the use of military coercion becomes the desired norm for security communities.

In order to protect their interests, countries turn to those in their immediate vicinity and agree on arrangements to lower threats and vulnerabilities. Over time, member states begin to share core values that stem from common institutions, mutual identity and loyalty (Adler & Barnett 1998:69-70). The wellbeing of a security community turns upon protecting the national good and eventually also the collective good of the community – a duality that members do not always heed (Adler & Barnett 1998:13, 36). Member states moreover often ignore pacifist pathways to protect national or communal interests. While the EU requires a robust strategic culture to intervene externally when so desired, analysts also raise questions about the conventional military profile of the SCO (Cornish & Edwards 2005:801; De Haas 2007:10-11).

Strategic culture results from the central tenets and operational assumptions of a security culture. In effect, security culture acts as the guiding intelligence for strategic culture and serves to '… establish durable security preferences by formulating concepts of the roles, legitimacy and efficacy of particular approaches to protecting values' (Haacke & Williams 2007a:17). At regional level, certain basic assumptions need to be shared between members: the importance of security referents, dimensions of security, views of the general politico-security environment and the purpose of the regional arrangement. Security culture thus sets the scene for the operation of strategic culture.

Strategic culture also informs parties about government preferences for using their armed forces to pursue state policy. If this preference becomes too pervasive, militarisation could well set in. Some theorists define militarisation quite widely as a range of social and political phenomena on the more practical and material use of the armed forces and their presence as being more pervasive than discreet. Employed against real and perceived enemies, internally and

externally, armed forces feature prominently in the defence and pursuit of interests, but do not always constitute a pervasive and explicit value system as found under Praetorianism. Under Praetorianism, the civilian and military authorities almost become collapsed with the military emerging as the de facto ruler (Frankel 1984:71, 131; Wiseman 1988:230-231). Different shades of militarisation are thus possible. One popular view is to equate militarisation with defence spending, but this only serves to indicate one pattern, and one difficult to calculate accurately, and to immerse in a much wider social activity (Frankel 1984:73-74). As opposed to stark boundaries delimiting the use of armed force, militarisation threatens the boundaries that contain and direct the use of armed coercion. Creeping elements of militarisation thus point political and military elites towards accepting the use of armed force to resolve certain matters, particularly if these elites share a common politico-strategic history (Wiseman 1988:233).

The growing role of regional agents of security inadvertently also amplifies the trans-national character of strategic culture (Neumann & Heikka 2005:18). Gray (2007:6), however, warns that communities do not all share and conform to common views on strategic matters. National political goals still direct or guide armed forces (Neumann & Heikka 2005:16) and contain ideas on and preferences for armed coercion. In this vein some governments employ their armed forces as a primary policy instrument; others prefer to keep armed coercion as a very last policy option while some prefer not to resort to armed coercion at all.

The definition and demarcation of strategic culture by theorists remain difficult and are recognised as such in most literature on the topic. One way for theorists to attend to conceptual difficulties is by contrasting security and strategic culture. Haacke and Williams (2007a:17-18) confine strategic culture to preferences on the use of force and describe it as being one component of a broader security culture that considers the use or non-use of military force to protect values. Booth and Trood (1999:11) define strategy as the military dimension of policy and strategic culture as the military dimension of political culture, and seek to keep concepts from merely collapsing into security and political culture. Several views on security and strategic culture thus coexist.

The debate on strategic culture unfolds as three waves of theory. The first wave depicts strategic culture as '… historical experiences, national character, and geography, and they consistently lead to certain types of behaviour'. The second wave makes '… a clear distinction between strategic culture and behaviour, as well as between declaratory and secret doctrine'. Third-wave theorists view strategic culture as '… an entity that appears in the form of a limited, *ranked* set of grand strategic preferences over actions that are consistent across the objects of analysis and persistent across time' (Neumann & Heikka 2005:7-8). Although there is this admittedly difficult debate devoid of consensus, the pathway followed in this article accepts the wider definitions of Haacke and Williams and that of Johnston, but heeds the qualification by Vale (1994:5-6) that '… the forces which underpin strategic culture, are far stronger than those which shape what we call "policies"'. Policies, according to Vale (1994:5) have a much briefer durability and life span, and they shift as governments change. Strategic culture, however, may only shift when fundamental politico-strategic shifts occur.

Preferences of different players mould and fix strategic culture over time (Gray 2007:7). Regional players thus 'inherit' regional strategic culture that brings into focus different strategic preferences from individuals, groups, and member states. While individuals and groups facilitate strategic culture at the national level, it is more difficult at the regional level. Regionally shared experiences and beliefs often diverge, while claims of sovereignty regularly disrupt the desired common culture. Regional communities do not all behave in a similar fashion and often display preferences for engaging in a particular behaviour (Gray 2007:6, 9). The fact remains that once established and maintained, core tenets of strategic culture shift incrementally and very rarely in some fundamental fashion.

Strategic need drives a particular strategic culture and over time parties adopt a culture that satisfies that need (Gray 2007:11). This however, is not a conscious choice, but rather one that is buffeted and moulded by time and events. Assuming that a community has only one strategic culture is perhaps somewhat optimistic. Having more than one 'way of war' or having different ideas on dealing with strategic issues that require politico-strategic measures (Gray 2007:14-15; Vale 1994:6) is not impossible. It is thus quite probable for two or more strategic cultures to compete within one regional community and to depict a greater or

lesser preference for military coercion. Certain constraints also mediate strategic culture as organisational factors, and preferences disrupt the preferred strategic culture and policy-strategy connectivity and make a compromise option more viable (Gray 2007:16; Gray 1999:144).

Changes to strategic culture are possible, but they need to be qualified. As noted earlier, strategic culture changes slowly in response to those challenges that question its fundamental tenets and operational preferences. For example, should regime and state security feature prominently, while shifting to a culture that emphasises human security is bound to be very slow? Once a regional culture on the use or non-use of force is established, such a culture is bound to be more robust and durable than that of a state, as several communal linkages hold it in place (Haacke & Williams 2007a:22). Nonetheless, changes are effected over time, but result from deep seismic events and extensive communications. Norm entrepreneurs, such as new political incumbents, also play an important role to shift or maintain existing norms, ideas and preferences that sustain a particular culture (Kenkel 2003:12). These shifts, furthermore, flow across international boundaries to influence and change preferences of other actors in the system as well (Haacke & Williams 2007a:23). How much change and how rapidly, remains a polemic question, but analysts generally accept that change is possible, but slow in the making.

Preferably, the strategic culture of a collective entity should be cooperative and not necessarily common and all-embracing (Neumann & Heikka 2005:19). Sweeney (2007:7), for example, observes that expectations of similar strategic cultures amongst a collection of states (even for the EU) are unduly optimistic as several catalysts mould and form strategic culture at the national and regional levels. Regarding the EU, some hold the notion that a common (monolithic) strategic culture for the organisation is idealistic (Lianos 2006), with a more cooperative-styled strategic culture perhaps being more practical. Strategic culture is thus also the outcome of what member states bring to the regional agenda. In the case of ASEAN, several strategic cultures coexist, and in spite of progress, the organisation displays no common culture for using force (Booth & Trood 1999:354).

A coherent or even common security culture does not emanate from merely forming a regional arrangement (Haacke & Williams 2007a:19), and this reality is most probably valid for strategic culture as well. Strong and weak states within a regional arrangement are also important mediators of the resultant culture. If weak states dominate the regional arrangement, a preference for state and regime security is bound to profit as weak bureaucracies and institutions increase perceptions of threats to sovereignty as well as external threats. As member states bring their peculiar security and strategic cultures along, they either interlock and predispose collective bodies towards particular policies, decisions and actions, or 'disrupt' the desired cultural consensus. Subsequently decisions and activities to deal with threats and vulnerabilities along common pacifist lines become compromised.

A security community intent upon a pacifist orientation to lower and eventually abandon the possibility of members settling differences by going to war requires a disposition of its members to heed the pacifist pathway. Regional entities do not automatically discard the use of force, and the possibility of military coercion to pursue or protect the national or communal good heightens the role of strategic culture. However, the use of force as a central tenet in a regional security culture often gives rise to controversy. This controversy constitutes a rivalry between two paradigms and there is bound to be a victory for one or the other, or the coexistence of proponents and opponents of using force (Haacke & Williams 2007c:14). In the SADC, as discussed below, undue competition can be traced as member states attempt to build a common pacifist approach amidst strong preferences to retain the military option.

Strategic culture and militarisation in the SADC

In a 1994 study on Southern Africa, Vale (1994:6-7) links future peace in the region to understanding the strategic cultures of the respective countries. These cultures hold real implications for regional relations because of their aversion to change and pledges for change rarely translating into quick and visible shifts (Vale 1994:18). One salient matter is thus whether Southern African governments have truly shifted their political cultures from that of liberation

movements and an inclination to co-employ politics and military coercion to a culture of fully-fledged political parties and governments. In a subsequent study on strategic culture and Southern Africa, Carim (1995:54) views strategic culture as a fresh and new pathway to research peace and security in the region. Regionally, however, strategic culture is important as it shapes shared norms and expectations towards regional arrangements (Carim 1995:61).

Amongst the questions posed during 1994 and 1995, those about a militarist inclination in society and the sources that serve as its origins feature prominently. One lingering matter for the region identified by Vale, as well as Carim, is the use of military force to pursue objectives. Carim (1995:63) points out the role of apartheid legacies in the Southern African region and that of a culture to use armed coercion to enforce or defend. In retrospect, and following the demise of apartheid, several other legacies with a military connectivity lingered in the region. Continuous warfare in Angola and the DR Congo left military catalysts that still fester in the Southern African region. Surplus arms sustained a conflict-prone culture in countries like Zimbabwe, South Africa, and Angola who all allocated noticeable proportions of their public expenditure to defence (Carim 1995:64). Demobilisation in Southern Africa is a major, but slow undertaking (Porto et al 2007:ix), and continues to sustain a pool of trained, but unemployed military personnel. Add the South African armaments industry (Vale 1994:23-24; South Africa: Hardware developments 2005:16265) seeking out markets in the region and one finds a mix of factors that are bound to promote elements of militarism that are unlikely to fade quickly.

The official demise of apartheid by the mid-1990s did not effect an immediate termination of a strategic culture that privileged the military option to deal with regional differences. The strategic culture of apartheid extends beyond its official demise, and this ties in with the view that strategic culture shifts very slowly. In South Africa, the 1994 watershed coincided with a fundamental shift in political culture and new incumbents, but perhaps not necessarily a shift in strategic culture as well. Angola, Namibia, Zimbabwe, Mozambique and the

DR Congo are perhaps not spared a similar fate[3] on account of being weak states on the one hand, and having earlier liberation cultures that are difficult to shed on the other. Vale (1994:25) argues that strategic culture (or perhaps elements thereof) can also be passed on, even if a previous culture is denied, found unwanted or vilified. Defence forces of South Africa and Zimbabwe, and currently in Angola, Mozambique and the DR Congo as well, became nation-building institutions composed of forces that 'passed on' their own military cultures. Moller (2003:11-14), for example, confirms the earlier military (including colonial) origins of the authorities in Angola, Mozambique, Namibia, Zimbabwe and South Africa, with the DR Congo still struggling along a military pathway towards de facto political survival.

In contrast to lingering military catalysts in the region, the SADC portrays a normative preference to become a security community through pacifist ways and means. In effect, one finds that SADC member states are attempting to follow a post-modern approach where common interests are set above national state interests (Sweeney 2007:5). For the SADC, a pacifist approach and non-militarism thus feature as a preferred norm for members. Violating this norm by acting in a manner that tends to lean towards unilateral, coercive and military-styled solutions is bound to elicit some response from those actors intent upon upholding the norm (Geldenhuys 2006:3). In the SADC, such a division is visible and discussed further in the following section.

The SADC mandate extends into the security and political domains, and fragile security hastened the creation of the SADC regional security forum. The preferred move from a coercive culture to a more democratic and pacifist one did not manifest as a once-off migration into a mature security community (Nathan 2006:608). Article 5 of the SADC Treaty provides for the promotion of defence, peace and security and thus presents an entry point for elements of militarism. Article 4, however, stipulates the peaceful settlement of disputes that in turn reaffirms a pacifist approach to conflict.[4] Nonetheless, not one SADC country

3 Disarming the mind after a peace was concluded is an important step towards removing the idea that war and conflict is a normal way of life (Porto et al 2007: viii).

4 See Declaration and Treaty of SADC, Article 5, Objectives.

comprehensively shut down its armed forces as part of its national strategy or declined to participate in regional military cooperation. Institutionally, each SADC member has a military establishment with regular forces destined for national and regional contingencies – a policy option still observable on the SADC strategic landscape.

The absence of common values towards a pacifist approach offsets the stated intention of an anti-militaristic SADC security policy (Nathan 2006:606-608). The earlier pacifist and militarist divide on the role and status of the SADC Organ only accentuated the fragility of the preferred pacifist approach. Nathan (2006:609) argues that some states did not take kindly to the declared anti-militarist drive to inculcate a more pacifist SADC culture. The deliberations to resolve the impasse around control of the Organ became an increasingly closed process that excluded those (South Africa, Botswana, Mozambique and Mauritius) who probably could have driven home the anti-militaristic drive. Up to 2001 the Organ remained in the hands of Angola, Namibia and Zimbabwe, who became known for their preference for military coercion – a preference demonstrated by their military intervention in a fellow SADC country – the DR Congo. The militarist hold on the Organ by the Zimbabwe-Angolan-Namibian troika clearly shows the recent divide regarding the more militarist and pacifist members of SADC (Nathan 2006:610). In effect, the militarist group in the SADC held a preference for a collective defence arrangement while the pacifists led by South Africa preferred a common security regime.

Since 1994 an elaborate SADC security architecture took shape to deal with security through defence, policing and intelligence (Nathan 2006:611). The fact of the matter remains that the military option continued as an operational response, in spite of a declaratory preference that accentuated a pacifist policy route. Regional military arrangements remained part of the response hierarchy and also the sector where most progress (both declaratory as well as operationally) becomes visible. The Mutual Defence Pact (2003), the SADC Brigade (2007)

and the post-2000 prominence of South African armed forces in AU missions demonstrate most visibly the progress in the defence and security sectors.[5]

Historically, Southern Africa is perhaps also a product of the dictum 'War made the state and the state made war' (Tilly 1975:42). After independence and more particularly since 1994, most SADC countries found that external threats calling for national defence seemed remote (Moller 2003:17).[6] Independence, however, did not automatically translate into legitimacy, stability and strong institutions (Moller 2003:15) and the leeway to embrace the pacifist approach. Preferences for military solutions by certain SADC countries still disrupt the normative strive for a more pacifist regional strategic culture. In line with the weak state theory (Jackson 2001:69; Nathan 2006:618), the majority of SADC countries remain threatened by vulnerabilities stemming from unconsolidated democracies, institutional weakness and threats from within. The constitutional crisis in Swaziland, internal and external threats against the DR Congo, the legacy of war in Angola and institutional fragility in Zimbabwe only serve to highlight country-specific weaknesses. Furthermore, economic weakness in Mozambique, threats of a coup in Lesotho and corruption in the Zambian presidency also point to weak state features in SADC countries (Nathan 2006:611). The aforementioned weaknesses as well as the limited range of policy instruments in weak states promote the inclination to resolve such vulnerabilities and subsequent threats through military coercion.

In spite of a visible lack of external military threats, AU and SADC security arrangements created new roles and functions for SADC militaries (Moller 2003:20). Immersion in peacekeeping operations became a prominent activity for the armed forces of South Africa. In addition to the external missions, internal demands required of military forces to play a range of other roles: counter-

5 The preparation of a military structure for SADC is also driven by a responsibility to put in place a regional brigade for the African Standby Force of the African Union. (See Article 13 of the Protocol Relating to the Establishment of the Peace and Security Council of the African Union).

6 More generally stated, African national security is primarily defended by military and security forces to oppose external threats and to ensure the controversial matter of regime security. See Solomon 2004:130.

insurgency and constabulary duties mixed with privatised security and military companies while some SADC armies played an almost predatory role as in the DR Congo (Moller 2003:20). In addition, military-styled internal threats still linger, as post-war conflicts in the east of the DR Congo, the Cabinda question in Angola and the Caprivi region in Namibia represent threats to sovereignty that could well draw a military response (Ngubane 2004:52-54).

Defence demobilisation in Southern Africa did not unfold in a most efficient manner so as to lower the military profile of the region. Attempts to rationalise armed forces released large numbers of soldiers back into society, but not necessarily through a well-managed demobilisation process (Moller 2003:36; Porto et al 2007:ix). In effect, large numbers of military-minded individuals roam a region awash with arms and ample opportunities to return to military-styled movements and institutions such as national military forces, newly established private security and private military companies, militias and militant youth movements. A gun culture evolved in much of the region and placed a reciprocal securitising burden upon governments to protect their communities and themselves through force if necessary (Porto et al 2007:16). How much money they spend on this priority, however, remains somewhat opaque.

As stated briefly earlier, defence expenditure is often viewed as an important indicator of militarisation (Frankel 1984:71). In the SADC, national defence expenditures present little evidence from which to infer militarisation. Except for Zimbabwe, none of the more prominent SADC countries such as Angola, South Africa and Botswana portrays disproportionate defence spending levels (Howe 2005:99). Figures from Stockholm International Peace Research Institute (SIPRI) (2007) indicate that moderate defence spending does not serve as a strong indicator of militarisation in the SADC. The data from SIPRI, however, are qualified as figures are inaccurate due to estimates and other voids in official figures that undermine their credibility. Zimbabwe's figures, for example, are distorted by economic collapse while figures of the DR Congo are estimates, although both portray prominent militarised-styled activities in the region. South Africa is spending large sums of money on new defence acquisitions, but it remains uncertain as to whether this stems from the defence budget. Ultimately,

defence spending by member states serves as a vague indicator of militarisation in the SADC region.

Whether all members of SADC are committed to a culture of peacefully resolving conflicts that extends beyond a mere declaration of intent, is not beyond doubt. Leadership solidarity and the weakness of the Mutual Defence Pact (MDP) to act against transgressors combined with an unwillingness to take a hard stance against aggressors offer a forgiving environment for those members considering a more militarist pathway. Member states are more concerned with their own interests, which strain collective decision making regarding high-politics and cause more divisions than congruence.[7] Divisions about 'who is in and who is out' offer leeway for state behaviour and opportunities for militarism.[8] In the section below, several examples of state behaviour in the SADC are presented that are reminiscent of a culture which readily turns to the military option to resolve conflict and which pursues national rather than regional security and interests.

Zimbabwe illustrates perhaps most visibly the encroachment of elements of militarism as the press recently identified militarisation as the most fundamental problem in Zimbabwean politics (Mangcu 2007). Zimbabwe gained independence through a liberation war, the legacy of which is kept alive in the Zimbabwean mind. After independence, the new political incumbents almost immediately turned to the military instrument to deal with perceived threats from it own population (Matabeles in particular) – a campaign lasting several years and discontinued by 1987.[9] About a decade later (1998), Zimbabwe participated in the controversial episode to deploy armed forces to the DR Congo for alleged personal and business reasons that still remain shady and divisive. In the wake of the DR Congo debacle there followed the militant role of 'War

7 See concluding remarks by Ngubane and Solomon (2003), and also Nathan 2006: 617.

8 SADC members demonstrated a surprising propensity for military coercion during 1998. Ignoring the required authority of the Summit, these interventions demonstrate a hidden militarist preference amongst some members that is not often noticed. The militaristic notion is reinforced by the solidarity principle that often prevented proper sanctioning of such behaviour and thus offering further leeway for growth (Nathan 2006: 611-613).

9 See Catholic Commission for Justice and Peace (CCJP) & Legal Resources Foundation (LRF) 1999; Ndlovu-Gatsheni 2003:24-25.

Veterans' in Zimbabwe, the introduction of a militant national youth service and the actions of the military during the 2001 election (Moller 2003:28-29; McIntyre 2007:21). The 2002 stance of the Zimbabwean Army Chief on the non-allegiance of the army to a leader not suiting their liberation criteria, further accentuated a lingering liberation culture and the 'behind the scenes' role of the Zimbabwean military (Nyaira & Nyamutata 2002). By 2008 the role of the Zimbabwean security chiefs became so pervasive that the Zimbabwean president could barely survive without the active intervention of the security forces and ZANU-PF (Zimbabwe African National Union – Patriotic Front) militants to ensure his reign (Peta 2008:1).

By the middle of 2007, the Zimbabwean leader continued to praise the Zimbabwean defence establishment (AllAfrica 2007). His emphasis upon the interface between the defence force and the Zimbabwean society to uphold certain faltering institutions serves as a further indicator of the Zimbabwean military not being an apolitical and silent partner. This dangerous nexus features amidst allegations of the military chiefs benefiting from the chaos and therefore not inclined to restore order (Mangcu 2007). Rumours of a failed 2007 coup attempt further add to the political interference of the Zimbabwean military, although still officially denied (*Africa Research Bulletin* 2007a:17129). Reported by several agencies, the attempted coup nonetheless underlines the stark possibility of military interference in Zimbabwean affairs of state – an interference that became glaringly exposed during the 2008 presidential re-election. In effect, the Zimbabwean defence force and police service penetrate domestic politics and society amidst a regional image of solidarity with the leadership, the regime and its militant undertones.

In South Africa, a number of factors temper the idea of a major shift in strategic culture. First, the lingering presence of former SADF members within the military decision-making structures ties in with the argument of Vale that dramatic shifts do not take place overnight (Vale 1994:38). The stark reality is that the different politico-military factions and parties brought their strategic cultures to the integration process. The merging of different armed forces represents a mixture of politicised soldiers and even former coup plotters from the former Transkei, Boputhatswana, Venda and Ciskei (TBVC) forces that stood

close to their earlier political masters (Williams 2006:45, 47). Secondly, a major and very expensive, albeit controversial, upgrading and acquisition programme is underway for the South African military. Thirdly, South Africa is the leading nation in both the AU as well as SADC as far as providing military contingents is concerned (Lekota 2007). The 2007 Defence Update is particularly focused upon making the peacekeeping role more salient, or at least not a mere spillover of primary capabilities. This policy shift that narrows the primary-secondary divide creates conceptual space to keep the South African armed forces a salient policy instrument for the region.

The incumbent South African military and political leadership are quite closely connected. Most members of the governing party are also former members of the military wing of the African National Congress, Umkontho weSizwe (MK). These former MK members now dominate affairs of state both politically as well as strategically. As for the upcoming 2009 elections, MK veterans are actively mobilising in support of the Zuma faction – a matter viewed closely by intelligence circles. Mobilisation by a dissatisfied group with military skills and experience holds some danger for the infighting in the ranks of the governing party – a matter further accentuated by a perception that the position of the South African president is closely connected to the support of his security chiefs (Sole & Majova 2007:4; Carte Blanche 2007).[10]

The South African Defence Minister is also on record for stating that within the AU, the SADC will increasingly take on the main role of dealing with conflicts on the continent. Speaking at the arrival of the third submarine for the South African Navy, he alluded to the contribution of the new frigates and submarines to provide security for the SADC (*Africa Research Bulletin* 2007b:17094). In contrast to speaking out against the US AFRICOM (US Africa Command) idea, the minister alluded to Africa and the SADC in particular to shoulder more of the security burden. Simultaneously, a South African naval task force that comprised newly arrived vessels engaged in naval exercises with the North Atlantic Treaty Organisation (NATO) and American naval contingents off the

10 The 2008 ousting of President Mbeki in favour of an interim arrangement without any response by the security chiefs tends to ameliorate this view.

South African coast. In this regard it is no secret that South Africa is perhaps the lead nation in bringing the SADC Brigade closer to operational readiness and in the process is also strengthening South African military readiness in general (Hartley 2007).

At times, South Africa also bordered on breaking the multilateral imperative and quest for pacifist solutions, as demonstrated through its 1998 involvement in Lesotho, and to a lesser extent in Burundi (Habib & Selinyane 2006:6). In addition, DENEL (a South African armaments corporation) shifted its focus to equipment for regional peacekeeping functions and to support the SADC Brigade (*Africa Research Bulletin* 2005a:16265). Both from the media, as well as through official acknowledgements, South African military commitments to the African continent are already overstretched. Nonetheless, the South African leadership displays a strange determination to support diplomatic initiatives with even more expensive military commitments (*Africa Research Bulletin* 2005b:16337).

Recent military incursions into the DR Congo by Zambian forces, as well as Angolan military contingents draw the attention to this unsettled and volatile SADC member. The aforementioned incursions point to the difficulty for the DR Congo to secure its fragile sovereignty. Both incursions potentially threaten, or are directed at protecting rich deposits of diamonds and copper and thus create a rationale for Congolese armed forces to defend Congolese national integrity and values (*Africa Research Bulletin* 2007c:17069). Inherently, this state of affairs holds the threat of an intra-regional military clash. Simultaneously a rogue Congolese general is further upsetting the peacebuilding in the DR Congo, with the national leadership now intent upon a military solution to settle the matter of rogue elements once and for all. However, this latter event is merely a window upon the military profile of current events that dominate the strategic landscape of the DR Congo. Congolese forces are still arrayed against rebels and militias and even shady criminal elements within the national military establishment with the softer MONUC peacekeepers caught up between the fighting factions (*Africa Research Bulletin* 2007e:17160).

Although the war in the DR Congo was officially declared over during 2003, military insecurities persisted with political opposition alternating between politics proper and armed politics (*Africa Research Bulletin* 2005c:16265). The EU special envoy Ajello, notes that Congolese officers are '… more active in the corridors of the presidential palace than on the battlefield …' and thus ensure a strong military input into political decision making. The military presence is overbearing and officers exploit the bloated military and faltering demobilisation and reconstruction process that in turn calls for quicker and deeper army reforms (*Africa Research Bulletin* 2007f:17024-17025). It appears that the swell of military personnel in the DR Congo permeates many walks of life – including the political sphere.

The DR Congo contends with insecurity in a hard military way and thus brings this culture to the SADC. The military nature of threats within the DR Congo could also 'compel' responses with a strong military backing if it is to succeed (*Africa Research Bulletin* 2005d:16349). A further practice that adds to militarisation is that of Congolese politicians not always favouring the collapse or defeat of rebel groups, for they use them as personal militias when needed (*Africa Research Bulletin* 2007g:17123). Set alongside child soldier armies, both phenomena further contribute to militarisation of the Congolese society. One estimate sets the number of child soldiers in the DR Congo as high as 30 000. This contributes to a military mindset among the younger generation (McIntyre 2007:21; *Africa Research Bulletin* 2007d:16978). The Congolese military policy instrument thus features prominently amidst the militarisation of politics by official and rogue-styled actors, with many of the guilty parties now serving in government positions.

In Angola, the closeness of the military to government is displayed by the fact that Angolan armed forces, both as liberation as well as a national defence establishment, served as prominent extensions of the governing party. In effect, since independence in 1975, the Angolan armed forces featured as the most salient Angolan policy instrument (Malaquias 2000). In the aftermath of independence in the mid-seventies and up to 2002, Angola maintained large armed forces to offset UNITA and to satisfy the need for forces in the DR Congo (Moller 2003:33). Demilitarisation in Angola is particularly complex

as progress first required a military victory over UNITA (National Union for the Total Independence of Angola), but it was a victory that unfortunately also pushed militarisation to new heights (Porto et al 2007:ix). The ISS Monograph, *From Soldiers to Citizens,* for example, offers a glimpse into the enormity of the demilitarisation process in Angola and the deeply embedded notion of war in the psyche of society.[11]

Recent claims by an Angolan diplomat regarding efficiency of the Angolan armed forces to deal with conflicts on the continent caused some concern as well. Angolan armed forces also continue to play a role in the north of the country where the DR Congo-Angolan border region remains volatile. Diamond fields, the matter of Cabinda and the simmering of ideas about independence or greater autonomy sustain the need for a military presence. Following in the wake of the 1998 Angolan intervention in the DR Congo, it appears that the employment of the Angolan armed forces remains prominent (*Africa Research Bulletin* 2007h:17035-17036). A further disturbing factor is that the US vision of AFRICOM views Angola as a pillar to influence events in Central-Southern Africa and towards the Bay of Guinea with its lucrative off-shore oil resources. This view includes a military domain where Angola is to be 'empowered' to play a leading role (*Africa Research Bulletin* 2007i:17097). In essence, both the political as well as societal sectors of Angola find themselves strongly influenced by or even dependent upon militarised practices and influences.

Even a small country like Lesotho is not devoid of elements of militarisation of its politics (Molise-Ramakoae 2003:171-172). The 1998 SADC military response to events in Lesotho resulted from the lingering threat of a possible coup against the Lesotho government. Lesotho still reflects the dangers of an unhealthy closeness between political and military leadership, with elements of the Lesotho military allegedly continuing to act against opponents of the political incumbents (Neethling 2007:497). Accusations surfaced recently of an attempted coup by army mutineers and the political opposition pointed out that the governing party is invoking military force to deal with political opponents.

11 Demobilised UNITA soldiers, for example, showed a particular propensity to hold non-civilian identities (Porto et al 2007: 114-115).

Elements of the Lesotho armed forces seem quite involved in politics while the politicians are not innocent in this politico-military collapse (Neethling 2007; *Africa Research Bulletin* 2007j:17163-17167). The militarisation of Lesotho's politics is once again rearing its head.

Concluding remarks

For regional security arrangements to mature, they require strong elements of consensus and cooperation by member states. One important stimulant for the migration towards maturity is the lowering of the military threat amongst member states and for these states to embrace a pacifist approach to resolve differences and possible conflicts amongst themselves. In the quest towards a common and preferably pacifist approach to resolving conflicts, member states bring their own peculiar strategic cultures to the regional security agenda. If deeply influenced by a propensity to depend upon or turn to their military establishments, this is the culture that they bring to the regional agenda.

Within the SADC, the movement from enmity to amity is visible in the strong and persistent commitment of SADC leaders to cooperate and resolve differences in ways other than going to war. In a declaratory sense (verbal, as well as written), consensus, commitment and solidarity towards building an SADC security community and eschewing war, feature prominently and display a sense of regional and national maturity. If viewed as ideas, preferences, concepts and commitments, the profile of the declaratory domain reflects a pacifist and cooperative image within the SADC realm. However, second-generation theory on strategic culture holds that the declaratory domain often differs from what eventually transpires at the operational level.

Operationally, statements, preferences, ideas and actions that stem from strategic culture are difficult to shed. Firstly, a culture of preferring and using the military instrument fades slowly. Several remnants of military practices, both psychological as well as material, depict the SADC strategic landscape. Secondly, actions often differ from statements and declarations. In the SADC, the void between official policy and operational responses is apparent as preferences for

and reliance upon the military instrument still feature in some leading member states:

- In Zimbabwe, a close connection between government and the armed forces can be traced from independence to the 2008 crisis. Militarisation in Zimbabwe is perhaps best illustrated by the stance of the defence chiefs on maintaining a militarised liberation culture in the political culture of Zimbabwe, thus also showing the tenacity of previous culture.
- South Africa portrays a legacy of close cooperation and affinity between the political and military establishments and one not altogether shunned by the ruling elite. A growing military involvement in Africa amidst modernisation programmes serves to accentuate the military instrument, while shifting the primary and secondary roles into closer proximity serves as a further indicator of an emergent South African strategic culture.
- The leadership of the DR Congo is more dependent upon national and international military forces than upon its own political legitimacy. It remains questionable whether the Congolese political establishment is bound to govern its national territory without resort to military coercion in the near future. Both the government and the opposition bring nothing else but a militarised strategic culture to the regional security agenda.
- In Angola, a history of one of the longest wars on the African continent has left its imprint. Large sections of society are infused with demobilised soldiers, including child soldiers, amidst a government-military closeness brought about by almost half a century of consecutive liberation and civil wars. According to strategic culture theory (third generation in particular), such legacies linger for long periods and Angola is bound to display a strategic culture that privileges the military option for some time to come.

- The tiny kingdom of Lesotho shows a continuing culture of not being able to sever the unhealthy politico-military nexus. The armed forces of Lesotho remain a quasi-political actor rather than being a professional military for foreign policy purposes. As such not only is the militarisation of politics perpetuated, but a culture that privileges the military option is carried into the regional culture.

A preferred strategic culture for SADC is well expressed and reflects a consistency in the declaratory make-up of the regional leadership that is not often disrupted. However, the operational domains of the declaratory preferences, ideas and images of SADC paint a different picture that diverges from the desired pacifist strategic culture. Domestic events and measures as well as interstate dynamics contain military features that in part flow from earlier pre-independence experiences. Also visible is a post-independence inclination by certain member states to regularly turn to the military instrument to resolve differences or pursue interests. Although militarisation of strategic culture seems pervasive, it is also possible to portray emergent SADC strategic culture as consonant with the theory that two strategic cultures can coexist within one actor: Firstly, it is illustrative of second-generation theory in that declaratory and operational commitments tend to differ in the pursuit of national hegemony. Secondly, and perhaps more accurately, the SADC illustrates the often claimed long periods that underpin shifts in strategic culture. The strong verbal and declaratory commitments by SADC leaders are perhaps a first step to bring the militarised operational responses into line with the declared and desired strategic culture of amity and a pacifist approach to dealing with conflict.

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The spirit of the National Peace Accord: The past and future of conflict resolution in South Africa

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Abstract

This article seeks to examine the evolution of the conflict resolution community in South Africa through a combination of history and policy analysis. Each section roughly corresponds to the past and future of conflict resolution in the country. The connection between these sections is at times *causal* – in the sense that some events directly shaped the next – but more often *thematic* – meaning that certain trends may be traced throughout the evolution of the community. Consultation with more than ten conflict resolution organisations and interviews with over twenty leading practitioners offer valuable insights to the investigation.

The article begins with an analysis of the rise and fall of the National Peace Accord. The study demonstrates that government endorsement of the Accord did not detract from the ability of the peace committees to furnish the nation with a reservoir of practical conflict resolution skills. Communication, aided in part by the South African Council of Churches, helped avert violence and steer

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the country clear of civil war. Peace work was more successful when national, regional, and local levels were coordinated. At the same time, the Accord's attempt to resolve greater structural inequalities in its peacebuilding initiatives fell short of its goals. The business community enjoyed managing the process, but offered little in terms of actual resources and training as it high-tailed it 'back to the balance sheets'.[1]

The second section of the article analyses the work of the South African Law Commission's Project 94. This project would mark a shift to the spirit of the National Peace Accord by wedding local conflict resolution mechanisms to the state. The places to which people already go to resolve conflicts – the 'other law' – have been providing justice to South Africans for decades. But recognition of these ordering mechanisms is itself beset with difficulties. The 'other law' is pluralistic in nature, making it difficult to make naturally subversive and organic entities conform to the formal justice system. The state is under-resourced, but seems wary of granting too much power to unpredictable dispute resolution structures. Guidelines may provide some certainty, but this does not disguise the uncertainty of the political process itself – the Draft Bill may disappear once it enters the legislature. This political reality is compounded by the fact that the Draft Bill itself permits either the government or community dispute resolution structures to end their liaison at any time, undermining commitment. The creation of a new National Peace Accord therefore appears unlikely in the short term.

The hope is that the reader will leave with a better understanding of the conflict resolution community and of the complexity of issues facing South Africa today. If nothing else, South Africa's unbridled forays into conflict resolution will be revealed as undeniably inspiring.

1. Introduction

South Africa emerged from apartheid at the forefront of the conflict resolution community. The numerous social and political forces required to shepherd

1 Interview with Peter Gastrow.

the transition to majority rule had trained people at every level of society. Domestically, labour experts, social activists, clerics, politicians, community leaders, and business gurus had lent their skills to the country. Internationally, practitioners from around the world had seized the opportunity to wed their cutting-edge theories to South Africa in a workable praxis. These efforts were complemented by underground networks of street committees and other popular forms of justice. Nonetheless, over 20 000 people lost their lives between 1985 and 1994 alone. At no time was the seemingly intractable conflict guaranteed to enjoy a peaceful handover (Rothchild 1997:194). Civil war remained a viable prospect until election day on April 27, 1994, when disappointed journalists packed up their bags and headed to the genocide in Rwanda.[2]

The nation enjoyed a short honeymoon of constitution-making and democratic processes. South Africans adapted to democracy so thoroughly that they could design an inclusive problem-solving mechanism at an hour's notice, and became 'processed out of their skulls'.[3] By 1999-2000, the country's conflict resolution community was at its apogee, possessing an unmatched reservoir of hands-on experience and home-grown theory.[4] Today, the honeymoon has ended. Some government promises were kept, while others were not, and practitioners have been absorbed by politics, business, or scattered across the world in a new Diaspora.[5] Fifteen years after the transition, over 90 percent of land remains in the hands of the white minority and new terrors such as HIV/AIDS have transformed the political landscape (Centre for Conflict Resolution 2004). The conflict resolution community has undergone profound changes in turn.

This article seeks to examine the evolution of the conflict resolution community in South Africa through a combination of history and policy analysis. The first section offers a study of the National Peace Accord, the national mechanism that helped pave the way for the multiparty negotiations and the interim government.

2 Interview with Roger Lucey, former SABC journalist (Jan. 2006).

3 Interview with Ghalib Galant, Facilitator, Synergy Works (24 Jan. 2006).

4 Interview with Sean Tait, Director: Criminal Justice Initiative, Open Society Foundation for South Africa (20 Sep. 2005).

5 Interview with Susan Collin Marks, Executive Vice-President, Search for Common Ground (22 Dec. 2005).

Emerging from a joint effort of the religious and business communities, the Accord's system of local, regional, and national Peace Committees furnished conflict resolution skills on an unprecedented level to the entire nation. The successful initiative was hastily dismantled by the interim and elected governments, but certain themes – the 'spirit' of the Accord – continue to shape contemporary South Africa.

The second section will examine the South African Law Commission's Project 94, which is currently assessing the possibility of wedding state institutions to non-state forms of conflict resolution. This section will briefly highlight the vibrant history of non-state justice actors in South Africa. It will then proceed to analyse the legal and political questions that arise in extending the reach of the state to areas in which it was heretofore absent. Questions of access to justice, jurisdiction, and service delivery will be discussed to determine whether a kind of 'New National Peace Accord' may be fashioned.

2. Clipped wings: The rise and fall of the National Peace Accord

A solitary gunman walked towards Chris Hani in front of his home in Boksburg, Johannesburg and fired four shots into his head, killing him instantly on 13 April 1993 (Mandela 1994:599). Hani, South African Communist Party president, guerrilla veteran, and leader of the African National Congress, had proven to be one of the lone voices capable of restraining an increasingly militant African youth. An informer revealed the assassin to be a white Polish immigrant and member of the right-wing Afrikaner *Weerstandsbeweging*[6] party, and the nation viewed the event as a deliberate move to destabilise the ongoing negotiation process. The youth bristled and clamoured for violence. In response, the ANC leadership organised a series of commemorative marches to prevent retaliatory attacks (Mandela 1994:600).

In Cape Town, a Church service predicted to attract 10 000 people swelled to 50 000, and ANC peace marshals found themselves overwhelmed (Collin

6 Resistance Movement.

Marks 2000:77). Unable to hear Archbishop Tutu and party leaders express their recognition of Hani, the marchers turned their eye towards the nervous, inexperienced police, as Collin Marks (2000:77) recalls:

> Leaderless, frustrated, and spoiling for trouble, gangs of youths go on the rampage, stoning the stalls and nearby shops, breaking windows in preparation for looting, and setting fire to parked vehicles, pay-and-display machines, and refuse bins. Others are making mock attacks on the police position. Chanting 'war, not peace', fists pummeling the air, between two hundred and three hundred youth at a time charge toward the police, toyi-toyiing their challenge, only to disperse at the last minute and then regroup for another pass.

The police were not the only ones charged by the youths, however. Standing between them and the youth, a line of peace workers worked to diffuse the looming conflict at key flashpoints throughout the rally. Despite the looting and inflammatory aiming of police weapons at marchers, the peace workers helped the day pass without violence – with one exception. A marcher lost his life and one hundred and fifty were injured when the police lost their calm and peppered the crowd with buckshot, rubber bullets, and tear gas at the close of the rally. The newspaper headlines displayed bloody pictures of the fallen marcher and the injured the next day, but the efforts of the peace monitors were celebrated (Shaw 1993:23).

This incident underscores the complex nature of the National Peace Accord. Signed on September 14, 1991, the Accord established, among other things, a network of peace committees ranging from the national to local level, and represented a pluralistic attempt to shepherd conflict-plagued South Africa towards a democratic future. The agreement provided a needed forum for antagonistic parties to meet, offered insights into halting spiralling violence, and presented a new national vision. Yet the Accord did not even envision the brave role of the peace monitors. Their work simply emerged from extemporaneous problem solving. Moreover, because of the tendency to measure the success of the Accord by the number of fatalities instead of *averted* fatalities, its

accomplishments often go unrecognised. In the Hani rally, for example, one person died, but two hundred youth or more were ready for conflict. It is an unanswerable question how many more lives in South Africa would have been lost without the agreement.

But even the Hani incident barely touches upon the complexity of the agreement. Drawing upon interviews with key actors during the process, this section will examine the nuanced and multifaceted history of the National Peace Accord (NPA), with an emphasis on the effectiveness of the Peace Committees. The first sub-section will examine the formation of the Accord. The second will discuss the structure of the Accord by analysing the language and intent of the document. The third will assess the strengths and weaknesses of the Accord through the use of Gastrow's analytical framework. Throughout this section we will see that the Accord, while flawed, successfully transformed entrenched attitudes in the face of a rapidly changing political landscape. We will then turn to assess its legacy in the fourth section which examines current efforts to restore the spirit of the NPA in South Africa today.

Origins of the National Peace Accord

The National Peace Accord must be seen as part of the continuum of the negotiated settlement towards majority rule in South Africa. A multitude of pressures culminated in the unbanning of opposition political parties and the release of political prisoners in the early 1990. However, ongoing conflict and an escalation in violence had resulted in nearly 700 political fatalities in the month of August alone (Ball & Spies 1997:64). Discord over scarce resources was fomenting between blacks and whites, between and within political parties, migrant hostel dwellers and communities, Xhosas and Zulus, rival taxi services, and within impoverished townships.

Church and progressive business groups, considering themselves to be neutral mediators, each attempted to launch a negotiating forum to foster needed peace talks. Both efforts floundered. The South African Council of Churches (SACC) declared its intent to hold a national meeting of all 'strife-torn' communities in March 1991 (Gastrow 1995:15). Comprised of an alliance between Christian denominations and religious organisations, the SACC had displayed its support

for the transition by denouncing the apartheid system, calling for a more egalitarian society, and demanding a democratic constitution at the town of Rustenburg in November 1990 (Spies 2002:20). But the failure to alert Inkatha Freedom Party (IFP) Chief Minister Buthelezi, the ANC's chief political rival, resulted in his refusal to participate in the meeting. Peace talks would have been ineffectual without the participation of these two parties so this meeting and a similar one intended for 9 May 1991 both failed to materialise (Spies 2002:39).

Progressive business forces were also unable to convene a national multiparty meeting. Representing ninety corporate business interests committed to the transfer to majority rule, the Consultative Business Movement (CBM) held a series of exploratory meetings with the government, ANC, IFP, and trade unions (Spies 2002:18). Discussions centred upon the disruption of violence to the weakened economy and private life (Spies 2002:18). But the spiralling violence derailed any possibility of national talks as the ANC issued demands of the government, alleging covert funding of the rival Inkatha Freedom Party.[7] The CBM had positioned itself as capable of addressing the involved parties, but its preoccupation with maintaining the status quo also made it suspect as a sole mediator (Gastrow 1995:40).

The unilateral call of a late May peace summit by President F.W. de Klerk was equally unsuccessful. Following the demands issued by the ANC in April, De Klerk announced a national peace summit without consulting the other political parties. ANC leaders accused De Klerk of showboating before embarking on an international sanctions-lifting tour, and did not appreciate the non-consultative decision, which smacked of the authoritative apartheid era he had declared himself willing to leave behind (Spies 2002:21). Moreover, the ANC held the government responsible for causing much of the violence and shunned the lack of transparency behind the decision (Gastrow 1995:20). Three separate attempts to provide a high-profile negotiating session had failed within a short time.

At this moment the earlier initiatives of the South African Council of Churches and the Consultative Business Movement bore fruit. Church leader Reverend Frank Chikane and CBM organiser Colin Coleman, viewing De Klerk's

7 The allegations were for the most part true (Ball & Spies 1997:6).

summit as a potentially destructive development, sprang to action and met with the concerned parties (Spies 2002:21). It was decided that De Klerk's conference would be framed as an 'ongoing process', and quickly followed by another, more inclusive one with the SACC and CBM serving as independent mediators (Gastrow 1995:22-23). De Klerk's half-baked summit produced two tangible results: Buthelezi's call for a network of 'peace action groups' (Gastrow 1995:24-25) and the appointment of church leader Louw Alberts to spearhead preparations for a new initiative (Spies 2002:21).

We will digress here to note IFP leader Buthelezi's suggestion for a network of peace action groups because they are relevant to our greater examination of local conflict resolution. Like the National Peace Accord, Buthelezi's idea was culled from an evolving culture of conflict resolution. The deficiencies of the apartheid system had given rise to a thriving 'other law', as Schärf and Nina (2001:13) call it, that provided the country with conflict resolution and justice:

> The 'other law' has been developed and constituted in South Africa through many years of resistance, adaptation and accommodation in relation to the oppression of the apartheid state. It has also emerged as a normal response of a civil society which requires its own micro-level regulatory needs beyond state control and capacity. Last, it is a feature of a diverse society in which value systems and religious beliefs exist which are contrary to the standard western beliefs.

Peace committees had been active as 'other law' in South Africa since at least the late 1980s. A loose network of traditional *makgotla* and street committees thrived in the townships at the time Buthelezi demanded them. Non-state ordering mechanisms provided millions of black South Africans with access to conflict resolution on a daily basis (Schärf & Nina 2001:7). Other community-based and non-governmental organisations complemented the efforts of

the *makgotla* and street committees.[8] Buthelezi's suggestion even drew upon the positive contributions of local peace initiatives in his own constituency (Gounden 2000:75).

Returning to the formation of the document, the National Peace Accord was nearly completed by September 1991. Louw Alberts formed a thirteen member facilitating team that drew support from three members each from the ANC, IFP, and government. Five working groups hammered out details pertaining to: (1) a political party code of conduct; (2) a security force code of conduct; (3) socio-economic development; (4) implementation and monitoring; and (5) process, the secretariat, and the media (Spies 2002:21). Junior party representatives were charged with fashioning a final agreement in order to prevent the face-saving stalemates that plagued senior leaders (Spies 2002:21). The representatives reduced numerous draft agreements down to an acceptable document by the time of the widely publicised National Peace Convention on September 14, 1991. Although extreme right and left wing parties did not participate, the Pan African Congress of Azania and Azanian People's Organisation endorsed the spirit of the final document, and twenty seven parties signed.

The structure of the Peace Accord

The text of the National Peace Accord marked an ambitious effort to stop the spiralling violence in South Africa. Signatories committed themselves to 'condemn the scourge of violence' and 'consolidate the peace process' (National Peace Accord 1991). An emphasis was placed on socio-economic reconstruction of violence-plagued areas, the investigation of particular incidents, reining in the police force, and outlawing private armies (National Peace Accord 1991). Codes of conduct were established for the political parties and the police, guidelines for socio-economic development promulgated, and implementation mechanisms approved. These measures were underscored by a declaration of basic democratic principles (National Peace Accord 1991:§1.2). The 'fundamental' rights of

8 For example, the African Centre for the Constructive Resolution of disputes (ACCORD) worked in Mpumalanga (between Durban and Pietermaritzburg) in reconstructing a community torn by ANC-IFP antagonism. A local peace agreement was signed in 1989 and party leadership established the Mpumalanga Reconstruction Coordinating Committee as a result (Gounden 2000:74).

conscience and belief, free speech and association, freedom of movement and assembly, and political affiliation were agreed upon (National Peace Accord 1991:§1.3). The media was granted wider freedom, the importance of democratic sovereignty was stressed, and the parties were reminded to behave courteously in public so as to not instigate violence (National Peace Accord 1991:§1.4).

The signing of the National Peace Accord also marked the establishment of a new quasi-governmental body. Although various authors have offered diagrams to explain the structure, they are inconsistent and ultimately confusing, so we will confine the discussion to words. The NPA essentially worked at *national, regional,* and *local* levels. Each level contained a particular administrative apparatus.

At the *national* level there were three apparati. The umbrella National Peace Committee, comprised of a council of leaders, oversaw the implementation of the entire agreement. Beneath the committee, the National Peace Secretariat, headed by Antonie Gildenhuys, coordinated the peace committees throughout the nation. Parallel to the National Peace Secretariat, and also at the national level, was the Commission of Inquiry (the 'Goldstone Commission'), charged with investigating violence and intimidation.

At the *regional* level, three mechanisms functioned. The socio-economic and reconstruction and development sub-committee (SERD) served to address poverty and resource-based conflict. Regional peace committees were tasked with establishing local peace committees and, when possible, helping SERD to fulfil its mandate. The third mechanism of the Justices of the Peace received broad powers to investigate public complaints, mediate disputes, and refer offences to the government.

The *local* mechanism was arguably the most successful and interesting aspect of the National Peace Accord. At this level, local peace committees (LPCs) served to confront violence and address community concerns.[9] Chapter 7 of the Accord outlined their basic functions. Beginning from the premise that 'insufficient instruments exist to combat violence and intimidation… at [the] grassroots

9 This explanation is drawn from a *Track Two* schematic diagram (Nathan 1993:5).

level,' the document then delineated specific roles (National Peace Accord 1991:§7.1). Government involvement was deemed essential, and the National Secretariat's role of establishing peace committees was outlined. Decision making within the Secretariat was to proceed on a consensus basis (National Peace Accord 1991:§7.3.3). Peace bodies were to be established at the regional and local levels, and both kinds of peace committees were to be representative of the communities they served. The regional peace committees (RPCs) were required to appoint a variety of church, business, and political organisations while local peace committees (LPCs) were not, only needing to be comprised of representatives 'reflecting the needs of the relevant community' (National Peace Accord 1991:§7.4.7). The twenty-member regional peace committees also had an extremely broad agenda, including working with the Goldstone Commission, settling disputes, monitoring regional peace agreements, noting breaches of the Accord, establishing LPCs, and consulting with regional authorities to prevent violence or intimidation (National Peace Accord 1991:§7.4.5). The Local Peace Committee agenda was much looser: creating trust and reconciliation within the community, settling disputes, reporting to the RPCs, establishing rules for rallies and marches, and liaising with local authorities for such events (National Peace Accord 1991:§7.4.8).

Our basic understanding of the structure of the Peace Accord permits us to proceed to examine its workings in practice.

Assessing the Peace Accord

The National Peace Accord represented a commitment to peace at the highest levels of government. However, the day of its entry into force was not without difficulties, perhaps setting the tone for its three year life. Several thousand IFP supporters rallied outside on the day of the Convention, wielding the traditional weapons that their leader had just outlawed with his signature. Mandela rose to the podium and denounced the protesters, while Buthelezi, instead of apologising, intoned: 'Wherever the king is, the people come' (*Financial Mail Survey* 1993:7). Buthelezi then accused Mandela of breaching the code of political conduct after Mandela called him a 'surrogate' to the government (*Financial Mail Survey* 1993:40).

The Accord otherwise got off to an acceptable start. Within a short time, the marketing committee developed the distinctive blue two-dove mark that came to represent the process. Television and newspaper advertisements explained the basic mechanisms of the Accord and the parties attempted to fulfil its mandates. The investigatory Goldstone Commission, after launching 467 investigations and filing 46 reports (Stober 1995:21), fostered an agreement for party rules governing mass rallies (*Financial Mail Survey* 1993:18), and eventually revealed the existence of the government-sponsored 'third force' that threatened to derail the negotiations. The National Secretariat held 38 formal meetings in its first year (Stober 1995:12), and spawned eleven regional peace committees and 263 local peace committees by 1994. The regional and local committees absorbed the impact of violence on a daily basis, frequently representing the sole line between, according to Collin Marks (2000:20), 'a fragile equilibrium and chaos'. The committees' individual achievements are remarkable but also anecdotal and plagued by the difficulties inherent in measuring the absence of violence. Except for Mandela's call to revitalise the agreement following negative media coverage in June 1993, most aspects of the Accord functioned well (Ball & Spies 1997:26).

The peace monitors served as the Accord's most visible contribution to civil society. Not envisioned within the text of the document, but also not anathema to it, a network of monitors developed along with the regional and local peace committees. They identified themselves with colourful bright vests and frequently placed themselves in danger at marches and potentially explosive events. A last minute decision by the IFP and an injection of funds from the British government enabled about 18 500 monitors and 1 930 marshals to oversee the April 1994 elections (Siebert 1994:36). Their ability to operate communications centres facilitated the distribution of ballot papers and ensured peaceful journeys to the ballot. International observers were obviously impressed. Scotland Yard chief superintendent David Gilbertson, for example, declared that 'the peace structures probably saved the electoral process at an operational level' (Garson 1995c:14). Gerrit Nieuwoudt, a police superintendent who sat on the Western Cape Regional Peace Committee, echoed these sentiments. The police monitors

'gave an awareness of being watched,' he remembered, 'and this helped all the parties in difficult situations'.[10]

Interestingly, the stated goal of the Accord to 'consolidate the peace process' also resulted in its demise. The start of the CODESA (Convention for a Democratic South Africa) talks immediately following the Accord and the later Multiparty Negotiations Forum sessions both sapped the NPA of momentum. The interim transitional government, without explanation or dialogue, began closing down the National Peace Secretariat as early as 1994 (Spies 2002:25). The task of fostering a political climate conducive to the transition had more or less been accomplished. It was presumed that the expected democratic institutions would replace the structures with accountable local governments, but this was never expressly stated (Spies 2002:25). Leaders within the Secretariat lamented the decision and made unanswered pleas for financial support from the business community, hoping to fund a R35 million shortfall (Garson 1995b:14). However, by December 1994 the entire apparatus was dismantled. The KwaZulu-Natal Provincial Legislature was the sole government that continued its regional and local peace committees, with a R5,5 million operating budget for 1995 (Spies 2002:25).[11] Thousands of volunteer and full-time peace workers scrambled for prized positions in the new 'peace industry' or, with luck, returned to their old posts.

It suffices to say that the rich history and structure of the National Peace Accord have been examined at length. Two scholars who participated in the process, Peter Gastrow and Susan Collin Marks, wrote extensive analyses. In *Bargaining for Peace*, Gastrow offers the perspective of an insider conflict resolution theorist well-versed in the Accord's political development. Collin Marks' *Watching the Wind* presents a more informal, experiential view of a member of a Regional Peace Committee that is invaluable for its practical insight on day-to-day peace efforts. Because of its more systematic analysis we will utilise Gastrow's work as

10 Interview with Gerrit Nieuwoudt, Police Superintendent of Kraaifontein South African Police Services (25 Jan. 2006).

11 See also MacGregor 1995.

a framework to assess the effectiveness of the agreement, followed by an analysis by another scholar for balance.

Peter Gastrow's objectives

Gastrow suggests utilising the main objectives of the Accord as a matrix. His reading of the agreement found that it intended to (1) eliminate political violence through the peace committee network; (2) promote democratisation by fostering a climate of tolerance; and (3) facilitate reconstruction and development in strife-torn communities (Gastrow 1995:57).

1. Eliminating political violence

On the face of things, the first objective of eliminating political violence appears not to have been reached. Statistics indicate that violence was neither eliminated nor lessened. The years 1991-1993 saw an increase in political fatalities from 2 706 in 1991 to 3 347 in 1992, and from 3 347 to 3 794 in 1993 (Ball & Spies 1997:64). Gastrow notes that most of these deaths were based in the hot zone of KwaZulu-Natal and the Pretoria-Witwatersrand-Vereeniging area, where 'political rivalry is at its fiercest', and this clouds the fact that the rest of the country may have succeeded in stemming violence (Gastrow 1995:78). But this observation misrepresents the fact that over 60 percent of the national economy was located in those regions at the time (Gastrow 1995:77). In other words, it seems natural that conflict should have occurred where the most resources were at stake, even if most were controlled by the white minority. (It also seems tautological to say that violence happened where violence was at its worst.) Ball and Spies (1997:12) shed some light on this issue with respect to local peace committees:

> Efforts to establish LPCs often ran up against a 'Catch-22' situation. Where tensions existed but violence was latent, communities often questioned the need for peace committees. Once violence flared, however, community leaders were often more willing to have committees established, but the polarization resulting from the violence greatly increased the difficulty in establishing committees.

The regions of KwaZulu-Natal and Witsvaal, they observe, were typical of this Catch-22 difficulty. Regional peace committees in these areas were fraught with internal politics and accused of partisanship. Because of the reactive nature of local peace committees, which were set up to combat violence as it flared, many were created when the conflict escalated to intractable levels of conflict and mistrust (Shaw 1993:6). In a small town in the Transvaal, for example, some local organisations felt there was no need for a peace committee since there was no violence, but demanded one when violence erupted. By the time it was established, it was ineffective against the entrenched positions of the parties involved (Shaw 1993:7). Gastrow's regional analysis of the violence also detracts from the fact that, despite this Catch-22 phenomenon, LPCs in those violence-torn regions were often the *most* effective committees in the country once operational, as judged by the frequency of participation, frequency of meetings, and success in resolving disputes (Shaw 1993:30).

Another, more valid qualification Gastrow makes is that political fatalities are not an adequate measure of violence. The *patterns* of violence changed, particularly in the sense that overt, daytime killings were replaced by underground attacks and massacres perpetrated by the then anonymous Third Force. According to a *Financial Mail Survey*, these were groups of 'well-armed, well-organised gunmen who inevitably melted away after the event to spark a wave of retaliatory violence against opponents of those attacked'.[12] Revenge killings and assassinations became the norm (Shaw 1993:9). The underground violence presented issues of causation and procedure that hampered the Goldstone Commission and prevented the perpetrators from being brought to justice for lack of witnesses (Shaer & Nossel 1992:19). The police and mercenary members of the Third Force also tended to come from outside the communities, and therefore could not be confronted in local forums.

This observation of the changing patterns of violence is related to a much larger point. The nature of peace work makes it impossible to measure exactly how many political fatalities were prevented. Any attempt would by nature be hypothetical

12 The third force was later revealed by the Goldstone Commission to be operated by members of the South African Police (Gastrow 1995:80-81; *Financial Mail Survey* 1993:4).

and counterfactual. For example, in the discussion of the Chris Hani marches that opened this section, it seems fairly clear that the intervention of the peace monitors in the face of the toyi-toyiing youth may have prevented a blood bath. But there is also the remote possibility that the youth would not have charged at all if they had not known the monitors would keep things in order. 'Generally speaking', Secretariat head Dr. Antonie Gildenhuys explained, 'measuring the impact of the peace structures is difficult, because some of our successes are non-events' (Garson 1995a:16). On the other hand, Justice Goldstone, head of the Investigatory Commission, warned that 'if there had not been tens of local dispute resolution committees operating throughout the country, I don't think any sensible person could doubt that the level of violence would be much worse' (*Financial Mail Survey* 1993:20).

Efforts are made to assess the potentially 'worse' violence by pointing to the number of monitors and local peace committees in existence (about 18 500 and 260, respectively) at the time the Secretariat was closed in 1994. But this argument is also subject to criticism. The mere existence of an institution does not demonstrate its success; the bureaucratic quagmire of the apartheid government can attest to that fact. That the LPCs were voluntary does bolster the point somewhat, but some communities felt the committees were forced upon them.[13] The existence of empirical research might have helped resolve this problem of metrics. However, given the dramatic and sudden closure of the Secretariat, much of the valuable data, such as meeting minutes and local reports, were lost as a handful of officials closed the project down (Spies 2002:25).

2. Promoting democratisation and a culture of tolerance

The second goal of the Accord identified by Gastrow pertains to its ability to promote democratisation and a culture of tolerance. This goal is inherently less measurable than the goal of eliminating violence, yet it is also the area in which the Accord appears to have met with the most success. The single most challenging and remarkable aspect of the agreement appears to have been the ability to change attitudes. On the national level, the National Peace Committee

13 Shaw (1993:7) cites the example of Bruntville, Natal, in which the community considered the establishment of an LPC to be an intrusion.

provided a forum in which opposing leaders could meet informally even after talks had broken down. The mutual commitment to the spirit of the Accord permitted, according to Spies, 'channels of communication to remain open' (Spies 2002:20). The establishment of face-to-face relationships also proved valuable at the regional and local levels. Political rivals suddenly found a neutral forum in which to express their views without losing face, and community members began a tentative dialogue with the South African Police Services, or addressed non-political problems from a conflict resolution perspective.

Indeed, the police represent an excellent example of the ability of the Accord to change attitudes. Chapter 4 of the agreement stipulated a detailed code of conduct for the police forces that required, among other things, upholding basic rights and liaising with members of the community when possible, both novel responsibilities. They were also required to wear identifiable badges and patrol in clearly marked cars, removing the ability for surprise attacks and increasing accountability. Minimum force, adhering to unprejudiced conduct, avoiding corruption, and adopting an altruistic, community-oriented attitude were other important tenets (Collin Marks 2000:165). Joint Operations Communication Centres alerted community members to roadblocks and search actions, while political parties informed police of coming rallies (Ball & Spies 1997:28). Sometimes the very act of attending regional or local peace committee meetings was enough to break down barriers. Seating arrangements manipulated personal space and placed former enemies next to each other (Collin Marks 2000:159). Collin Marks (2000:159) recalls one particularly revealing incident watching an apartheid activist sit deliberately next to an old enemy:

> Stewart walked in, hesitated, his eyes sweeping the circle, and made his decision. He walked toward a vacant seat next to a police major. He sat down and turned to greet the police major before acknowledging the warm welcome of colleagues and friends. Only a handful of people in the room knew that he had chosen to sit beside his former torturer.

The culmination of encounters such as these was a drive towards community policing. Committed by their leaders to adopt new methods of policing in

the spirit of the Accord, dialogue with police increased recognition that they were meant to serve, rather than terrorise their communities (Collin Marks 2000:169). This ran directly counter to their apartheid-era training, which implored them to seek out – and often destroy – government opposition (Collin Marks 2000:161-162). Yet by the time of the elected constitutional government, community-police bridges had been forged in the New Police Act (Collin Marks 2000:176). A police officer sitting on the Western Cape Regional Peace Committee recalled that '[t]he police were used to being on their own. Now they gathered input from others. This attitude slowly filtered upward to the management'.

Local peace committees in particular made a variety of differences at the community level. Local politics were made less divisive by the neutrality of the forum (Shaw 1993:8). Rumours were dispelled through transparency before they were inflamed (Ball & Spies 1997:20). LPCs also provided a needed administrative apparatus in resource-deprived communities (Shaw 1993:8), furnishing telephones, faxes, and rapid response vehicles (Spies 2002:25). The notorious taxi rivalries of the Western Cape and squatter conflicts in the Transvaal were, at least temporarily, resolved (Shaw 1993:8). Several thousand committee members also benefited from training sessions held across the country (Gastrow 1995:75), learning practical conflict resolution skills that helped increase local empowerment. Again, many of the accomplishments are anecdotal, but on the whole, local and regional committees carried out their mandates, as Ball writes:

> [A] comparison of the official mandates with the functions actually carried out by the committees clearly demonstrates that despite significant difference in the degree of success registered by individual committees in fulfilling their mandates, as a group, the regional and local peace committees did manage to perform most tasks specified in the NPA (Ball & Spies 1997:9).

Most regional and local peace committees were successful in upholding the letter of the agreement, although not all. Some committees were underinclusive, neglecting the important voices of refugees and migrant workers, as well as youth (Ball & Spies 1997:37). But due to the vague language governing the LPCs, flexibility permitted adaptability to fluctuating conflict climates. A committee

could oversee the installation of water taps in a squatter settlement, address allegations of police brutality, and resolve hostel disputes at the same meeting.

However, the ability of the peace committees to foster democratic processes should not be confused with the internal structure of the NPA. The Accord was essentially structured as a top-down mechanism, imposed from the highest levels of society to the local level. In some ways, particularly with respect to the police, this was a positive development because lingering apartheid structures could be resistant to change. But, in a negative sense, this prevented the insights of the local and regional structures from influencing national level decision making. It would have been simple to include LPC members on RPCs, for instance, and for RPC members to be represented at the Secretariat level. But national level members were appointed, and LPCs were generally *consulted* by RPCs, rather than represented on their structures. This denied the very real impact that these mechanisms were having on the communities, and prevented the adoption of practical insights. Perhaps if members of the local committees had been present at the national level, the interim government would not have been so quick to scrap the Accord.

A successful argument could be made that the Accord suffered from a lack of internal commitment to diversity as well. There was a severe dearth of women within the structures of the Accord (MacGregor 1995:53). Its facilitation by the Consultative Business Movement also appears to have left its imprint as a top-down structure. Different scholars have noted its close resemblance to a corporate board and its failure to incorporate the interests of its consumers (Midgley 1992:1, 9; Shaw 1993:15). Fund disbursement to local level structures was therefore appallingly low (Shaw 1993:16). The national level leadership also seems to have been overwhelmingly white. The key cabinet members – Judge Goldstone (of the Investigatory Commission), Gildenhuys (of the National Peace Secretariat), and John Hall (Chairman of the Accord) – while progressive, certainly did not reflect the envisioned Rainbow Nation. These leaders were complemented by the appointed representatives of the IFP, ANC, and NP, but non-whites were the *majority* in the country. Perhaps the overall lack of diversity can be explained by the political affiliation of minorities capable of wielding

such power, but this is somewhat unlikely, and it does not answer the problem of gender disparity.

Despite its shortcomings, the National Peace Accord does appear to have effected widespread change at an institutional and attitudinal level. It readied the nation for coming transformation at a time in which spiralling violence seemed to preclude the possibility.

3. Socio-economic development and peacebuilding

The third and final criterion offered by Gastrow of the ability of the Accord to facilitate reconstruction and development in strife-torn communities, does not appear to have been reached. This criterion relates to the arena that Johan Galtung called 'peacebuilding'. Peacebuilding entails the transformation of the structural conditions that foment conflict (Shaer & Nossel 1992:2). Class violence, entrenched attitudes, and access to resources must be addressed to prevent conflicts from resurfacing in a new form. The Accord does not seem to have satisfied these requirements.

Most studies of the NPA distinguish between its ability to resolve symptoms of violence and resolve structural causes of violence. 'The Accord', a monitoring team from International Alert determined, 'at best addresses the symptoms of political violence, but it cannot overcome the structural causes of violence' (International Alert 1993:3). Ball seconded this assessment, writing that 'the structural causes of violence and the struggle for power among the major political parties limited the capacity of the committees to significantly reduce violence in South Africa prior to the 1994 elections' (Ball & Spies 1997:13). The Accord and its foot soldiers, the peace committees, acted as a temporary band-aid to replace failed apartheid and political party attempts to halt violence.

Yet the Accord did contain textual provisions to combat these structural difficulties. The Accord's original Preparatory Committee boasted that it did 'creat[e] the structures' and could serve as 'a vehicle which [would] bring peace if all South Africans work[ed] together in those structures' (*Financial Mail Survey* 1993:11). The Socio-economic and Reconstruction and Development sub-committee (SERD) was intended to prevent the recurrence of violent conflict by

repairing communities crushed in its wake, before the resulting resource drain created more conflict. This structure-building activity was to be carried out while simultaneously addressing the other issues covered in their mandate.

However, SERD failed to uphold the letter of the agreement in most respects. The business community, with all the lip-service it paid to economic empowerment, contributed negligible resources.[14] The undivided attention required of the LPCs and RPCs ultimately prevented the initiation of SERD projects, as they were 'too bogged down in crisis management to systematically address reconstruction' (Garson 1995c:8). International Alert pointed to the difficulty of the task without the securing of additional personnel for the express purpose (International Alert 1993:13). Shaw also notes that even the presence of personnel and *funds* might not have solved the problem. There was some evidence that development projects were not necessarily 'conflict-free', and were capable of fomenting discord, as the death of four on the East Rand over resource distribution demonstrates (Shaw 1993:22).

In short, Gastrow's third identified goal of rebuilding strife-torn communities was not satisfied.

Concluding thoughts

While the National Peace Accord steered the nation towards the transitional government, creating needed space for negotiations, it was flawed. The top-down structure was fashioned behind closed doors and created problems of 'ownership' in some communities (Mbileni 1993:16). Communication was hampered by a failure to use radio and to translate the document into indigenous languages. The initiative also lacked enforcement mechanisms capable of giving it 'bite'. At best, even for the Goldstone Commission, officers could refer matters to criminal or civil courts to impose fines. This meant that it relied upon opprobrium and condemnation to achieve results, when tougher measures were necessary. Finally, while churches often diffused tensions within their flocks, the business

14 Interview with Peter Gastrow, Director, Institute for Security Studies, Cape Town (13 Sep. 2005).

community offered nothing more than management skills and fell short of any other meaningful contributions.[15]

Such flaws were an inevitable manifestation of an improvised negotiation process. At no time were the parties to the Accord a monolithic bloc; complexity and fluctuation characterised it from the outset. Nor does any such experiment appear to have been tried before. The initiative changed over time from merely meeting evolving needs to a structure that placed responsibilities on state and non-state actors.[16] It acted as a stopgap measure to fill a swiftly developing power vacuum as the apartheid government lost its legitimacy. Measuring the success of the agreement is challenging, but those who participated in the process appear to agree that the peace committees 'saved lives' (Ball & Spies 1997:20).

This testimonial, of saving lives, makes it especially disappointing that the interim government dismantled the structure in its haste. Countless primary source documents were lost that may have proven useful during the Truth and Reconciliation Commission process or, simply, bore witness to a turbulent time. 'I thought the Peace Committees should have continued,' Peter Gastrow said. 'I understand that the new government did not want old vestiges of the previous regime to continue, but that does not mean we should discard conflict resolution in local areas'.[17] After the disbursement of nearly R65 million and the creation of an extensive peacebuilding network (Ball & Spies 1997:65), committing more effort to understanding the effectiveness of the Accord seemed well within the elected government's grasp.

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15 Interviews with Gerrit Nieuwoudt and Peter Gastrow.

16 A few small examples illustrate this point. The annual budget stood at US$12 million by 1993 and was administered by the Department of Justice. However, as delays plagued its implementation, financial control was transferred to the National Peace Secretariat. The agreement was also altered slightly by the passage of the Internal Peace Institutions Act of 1992, which gave it official government recognition. The Internal Act did not mirror the original text, nor did the Accord's implementation in practice with its top-down management style typical of the outgoing authoritarian regime. The provisions on the regional level Justices of the Peace in particular were especially broad and could have led to the abuse of powers. In addition, certain mechanisms were established before others, further demonstrating its fluctuating nature. See Spies 2002:22; Midgley 1992:1, 7.

17 Interview with Peter Gastrow.

3. Wedding non-governmental conflict resolution to the state

The conflict resolution community in South Africa has long been intertwined with the state. In the colonial era, indigenous conflict resolution practices were mediated by the state through indirect rule that was further enforced through rural and urban divides (Schärf & Nina 2001; Seekings 2001:72). During apartheid, there were several marked shifts by the conflict resolution community in response to state action. Indirect rule persisted in some areas (Moses 1990:44) while in others conflict resolution practitioners developed a parallel informal sector. Forms of popular justice, community courts, and non-governmental organisations all functioned against a backdrop of state activity. These 'other' activities proliferated in

> the economic sphere (the informal sector), informal insurance (burial societies), informal banking (savings clubs), the welfare sphere (informal child- and old-age care), informal health (traditional healers and herbalists), informal housing (sometimes orchestrated by shacklords) among others (Schärf & Nina 2001:3).

Following the transition from apartheid, discussion began about officially recognising these formally subversive structures (Nina 1995:18). The new, majority-run state offered the possibility of ensuring them a more permanent role. Its command of resources could sustain financially-strapped conflict resolution organisations (Jantzi 2004:194).

The South African Law Commission began investigating the possibility of wedding non-state conflict resolution to government structures in 1997. Project 94, 'Arbitration: Community Dispute Resolution Structures', sought to consult both South African and international authorities on the appropriate state response to non-state dispute resolution organisations. The Commission held workshops around the country in which practitioners, scholars, traditional African authorities, and jurists voiced their opinions.

This section seeks to explore the *future* of conflict resolution in South Africa. It strives to identify some of the key themes that emerged from the Law Commission's discussions and critically analyse the proposed solutions. It is submitted that state involvement in community dispute resolution structures may improve access to justice and help transform problems, but will be hampered by inherent practical difficulties in standardising a diverse community. A 'New National Peace Accord' is unlikely to arise in the near future.

Project 94 and its resolutions

Project 94 represented an effort by the state to include non-state actors in the provision of justice. The investigation evolved as part of an ongoing project initiated by the Minister of Justice in 1994 to assess alternative methods of dispute resolution (SALC 2005). Initially convened to study arbitration, the study was broadened to include alternative dispute resolution (ADR) and, by 1997, had evolved into a three-pronged approach (SALC 2005:1).[18] ADR and the civil law, family mediation, and community courts would each be studied separately by a select committee, the Project Committee on Alternative Dispute Resolution (SALC 2005:2). The committee decided to begin its inquiry into community courts first, and forwarded a variety of pertinent questions to the public. 'Community courts,' were defined as

> popular justice structures, or the many informal tribunals existing outside the formal legal structures, such as street committees and yard, block or area committees operating in urbanised African townships and informal settlements (SALC 2005:3).

Among the committee's concerns were the level of state involvement, public perception of community courts, the general ability of community courts to patch up the justice system's shortcomings, applicable jurisdiction, procedures, and the regulation of interaction between the community courts and the formal judicial system.

18 The Commission was also supported by the 1998 White Paper on Local Government. See Griggs 2003:129.

Several relevant themes emerged from the consultation process. There was an overriding concern with access to justice in the formal system. Access was found to be inadequate along geographical, financial, attitudinal, educational, and cultural lines. Geographically, the formal justice structures were situated too far from popular centres (SALC 2005:15). This was further compounded in rural areas, where participants were forced to travel long distances and attended the committee's workshops at great hardship. The formal courts also demanded financial resources that were beyond the average South African so it was difficult to secure attorneys and pay court fees. Attitudinally, court officials could be dismissive of people's complaints or bungle procedures through improper training.[19] Even when functioning well, these procedures also could lead to the 'snowballing' of disputes, such that they became larger and more destructive:

> When someone wants to stab you and you rush to the police to report, they tell you that he must first stab you and only then you can come and report the matter to them. These people are not stopping crime and it is discouraging (Seekings 83).[20]

In the area of education, many citizens were lacking in knowledge about their constitutionally guaranteed rights. Court officials also did not understand witchcraft and other relevant cultural issues and unnecessarily intervened (SALC 2005:19). Their ignorance underscored a general lack of communication with existing non-state dispute resolution structures (SALC 2005:19). Language difficulties also made the courts unappealing. For example, in the North West Province, the participants preferred to use Setswana, their native tongue, and were forced to use an interpreter (SALC 2005:22). Finally, the courts were overburdened and inefficient and tended to favour whites over blacks, perpetuating class differences (SALC 2005:25).

19 For example, in the area of domestic abuse, Zarina Majiet of Mosaic, a Western Cape organisation, explains that Xhosa policemen sometimes impute ownership to an abusive husband over a spouse, when they are in fact required by law to press charges. Interview with Zarina Majiet, Director, Mosaic (27 Sep. 2005).

20 Seekings 2001:83, quoting Siegfried Manthata.

Non-state, informal dispute resolution mechanisms addressed some of the shortcomings of the formal system. They were trumpeted as more empowering, adhering to traditional values, promoting reconciliation and restoration, as being cheaper and speedier, providing better operating hours, and as possessing a community-wide outlook instead of breaking down grievances into purely individual cases (SALC 2005:27). Procedures were common-sensical and more flexible, and language barriers were not at issue (SALC 2005:31). And, while these community dispute resolution structures were normally utilised by blacks, this was not always the case. For example, in KwaZulu-Natal, white participants professed a preference for the king's traditional courts over the formal state structures (SALC 2005:30).

However, the informal system was not without its own share of problems. The diversity of community dispute resolution structures prevented defining them with satisfaction (SALC 2005:39). Traditional courts were found to discriminate against women, and vigilantism plagued certain areas (SALC 2005:75). Lungisile Ntsebeza, who has written extensively on the role of traditional authorities in South Africa, expressed his own concerns:

> My bottom line is that they must be democratic, legitimate, transparent and can be challenged. My own reservations about traditional institutions are that they are undemocratic and not transparent. If they can be made transparent, with competent leaders, not because of birth, they would be fine. But the nature of traditional courts is that they are appointed by birth right. I am sure that they worked for small groups in the past. But if it worked then, you must look at the context… The same holds true for street committees. Many were not democratic or representative. They were kangaroo courts – we cannot beat about the bush about that.[21]

Many community dispute resolution structures functioned in a particular context that benefited from their activity. But the nation is not the same today as it was before colonialism or during apartheid. Decisions made in community

21 Interview with Lungisile Ntsebeza, Associate Professor of Sociology, University of Cape Town (6 Feb. 2006). For a more detailed expression of these sentiments, see Ntsebeza 2005.

courts also lacked a necessary coercive element, such that members against whom decisions were made could simply leave the area (SALC 2005:16). Allegations of corruption and abuse of power further undermined the informal systems. Oddly, some participants found that informal structures were not formal enough. Certain structures lacked set guidelines and policies, making outcomes unpredictable and insufficiently coercive (SALC 2005:25). And in some areas, such as the Free State, both informal justice and formal justice were non-existent (SALC 2005:33).

The Draft Bill

Having consulted the South African community, the South African Law Commission then moved to distil the multiplicity of suggestions down to a workable praxis. The combination of professional, juridical, and scholarly contributions was eventually collapsed into a draft bill and several concrete proposals. The Law Reform Commission elected to suggest a loose 'framework' within which community dispute resolution structures (CDRSs) could operate. It opined that

> any attempt to regulate community dispute resolution structures by prescribing to them how they should be formed, how they should operate and by creating a bureaucracy to enforce compliance with these prescriptions would be a mistake. Not only would such a course of action undermine genuine community based initiatives, but also the community support which gives them their strength (SALC 2005:100).

The framework and the related Draft Bill strongly emphasised training over direct funding and avoided meddling with formal law. The report acknowledged South Africa's lack of state resources and that access to justice was directly linked to class. While some CDRSs resorted to vigilantism, most did not and could serve a 'useful purpose' in furthering access to justice (SALC 2005:102). Accordingly, the state should grant 'explicit recognition' to CDRSs 'in principle' (SALC 2005:102). Recognition would be furthered by:

(a) asking whether a structure needed assistance in linking with formal structures;

(b) arranging meetings with formal structures for referral purposes;

(c) helping CDRSs apply for funding, use of facilities, training, and expanding criminal jurisdiction;

(d) promulgating a 'code of conduct' by which the CDRS abides;

(e) attempting to prevent duplicating functions, particularly in rural areas; and

(f) promoting the Small Claims courts in the townships (SALC 2005:103).

Comparing the texts of the Draft Bill and the National Peace Accord

In the preceding sections, we examined the *context* of the Draft Bill and National Peace Accord. Each section identified the events that culminated in the shaping of these documents, described and analysed their work in practice, and attempted to assess their outcomes. It may prove useful to briefly compare the *co-texts* of each document as well. In other words, based solely on the texts of the Accord and the Draft Bill, are there any insights that may be gained?

The National Peace Accord is a complex document. Its preamble contains a religious component, delineates rights, outlines specific problems confronting the nation, and focuses on local level solutions (National Peace Accord 1991:Preamble). It also creates several mechanisms – the Goldstone Commission, peace committees, and Justices of the Peace – and stipulates the means by which the mechanisms may be given effect. A full chapter outlines the rights required of a multiparty democracy and emphasises consultation with affected communities. More relevant to the Draft Bill, Codes of Conduct are enumerated that place duties on the police, political parties, and state authorities (National Peace Accord 1991:chapters 3-5). Breach of the Accord would be resolved by eventual referral to an arbitrator.

The Draft Bill contains several differences. There is no mention of God or religion. Rights are not discussed. New mechanisms are not created so much as recognised: the Minister of Justice and Constitutional Affairs may grant recognition to a CDRS or withdraw recognition from a CDRS. Police are addressed in both documents, but in significantly varying degrees. The Accord discusses the police in detail, underscoring the importance of their envisioned role. By contrast, there is only very brief mention of the police in the Draft Bill. This is unusual in that both documents express a concern for unusual criminal cases. The Accord provides for 'Special Criminal Courts', while the Draft Bill denies jurisdiction to CDRSs in major criminal cases.[22] But while the Accord speaks to a clear link between criminal cases and the police, the only role for police in the Draft Bill is for a 'liaison officer' to facilitate discussion between the CDRSs and the formal court system. Another distinction may be found in the Codes of Conduct. Like the National Peace Accord, promulgating a Code of Conduct is identified as central to the Draft Bill. However, while the Accord stresses the possibility of violations by both the state and political parties, the Bill seems to be wholly suspicious of the CDRS alone, perhaps because the state's underlying Code of Conduct is the Constitution.

Another relevant point is that several political actors signed the Accord. The Draft Bill, which would become democratic law if ratified, would represent an agreement between the state and its people. The Accord stipulated referral to an arbitrator if the signatories acted out of line. The only enforcement mechanism in the Draft Bill appears to be amending the constitution. A sub-agreement, or sub-contract, between the state and the CDRSs could be withdrawn by either side, as we have seen.[23]

Revisiting the contextual themes outlined earlier in the article – for example, the numerous political forces acting in the Accord – may explain some of the distinctions between the two documents. But the reluctance to relinquish state

22 The Special Criminal Courts never materialised.

23 The Draft Bill also contains a specific bias against arbitration because of its 'inconsistency' in resolving disputes in CDRSs.

power to CDRSs and the tendency to ignore the role of the police in the Draft Bill are worth noting.

Summary

The Draft Bill that emerged from Project 94 would result in the recognition of a long existing non-state ordering community. These community-empowering mechanisms would be legitimised by the state and acknowledged for their contributions to conflict resolution in South Africa. Criminal jurisdiction would be extended so that communities could nip small disputes before they developed into large scale conflicts. Justice might be better standardised through increased adherence to constitutionally-aligned codes of conduct. Local mechanisms with inadequate coercive power might benefit from state enforcement, and dialogue would be fostered between the informal and formal sectors.

Yet the Draft Bill contains significant weaknesses. The most common aspect of informal justice is its lack of sustainable funding (Jantzi 2004:194), which the state would not provide with the Bill. The state would incur few new responsibilities other than the training of formal structures on how to interact with non-state structures. (Indeed, training has become a buzzword in the government with its own inherent difficulties of measurement.) The state would also be officially outsourcing justice to these mechanisms, potentially permitting it to wash over its duty to expand formal justice. The relationship of the informal sector to the existing legal aid, family courts, equity courts, and sexual offences courts has not been sufficiently determined. Compounding this issue is a general lack of access to all of the formal institutions.

Our examination of the National Peace Accord has shown that many of these difficulties may be fatal to the proliferation of local conflict resolution structures. Significant failings of the Accord pertained to, among other things, peacebuilding and the initiative's hasty demise. Peacebuilding in local communities failed because of inadequate funding. The peace committees were dismantled when they had proven on the whole successful, against better judgment, in part because there was a lack of communication from the local to the national level. The Draft Bill suffers from similar flaws. There is an underlying problem of *rapid exit* of the shared apparatus by either local groups or the government (but

more likely the government). The bill also does not seem to adequately mandate communication between formal and informal structures. Communication may need to be required at periodic intervals, with ongoing monitoring. And, ultimately, the bill seems to require de facto subservience by CDRSs to the formal hierarchy. They would still be, it seems, 'second class justice'.

Perhaps the Bill would be better served by attempting to fill the gaps left by the formal system. Formal legal structures address criminal issues and some specific civil matters. Legal aid is heavily weighted towards criminal matters, however, and the civil courts are not as geographically widespread. CDRS mechanisms that address the cases that slip between these institutions may potentially be more easily wedded to formal structures. As access expands, these CDRSs could be formalised. The difficulty with this approach is that it would deny the flexible nature of many CDRSs. Limiting jurisdiction might inhibit both the coercive power of the courts and their problem-solving abilities. Searching for root causes of conflict often requires blending remedies across civil and criminal lines.

4. Conclusion

The places to which people already go to resolve conflicts – the 'other law' – have been providing justice to South Africans for decades. But recognition of these ordering mechanisms is itself beset with difficulties. The 'other law' is pluralistic in nature, making it difficult to make naturally subversive and organic entities conform to the formal justice system. Guidelines may provide some certainty, but this does not disguise the uncertainty of the political process itself – the Draft Bill may disappear once it enters the legislature. (At the time of this writing, the South African Law Commission claims to be investigating Project 94 but there has been no official activity either in the legislature or the courts).[24] 'It was overkill,' explained Project 94 member John Cartwright. 'We could not

24 Similar draft legislation by the South African National Civics Association, for example, never bore fruit (Nina 1995:18).

figure out how to mesh with government structures.'[25] The creation of a new National Peace Accord therefore appears unlikely in the short term.

This article should be read with some caution. In the 'past', we examined a *quasi*-governmental body and the 'future' assessed linking the state to *community* organisations. A strict analysis might critique this as comparing apples to oranges. The article essayed to overcome these differences by identifying key themes: geographic differences, business efforts, strategic positioning, funding trends, and attempts to eliminate structural challenges. The hope is that the reader will leave with a better understanding of the conflict resolution community and of the complexity of issues facing South Africa today. If nothing else, South Africa's unbridled forays into conflict resolution have been, and continue to be, incredibly inspiring.

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Assessing South Africa's strategic options of soft power application through civic interest groups

Yazini Funeka April[*]

Abstract

South African foreign policy is premised on the African Renaissance concept of good governance. The country's good governance objectives are to strive for world peace and the settlement of all international disputes by negotiation – not war. Furthermore, South Africa's foreign policy is informed by its domestic policy which is guided by the vision of a democratic South Africa that promotes best practices with regard to good governance regionally and globally. Given its vision of effective global governance, South African foreign policy faces many challenges due to the various continental demands that include global food shortages, low intensity conflict, and low employment levels. This article argues that South Africa cannot accomplish its foreign policy objectives by itself and advocates the use of civic interest groups as a strategic tool of implementing soft power. In demonstrating the impact of civic interest groups as a foreign policy instrument, the article illustrates how globalisation has changed the world of international diplomacy, requiring non-state actors to become more active in transforming the economic and political playing field. Throughout the

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discussion, the South African Dialogue for Women is used as a case study that demonstrates how South Africa could further achieve its objectives of African Renaissance by supporting civil society initiatives in promoting good governance on the ground.

1. Introduction

In July 2004, the South African Women in Dialogue (SAWID) initiative, supported by the office of Mrs. Zanele Mbeki at the office of the Presidency, facilitated a dialogue with Burundian women. The South African and Burundi Women in Dialogue (SABWID) was the second intercontinental peace dialogue organised to promote peace among women in the Great Lakes Region, by developing and sharing strategies for mainstreaming women's issues and by discussing post-conflict developmental challenges (South African and Burundi Women in Dialogue 2004:6). The objectives of dialogues such as SABWID are usually designed to bring together stakeholders to discuss priorities and needs in the social and human sciences, and to agree on a particular plan of action. Interest groups, civic education organisations, non-governmental organisations (NGOs), parastatals, and others have become successful in their action plans to address conflict and provide capacity building and mediation, thereby facilitating democratic measures. Their impact on democratisation has expanded their influence on global affairs making them attractive agencies of foreign policy.

Due to the influence of interest groups on the global arena, there is much debate about the role of diplomacy in shaping foreign policy. The modern diplomat is very far removed from the original job description of an ambassador in the era of Greek city states, when diplomacy was limited to the interaction between monarchs to maintain peace. We operate in a much more complex environment, where the Department of Foreign Affairs is no longer the only player in the world of international diplomacy. Other departments of state as well as non-state actors now work in areas that were previously the sole preserve of the Ministry of Foreign Affairs. This level of influence by interest groups has positioned them to become effective foreign policy tools for promoting soft power in various countries such as India, Canada, and the United States. The

basic concept of power is the ability to influence others to get them to do what you want. 'Soft power' is the ability to achieve desired outcomes in international affairs through attraction rather than coercion. It works by convincing others to follow, or getting them to agree to, norms and institutions that produce the desired behaviour (Nye & Owens 1990).

Due to its regional work the SABWID dialogue, the focus of this study, is considered a civic education project that qualifies as an option of soft power application by the South African government. SABWID, which is considered as a civic education organisation, began engaging in regional capacity building activities in order to resolve conflict in countries such as the Democratic Republic of the Congo and Burundi. Civic education organisations are a brand of institutions that have started broadening the scope of civil society programmes that have a democratic focus (Carothers & Ottaway 2002). Civic education usually involves efforts to teach people the basic principles and procedures of democracy (Carothers & Ottaway 2002). The involvement of gender-based civic education groups such as SABWID is a positive breakthrough, as women's interest groups are increasingly influencing the ability of governments to set their own policies, and to promote and protect human rights in general.

By assessing SABWID, this article will determine whether South African interest groups can be utilised as a foreign policy tool that could promote African Renaissance through transformation cooperation. SABWID was selected as a case study because of the following:

a. It focused on a wide range of local Burundian civil societies and political groups promoting citizenry participation and reconciliation.

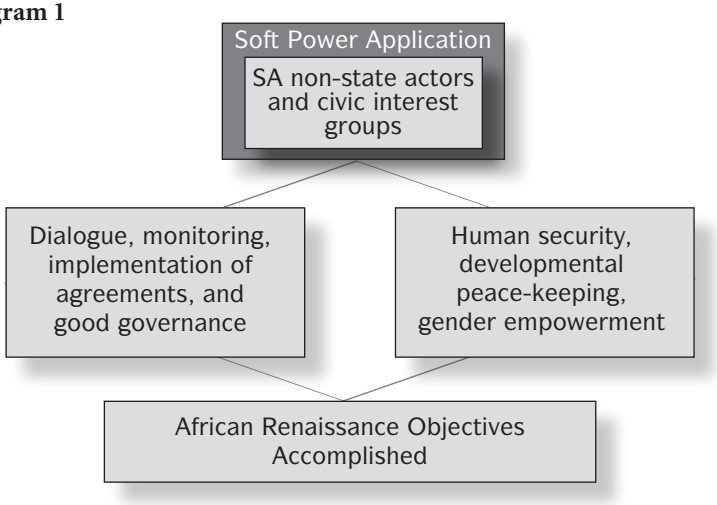
b. The dialogue occurred prior to the electoral process in Burundi. The electoral process was viewed as an important initial step towards the creation of a legitimate independent government making it a key component of the democratisation process.

c. The dialogue was gender-based, which is critical, given the role of women during the post-conflict reconstruction period.

d. The dialogue's objectives were in line with promoting human security and the African Renaissance.

According to Ms Sue van der Merwe, Deputy Minister of Foreign Affairs, the mandate of the Department of Foreign Affairs is to ensure that South Africa conducts its foreign policy in a manner that promotes citizenry participation and the human security of its people, through a principled foreign policy which should also be sought for the peoples of the continent of Africa.[1] SABWID's objectives of promoting good governance measures, outlined by Sue Van der Merwe, were in line with South Africa's application of African Renaissance principles such as integration and transformation of security, and healing and reconciliation within the New Partnership for Africa's Development (NEPAD) framework (South African and Burundi Women in Dialogue 2004).

Diagram 1



(Source: Author)

The African Renaissance concept favours a developmental, peaceful and multilateral approach to resolve conflicts and instability on the continent and establish good governance (Institute for Security Studies 2004).

1 Address by Ms Sue van der Merwe, Deputy Minister of Foreign Affairs, on the occasion of the Budget Vote Debate of the Department of Foreign Affairs, National Assembly, Cape Town, 15 Apr 2005.

Foreign Affairs Minister Nkosazana Dlamini-Zuma elaborates further on South Africa's foreign policy goals being focused on African Renaissance principles when she asserts that 'the promotion of peace and security is one of South Africa's most important objectives in the region. South Africa's foreign policy agenda includes the strengthening of conflict prevention and resolution capabilities of the region and rendering assistance in monitoring and addressing domestic issues that affect regional stability'.[2] The fact is the African continent still consists of an abundant number of weak states, failed states, states undergoing post-conflict reconstruction, and states still attempting to implement consolidated democracy. These countries form a large cluster that South African foreign policy may have to address at one point or another. By implementing civic education organisations or interest groups as a foreign policy tool, South Africa will not be an exception in the international community as countries such as Canada have adopted a strategy of using interest groups to promote their foreign policy measures in a positive way. Canadian civil societies, research institutes, NGOs and media houses such as the Canadian International Information Strategy (CIIS) have become an optional medium for enhancing Canadian influences – its soft power – and promoting the delivery of Canadian foreign policy (Axworthy 1997:187).

The impact of interest groups or civil societies on the African continent in performing capacity building measures – such as developmental peacebuilding, conflict resolution and public service delivery – also explains how they have become a growth industry on the continent. Human security is an essential link for political development as it encompasses human rights, good governance, access to education and health care and ensuring that each individual has opportunities and choices to fulfil his or her potential (Annan 2000). Technically, human security is one of the key functions that are to be provided by the state. Instead, weak states such as the Democratic Republic of the Congo (DRC), Liberia and Sierra Leone continue to rely on interest groups to provide their citizens with basic and yet critical elements of human security, and community

2 Address by Dr. Nkosazana Dlamini-Zuma, Minister of Foreign Affairs, on the occasion of the Budget Vote Debate of the Department of Foreign Affairs, National Assembly, Cape Town, 3 Jun 2004.

empowerment measures. South Africa has established a strong record of contributing significantly in facilitating human security in weak states such as the DRC by placing considerable effort and resources, both financial and human, into economic and political development. For example, South Africa had six government departments working in the Democratic Republic of the Congo, including their defence force and electoral commission.

This developmental approach is attributed to a 'soft power' approach in promoting change in weak states. Joseph Nye who coined the soft power theory indicates that there are three kinds: the military approach where you can threaten or coerce the politicians into certain action; the second one is economic where you seduce them with payments; and the third kind is to attract people, or co-opt them, to do what you want. Soft power is a product of globalisation which is described as a process by which the people of the world are unified into a single society. This process is a combination of economic, technological, socio-cultural and political forces which have changed the way foreign policy is implemented (Croucher 2004:10). The relevance of these forces is demonstrated through the influence exercised by the media and civic education groups, which started becoming more prominent in the twentieth century. Equally important are the specialist advocacy groups that engage in public diplomacy around issues of peace and security.

2. The impact of the SABWID Dialogue on promoting African Renaissance principles

Civil war broke out in Burundi, a nation of approximately 6 million people, in October 1993 after Tutsi paratroopers assassinated the country's first democratically elected leader, a Hutu (Security Brief 2003:51). The civil war was the result of long standing ethnic divisions between the Hutu and the Tutsi tribes in Burundi. Under international pressure, the warring factions negotiated a peace agreement in Arusha in 2000, which called for an ethnically balanced military and government, and democratic elections (British Broadcasting Corporation News 2004). The Burundi Civil War lasted from 1993 to 2005 with an estimated death toll standing at 300 000 (Mail & Guardian Online 2008).

South Africa assumed a leading role in addressing the Burundi conflict which is demonstrated by the diplomatic negotiations and peacekeeping process led by top leaders such as former President Nelson Mandela and former Deputy President Jacob Zuma. When South Africa became involved with Burundi, the United Nations that is tasked with the Responsibility to Protect did not even want to become involved at the initial phases after the Arusha Accords were signed. Case in point, the United Nations, designated by the Accords to provide troops to protect opposition leaders, refused to do so until there was an effective cease-fire in Burundi. South Africa, through its African Renaissance commitment, provided the lead by providing the necessary soldiers in Burundi to facilitate the peace process.

Former President Nelson Mandela, who was the Facilitator for the Burundi Peace Negotiations, spearheaded the involvement of gender in the peace process, which was considered essential for democratisation. This gender initiative was a positive step in promoting reconciliation as previously Burundian male delegates who participated in Arusha merely permitted temporary observer status to three Hutu and three Tutsi women, despite the urging from the former facilitator, Mwalimu Nyerere, to fully involve women.[3] The delegates insisted that women should participate as part of political parties or civil society, which had already been given participatory status, and emphasised the need for a larger number of women delegates who would represent the broad spectrum of constituencies.[4] South African foreign policy initiatives, through the involvement of the United Nations Development Fund for Women (UNIFEM), were successful in ensuring that all 19 political parties involved in the Burundi peace negotiations would guarantee that women participate in the peace process and that their concerns regarding the implementation of the peace accord would be taken into account.

These measures by South Africa in promoting gender were critical as an estimated 65% to 70% of Burundi refugees during that period were women and children. Moreover, the impact of the conflict on Burundi women became particularly

3 In the second round of negotiations in Arusha in July 1998, women were regarded as a non-accredited delegation.

4 Civil society and religious organisations were already granted permanent observer status (United Nations Development Fund for Women (UNIFEM) 2000a: 9).

severe, characterised by rape, killing and forced displacement (United Nations Development Fund for Women 2000b). Given the aforementioned conflict dynamics, and the path that was charted in promoting gender, the SABWID dialogue in addressing the Burundian peace process was significant. In an attempt to establish the significance of the dialogue, respondents were assessed on issues related to gender mainstreaming, reconciliation, South Africa's impact on Burundi, the SABWID dialogue impact, and the prospects of having a regional AU dialogue structure for peace. Some of the surveys also attempted to establish whether UN Security Council Declaration 1325, which was passed unanimously on 31 October 2000 (Resolution S/RES/1325), did address the impact of war on women, and whether women's contributions to conflict resolution and sustainable peace were applicable during the dialogue.

Human Rights organisations such as Amnesty International and Human Rights Watch, that monitor governmental actions, were one of the first prominent politically based interest groups that became a major force of globalisation. Along with the thousands of politically based organisations and advocacies that began to mushroom as a donor-based industrial complex, globalisation then produced millions of competing capacity-building civil societies that took over the role of much needed public service delivery in under-developed countries. Due to the proliferation of these organisations which are typically funded by the West, weak states are now outnumbered and out-resourced by these groups (Mohammed 2007). Some governments have now come to view the original interest groups as a strategic way of promoting positive goals and objectives. These governments have come to realise that it is through advocacy or capacity building that these various interest groups perform some of the key pro-democratic roles – articulating citizens' interests and disciplining the state (Mohammed 2007).

The emergence of South African based trans-national civic education groups is a rather recent phenomenon that only began to emerge in the post-apartheid era. South African organisations only then started joining international civil societies in monitoring or assisting developing countries, specifically those that are affected by conflict in the late twentieth century. Consequently, compared to interest groups in regions and countries like Canada and India, South African

interest groups have not been actively taken into consideration in the formulation of South African foreign policy. European Union foreign policy, according to Philippe van Amersfoort (2005), has a specific goal aimed at strengthening civil society in developing countries to achieve its objectives, notably in the field of human rights and democratisation. In India, on the other hand, interest groups are actually trained to have an effective impact on the country's 'Look East' foreign policy by involving them in the economic and political growth of Asia (Indo-Asian News Service 2007).

However, despite its slow pace in utilising South African interest groups as a strategic element of its foreign policy, the South African government has been effective in establishing a positive history of involving its civil society in political processes regionally. For example, consultation with South African civil society and the private sector has been underway since 2005 leading to the NEPAD Implementation Strategy for South Africa (NISSA). As stated earlier, during the electoral process in the DRC, South Africa sent representatives from a number of civil societies in various parts of the nation to go and monitor elections in the DRC. South African civil societies have also been involved in monitoring the Zimbabwean elections. South African civil societies have now been actively involved in the process of diplomatic relations between South Africa and China. These aforementioned exercises are an excellent orientation towards civil society's active participation in an international democratic process.

Along with interest groups that are usually consulted by the South African government to engage in foreign policy-based exercises, there are civic education organisations such as the African Centre for the Constructive Resolution of Disputes (ACCORD) that have independently managed to establish an impressive regional footprint in promoting the African Renaissance. ACCORD has been in the fore-front of promoting a South African Renaissance by promoting conflict transformation, peace and stability in at least 26 African countries for over 15 years. ACCORD is very relevant to South Africa as a foreign policy instrument as the institution has been actively working with various grass roots organisations in the region. The organisation's primary goal of influencing positive political developments through promoting dialogue and institutional development as an alternative to protracted conflict (Indo-Asian News Service

2007) is not very different from African Renaissance principles. The dialogue approach used by ACCORD and SABWID, albeit at different levels, is premised on using communication to influence state actors and civil society members to act a certain way.

Dialogue is the interaction between people with different viewpoints, intent on learning from one another. The purpose of this learning is to lay the foundation for creating a new understanding and new solutions (Hardy et al 1998). Peace dialogue is defined as a dialogue *practice* of mutual accommodation applied in different dialogue *procedures* to achieve social transformation. The SABWID dialogue procedural tools were developed through local South African consultants such as Dr. Cheryl Hendricks and Allison Lazarus who both worked at the Centre for Conflict Resolution during this period. Their main focus was to promote interaction, understanding, and reconciliation amongst the Burundian women who were from different political and civil society groups. Various South African gender-based civil societies were also included in the dialogue as a method of exchanging lessons between the two countries, and advancing peaceful coexistence amongst Burundian people.

In assessing SABWID's impact on South African foreign policy, a scientific analysis was done by interviewing some of the dialogue participants. The methodology used to determine the dialogue's effectiveness focused only on the Burundian participants. The assessment was inclusive of surveys that questioned respondents about their views of the dialogue and African Renaissance. Implementation of the surveys was based on purposive samples, which required that the investigator purposefully select individuals or groups for their relevance to the research study (Simon 1986). Consequently, Burundian dialogue participants had to be purposefully selected based on their availability in Burundi.

a. Gender mainstreaming

The UN Security Council recognises the need to mainstream a gender perspective into peacekeeping operations in accord with the Windhoek Declaration and the Namibia Plan of Action on Mainstreaming a Gender Perspective in Multidimensional Peace Support Operations (S/2000/693). According to the UN Economic and Social Council, mainstreaming a gender perspective is the

process of assessing the implications on women and men of any planned actions (including legislation, policies or programmes) in all areas and at all levels. It is a strategy for making women's as well as men's concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres – so that women and men benefit equally and inequality is not perpetuated. The ultimate goal is to achieve gender equality (United Nations Economic and Social Council 1997: E.1997 L.10. Para. 4). More importantly, gender mainstreaming has been endorsed by the Beijing Platform for Action as the approach by which 'governments and other actors should promote an active and visible policy of mainstreaming a gender perspective in all policies and programmes, so that, before decisions are taken, an analysis is made of the effects on women and men, respectively' (United Nations Economic and Social Council 1997: E.1997 L.10. Para. 4).[5]

Given the marginalisation of women in the initial stages of most international peace processes, respondents were questioned about whether SABWID had effectively promoted gender mainstreaming through developmental peacekeeping strategies. 23% of the participants felt that SABWID had done a good job, 45% gave a better rating, while 3% felt they had provided excellent strategies. Most of the women also emphasised that sharing strategies of gender mainstreaming and promoting peace amongst the women was a relevant aspect of peacebuilding, particularly given the divisions that already existed due to ethnic or party lines. Gender equality and women's empowerment, as emphasised earlier, are an integral part of national development, peacebuilding and conflict resolution. Empowering women on the ground in order that they play an equal part in security and maintaining peace, politically and economically, and be represented adequately at all levels of decision making – at the pre-conflict stage, during hostilities, and at the point of peacekeeping, peacebuilding, reconciliation and reconstruction – not only promotes African Renaissance but achieves the objectives of soft power through diplomatic means.

5 See also Fourth World Conference on Women 1995:para 13.

b. Reconciliation

Reconciliation has increasingly become important in the context of conflict prevention and development cooperation. While the physical reconstruction of infrastructure and the re-building of basic administrative and governmental structures are often the focus of international engagement, less attention is usually given to the re-building of societal links. Therefore, a society such as Burundi which had undergone a brutal war was bound to be fragmented. Participation of conflict resolution experts was an essential strategy of the dialogue because the causes of conflicts often continue to exist during democratic transition and after elections, making reconciliation initiatives an essential component of conflict resolution.

As established earlier in this discussion, dialogue involves interaction between people with different viewpoints, intent on learning from one another to sometimes achieve understanding and reconciliation. The SABWID dialogue ensured the participation of various involved political parties and civil societies, which made the study relevant in determining whether an understanding and reconciliation would be achieved amongst the Burundi women. Table one indicates some of the various political groups that attended the dialogue.

Table 1: SABWID Political Participants

NAME	ACRONYM
Front Pour la Démocratie au Burundi	Frodebu
Union Pour le Progrès National	Uprona
Conseil National de Défense de la Démocratie – Force pour la Défense de la Démocratie	CNDD-FDD
Parti pour la libération du people Hutu	Palipehutu

According to most respondents, the promotion of peace along party lines remained a challenge – as most non-CNDD-FDD members viewed the ruling government during that period as endorser of South African foreign policy.

Non-CNDD-FDD members kept pressing for a balanced representation of participation in future dialogues. However, these views, constantly voiced by non-CNDD-FDD members, had little effect on thinking that promoted reconciliation. Consequently, the dialogue promoted ownership of the peace process as the Burundian women, despite their differences in opinion, were seeking to be reconciled.

c. SABWID influence on the Burundian electoral process and democratisation

Resolution 1325 calls on all actors involved to adopt a gender perspective when negotiating and implementing peace agreements, including measures that ensure the protection of and respect for human rights of women and girls, particularly as they relate to the constitution, the electoral system, the police and the judiciary. As a capacity-building strategy of the electoral process, the SABWID dialogue was hosted prior to the elections in 2005. The Republic of Burundi held several elections in 2005, ensuring that the nation returned to constitutional democratic rule after a devastating civil war. During my field research in Burundi, one lady confirmed that before coming to South Africa she had no knowledge of how to galvanise women to become involved in the electoral process. She maintained that SABWID helped her raise an awareness of the electoral process among the women in her community.

Participants in the dialogue had to respond to a four-part survey on the influence of SABWID in promoting its envisaged outcomes. As to whether the dialogue promoted peace amongst women, 26% gave SABWID a fair rating, 26% a good rating while only 2% each gave ratings of 'better' and 'excellent'. Upon interviewing some of the Burundian participants, a number of them indicated that they were able to facilitate the knowledge they had learnt from SABWID amongst their communities.

Several of the respondents felt that the dialogue mobilised women despite ethnic and political differences on common issues. Respondents also indicated that the dialogue illustrated the need for women to work together on political issues related to the well being of the country. Several women indicated that the dialogue was a positive tool with regard to the African Renaissance as well as

South African foreign policy's key objective of democratisation on the continent. Regarding the implementation of the dialogue, there were negative responses which asserted that some lacks of organisation and structure contributed to the respondents not taking SABWID seriously. Concluding responses were positive again whereby the respondents maintained that dialogue is an effective tool for peacebuilding which should be considered for the African Union in resolving instability.

When the participants were questioned as to whether the dialogue was successful in promoting South Africa's cause of promoting African renaissance through democracy and peace building initiatives, only 39% recognised South Africa's leadership efforts in Burundi, while nearly half of the group decided to abstain. This question was critical given the various suspicions that arose regarding South Africa's objectives in the country and the region. If South Africa will participate in foreign policy activities of this nature in the future, it is essential that the civil societies in the identified country understand South Africa's African Renaissance objectives.

Democratisation is the process whereby a country adopts a democratic regime. The transition may be from an authoritarian regime to a partial democracy, or to a full democracy, or one from a semi-authoritarian political system to a democratic political system (Putnam 1993). According to Chris Hauss (2003), real democratisation has been achieved only in these cases where the management of the transition process has not been left wholly in the hands of the elites but has rather been supervised by elements from the broader civil society. The involvement of civic associations in the electoral process through dialogues such as SABWID prepared a number of Burundians for their future political participation in a democratic regime. The fact is that horizontally organised social networks through effective civic education develop trust among people, and trust is essential for the functioning of democratic institutions (Mousseau 2000).

As to whether the dialogue was applicable to the Burundi transitional process as facilitated by the South African government, SABWID achieved a 'yes' score of 61%. This endorses the UN resolution that emphasises the important role of

women in the prevention and resolution of conflicts and in peacebuilding, and stresses the importance of their equal participation and full involvement in all efforts for the maintenance and promotion of peace and security, and the need to increase their role in decision making with regard to conflict prevention and resolution.

Gender equality and women's empowerment programs are an integral part of national development, peacebuilding and conflict resolution. The surveys from SABWID dialogue demonstrate that gender dialogue can promote peace and stability. The dialogue was critical as it did impact democratic best practices as indicated by the participants. When asked whether the dialogue effectively addressed presented issues related to security and stability that would facilitate good governance strategies, which is a key pillar of South African foreign policy, 81% provided a resounding yes.

Imparting good governance measures was relevant to Burundi, as institutional mechanisms that favour women's advancement in spheres of public life are still weak or poorly implemented. Burundi is not an exception: poor implementation is a phenomenon that applies to both stable and conflict-prone countries.

Respondents were also asked whether the African Union (AU) as an institution could benefit from another intercontinental dialogue such as this one, and in this regard some of the following statements were made:

- The political participation of women is critical in intercontinental dialogue.
- The expertise of African women in mediation and peace talks from different countries as in the SABWID combination is critical as participants tend to learn from each other.
- The African Union does not consistently promote regional dialogue amongst civil societies, which is essential for democratisation.
- SABWID should be continued in order to promote dialogue amongst the ethnic groups and gender equality in post-conflict reconstruction.

The responses from the participants emphasised the need for dialogue between ethnic groups and women from both South Africa and Burundi. The surveys also demonstrated the viability of utilising civic education groups to advance the consolidation of democracy through various techniques such as dialogue. Empowering women on the ground through dialogue in order that they play an equal part in maintaining security and peace, politically and economically, and be represented adequately at all levels of decision making – at the pre-conflict stage, during hostilities, and at the stage of peacekeeping, peacebuilding, reconciliation and reconstruction – would not only promote the African Renaissance but would also effectively promote soft power diplomatic processes.

3. Conclusion

The responses on the surveys discussed above demonstrate the possible impact of interest groups such as SABWID for positive soft power implementation. These positive channels of soft power through interest groups contribute to democratic consolidation by strengthening governance mechanisms and promoting open and transparent decision-making processes. Monitoring elections, protecting human rights, exposing government corruption, and supporting capacity-building measures are just a few examples of the work taken on by civil society. In general, interest groups embrace the wide-ranging needs and concerns of the community at large, and typically offer an open forum for the debate and discussion of ideas with the aim of strengthening democratic institutions. Sue van der Merwe argues that to be effective in promoting democracy and economic growth, government requires the cooperation of business, workers and all South Africans including civil societies to take advantage of these opportunities, to promote the country's image, and to provide good service to investors, tourists and others (Department of Foreign Affairs 2006a).

On the other hand, in using interest groups as a positive tool of foreign policy, South Africa should be cognisant of the objectives and outcomes of the various entities. In regard to the private sector for example, the government should emphasise corporate social responsibility practices. On the African continent currently, there are mixed feelings amongst regional business people and

politicians concerned with South Africa's dominant economic role in the region. These feelings range from hopes that the neighbourhood giant will spark off a region-wide recovery to fears that South Africa will steal a competitive march on the nascent industries and political control of other countries (Economist Intelligence Unit 2004).

As Deputy Minister Van der Merwe argues, if the South African government has adopted deliberate efforts to build the confidence of other countries in our vision, South African businesses that operate on the continent must concentrate on forging partnerships for sustainable development rather than focusing on short-term profit gain. Otherwise South African businesses will continue to feed into stereotypes about unscrupulous business practices (Department of Foreign Affairs 2006b). Along with South African interest groups, South African companies should also engage in localised community-building projects, which will help maintain the country's image in a positive light and negate the perception that the African Renaissance is just a tool for capitalistic interests. Finally, a multilateral approach through bodies such as the AU and the United Nations remain the best form of addressing the war economy (April 2006).

From a political perspective, positive long-term involvement from more interest groups such as SABWID and ACCORD could help eliminate some of the suspicion that constantly clouds South Africa's foreign policy. For example, in July 2006 there were claims that South Africa engineered a 'fake coup' in Burundi to silence opposition and cover-up large-scale government corruption. This allegation spread through Burundi like a bush fire and re-ignited speculations on South Africa's desire to colonise the region through its selected leaders. An interest group could, through civic education, win the hearts and minds of the community and reduce the high level of suspicion that sometimes promotes only the negative areas of a country's global relations.

In the final analysis, the 21st century has basically afforded South African interest groups an opportunity to use globalisation techniques and organisational objectives to promote good governance on the continent. Through its current soft power approach, South Africa should continue playing an active role on the international stage in key areas such as peacekeeping, peacebuilding and

disarmament (Axworthy 1997:187). However, the success of South Africa's soft power approach will heavily depend on the country's reputation within the international community, as well as on the continued flow of information between diplomats and the grass roots. Interest groups have at times developed questionable reputations that have been identified with the agendas of their countries of origin. President Mbeki has in the past questioned to what extent South African civil society made independent choices. This concern has been argued vigorously on a global level.

For example, a Boston Globe survey 'identified 159 faith-based organisations that received more than $1.7 billion in USAID prime contracts, grants and agreements from fiscal 2001 to fiscal 2005' (Ngugi 2007) as part of President Bush's Faith Based Initiative. The implication for these 159 faith-based institutions was that despite the necessary services they provide they were viewed differently by the global community. It is essential that South African interest groups are never identified suspiciously as government agents, but are regarded as transformation entities strictly designed to promote democratic best practices. Interest groups such as SAWID and ACCORD have managed to maintain a positive image on the global arena which is essential in keeping the country's image at a respectable level.

The challenge is to devise a strategy that would empower, on the ground, some of the interest groups which would be beneficial for the country. Structure is one of the required tools that would help to prevent the confusion that can be caused when a country is represented by a large number of interest groups that usually end up providing overlapping services in the region. Structure is essential particularly because South Africa has not yet developed a method of ensuring that its countrymen when travelling abroad fully embrace the concept of 'proudly South African' as a team. Currently, South African civil societies, civic education groups and government departments visit various countries representing their specific interests. It is not surprising to find a South African province or government department in another country promoting themselves first and South Africa second.

The trick in achieving soft power through effective transformation cooperation in the field is through recognising the ability of interest groups to achieve particular goals in a constructive method that positively and indirectly represents South Africa. A tool of assisting effective interest groups is to also ensure that a civil society rating system that does for global civil society what independent credit rating agencies do for the global financial system is implemented. This rating system could provide accurate information about the backers, independence, goals, and track records of different NGOs. It is essential that globalisation and effectiveness of NGOs are not held hostage by lack of reliable ways of distinguishing organisations that truly represent democratic civil society from those that are tools of uncivil, undemocratic governments (Naím 2007).

Even though most South African military forces serving under the United Nations have pulled out of Burundi, South Africa could remain actively involved through various interest groups. The democratisation path that Burundi is trying to implement is still full of challenges, as it still remains the 'poorest country' in the world. Violence and poverty continue to plague the people of Burundi, as those who participated in genocide against Hutus in 1972 – which led to the death of 100 000 Hutus and moderate Tutsis – have never been held accountable for their crimes. There is still a critical need for transformation cooperation that could be implemented in Burundi through various government departments and institutions such as SABWID and ACCORD. For example, proposed mechanisms for negotiating transitional justice have stalled. And recently, both Hutu and Tutsi civilians have allegedly been targets of mass killings and acts of genocide organised by the state and armed militia groups. The attacks have allegedly taken place against a background of government complacency, as in July and August 2006 when more than 30 civilians were killed by the National Intelligence Service.

These attacks demonstrate that democracy promotion remains an essential system that should still be effectively monitored in Burundi. It is fair to say that the issue of democracy promotion has become a central issue in the international system. Indeed, all around the world, people are pressing for their rights to be respected, for their governments to be responsive, for their voices to be heard and their votes to count, for just laws and justice for all. Recognition

also is growing that democracy is the form of government that can best meet the demands of citizens for dignity, liberty, and equality (Lowenkron 2007). South Africa's government, though besieged with South Africa's own internal problems and pressurised by the international community to invest more of its foreign policy resources in Zimbabwe, should strategise a community-based foreign policy agenda that will promote democracy. The participation of women and the integration of gender issues should remain a priority in the implementation of peacebuilding efforts, and should be improved upon so that they can have a greater impact at regional level. More dialogue initiatives are necessary because negotiation and conflict resolution skills are critical for the maintenance of peace. Women have traditionally been identified as consensus builders. Therefore, further improving their skills through more civic education can lead to more linkages across parties and sectors of society, as well as between men and women, which could contribute to reducing the current low intensity warfare that threatens stability in the region.

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Book review

Peace and conflict in Africa

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Many interpretations of peace and conflict in Africa are too simplistic. The book under review, therefore, seeks to deviate from those interpretations and provide a more detailed perspective. A collection of essays edited by David J. Francis, the book is touted as an introduction text to key themes with regard to peace and conflict in Africa. The book aims, firstly, to introduce the reader to the concepts, debates and issues in peace and conflict in Africa, and, secondly, to stress the importance of indigenous African approaches to peacebuilding. Thus, the book is divided into two parts. The first part has seven chapters and deals mostly with concepts and the discourse of peace and conflict in Africa. Part two has five chapters and deals with issues in peace and conflict.

The first chapter is an introduction to the context of peace and conflict. The author presents an overview of the western media's representation of Africa, reviews selected literature on conflicts, and appreciates Africa's potential and

mineral resource endowment. Besides lamenting that conflicts have undermined that potential, he explores the political and economic conditions in which conflicts arise. He also defines terms such as patron-clientelism, patrimonialism and neo-patrimonialism, and ends with an outline of the book and explanations for the choice of the articles.

Chapter two, by Tim Murithi, focuses on traditional African approaches to peace and conflict. Noting that the African concept of peace is much broader and deeper than the liberal notions, the author contextualises these approaches within the broad peace and conflict issues. He analyses four indigenous approaches: the *jir* mediation of the Tiv people of Nigeria, the *shir* process in Somaliland, the *Mato Oput* of the Acholi of northern Uganda and the *ubuntu* concept of South Africa. He ends the chapter with an analysis of the strengths of these processes.

The third chapter, by Isaac Albert, addresses conceptions of peace. Albert notes that, firstly, the current emphasis by academics and policy analysts has been on what outsiders are doing or can do and not what the people can do for themselves. Secondly, he notes that the formal dispute and conflict resolution institutions in Africa – including the judiciaries – lack credibility. He also analyses what appears to be a broad global conceptualisation of peace and lays a philosophical framework of peace in Africa. Albert cites several examples from different parts of Africa to support his framework, including *Gacaca* in Rwanda, *Mato Oput* in northern Uganda and *Kgotla* in Botswana. He ends with a call for integration of African conceptions to the global ones.

Chapter four and chapter five are closely related. João Porto focuses on mainstreaming of conflict analysis in Africa in chapter four, and Kenneth Omeje contributes chapter five where he focuses on understanding conflict resolution in Africa. Porto summarises the conflict analysis theory and its contribution to conflict resolution. He then explores the practice of conflict analysis mainstreaming, citing examples from across the continent. He concludes with a review of the dilemmas and challenges of conflict analysis. Omeje, in contrast, reviews theoretical discussions of conflict resolution from the perspectives of realists, behaviourists and critical theorists and their implications for conflict resolution. One point that stands out is the distinction between conflict

resolution and conflict transformation. He then looks at various analyses of causes of conflicts in Africa as presented from the viewpoints of primordialism, instrumentalism, and political ecology and conflict goods theories, and then critiques each. The chapter ends with an analysis of various conflict resolution approaches such as military victories, elite co-optation, third party mediation, and traditional African approaches.

The sixth chapter, by Nana Poku, analyses the context of security. The author starts by tracing the evolution of the nation-state in Europe. She then contrasts that with the African state that was imposed by colonial powers. She identifies several challenges that arise from that imposition including cultural-linguistic links across borders and internal ethnic composition. The author notes that only Nigeria, Ethiopia, South Africa and the DRC have more than 30 million people. She then highlights problems such as lack of common 'constitutive stories', ethnic and social class divides, and parallelism between statism and nationalism – which have undermined the social contract and rendered the state very weak, thus leading to conflicts. The current challenges include bad governance, low overseas development assistance, the debt burden and the HIV/AIDS pandemic. In short, the context of security is deeply linked to state consolidation. Whilst state weakness has bred conflicts, the conflicts have led to underdevelopment and social injustices which generate further conflicts. She suggests that Africa needs to change its focus from international interventions to a people-centred approach.

Tony Karbo contributes chapter seven in which he analyses peacebuilding. He starts by unpacking the concept of peacebuilding and approaches in this regard. These include the conflict transformation approach, as espoused by John Paul Lederach, and structural approaches. The author delves into the role of non-governmental organisations. Among the challenges to peacebuilding that he lists are: protracted or intractable conflicts, the involvement of external players who do not seek sustainable solutions, the countries' involvement with external lenders such as the World Bank and the International Monetary Fund, and the nature and persistence of conflicts and employment of top-bottom approaches to peacebuilding. The author ends with a review of the prospects for

peacebuilding, including the African Union (AU) reforms, the strengthening of regional institutions and the role of traditional African approaches.

Chapter eight is the first chapter in Part two. Written by Jannie Malan, the chapter explores transitional justice issues. Malan starts by distinguishing retributive and restorative justice, and then analyses transitional justice issues in post-genocide Rwanda and post-apartheid South Africa. He explores the *Gacaca* traditional system as well as South Africa's Truth and Reconciliation Commission (TRC). He identifies four notions of truth that emerged from the TRC hearing sessions: factual or forensic truth, personal or narrative truth, social or dialogue truth and healing and restorative truth. He also cites the Institute for Justice and Reconciliation as one of the TRC outcomes. Among the key lessons from post-1994 Rwanda and South Africa are: the need to address transition as a comprehensive process, the need to consider practical mechanisms of implementing transitional justice, and the promotion of transformative transitional justice.

The next chapter, by Belachew Gebrewold, deals with issues of democracy and democratisation in Africa. After reviewing the conceptualisations and practicalities of democratisation, the author analyses 'quality of governance as a benchmark for the quality of democracy' in which he lists several points, among them political stability and absence of violence, voice and accountability, government effectiveness, role of law and control of corruption (p. 154). He then discusses challenges facing democratisation. These include ethnicity, corruption, and an anti-democratic international system. He ends with a review of many countries and depicts the successes and failures of the African democratisation experiment.

Chapter ten, by Mohamed Salih, explores the links between poverty, human security and the liberal peace discourse. Noting that human security is about protecting and empowering citizens to obtain vital freedoms from several threats, including fear and hunger, the author argues that poverty hampers the attainment of human security. He argues that liberal peace is not a sufficient condition for attainment of human security, and reviews the linkage between the peaceful management of conflicts and human security. He also explores in

some detail several human security indicators, and policy responses such as the Millennium Development Goals (MDGs) and the New Partnership for Africa's Development (NEPAD). Besides linking liberal peace with the poverty-human security debate, he observes that indicators of liberal peace do not in themselves provide human security. He also notes the tensions that exist between neo-liberal values and the socio-economic conditions in which they thrive, and ends with a view that liberal peace has not improved human security in Africa.

Jim Whitman contributes the last chapter that situates concerns about peace and conflict in Africa within the globalisation paradigm. The author reviews key generalisations such as, 'Africa the country', and that globalisation can be reduced 'to observable effects, abstracting what is most significant about it politically, socially and environmentally; and sidelining considerations of power, agency and causation' (p. 185). He notes that analysing Africa within the globalisation concern ignores national differences and competing, often contradictory, national choices. The author then delves into AU's mechanisms of peace and security, and the challenges facing African states in a globalising world. Such challenges include the 'cheap selling' of Africa's precious commodities, poor governance, corruption and low human capital development. He does not forget to mention China's 'considerable investments on the continent' and the 'good deal of ambivalence, since Africans are keenly aware that there is nothing altruistic in China's intentions' (p. 192). He ends with a hope that 'a new generation of African leaders, unburdened by misplaced loyalties' will emerge to navigate Africa to prosperity.

Peace and conflict in Africa has several strengths. The book adds to the growing literature about peace and conflict in Africa; it documents important traditional African responses to conflicts from a peace and conflict studies dimension; and it offers a different conceptualisation of peace and conflict. Also, the book has several weaknesses. Firstly, some of the articles need to be reviewed. For example, the number of countries with a population of more than 30 million people is certainly more than four - Kenya (36 million), Tanzania (40 million), and Sudan (40 million) are far beyond that mark. Secondly, key questions remained unanswered. For instance, why has *shir* succeeded in Somaliland and not the rest of the country, yet the Somali culture is the same? How can a single

cultural group's traditional approach resolve a conflict over the control of a modern multi-cultural nation-state? Why have there been conflicts in culturally homogeneous countries such as Rwanda, Burundi and Somalia, yet Tanzania with more than 120 ethnic groups has been very stable? Lastly, *Peace and conflict in Africa* can indeed serve as an introduction to key themes in peace and conflict in Africa, but can obviously not stand on its own as a foundation text in this field.