

# CORNELL INTERNATIONAL AFFAIRS REVIEW



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***Influence Operations as Counterinsurgency: A Strategy of Divisiveness***

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***Singing in the Wilderness: Kuchi Nomads in Modern Afghanistan***

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***The Burdensome Neighbor: South Africa and the Zimbabwe Dilemma***

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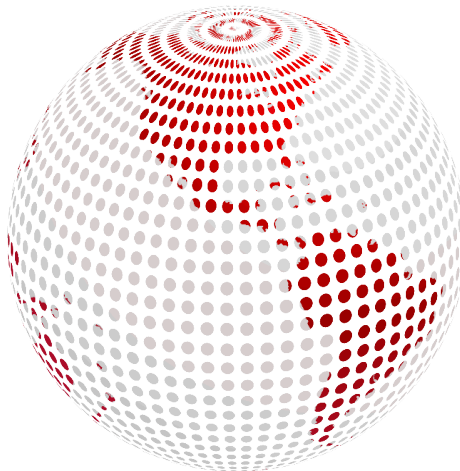
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# President's Letter

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Three years ago, a group of undergraduate students founded an organization dedicated to expanding the discourse of international affairs at Cornell. In a town whose motto happens to be “ten square miles surrounded by reality,” engaging students on campus proved no small feat. Yet, as the last remaining member from our inaugural executive board to graduate, I look back upon this time with an unequivocal sense of accomplishment.

With our sixth journal in your hands, the Cornell International Affairs Review has passed the tests of longevity. In the words of our second president, Luis de Lencquesaing, through engagement of students of various backgrounds and majors with the knowledge of professors and pragmatism of policymakers, “CIAR contributes in an original way to the debate on foreign policy and offers tools to analyze the world in its complexities and nuances.” The array of forums we organized and the diversity of authors published reflect this approach.

Our events this semester featured a melting pot of topics. CIAR closed January with a benefit concert in support of victims of the Haitian earthquake. Hands for Haiti raised over \$2500 in support of Weill Cornell Medical College’s Global Health Initiative. A week later, Professor Sir Partha Dasgupta, the Frank Ramsey Professor of Economics at the University of Cambridge and a Cornell University A.D. White Professor-at-Large, presented *The Problem of Trust: Norms and Laws of Economic Life*. Mid-semester, Professor Ken Roberts spoke to CIAR about leftist movements in Latin America. We look forward to ending the semester with a dinner featuring General Anthony Zinni, Cornell’s Frank H.T. Rhodes Class of 1956 Professor.

However, our primary mission—to provide for the Cornell community—is far from complete. We continue to innovate and explore new methods of engagement with an ever expanding consistency. Just this semester our organization launched a biweekly newsletter to resounding success. Consequently, instead of merely publishing once a semester, CIAR provides a broad overview of current global events to the public. This represents just one more way our organization serves as the undergraduate epicenter for international affairs on campus. Work still remains and we must consistently strive for higher quality in all aspects of the journal.

As I bid farewell to this wonderful “experiment” and as CIAR turns over to a new generation of bright and energetic Cornellians, I confidently affirm that this journal will remain a mainstay of our campus for many years ahead. In our inaugural issue, then president Gracielle Cabungcal wrote, “The members of the Cornell International Affairs Review have endeavored to create a dynamic intellectual community – one in which ideas of the world and of ourselves in it are constantly being formed, analytically discussed, and transformed. In doing so, we have hoped to enrich not only our own personal interests, but to engage and spark the interests of others.” With the benefit of perspective, I can say CIAR has held true to its founding principles.

Thank you to everyone who has given their time, efforts, and energy to this worthwhile endeavor. Without you— board and staff members, faculty, and readers alike—this surely would not be realized. On behalf of everyone who has made this issue possible, I hope you enjoy the latest installment.

**Mitchell Alva**  
**President, Cornell International Affairs Review**  
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# Editorial Letter

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Although no longer capturing headlines with the fervor of the post-9/11 period, American involvement in Afghanistan and Iraq continues to hold the attention of policy makers and commentators from across the political and academic spectrum. While our previous issue was largely built of responses to the immediacy of the financial crisis, familiar questions of war, terrorism, insurgency, and military intervention have guided recent submissions to our journal. Together they provide a rough theme for the collection we have chosen to publish this semester. Because these questions are philosophical as well as social, normative as well as pragmatic, the essays offer a diverse range of cultural and social issues, as well as the more standard international relations fare of political economy and rationalist analysis.

We begin with an article by Cornell undergraduate Sam Worby, who unpacks the idea of “counterinsurgency” and its relevance to the broad military interventions in the Middle East. Following Worby, Michelle Ker and Jacob Locke delve into specific aspects of American military intervention from the perspective of Afghanistan, pointing to the importance of understudied populations in the region. Colonel William Way, our first ever contributor from the armed forces, offers a pragmatic list of elements for the U.S.’s post-war reconstruction efforts. Citing historical examples, Mr. Way relies on conventional understandings of democratic societies to explain what he feels is necessary for a successful post-war Iraq. Fourth, Cornell student Zain Pasha looks at the issue of torture, making an impassioned normative case against the practice in terms of American interests.

Safwan Shabab’s examination of the problems and prospects of NATO involvement in Afghanistan diverts the thematic flow of the journal back to the international and undeniably plural context for America’s involvement. His analysis of international contractual politics leads to two looks into broader issues of international law. Eric Ip and Giselle Yuan map out the often aggravatingly intricate terrain of international humanitarian legal questions. Amanda Jones fixes the issue of international law onto the case of Japan, where human trafficking is a persistent problem for international activists trying to fight the practice with legal means.

Taha Oudghiri brings us back to the Middle East, laying out the politics of economic development in Morocco. We are reminded not to ignore states and regions that, while peripheral to direct U.S. involvement, are nonetheless increasingly important in the global context as they confront the challenges of economic growth. Finally, with the 2010 World Cup fast approaching, Andrew Miller considers South Africa’s options for dealing with Zimbabwe’s ongoing political and economic crises.

This set of articles, diverse, rich, and unconventional, follows a season in American politics dominated by domestic concerns. The cultural aspect of “Tea Parties” and congressional debate on healthcare reform occasion us to consider the broader cultural and normative questions underlying an arena of international affairs often reduced to strategy, economics, and rational actors. All of the articles in this issue, in one way or another, point to the value and inevitable complexity of looking outside the traditional box of policy, towards the cultural, international, and normative problems that are always present, but not always noticed.

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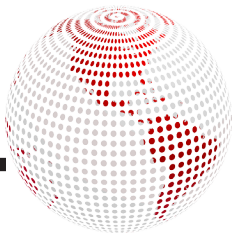


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# Influence Operations as Counterinsurgency: A Strategy of Divisiveness

Sam Worby

Cornell University, 2012, Government

*"Our forces were vastly superior to the rebels. Then why couldn't we finish with them quickly? Because they managed to mobilize the population through terror and persuasion . . . It was therefore imperative that we isolate the rebels from the population and that we gain the support of the population."*

**-David Galula, *Pacification in Algeria, 1956-1958***

Since the invasion of Afghanistan in 2001 and Iraq in 2003, U.S. and coalition forces have found it difficult to win the "hearts and minds" of the civilian population.

Like many other invading forces of the last half-century, the U.S. has found itself fighting an unmarked, non-state, and highly adaptable foe: the insurgent. Central to counterinsurgency doctrine (COIN) is the concept of winning the "hearts and minds" of the civilian population. Insurgencies derive their power from popular support. A powerful insurgency or counterinsurgency, therefore, has a firm grip on the hearts and minds of the people.

In order to gain the support of the people, an invading force has to earn their trust and make them feel secure. Counterinsurgency theory treats civilians as pragmatists: they will lend their support to whichever party best represents their interests. Assuming civilian populations have an interest in self-preservation, the U.S., under the guidance of General Petraeus, has adopted a "population-centric" approach, making the security of the civilian population the first priority. It is essential that the U.S. provide better protection for the people than the insurgents ever could. That being said, providing security, while necessary, is not sufficient for earning the support of the people. Winning the hearts and minds of the people is far easier said than done.

According to David Galula, a notable

French counterinsurgency theorist, one of the most essential conditions of victory in counterinsurgency is "the permanent isolation of the insurgent from the population . . . not enforced upon the population but maintained by and with the population."<sup>1</sup> Separating the insurgency from the population both physically and politically is an often overlooked but nonetheless essential step in the hearts and minds process. The population will not reject the influence of the insurgency without having first become disaffected from the insurgency. Moreover, it is impossible for a counterinsurgent force to build relationships with a population that remains unwaveringly aligned with and connected to the insurgency. Successful insurgencies will have established deep roots within the community, and, as a result, this permanent isolation will be more difficult to achieve.

The success or failure of a counterinsurgency campaign depends as much on how the people perceive their presence as it does on their actual military strength. If the insurgency has had an anti-American propaganda campaign in place for several years, entrenched beliefs regarding the invading American force will make gaining civilians' trust extremely difficult, especially with force as their only tool.

Australian counterinsurgency guru David Kilcullen observes that while "we typically design physical operations first, then craft supporting information operations

to explain our actions," Al Qaeda does "the reverse."<sup>2</sup> Al Qaeda's physical operations are only possible because of the support they have already cultivated through influence operations. This is one of the most frequently ignored asymmetries of counterinsurgency warfare. While the U.S. may have far superior military technology and might, when it comes to influence operations, the U.S. has been inferior. This is the nature of counterinsurgency warfare. Galula bluntly declared, "If there was a field in which we were definitely and infinitely more stupid than our opponents, it was propaganda."<sup>3</sup> The U.S. must adopt well-researched and targeted influence operations to correct this asymmetry and effectively combat the influence of groups like Al Qaeda.

Galula cites an axiom stating that in insurgency warfare "the population is split among three groups: (1) an active minority for the cause, (2) a neutral majority, (3) an active minority against the cause."<sup>4</sup> If the U.S. can successfully use influence operations to mobilize the neutral majority or to neutralize the active minority that supports the insurgency, thus isolating them from the insurgency, they can significantly weaken Al Qaeda and similar organizations that rely so heavily on their own influence operations.

***"Separating the insurgency from the population both physically and politically is an often overlooked but nonetheless essential step in the hearts and minds process."***

Identifying these groups and designing influence operations targeting them is essential to efficiently isolating an insurgency from its support base. Just as targeted sanctions are used to coerce influential individuals and groups in societies, influence operations must target the groups from whom the insurgency draws their most vital support.

According to Mao, the insurgent swims in the population as a fish swims in water.<sup>5</sup> The

environment in which an insurgency thrives is one where it enjoys strong popular support. Popular support is the chief asset of an insurgent group. Effective counterinsurgency must target that asset through operations designed to isolate the insurgency from the population both physically and politically.

To use influence operations to achieve that isolation an operation must first investigate and identify where the insurgency and its support base are most likely to hold disparate interests and then attempt to highlight that disparity through influence operations.

### **The Model:**

#### **Highlighting the Difference in Peru**

A perfect example of this approach is the joint U.S.-Peruvian effort to subvert the influence of the Shining Path insurgent group in the 1980s. William Yaworsky describes this strategy in his account of U.S. Army psychological operations in Peru. Yaworsky recounts the structure and planning of Project Inti, the psychological campaign targeting the support of the Sendero Luminoso Maoist insurgency in Peru. Near the beginning of the paper, Yaworsky notes that Sendero, under former professor Abimael Guzman, spent ten years "ingratiating themselves into the local society" prior to launching their first physical operations in 1980, thus supporting Kilcullen's hypothesis regarding the order in which insurgent groups launch physical and influence operations<sup>6</sup>. The joint U.S.-Peruvian task force decided to primarily target "pre-militant members/recruits" of Sendero Luminoso.<sup>7</sup> These recruits resemble Kilcullen's "Accidental Guerrilla."<sup>8</sup> They are former members of the neutral majority that have been seduced and co-opted by the insurgency. In order to prevent this co-option, the counterinsurgent must become present, either physically or through information, thus countering the influence of the insurgency. The insurgency may be responsible for the population's security or its economy. Strategic

influence operations can be applied in either case to facilitate the counterinsurgency's efforts to separate the insurgency from the population and take over their role in society.

In this case, the U.S.-Peruvian coalition chose to counter the influence of the insurgency by disturbing the co-option process of these "pre-militant members" of the insurgency. To disturb this process, they used information to highlight divergent interests between the targeted group and the insurgency. Yaworsky explains how, through anthropological research, the task force recognized "the family orientation of recruits" as a divergence from the brutal nature of Sendero. Because Peruvian society valued "extremely close-knit interpersonal relationships within" the family unit, "pre-militant inductees... had to calculate the repercussions their actions had on their families."<sup>9</sup> They had to consider both the brutality of Sendero and the brutality of the Armed Forces' reaction. As time progressed, however, "the Armed Forces became more humane," and Sendero became "harsher and more indiscriminate," thus simplifying the target audience's decision, in favor of the government.<sup>10</sup> This dilemma was developed and facilitated by influence operations highlighting the issue of family-orientation.

### The Sunni Awakening in Iraq: Influence Untapped

In late 2007, momentum in Iraq began to shift in the Coalition's favor. The shift is

mainly attributed to the Coalition's 'surge,' but another significant factor was the rebellion of Sunni tribes against al Qaeda, their former allies. Although improved security did not "spread exclusively because of tribes' rejection of al Qaeda," as Kimberly Kagan correctly asserts, the Sunni Awakening, as it has been termed, is an important example because it demonstrates how an insurgency's vulnerability can explode and, as a result, isolate them from the population.<sup>11</sup>

David Kilcullen attributes the Sunni Awakening to al Qaeda's "exclusive emphasis on religion and disregard of custom."<sup>12</sup> One of Kilcullen's "informants" provides the useful anecdote of al Qaeda asking the tribes for "their women... in marriage" and the tribes taking offense and declining on the basis of al Qaeda being outsiders to whom it is against tribal custom to give their women. Al Qaeda responded by dismissing tribal custom as "ignorant" according to the Qu'ran.<sup>13</sup> This triggered a conflict between the tribes and al Qaeda resulting in the disaffection of the "accidental guerrillas," being the Sunni tribes, from al Qaeda.<sup>14</sup>

The months and years preceding the surge and the Sunni Awakening were the bloodiest and least productive period of the war. This begs the question: Could anything have been done to bring about the positive change that resulted from the surge and the rebellion a bit earlier? As demonstrated in the Sunni Awakening, the disaffection of Sunni



*The difficulty in distinguishing between insurgents and civilians makes it difficult for armed forces to rebuild a community both physically and mentally.*



tribes from al Qaeda contributed to gains in security for Iraqis beginning in late 2007. Targeted influence operations highlighting potential points of dissonance between the tribes and insurgency, much like those Yaworsky and his colleagues implemented in Peru, could have triggered the conflict, and the subsequent weakening of the insurgency, earlier.

Dynamics between tribes and insurgent groups are often helpful for identifying divergent interests. Bear in mind, however, that this dynamic, a product of the values put on religion, glory, nationalism, tribal customs, etc., is extremely unlikely to be identical in any two cases. This strategy cannot be applied blindly. Any suggestion for tribal engagement in Afghanistan, for example, on the basis of the Sunni Awakening in Iraq alone is, therefore, inherently flawed and ignorant.

### **Afghanistan: Disparate Priorities and Alternative Options**

It's more difficult to find where insurgent and Afghan, specifically Pashtun, interests diverge because the extremists have been there for such a long time now. They cannot easily be exposed as an invading foreign presence because they've been there long enough to weave themselves into the political and cultural fabric of Pashtun regions. While during the Soviet-Afghan War some Afghan *mujahideen* resented foreign extremist volunteers like the young Osama Bin Laden, that division does not exist in the same capacity today. Not to mention that as the Taliban is the former government, certain groups are bound to support them out of habit rather than the opportunism Kilcullen's "Accidental Guerrilla Syndrome" would suggest. Moreover, their constituency is very familiar with their platforms and principles. There is no secret motive to be illuminated nor is there any obvious deviation from Pashtun culture, as there was in the Yaworsky example. The Taliban has been studying their constituency for nearly twenty years;

they know better than to diverge from them culturally or religiously.

For this reason, Kilcullen points to their economic platform, the poppy, as their vulnerability. His first suggestion is to further restrict poppy trade to prove that the Taliban cannot, in fact, protect their constituents' poppy. His second is to highlight inconsistencies in Taliban and Islamic policies towards drugs.<sup>15</sup> The first suggestion bears the same risks as all economic warfare and sanctions: the targeted government, in this case the insurgent Taliban, will blame the costs born by the people on the foreign and domestic forces imposing the restrictions. Rather than losing popular support they will rally against the counterinsurgency. The second suggestion requires the Afghan government to take the religious high ground, which it will have a hard time holding as long as the opposition is Islamic fundamentalist.

Given the long and complex history of the Taliban in Afghanistan, there is not a golden key to disaffecting the population as there was in Peru. Perhaps a better way to target the Taliban's support is with a more comprehensive approach. According to Kilcullen, "the Taliban adopted a five-line information strategy. . .in early 2006" emphasizing the importance of the Taliban party, Pashtun nationalism, the poppy economy, Shari'a law, and the emirate as a form of government.<sup>16</sup> A potential key to disaffection lies in how these priorities are ordered.

It is likely that the average Pashtun would order these differently than Taliban leadership. Kilcullen calculates that twenty-five percent of Afghan insurgents belong to the "core" Taliban while most of the remaining seventy-five percent "are local, part-time guerrillas who. . .operate on a temporary, ad hoc basis."<sup>17</sup> If this is accurate, it is likely that the "part-time" seventy-five percent have different priorities than the "core" or "full-time" twenty-five percent, assuming, quite pessimistically, that they all have basically the same set of interests corresponding to "the

five-line information strategy.” This is not to say that either group is a unitary constituency, but there are some conclusions we can draw from this division. As the Taliban’s support is mainly Pashtun, it is likely that the “part-time” seventy-five percent is mostly Pashtun. These Pashtuns who fight on their own terms, whom Kilcullen might designate “accidental guerrillas,” probably support the Taliban more for the ‘Pashtunistan’ nationalist platform, as it is more specific to their Pashtun identity, than for the conservative Islamic platforms. This explains their part-time commitment. The full-time twenty-five percent, identified as “‘core’ Taliban,” probably value the conservative Islamic principles of the Taliban more specific to their Taliban identity.<sup>18</sup> Moreover, Kilcullen points out that “Eleven percent. . . consider poppy cultivation legitimate under all circumstances.”<sup>19</sup> If this eleven percent also fits more into the core Taliban portion of the population, then the poppy is also prioritized differently between the two groups.

An influence operation highlighting these disparate priorities in conjunction with Afghan government policy designed to co-opt and integrate the “part-time” majority could substantially weaken support for the Taliban in Pashtun regions. Even a resulting minor hit among the Taliban’s main support base would hugely improve U.S. forces’ and the Afghan government’s position in the conflict. Granted, we are unlikely to defeat the Taliban altogether with an information operation. Progress made through influence operations of this kind, however, would improve the Afghan government’s position and facilitate the reintegration of Taliban constituents.

It should be mentioned that the Taliban uses tactics of intimidation to gain and maintain popular support. Galula explains that potential opposition to the insurgency “cannot emerge as long as the threat [of intimidation] has not been lifted to a reasonable extent.”<sup>20</sup> In this case, therefore, the physical operations already underway are necessary to enable the success of the influence operations.

## Conclusion

“As for me, I set out to prove a theory of counterinsurgency warfare, and I am satisfied that it worked in my small area. What I achieved in my first six or eight months in the Djebel Aissa Mimoun was not due to magic and could have been applied much earlier throughout Algeria.”

-David Galula, *Pacification in Algeria, 1956-1958*

The global nature of insurgent movements like al Qaeda makes them less likely to fully and accurately represent the interests of specific local populations. This makes them especially vulnerable to the approach outlined above. Much like the U.S. and other counterinsurgent forces, however, they adapt to the cultural landscape of their target populations with time. As a result, influence operations designed to highlight disparate interests between an insurgency and their target population are most effective when implemented early.

In trying to clarify how to win a counterinsurgency effort that is already underway, many counterinsurgency theorists unintentionally demonstrate how to preemptively weaken insurgent groups. While the use of influence operations before physical operations is preferable in counterinsurgency warfare, anything resembling a preemptive effort to subvert an enemy organization is subject to comparisons to Cold War-era covert operations. As Mackay and Tatham point out, however, while influence operations were organized from the top down and extremely centralized during the Cold War due to the sensitivity of the situation, “in counterinsurgency decentralization is absolutely essential.”<sup>21</sup> This mirrors observations in Major-General Flynn’s recent report on “Fixing Intel” in Afghanistan. Flynn emphasizes the importance of unclassified information and bottom-up operational design in counterinsurgency intelligence.<sup>22</sup> The decentralized nature and largely unclassified content of influence and related intelligence

operations in counterinsurgency minimizes the likelihood that these operations would be as controversial and suspect as their Cold War counterparts.

We can also conclude that how long the insurgency has been among the people spreading their propaganda is of great importance. Specifically, there appears to be a notable difference between Iraq and Afghanistan. While in Iraq extremism rose primarily after the American invasion, in Afghanistan extremists had been present and spreading their message since the Soviet-Afghan War. This corresponds directly to the strength of the ties between the insurgency and the population, and, therefore, the ease with which the insurgency can be politically separated from the population. This conclusion also lends support to the use of somewhat preemptive counterinsurgency influence operations in a nation like Yemen where an insurgent group is gaining momentum and support.

The ability to implement intelligent influence operations is essential to counterinsurgency. Although it is unorthodox, the “highlighting the difference” approach was effective in Peru and appears to have a place in

Iraq and Afghanistan as well. While preemptive actions should always warrant a certain amount of criticism, due to their obvious risks and implications, the “highlighting the difference” approach would probably be most effective if it is used more preemptively. That is not to say a huge web of preemptive and covert influence operations is necessary to avoid future wars with organizations like al Qaeda. However, public diplomacy efforts in nations with burgeoning Islamist insurgencies could be stepped up without warranting accusations of interventionism and manipulation.

Whether or not the U.S. chooses to institutionalize the lessons of counterinsurgency it has picked up in Iraq and Afghanistan, hopefully it will not forget the lesson of creativity. It would indeed be a weakness of ours if the U.S. only acknowledged and targeted enemies’ physical vulnerabilities. Every war has a dimension outside of the traditional battlefield. Whether it’s an urban battlefield or a cyber-war, the search for a victory to be achieved outside of the realm of traditional kinetic operations should be welcomed not scorned.

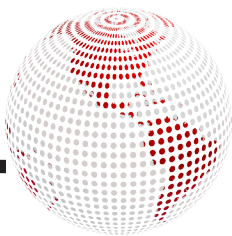
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# Singing in the Wilderness: *Kuchi Nomads in Modern Afghanistan*

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*The word kuchi conjures up a romantic but ultimately anachronistic lifestyle—tattooed women in red and gold embroidered dresses and men riding alongside flocks of goat and sheep; the reality, however, differs starkly. The past two decades of armed conflict, poverty and socioeconomic change have had a profound impact on Afghanistan’s kuchi nomads, and the United Nations Assistance Mission in Afghanistan (UNAMA) have identified them as one of the country’s largest vulnerable populations.<sup>1</sup> In contemporary academia, though, there has been a dearth of literature that links issues particularly salient to the kuchi—the pastoral economy, internal displacement, and their relations with the Afghan government as well as other societal groups—to Afghanistan’s reconstruction and development. Modernity requires that the kuchi no longer be distinct and removed from the Afghan state. Kuchi participation and representation in government is the necessary first step for their issues to be effectively addressed; at the same time, cautious measures must be taken to preserve their culture and distinctive lifestyle.*

## Who Are the Kuchi?

Kuchi is an Afghan Persian word, literally translating as “those that go on migrations,” from the Persian word “koch,” or “migrations.”<sup>2</sup> Indeed, while this word has been used as a pejorative similar to the use of the word “gypsy” in the West, connotations vary across the nation. For example, there are citizens of Kabul from wealthy families that settled down from a nomadic lifestyle generations ago who still describe themselves as kuchi. As Paul Garwood noted in an article for the Associated Press on May 14, 2006, Hashmat Ghani Ahmadzai, the self-proclaimed (and oft discredited) leader of the kuchi, is vice-president of a American security firm and the heir of a land-owning family in the trucking business. Though he is the chief of an organization called the Grand Council of Kuchi, he in effect has little-to-no say over the wide-ranging nomads—he does not even have a seat among the ten seats guaranteed to the kuchi in the Afghan parliament.

Kuchi can be most accurately described as a traditionally migratory lifestyle that depends on livestock for livelihood. Not all kuchi are fully migratory; however, many

gradually shifted into a semi-nomadic lifestyle with permanent winter residences. The kuchi who have settled in the past decade to become sedentary farmers or urban laborers are still considered kuchi for the purposes of this paper; very often, if crops fail or livestock dies, they will revert to a nomadic lifestyle, wandering for better grazing lands or communal support.<sup>3</sup> Some former kuchi, as mentioned before in the case of Hashmat Ghani, come from families who have been settled for generations. While they might consider themselves kuchi, their lifestyle, livelihood, and concerns are largely divorced from the majority of the kuchi; the vagaries and challenges of urban life, while legitimate, lie outside the scope of our paper.

Ethnically, the vast majority of kuchi are Pashtun. The kuchi also count Baloch, Arab, as well as Tajik and Uzbek in the north, among their numbers.<sup>4</sup> Today, there are no precise figures regarding the number of kuchis in Afghanistan; Afghanistan has not conducted a population census in twenty-five years, and counting kuchis is particularly difficult due to their nomadic lifestyle. Despite this, the National Multi-sectoral Assessment

on Kuchi (NMAK), conducted by the Ministry of Rural Rehabilitation and Development in 2005, estimated the kuchi population at about 2.5 million, 1.5 million of which remain fully nomadic. Economic conditions, drought, the increasingly monitored borders between Iran, Afghanistan, and Pakistan, and the plague of landmines across their migratory routes have effectively made a fully nomadic lifestyle impossible for some, and difficult for others.<sup>5</sup>

### **The Life Nomadic**

The traditional kuchi lifestyle involves highly fluid units of approximately eleven households at a time, herding 450-600 sheep and/or goats (as well as, to a much more limited extent, cattle) along migratory paths.<sup>6</sup> As winter turns to spring, vegetation sprouts in the highlands of central Afghanistan and the kuchi move inward to utilize the relatively rich grazing lands. Even agricultural fields, harvested by sedentary farmers, provide an abundant source of feed for a nomad's flock. At the end of summer, the kuchi will return to their lowland pastures along the border (and even across the Iranian and Pakistani borders), where the animals are often fed only enough to survive.<sup>7</sup> During these spring and summer migrations, various households will leave and rejoin other herding units as they wish; no unit remains continuous while traveling, and only the number of livestock remains the same. Due to the variable nature of kuchi units, a wide variety of tribes often travel together and share rights to pastoral grazing lands.<sup>8</sup>

Kuchis' interactions with the settled communities are usually limited to economic interactions—the trading of crafts and animal products for fruits, necessary crafting materials, and sometimes even water and grazing pastures. Kuchis produce and trade mostly milk from their livestock, due to its high nutritional value, although wool from sheep and cashmere from goats represent a large proportion of their goods and income as well.<sup>9</sup> The women are responsible for most of the economic production as they are in charge of

animal husbandry and the production of milk, wool, and cashmere while the men herd the flocks and represent the traveling unit when trading.<sup>10</sup> Income from livestock products makes up the majority of a kuchi's income, but

***“Beyond even their own products, the nomads have played an important role in the spread of essential items, such as kerosene, tea, and matches to various villages that might not otherwise have access.”***

the kuchi often supplement this by assisting land-owning farmers with their summer harvests, or herding shoats for the farmers and other kuchi. Beyond even their own products, the nomads have played an important role in the spread of essential items, such as kerosene, tea, and matches to various villages that might not otherwise have access.<sup>11</sup>

### **With Bag and Baggage**

The contribution of nomads to the Afghan economy can be easily overlooked, due to the seemingly archaic method of raising livestock. But the kuchi can afford to look after a greater number of livestock per capita than a settled farmer could, due to the migratory lifestyle's inherent lack of facilities. While productivity might be lower among itinerant methods of raising livestock, it has been noted that the low margins and initial cost involved means that any investment in rebuilding a supply of livestock among nomads offers a more immediate alleviation of poverty.<sup>12</sup> In addition, the kuchi occupy areas that are not easily made productive outside of livestock grazing. Although rangelands cover around 45 percent of the total land area in Afghanistan, between 70 and 85 percent of the total land area is effectively used for grazing because large areas are considered barren land. With increasing competition for landed resources and a trend towards intensification

of agricultural production, marginal lands need to be put to optimal use.

The necessity for making the most of Afghanistan's agricultural sector is clear: historically, livestock and livestock production have made a significant contribution to Afghanistan's GDP and exports. In prewar years, livestock and livestock products contributed 16 percent and 8-10 percent respectively to Afghanistan's GDP and livestock products made up about 35 percent of total exports.<sup>13</sup> The intervening years, then, have dramatically stunted Afghanistan's development. During the drought that lasted from 1998 to 2002, the average number of sheep per nomadic household decreased from 21.9 to 2.9 and 60 percent of kuchi households lost all livestock in Registan.<sup>14</sup> Considering the kuchi have been estimated to look after almost 50 percent of the nation's livestock, the loss takes on a drastic new toll.<sup>15</sup>

The Afghan government has begun to acknowledge the special needs of the kuchi population. According to an Afghanistan Research and Evaluation Unit report, the National Agricultural Development

Framework (NADF)—a project approved by the parliament in December 2009—even differentiates between the various flavors of modern kuchi:

"The Kuchi Support Program...distinguishes between Kuchis who continue to migrate and practice livestock-based livelihood system, and Kuchis who are semi-settled and practice a more diverse livelihood system. Of those who migrate, it also distinguishes between Kuchis who travel long distances across province boundaries, and those who travel short distances."<sup>16</sup>

The NADF, however, remains a conceptual framework for future programs rather than any tangible system in and of itself. Assuming there were even a specific and concrete implementation, the Afghan government still lacks the capacity to act in those provinces where many semi-nomadic kuchi reside.

## **Of Lands and Neighbors** **Access to Pasturelands**

Ethnic tensions are closely linked with competition over land rights, complicated by a number of intersecting legal regimes, including constitutional law, state law, religious law, civil law and customary law. Currently, there is a lack of clear government policy on land tenure and pasture rights. Over the years, pasture has alternately been described either as community owned land or as government land. The Land Decree, issued in 2002 by President Karzai, effectively placed all pasturelands under government control, leaving no space for communally owned pasture.<sup>17</sup> In rural areas, where the central government's presence is weak, customary law, rather than legal documents or the government's decree, holds weight.

Historically, pasture users obtained access via different mechanisms: through pasture rights allocation by royal decree or through the provincial administration, through customary practice, and through payment of taxes to the 'rightful' users. Since a single formal and mutually recognized system



*A Kuchi child holds a water bottle, something many of the remote villages of Afghanistan would not have access to otherwise.*

does not exist, the issue of access rights is an area of immense discontent.<sup>18</sup>

These days, the customary system of regulating access to pastures remains widespread and largely influenced by local power relations, despite the significant level of conflict surrounding access. User's rights are still, to an extent, established and recognized through customary systems; at the same time, they are subject to constant political maneuvering within local power relations.<sup>19</sup> Greater clarity and enforcement regarding access to pasture land is quite obviously needed.

### ***Grievances Slow to Fade***

Serious challenges arise from the kuchi's poor relations with other groups, often of different ethnicities and lifestyles. The NMAK estimated that in 2003, 21 percent of kuchis could not access their traditional pasture area due to ethno-political conflicts.<sup>20</sup>

In the long-standing Kuchi-Hazara conflict, both groups place the blame squarely on the other. The settled Hazara population contend that they are facing predatory nomads, in cahoots with the Taliban, who want to take advantage of interethnic and sectarian tensions. Kuchi leaders argue that they are forcibly excluded from the pasturelands they have used for over a hundred years by Hazara aiming to create an Iranian-backed Shia mini-state in the central highlands.

More recently and widespread than the centuries old dispute over grazing lands, the Taliban initiated a major power shift in favor of the Pashtun kuchi. Nomad groups' access to major grazing lands increased with the support of these new rulers. The kuchi, most of whom are ethnically affiliated with the majority of the Taliban, were generally assumed to have provided support to the Taliban and indeed, many Taliban recruits did come from kuchi background. Whatever the actual degree of collaboration existed, the perceived alliance between kuchis and the Taliban have led to an increased resentment by the non-Pashtun groups that had suffered

under the Taliban. Indeed, ethnic tensions are a significant security concern because of their potential to escalate quickly.<sup>21</sup>

### **Displacement**

For Afghanistan's growing internally displaced persons (IDP) population, there is a trend towards growing hardship and limited support. There are at least 200,000 IDPs in Afghanistan, 70 percent of which are kuchi.<sup>22</sup> But because of the deteriorating security situation, access to IDPs remains limited. Additionally, NGOs have consistently argued that humanitarian space has shrunk in Afghanistan due to the blurring of the identities and functions of military and humanitarian agencies through the Provincial Reconstruction Teams (PRTs) duplicating NGO activities. As the identities and functions of military and humanitarian actors have become blurred, attacks on humanitarian groups have increased.<sup>23</sup>

In April 2004, the Afghan government announced an IDP National Plan to promote and accelerate the return and sustainable reintegration of IDPs to their villages of origin. The National Plan placed responsibility for the IDPs' reintegration, with support from specialized agencies such as UNHCR and International Organization for Migration. This plan has brought together the Ministries of Refugees and Repatriation (MoRR), Frontiers and Tribal Affairs (MFTA) and Rural Rehabilitation and Development (MRRD) and distinguishes four groups of IDPs: Pashtuns displaced from the northern provinces; kuchi IDPs displaced by drought from the Registan desert in the southern provinces of Kandahar, Helmand, and Nimroz; kuchi IDPs whose migratory routes encompass the pastoral lands in Ghazni, Uruzgan, and Bamyan; and drought-affected non-kuchis.<sup>24</sup>

According to the National Plan, IDPs should go back to their areas of origin where they will be allocated a plot of land. But conditions in the IDP settlements are arguably better than those in the areas of origin, with

potable drinking water and limited access to education and health care. Most kuchi are unable to rebuild their herd and return to their traditional form of livelihood. In the absence of economic opportunity, it is a rational decision for them to remain in IDP camps as long as humanitarian aid is forthcoming. Unless present conditions change, the IDP camps are apt to become a self-perpetuating and enduring financial burden on the UN.<sup>25</sup> Moreover, relief organizations and UN agencies dealing with IDPs have said that too much emphasis is placed on the initial stage of return and not enough on issues which may later arise.<sup>26</sup>

### **The Government's Reply**

Although the Afghan government nominally recognizes the needs of the kuchi, to date, steps taken have done very little to improve their condition. The Afghan Constitution of 2004 includes provisions that directly address the kuchi. Article 14 of the Constitution obliges the state to implement effective programs for "improving the economic, social and living conditions" of nomads as well as adopting "necessary measures for housing and distribution of public estates to deserving citizens."

Kuchis are also guaranteed the right to vote in any constituency all over the country during presidential elections; despite this, the kuchi reacted somewhat indifferently to the most recent. Though the Constitution affords certain rights for the kuchi, most feel disillusioned over the gap between legal guarantees and their actual accomplishment.<sup>27</sup> Only 30 percent of Kuchis have received their identity cards and are thus registered as citizens.<sup>28</sup>

A blend of new and traditional structures and entities govern the kuchi. The Ministry of Frontiers and Tribal Affairs, Ministry of Agriculture and Animal Husbandry, Ministry of Refugees and Returnees, and the Ministry of Rural Rehabilitation and Development all deal with kuchi issues. However, the Ministry

of Frontiers and Tribal Affairs (MFTA) holds the institutional mandate over the kuchi, and in 2006, established the Independent Directorate of Kuchi (IDK). The IDK operates as a representative body of the kuchi, responsible for addressing all relevant social, economic, and political issues. However, the kuchi tend to minimize their interactions with the state (mostly out of necessity, as they continually cross not only provincial borders but very often national borders) so that in the day-to-day life of a kuchi nomad, government authority plays little role.<sup>29</sup> In Afghanistan, the shuras--assemblies of leaders that kuchi and other groups used to solve problems and settle disputes--account for more than 80 percent of conflict-based cases settled throughout Afghanistan.

The kuchi have been largely neglected in national plans for economic reconstruction and development because they do not constitute a fixed ethnic or residential group. Consequently, they have had lower levels of access to basic services than the average Afghan. For example, access to education is very limited for the kuchi, although kuchis nationwide have expressed a strong desire for education.<sup>30</sup> Today, the kuchi population remains largely illiterate (2 percent of men and 0.05 percent of women are literate whereas the national literacy rate is 12.6 percent for women and 32.4 percent for men), a trend perpetuated by very low school attendance.<sup>31</sup> In the 2005 NMAK survey, the kuchi were asked what priorities they would like the Afghan government to address. The five interventions considered most important were access to drinking water, restocking, improved health care, provision of shelter/housing, and increased numbers of educational facilities. The obstacles are severe, and the statistics are stark: only 10 percent of kuchis have access to safe water. 98 percent of kuchis own livestock and on average they own 50 shoats (the estimated minimum number of shoats required for a household to subsist on is 100). Clearly, the current average livestock numbers



are too low for a sustained livelihood. Yet, there remains a widespread preference for pastoralism, as indicated the surprisingly high demand for restocking.<sup>32</sup> Access to health care, like education, is limited and constrained by two major factors: the lack of health facilities in the areas where the kuchi are and the lack of trust in these facilities. Likewise, the government is skeptical of the traditional pastoral lifestyle and believe that the kuchis must be settled first before they can be helped.<sup>33</sup> Aside from the structural barriers surrounding the settlement of nearly 8.5 percent of the country's population, the preference that many kuchi have for pastoralism suggests that the Afghan government should take a more realistic approach and focus on addressing the nomads' priorities before settlement.

## Conclusion

The kuchi are slipping through the cracks. Since 2001, donors, aid agencies, and the Afghan government have disbursed over \$15 million in developmental aid, but little has reached the kuchi. According to the IDKA, per capita aid to Afghanistan is estimated at about \$60, while the kuchi have only received an estimated 20 US cents per person. There is a clear reason for this—international aid money is usually earmarked through provincial and ministerial budgets, and as there is no kuchi

province or ministry, the kuchi have inevitably been left out. But the broader problem is structural and derived from a narrow view of the contemporary kuchi. Both the Afghan government and the international community have effectively only reached kuchis at the margins—those most desperate and destitute at the IDP camps and those few that are settled and prosperous, a segment covered by national development programs. The many kuchi that practice nomadism are thus stuck in limbo.

Beyond well-intentioned frameworks, the Afghan government must provide concrete solutions that both target the majority of the kuchi and address their priorities. In turn, the kuchi need to come to terms with the reality that they can no longer afford to be distinct from the state. The kuchi must embrace the recently formed institutions and attempts to incorporate them into the broader system as well as learn how to better advocate for themselves. Addressing the kuchi issue is critical, not only on humanitarian grounds, but for Afghanistan's success as a nation. The kuchis are a part of so many key issues facing the country—displacement, the livestock sector, ethnic conflict and land-use disputes, to name a few—that Afghanistan's reconstruction and development will be incomplete until the issue is addressed.

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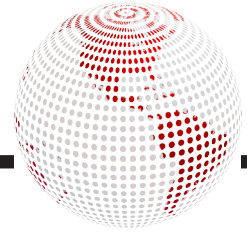
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Photo Courtesy:

"Kuchi Child." Wikimedai Commons. 3 April 2010. [http://commons.wikimedia.org/wiki/File:Goatherd\\_child\\_-\\_Afghanistan.jpg](http://commons.wikimedia.org/wiki/File:Goatherd_child_-_Afghanistan.jpg)

# No Guts No Glory:

## Essential Elements For Post-War Reconstruction



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Joint forces commanders have successfully contributed to the formation of democratic nations in the aftermath of modern wars.<sup>1</sup> Where joint force commanders and governments focused on the four essential elements of long-term U.S. commitment, education, rearmament and reindustrialization, democracies have been produced. This is proven true by a century of United States joint and combined post-war operations in Germany, Japan, and Korea. Today, joint and combined forces in Iraq and Afghanistan are contributing to the U.S. goals of bringing freedom and democracy to those nations. By focusing its efforts in the areas of long-term U.S. commitment, education, rearmament and reindustrialization, U.S. forces can bring about democracy and economic strength in future post-war operations.

### **Long-term U.S. Commitment**

*A faithful friend is a strong defense: and he that hath found such an one hath found a treasure.*

**Ecclesiasticus 6:14**

Long-term U.S. commitment is critical to producing post-war democracies. If the U.S.

commitment is weak, democracy will fail. A case in point was the U.S. occupation of Cuba following the Spanish-American War. The U.S. occupied Cuba briefly from 1898 to 1902.<sup>2</sup> After elections in 1902, U.S. forces left Cuba, returning only briefly in the following years to quell revolts.<sup>3</sup> Lacking a long-term U.S. presence, democratic traditions failed to take root. Moreover, industrialization failed to take place. Eventually, repressive military regimes took power, ultimately abdicating to Castro and his comrades in 1959.<sup>4</sup> Without a long-term U.S. commitment, as reflected by boots on the ground, democracy failed in Cuba.

The two occupations of Germany offer a contrast to Cuba in the effects of U.S. commitment and boots on the ground. The U.S. occupied Germany briefly after World War I. After U.S. troops departed, the German economy declined and society degenerated to the point that the weak Weimar government succumbed to Hitler.<sup>5</sup> In contrast, the second U.S. occupation, with a longer troop commitment, after World War II, yielded better results. That occupation lasted approximately

seven years. During that time, the American military government purged Nazis from power, fed the hungry, secured West Germany against Russian attack, and poured in millions of dollars for reconstruction.<sup>6</sup> Under the umbrella of U.S. protection, Germans formed a democratic federal government, rebuilt heavy industries, and rejoined the community of European nations as an equal and peaceful partner. Boots on the ground produced democracy.<sup>7</sup>

U.S. commitment also produced democracy in South Korea. After the Korean War, U.S. forces remained in South Korea to provide a security umbrella against North Korean, Chinese, and Russian aggression. Under that U.S. security umbrella, South Koreans built a new nation. Although power changed hands between a number of regimes, including both elected leaders and military strongmen, the stabilizing presence of U.S. forces ultimately produced democracy.<sup>8</sup> By their own sweat and blood, the Korean people transformed their nearly illiterate agrarian society into an international economic power during a span of forty years.<sup>9</sup> Today, South Korea's educated citizens lead powerful world-class corporations in heavy industries, as well as in cutting-edge information technologies.<sup>10</sup>

U.S. commitment also pushed Japan on its way toward the democratic economic superpower that Japan is today. In the aftermath of World War II, Japan's industry was destroyed and its army defeated.<sup>11</sup> Japan also faced Communist giants China and Russia across the straits. However, instead of devoting men and money to rebuild a large standing army, the U.S. security umbrella allowed Japan to focus on rebuilding its infrastructure and industry.<sup>12</sup> The partnership with the U.S. allowed the Japanese to focus on rebuilding their economy and society. Long-term U.S. commitment produced democratic institutions and a world-class industrialized nation.

Democracy in Iraq requires long-term U.S. commitment. History teaches us

that a long-term substantial commitment of U.S. forces is necessary to produce a post-war democratic society. Historically, U.S. commitment has entailed multiple combat divisions as occupation forces. Development of Iraq requires such a commitment. U.S. forces provide a stabilizing force in southwest Asia. The U.S. security umbrella allows Iraqis to build democratic institutions. Iraqis can also rebuild their armed forces and industries. U.S. forces can provide doctrine and tactical assistance to the new Iraqi army and conduct exercises with those forces. Long-term contact with U.S. personnel will also lead to a better understanding between our cultures.

### **Rearmament**

*A well-regulated militia, being necessary to the security of a free State, the right of the people to keep and bear arms, shall not be infringed.*

#### **U.S. Constitution, Second Amendment**

Rearmament is the second essential element for post-war democracy. The U.S. experience in Germany, Japan, Italy and Korea shows that a strong army is essential for the rebirth of a free nation. In each of those cases, after an initial hesitation, the U.S. promoted rearmament as a means of self-defense for the new nations.<sup>13</sup> In doing so, the U.S. entered into formal defense alliances, equipped the new armies, and also trained with them. Such actions produced strong military ties between the U.S. and the new post-war democracies.<sup>14</sup> Ultimately, the strong defense forces in Germany, Japan, Italy and Korea and their strong U.S. alliances deterred Soviet and Chinese aggression.<sup>15</sup>

Military service also benefits the work forces of post-war countries and contributes to reindustrialization. Compulsory military service provides discipline to youths. In countries striving for industrialization, military service provides youths with discipline, as well as work experience inside a large modern organization, giving them familiarity with procedures and chains of command.<sup>16</sup> In the armed forces, soldiers learn small-unit leadership skills and gain experiences



*American soldiers are attempting to engage with local communities*

in working toward organizational goals. These experiences build self-confidence in youths and prepare them to succeed in large business organizations. As a case in point, at the end of the Korean War, South Korea began as an agricultural nation with only a 22 percent literacy rate.<sup>17</sup> After the war and in alliance with the U.S., Korea built a highly trained and complex defense force. In a parallel transformation, Korea moved from an agricultural economy, transitioned through light and heavy industries, and now plays a leading role today in computer products and internet services.<sup>18</sup> The disciplined and determined work force that made the Korean economic miracle possible was the officer corps created in the armed forces, as well as the draft soldiers who were trained in technical skills in the armed forces.<sup>19</sup>

Military service also builds national unity. Military service, either voluntary or compulsory, brings together individuals from all parts of a country, crossing racial, religious, cultural, and perhaps class lines.<sup>20</sup> In the armed forces, the training cadre then breaks down the differences between recruits and rebuilds them into cohesive military units. Soldiers train together and learn about the merits of each other's cultures through first-person experiences, instead of through prejudice

and propaganda. They build friendships and confidence in each other for success on today's training field and tomorrow's battlefield. After training, soldiers may also be stationed in parts of the country other than their native/tribal lands, providing additional opportunities to learn about the diversity of their nations. Thus, travel benefits youths and military service builds national unity.

Admittedly, rearmament brings risks of military dictatorship and repression. However, such fears are misplaced. Some of the most notorious dictators in modern times were civilian politicians, such as Hitler and Castro. In contrast, where U.S. alliances and U.S. forces were present, military coups were tempered. In Korea, successive coups under Generals Park and Chun did take place in the presence of U.S. forces.<sup>21</sup> Democracy and free economics ultimately prevailed after those military regimes lost credibility and the population demanded change.<sup>22</sup> The powerful U.S. military presence tempered any military crackdown and lent credibility to U.S. calls for peaceful regime change. In contrast, where there is no U.S. military presence, such as in Burma today, the U.S. has little leverage against military regimes and less hope exists for economic growth or political freedom.

Rearmament contributes to the attainment of U.S. goals of freedom and democracy in Iraq. In Iraq, rearmament is necessary to protect against external threats. Military service also benefits Iraqi youths by exposing them to other cultures coexisting within their nation. Most importantly, military service produces a cadre of disciplined leaders for a stronger future Iraq.

## **Education**

*Education makes a people easy to lead, but difficult to drive; easy to govern but impossible to enslave.*

### **Baron Brougham and Vaux**

Education is the third essential element for post-war democracy. In order to successfully compete on the world market, nations must upgrade their citizens' education

to world-class levels. Otherwise, market forces bypass nations, just like individuals, in seeking the best qualified candidates. Nations that provide modern education to their workforces succeed in building world class economies and democratic governments. For example, after World War II, Japan decided that education was the key to modernization.<sup>23</sup> The Japanese distributed educational opportunities in accordance with merit through demanding nation-wide college admissions tests.<sup>24</sup> They also provided funding for Japanese youths to study at U.S. and European universities at government expense.<sup>25</sup> The Japanese commitment to education and the improvement of human capital paid off in the form of their world-class economy today.

***“A renewed emphasis on education in Iraq will also yield benefits by producing trained business leaders, as well as future political leaders.”***

Education gives students confidence in their own ideas. Education exposes students to ideas outside of their own culture and provides students with opportunities to test out such ideas. The results are not always pleasing, for example when students stand up and fight for their ideas. Japan endured a number of student riots from their universities in the 1960s, but ultimately, Japan was strengthened, not weakened, by education.<sup>26</sup> In less than fifty years, through education, hard work, and the imagination of its citizens, Japan pulled itself up by the bootstraps to become the second largest industrial power in the world.

Education also strengthens democracy. As shown in Korea, students are a force for political change. After the war, South Korea possessed no natural resources and its population had only a 22 percent literacy rate.<sup>27</sup> Koreans were cognizant of the fact that for their small resource-poor country to make its way in the world, they had to work

long hours, as well as meet global standards in education. Just as in Japan, Korea instituted a harsh nation-wide college admission test to assign prestigious educational opportunities based on merit.<sup>28</sup> Korea also paid for its top students to study in the U.S. for graduate school.<sup>29</sup> Certainly, Korean military regimes also encountered student resistance. The power of education was demonstrated during those confrontations. Although South Korean military regimes cracked down on student protesters, the students ultimately pushed the last military government to its collapse in 1987.<sup>30</sup> The pen proved to be mightier than the sword. Education made Korea a strong nation, both militarily and economically.

The power of students to force political change was also demonstrated in Cuba. After the Spanish American war, the U.S. military government, led by General Leonard Wood, built schools and modernized the university before quickly returning the government back to Cubans in 1902.<sup>31</sup> Succeeding Cuban governments failed to develop education and failed to raise literacy above 30%.<sup>32</sup> Despite that pathetic education effort, students brought about political change by force. The political student movement, in a coalition with soldiers under Batista, overthrew the U.S.-backed government.<sup>33</sup>

A renewed emphasis on education in Iraq will also yield benefits by producing trained business leaders, as well as future political leaders. Iraqi culture places a high value on education. Pre-war Iraq had a growing class of professionals.<sup>34</sup> Education was a reliable route for upward social mobility in pre-war Iraq.<sup>35</sup> During that era, college students were accorded privileges, such as exemptions from the draft during the murderous Iraq-Iran War. Accordingly, U.S. efforts toward reeducation would be welcomed by Iraqi society.

### **Reindustrialization**

*Seest thou a man diligent in his business?*

*He shall stand before kings.*

**Proverbs 22:29**

Reindustrialization is the fourth

essential element for post-war democracy. Without industrialization, post-war countries are weak and easy prey for dictatorship. With industrialization, even former totalitarian countries grow into democratic societies. Germany provides a contrast between one government that promoted industrialization and others that did not. The Weimar and the East German regimes collapsed after failing to achieve post-war reindustrialization to compete on the world market.<sup>36,37</sup> In contrast, in post-war West Germany, the government and the people committed to reindustrialization, and to working long hours at low wages to achieve it. The government promoted exports to drive national recovery and reindustrialization.<sup>38</sup> The government also provided large subsidies to promote growth in heavy industries, such as ship and aircraft manufacturing.<sup>39</sup> Through its central bank, the government controlled inflation and provided economic stability.<sup>40</sup> Through these commitments and hard work, Germany attained world-class economic status and a democratic society.

The Japanese and Korean “economic miracles” are additional examples of successful post-war reindustrialization that produced democracy. In the aftermath of the war, half of Japan’s heavy industries laid in ruins.<sup>41</sup> During the U.S. occupation, the Japanese vowed to reindustrialize and to rebuild their nation’s wealth and power, in order to guarantee their survival as a sovereign nation.<sup>42</sup> They committed to the education of their youths. They committed to reinvestment and accepted substandard living conditions in order to plow savings into investments in heavy industries.<sup>43</sup> Japanese companies competed for greater market share in the world market through aggressively price-cutting.<sup>44</sup> The Japanese government also provided tax exemptions and other subsidies to heavy industries.<sup>45</sup> The government pushed businesses to

move from medium to heavy industries, then ultimately into knowledge industries. By the 1980s, Japan succeeded in attaining the status of the second largest economy in the world, as well as becoming a leading democratic nation.

Korea’s rise to world-class status though reindustrialization is also inspirational. After the Korean War armistice, South Korea was a nation of illiterate peasants. It had neither natural resources nor industry; North Korea controlled those assets on its side of the demilitarized zone.<sup>46</sup> Yet South Koreans committed to the survival of their nation as an independent state and to the attainment of world-class economic power. They educated their workforce through military training and university instruction.<sup>47</sup> Like the Japanese, they also accepted lower standards of living to pour savings into investments in heavy industries. The Korean government provided tax benefits, contracts, and subsidies to encourage heavy industries and exports.<sup>48</sup> Today, Korea has attained leadership status in heavy industries, as well as in knowledge industries. Moreover, they have overcome repeated military coups and enjoy a stable civilian elected government.

Cuba is an example of what happens where there is no post-war industrialization. After the Spanish American War, Cuba was complacent in economic development and chose to continue with legacy sugar plantations as its main industry.<sup>49</sup> Without its own medium and heavy industries, Cuba relied on imports from the U.S. for more sophisticated goods and services. The Cuban government and businesses did not aim for world-class industrialization. Ultimately, the government was toppled by military strongman Batista, who was later succeeded later by Castro.

Reindustrialization is essential for post-war democracy in Iraq. Development

of its heavy industries will provide Iraq with independence and stability. Iraq has the ability to achieve reindustrialization. Pre-war Iraq had a growing class of professionals.<sup>50</sup> Iraq started development of heavy industries, such as steel and aluminum manufacturing, in the 1980s.<sup>51</sup> Iraq also produced its own main battle tanks and AWACs.<sup>52</sup> The launching of a 48-ton three-stage rocket, capable of putting satellites and warheads into orbit, demonstrated Iraq's pre-war technical sophistication.<sup>53</sup> Iraq has the assets and the ability to achieve industrialization once the appropriate environment exists. Just as historical

examples demonstrate, reindustrialization is essential to bring democracy and freedom to Iraq.

Joint forces commanders successfully contributed to the formation of democratic nations in the aftermath of modern wars, including operations in Germany, Japan, and Korea. By focusing efforts in the four essential areas of long-term U.S. commitment, education, rearmament and reindustrialization, U.S. forces can successfully contribute to bringing about democracy and economic strength in Iraq, Afghanistan and future post-war operations.

### Endnotes

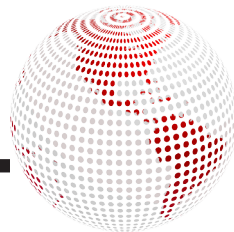
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Photo Courtesy of:

"Provincial Reconstruction Team, Panjshir, Afghanistan." Wikimedia Commons. 3 April 2010. [http://images.google.com/imgres?imgurl=http://upload.wikimedia.org/wikipedia/commons/3/37/Provincial\\_Reconstruction\\_Team\\_Panjshir\\_Afghanistan.jpg&imgrefurl=http://commons.wikimedia.org/wiki/File:Provincial\\_Reconstruction\\_Team\\_Panjshir\\_Afghanistan.jpg&usq=\\_\\_JUbDdtDDaRTybmAnGaEsRSJvLY=&h=1993&w=3000&sz=2948&hl=en&start=1&um=1&itbs=1&tbnid=U-LJUOKg8a3M:&tbnh=100&tbnw=150&prev=/images%3Fq%3Dafghanistan%2Breconstruction%2Bwikimedia%26um%3D1%6h%3Den%26client%3Dfirefox-a%26rls%3Dorg.mozila:en-US:official%26tbs%3Disch:1](http://images.google.com/imgres?imgurl=http://upload.wikimedia.org/wikipedia/commons/3/37/Provincial_Reconstruction_Team_Panjshir_Afghanistan.jpg&imgrefurl=http://commons.wikimedia.org/wiki/File:Provincial_Reconstruction_Team_Panjshir_Afghanistan.jpg&usq=__JUbDdtDDaRTybmAnGaEsRSJvLY=&h=1993&w=3000&sz=2948&hl=en&start=1&um=1&itbs=1&tbnid=U-LJUOKg8a3M:&tbnh=100&tbnw=150&prev=/images%3Fq%3Dafghanistan%2Breconstruction%2Bwikimedia%26um%3D1%6h%3Den%26client%3Dfirefox-a%26rls%3Dorg.mozila:en-US:official%26tbs%3Disch:1)



# Torturing America: Securing the American Interest



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*Even before his inauguration, President Barack Obama made it clear that he believed torture was morally reprehensible and promised that under his administration the U.S. would no longer practice torture.<sup>1</sup> Accordingly, on April 16<sup>th</sup>, 2009 Mr. Obama and the U.S. Department of Justice authorized the release of C.I.A memos detailing the methods of torture that were authorized under the George W. Bush administration.<sup>2</sup> The release of the C.I.A. memos elicited an almost immediate reaction from former Vice President Richard Bruce Cheney, who in an interview with Fox News on April 21<sup>st</sup>, 2009 criticized Mr. Obama for failing to disclose documents detailing the “success” of torture in garnering intelligence that was vital to the U.S. War on Terrorism.<sup>3</sup> Mr. Obama’s efforts to discredit torture as a justifiable tool for preserving U.S. national security and Mr. Cheney’s rebuke of those efforts attest to the importance and contentious nature of the debate about whether torture is in the U.S national interest.*

*Using this debate as motivation, I answer the question of whether or not the use of torture is in the U.S. national interest. To do this, I first chronicle the history of U.S. torture practices since the Cold War to provide a reference point for the rest of the paper. Second, I empirically demonstrate the negative impact of these practices on international U.S. credibility, the War on Terrorism and U.S. presidential approval ratings. Third, I consider the theoretical value of torture in context to its empirical utility as an intelligence-gathering tool, and vis-à-vis possible alternatives, to ultimately make a qualitative assessment of torture’s actual utility for preserving U.S. national security. Finally, I compare the international and domestic consequences of U.S. torture (section 2) to its actual utility (section 3) to ultimately conclude that torture is not in the U.S. national interest.*

## **U.S. Torture: Establishing a Reference Point**

Today’s brand of U.S. torture originated from a twelve-year CIA research effort initiated in 1950 whose primary goal was to “crack the code of human consciousness.” As part of this effort, called MKUltra, the CIA conducted chemical experiments with drugs like LSD and behavioral studies on the psychosis inducing potential of sensory restriction and physical constraint.<sup>4</sup> The results of these efforts were codified in the CIA’s 1963 *Kubark Counterintelligence Interrogation* handbook, which claims to teach a CIA officer “what he must learn in order to become a good interrogator” and asserts that “sound interrogation...rests upon knowledge of the subject matter and on certain broad principles, chiefly psychological.”<sup>5</sup> Over the

next thirty years the C.I.A. promulgated the *Kubark* methods of torture and those of the 1983 *Human Resources Exploitation Manual* within the U.S. intelligence community and among anti-communist allies in Asia and Latin America.<sup>6</sup> Even after the end of the Cold War and U.S. ratification of the UN Convention Against Torture, the U.S. continued to torture under the 1996 War Crimes Act and through programs like “extraordinary rendition.”<sup>7</sup>

After the September 11, 2001 President George W. Bush swiftly expanded the CIA’s torture authority beyond even Cold War and Vietnam War levels.<sup>8</sup> As part of this expansion Bush “suspended” the Geneva Conventions as they applied to the War on Terror and authorized the indiscriminate rendition of High-Value Detainees (HVD)<sup>9</sup> to at least 8 nations in Northern Africa, Eastern Europe

and Asia that were notorious for torture.<sup>10</sup> The impetus for expanding the rendition program and creating a network of secret prisons or “black sites” came in the wake of fear that followed the 9/11 attacks and from the CIA’s desperation to detain HVDs without legal constraints.<sup>11</sup> As the 2004 *Background Paper on CIA’s Combined Use of Interrogation Techniques* describes in general, HVDs were subjected to nudity, sleep deprivation, psychological and physical duress through insult slaps to the face and abdomen, slamming of the face against walls, and other actions reminiscent of the *Kubark* methods of torture.

The experiences of Abu Zubayada and Khalid Sheikh Mohammed, some of the CIA’s highest-value detainees, provide a more detailed exposition of torture under the Bush administration. Zubayada was electrically shocked and locked in a small coffin that was “too small...to stand or stretch out” and required him to “double up his limbs in a fetal position.”<sup>12</sup> Zubayada, along with Mohammed and other HVDs, was also water-boarded, forced to stand naked in frigid temperatures for extended periods of time, deprived of sleep, and forced to listen to panic-inducing American music from artists like Eminem.<sup>13</sup> Additionally, according to a U.S. Justice Department memo released in 2005, Mohammed was water boarded 183 times, while Zubayada was water boarded 83 times.<sup>14</sup> Other atrocities resulting from U.S. torture include the deaths of two Afghan prisoners at Bagram Air Base in December 2002 who were “short-shackled...for days on end” and officially died, according to a military report, of “blunt force injuries to the lower extremities.”<sup>15</sup> Unfortunately, despite this episode the Afghan “black site” at Bagram remains open today with no prospects of being shut down.<sup>16</sup>

Additionally, the brutal interrogation methods that were initially used only against HVDs at CIA “black sites” made their way into detention centers like Abu Ghraib.<sup>17</sup> Former Defense Secretary Donald Rumsfeld, impressed by the results of the extreme

interrogation rules used at Guantanamo Bay, ordered the “Gitmoiz[ation]” of Iraq. Additionally, despite being required to abide by the Geneva Conventions, Major General Geoffrey Miller was committed to applying his Guantanamo Bay experience at Abu Ghraib. Even Lieutenant General Ricardo Sanchez, the senior commander of the U.S. forces in Iraq, willingly authorized harsh interrogation methods such as sleep deprivation, military dog attacks, and uncomfortable temperature exposure.<sup>18</sup> Finally, mysterious CIA operatives, to whom U.S. Brigadier General Janis Karpinski referred to as “disappearing ghosts,” introduced psychological torture, as well as forced nudity and explicit photography to Abu Ghraib.<sup>19</sup> U.S. adoption of Cold War style interrogation practices akin to torture in Iraq ultimately resulted in significant human rights violations and even unintended death.<sup>20</sup>

### **Torturing America: The Consequences of Using Torture**

In order to determine if the use of torture is in the U.S. national interest, it is important to assess its costs. The 9/11 terrorist attacks lead the Bush Administration to revitalize Cold War U.S. torture policies, which has had several negative international and domestic consequences for the U.S. Specifically, U.S. torture since the 9/11 attacks has decreased international U.S. credibility, increased global terrorism and harmed U.S. presidential approval ratings.

#### ***International Credibility***

First, using torture undermines international U.S. credibility because U.S. insistence on international adherence to human rights norms and simultaneous use of illegal torture practices casts the U.S. as a hypocrite in the eyes of the international community. Dr. Joseph S. Nye, Jr. and Richard L. Armitage agree when they argue “[America] cannot denounce torture and waterboarding in other countries and condone it home.”<sup>21</sup> To be sure, a report released by China in 2008 used U.S. secret prisons and illegal U.S. torture

practices to accuse the U.S. of hypocrisy in condemning China's human rights record.<sup>22</sup> Moreover, in 2006 Vladimir Putin accused the U.S. of hypocrisy in criticizing Russia's human rights record with veiled references to illegal U.S. interrogation methods and use of force.<sup>23</sup> Indeed, in maintaining a hypocritical policy of torture the U.S. not only undermines international human rights norms, but also subsequently harms its national interest when those norms become necessary for preserving U.S. national interests (e.g. when American soldiers are captured by other nations).<sup>24</sup>

Moreover, many nations use U.S. use of torture to justify their own policies. For example, when questioned by the UN in 2007 about its widespread and illegal torture practices, Sri Lanka defended itself by citing U.S. torture at Abu Ghraib, Guantanamo Bay and CIA "black sites."<sup>25</sup> Additionally, President Hosni Mubarak defended Egypt's use of military tribunals for trying suspected terrorists by claiming that U.S. suspension of international human rights laws and use of military tribunals in cases of suspected terrorism vindicated Egypt of all criticism by international human rights groups.<sup>26</sup> Indeed, then UN special rapporteur on torture Manfred Nowak agrees that U.S. use of torture has increased the global prominence of torture, as many nations view the U.S. as a model, or at the very least a justification, for their own policies.<sup>27</sup> Similarly, Oxford University's Henry Shue argues that use of torture by a superpower like the U.S. in particular sets an irresistible precedent for weaker nations who may not have alternative counterintelligence resources (i.e. if torture is universally outlawed weaker nations are forced not to use it, but if world leaders break torture laws weaker nations find it irresistible not to follow suit).<sup>28</sup>

Finally, U.S. use of torture undermines U.S. soft power leadership because it diminishes international opinion about the U.S.<sup>29</sup> To be sure, a January 2007 World Public Opinion Poll of 26,000 people across 25 countries revealed that 67% of respondents



*America's brutal treatment of prisoners in Guantanamo and Abu Gharib has tarnished its image abroad.*

disapproved of the way in which the U.S. treated Guantanamo Bay detainees and 49% of respondents (the largest plurality) felt the U.S. had an overall negative impact on the world.<sup>30</sup> The implications of this are significant. For one thing, the U.S. relies on its soft power to gain the support of nations like Germany and Malaysia in the fight against terrorism. If public sentiment about the U.S. among the citizens of key U.S. allies is sufficiently negative, the U.S. may not be able to cooperate with those allies to confront a national security threat. For example, the U.S. may not be able to get permission to bomb an al-Qaeda terrorist cell in Malaysia, or it may not receive German political and military support in starting a campaign against terrorist groups. Moreover, soft power losses become self-perpetuating, as negative international opinion of the U.S. elicits isolationist responses from U.S. citizens that subsequently embolden U.S. enemies like al-Qaeda. Finally, winning the War on Terror necessitates moderate Muslim leadership in the Islamic world. For this, U.S. soft power diplomacy is crucial as it creates linkages between the U.S. and moderate Muslims that can subvert the influence of Muslim extremists.<sup>31</sup> Indeed, without the support of our allies and those living in the Middle East, the U.S. will have a hard time winning the War on Terrorism.<sup>32</sup>

## ***Increased Terrorism***

A recent study that looks at the relationship between torture and terrorism finds that use of torture actually *increases* terrorism globally. The study argues that governments should avoid engaging in torture to combat terrorism, as doing so supports terrorist recruitment by radicalizing populations and increasing sympathy for terrorist causes.<sup>33</sup> Some may argue that reverse causation disproves the study's finding (i.e. countries who face terrorist threats tend to use torture), but an analysis of a robust data set of government physical integrity abuses confirms that the direction of causation, for torture in particular, is indeed that torture leads to terrorism and not the other way around.<sup>34</sup>

***“Government use of torture can alienate individuals loyal to the government and subsequently cause them to actively support and even join terrorist causes.”***

Moreover, the radicalization of the Egyptian Muslim Brotherhood in the 1950s attests to these findings. In 1954, the Egyptian government imprisoned and tortured thousands of members of the Muslim Brotherhood, including Sayyid Qutb, a U.S. educated and moderate member. Qutb's experience with Egyptian torture convinced him that violence against the West was justified; he subsequently wrote several widely influential texts (e.g. *Milestones*) that today inspire terrorist organizations like al-Qaeda to undertake acts of violence against Western nations.<sup>35</sup> More generally, government use of torture can alienate individuals loyal to the government and subsequently cause them to actively support and even join terrorist causes.<sup>36</sup> During a Senate Armed Services Committee Hearing, Alberto J. Mora reported that the first and second most important “identifiable causes of U.S. combat deaths

in Iraq – as judged by their effectiveness in recruiting insurgent fighters into combat – are respectively the symbols of Abu Ghraib and Guantanamo.”<sup>37</sup> Even Matthew Alexander, the leader of an interrogation team assigned to a Special Operations task force in Iraq in 2006 concedes that the U.S. “...policy of torture was directly and swiftly recruiting fighters for al Qaeda in Iraq.”<sup>38</sup>

## ***Presidential Approval Ratings***

Finally, use of torture poses domestic-political challenges for the U.S. in the War on Terror, as citizens and political coalitions opposed to torture may withdraw their support for the government.<sup>39</sup> I use presidential approval ratings, in particular those of President George W. Bush after the May 2004 release of photos from Abu Ghraib to demonstrate the decline in public support that accompanies U.S. use of torture. Presidential approval ratings are one of the leading indicators of public support for government policies, which means demonstrating a decline in presidential approval due to the abuses at Abu Ghraib would support the argument that U.S. use of torture decreases public support for the government.

According to a CBS News Poll Report that surveyed President Bush's approval ratings throughout his presidency, “as the prison abuse at Abu Ghraib came to light... just 41% of Americans approved the job Bush was doing as President – *his lowest rating to date at that point in time* (emphasis added).”<sup>40</sup> Moreover, a CBS News Poll conducted immediately after the first release of photos from Abu Ghraib found that 61 percent of Americans disapproved of Bush's handling of Iraq.<sup>41</sup> Additionally, a CNN poll conducted during the same period found that only 46 percent of Americans approved of Bush, which was the lowest approval rating for Bush in that particular poll up to that point in time.<sup>42</sup> Although Bush's approval ratings rebounded after a his public apology and promise to investigate Abu Ghraib, the immediate and severe decline in presidential approval after

Abu Ghraib demonstrates that Americans are willing to oppose the U.S. government if it engages in torture.

### **Is Torture Worth It?: The Actual Utility of Torture**

Although the absolute consequences of U.S. torture are significant, it is important to consider them in context to the possible utility of torture in preserving the U.S. national interest. In this section I make a qualitative assessment of the actual utility of torture by evaluating the theoretical arguments for why torture is necessary vis-à-vis its utility in practice and possible alternatives. By doing this, I determine whether or not torture has some counterintelligence benefits, and if it does, whether or not there are alternative methods by which to access them.

Alan Dershowitz advances one of the most sophisticated justifications for the necessity of institutionalized torture with his “ticking time bomb” argument. Put in context to today’s War on Terrorism, Dershowitz writes that the “ticking time bomb” case is one that “involves a captured terrorist who refuses to divulge information about the imminent use of weapons of mass destruction, such as a nuclear, chemical or biological device, that are capable of killing and injuring thousands of civilians.” Dershowitz argues that because the use of torture would be inevitable in such scenarios, the U.S. should institutionalize torture by requiring warrants. It is important to note that Dershowitz does not advocate universal torture but feels that because the use of torture would be inevitable in the case of a “ticking time bomb,” the government should institute checks to ensure accountability.<sup>43</sup>

Israel became the first nation to legalize torture based on the “ticking time bomb” after the Landau Commission reported that torture is justified in the case that it is known

“with great certainty that there is indeed a bomb...that it will explode if we do not neutralize it...that it can indeed be

neutralized...that the person in our hands indeed knows where the bomb is located... that if we torture him he will provide the desired information...that if he provides the information we will be able to neutralize the bomb...and that there is no other way of uncovering the bomb...and so forth.”<sup>44</sup>

The Landau Commission’s description attests to the surreal nature of the “ticking time bomb” justification for torture, which is to say that the scenario arises rarely, if ever.<sup>45</sup> Even Michael Gross, an advocate of the “ticking time bomb” argument, recognizes that for countries like the U.S. and Israel the “ticking time bomb” is perhaps the most unrealistic scenario. According to Gross, this is because “The ‘ticking bomb’ scenario holds only if we know with certainty that others besides the suspect will not intervene to move the bomb...”<sup>46</sup> With organized terrorist groups like al-Qaeda, there are many individuals who can relocate the bomb or change the time of detonation, which renders any possible intelligence gathered through torture effectively useless. Moreover, two key logical problems with the premises of the “ticking time bomb” scenario make its conclusion of justified torture unattainable. First, there is no real world scenario in which interrogators would be certain that there is a bomb without it having gone off first. Second, interrogators cannot know with certainty that a suspect has the intelligence necessary to disarm the bomb or that he will willingly provide it.<sup>47</sup>

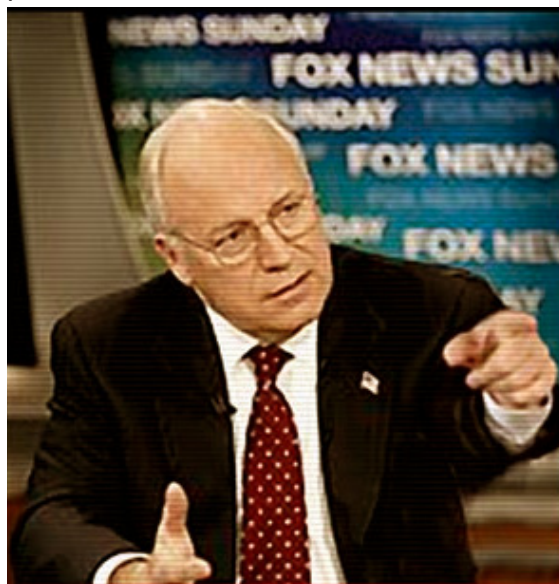
Additionally, use of the “the ticking time bomb” justification puts a government on a slippery slope that can lead to more abusive, widespread and indiscriminate torture. In his essay *Torture in Dreamland: Disposing of the Ticking Time Bomb*, Henry Shue argues that it would be naïve “...to believe that the kind of people who are running the so-called ‘War on Terrorism’ would, if they had discretion about using torture in secret—against ‘ghost detainees’ in ‘black sites,’ say—choose to restrain themselves in spite of the impossibility of accountability.”<sup>48</sup> The use of torture methods by Israel’s GSS beyond those authorized by

the Landau Commission corroborates Shue's concerns.<sup>49</sup> Additionally, the arbitrary time-horizon implied by the imminence of a "ticking time bomb" permits the "justified" use of torture against virtually anyone, as every case can be cast as a "ticking time bomb" (i.e., any threat can be considered imminent regardless of the actual time horizon).<sup>50</sup>

In general, torture is a largely ineffective counterintelligence tool and has very little utility for preserving U.S. national security. During his presidency Bush ardently defended torture as crucial to U.S. national security, and even today, former Vice President Cheney maintains that torture yielded intelligence that prevented terrorist attacks against the U.S. David Rose, however, after interviewing several U.S. counterterrorist officials concludes that, "not only have coercive methods failed to generate significant and actionable intelligence, they have also caused the squandering of resources on a massive scale..."<sup>51</sup> Even former CIA officer Bob Baer agrees that torture is ineffective at gathering useful intelligence, noting that "... you can get anyone to confess to anything if the torture's bad enough."<sup>52</sup> Moreover, despite official claims that use of torture yielded useful intelligence, the CIA has not provided any evidence of stopping a "ticking time bomb" nor has the agency conclusively tied progress in the War on Terror to the use of torture.<sup>53</sup>

Additionally, the interrogations of Abu Zubaydah and Ibn al-Shaykh al-Libi concretely demonstrate the ineffectiveness of torture in garnering actionable intelligence for the War on Terror. First, the CIA interrogated Abu Zubaydah over a hundred times during his first year of incarceration and used the "intelligence" he provided to make worldwide arrests. Unfortunately for the CIA, Zubaydah was mentally handicapped (diagnosed with split personality disorder) and as a minor member of al-Qaeda had minimal knowledge about the organization's plots. Although the Bush administration claimed that Zubaydah provided intelligence that led to the capture

of Khalid Sheikh Mohammed, in reality the CIA already knew the information Zubaydah provided a few years earlier. In fact, the intelligence that actually led to Mohammed's capture came from a tipster to whom the CIA paid \$25 million (and did not torture).<sup>54</sup>



*Former Vice-President Dick Cheney has been adamant in his defense of American torture practices.*

Second, the torture of Ibn al-Shaykh al-Libi, an al-Qaeda paramilitary trainer, is perhaps the most important example of the ineffectiveness of torture and of the misinformation that torture oftentimes yields. Based on al-Libi's reports that Iraq provided al-Qaeda with chemical and biological weapons, Bush made a public case for invading Iraq in his October 7<sup>th</sup>, 2002 Cincinnati speech. Moreover, Bush was so certain about al-Libi's statements that he even ignored the National Intelligence Estimate's conclusion that Saddam Hussein was not likely to provide chemical and biological support to terrorist groups; even Colin Powell trusted al-Libi's information enough to use it in his UN presentation on Iraq's weaponry.<sup>55</sup> As the U.S. now knows, al-Libi's information was false, and the reason al-Libi provided false information was because he sought to pacify those who "were killing" him.<sup>56</sup> Al-Libi's case is indicative of a larger problem with counterterrorism

interrogation: interrogators can never be sure of what a detainee knows or who he is, and thus can never be certain of the integrity of the information they received.<sup>57</sup>

Finally, when assessing the necessity of torture for the U.S. national security, it is important to consider possible alternatives that are perhaps more effective at gathering counterintelligence. Even Dershowitz recognizes in his “ticking time bomb” argument that torture should only be used when all other options have been exhausted, which implies that if there are empirically proven alternatives—which there are—torture should never be used.<sup>58</sup> Perhaps the most effective alternative to torture is not using it. More specifically, intentionally avoiding the use of torture and instead building a relationship of trust with detainees has in practice yielded more and better intelligence than torture. To be sure, when Abu Zubaydah was questioned with the FBI’s “rapport-building” techniques, he revealed logistical details of the 9/11 attacks, identified Khalid Sheikh Mohammed by his alias and even accidentally identified Jose Padilla during small talk.<sup>59</sup> Moreover, Larry Johnson, a former CIA officer and a deputy director of the State Department’s Office of Counterterrorism notes, “it is better to build a relationship of trust...than to extract quick confessions through tactics such as those used by Nazis and the Soviets.”<sup>60</sup> All of this is to say that focusing on trust building in lieu of using torture is an empirically proven better way of securing the U.S. national interest.

Torture clearly provides very little utility for preserving U.S. national security, even in instances of a “ticking bomb” because interrogators can never be certain of the integrity of the intelligence they receive. Moreover, as the cases of Abu Zubaydah and Ibn al-Shaykh al-Libi demonstrate, torture has provided at best redundant information and at worst false intelligence that caused the U.S. to invade Iraq. Finally, even if torture has some utility “rapport-building” is more effective at garnering counterintelligence than torture.

Based on this qualitative assessment, I conclude that torture has very little *actual utility* for preserving U.S. national security.

### **Is Torture in the U.S. National Interest?**

U.S. use of torture under the Bush administration has had several negative consequences. First, U.S. torture has undermined international U.S. credibility as nations like Russia and China label the U.S. as hypocritical for advocating human rights and simultaneously using torture. Second, U.S. torture has undermined international human rights norms, which prevents the U.S. from condemning human rights violations and allows other nations to justify their torture policies (e.g., Sri Lanka). This harms the U.S. national interest when those norms become important for protecting the lives of captured American soldiers. Third, use of torture has undermined U.S. soft power leadership around the world, which impedes global cooperation on the War on Terror and harms the ability of moderates to gain power in the Islamic world. Fourth, torture increases global terrorism by radicalizing previously moderate segments of the international population, increasing sympathy for terrorist causes, and consequently bolstering the recruitment efforts of organizations like al-Qaeda. Fifth, use of torture decreases presidential approval ratings and thus reduces public support for U.S. national security policies.

Moreover, torture offers little actual utility for preserving U.S. national security even in the case of a “ticking time bomb.” Indeed, the premises upon which the “ticking time bomb” justification is situated make the scenario very unlikely to occur in reality, which effectively makes it an argument for why torture should never be used. Furthermore, the vague time-horizon implied by the term “imminent” in the case of the “ticking time bomb” makes it a slippery slope that results in the use of torture against virtually anyone. Additionally, interrogators can never know with certainty that a detainee will provide

actionable or accurate intelligence. To be sure, the cases of Abu Zubaydah and Ibn al-Shaykh al-Libi demonstrate that torture oftentimes yields redundant and even false information, which makes it useless as a counterintelligence tool even in “ticking time bomb” scenarios.

Finally, even if there are some benefits to using torture (e.g. if a cooperative terrorist with exact details of how to disarm a “ticking time bomb” were apprehended), alternative methods like the FBI’s “rapport-building” have been empirically proven to be more effective at garnering intelligence. All of this is to say that torture is not in the U.S. national interest, as not only has torture been counterproductive for the U.S. in the War on Terrorism and not provided any mitigating benefits, there are alternatives that have been empirically proven to be more effective than torture at preserving U.S. national security.

## Conclusion

In this paper I answered the question of whether the use of torture is in the U.S.

national interest. I did this by first chronicling U.S. torture practices since the Cold War, second enumerating the negative consequences of torture for international U.S. credibility and the War on Terrorism, third making a qualitative assessment of torture’s actual utility for preserving U.S. national security, and finally comparing the ramifications of torture to its actual utility to ultimately conclude that the use of torture is not in the U.S. national interest. Indeed, despite arguments to the contrary, U.S. torture has not provided any unique benefits for the War on Terrorism but has had several persistent negative consequences for U.S. national security. Thus, by outlawing U.S. torture, pledging to shut down Guantanamo Bay and releasing information about torture under the Bush administration, President Obama has demonstrated that he is capable of moving in the right direction for securing the U.S. national interest.

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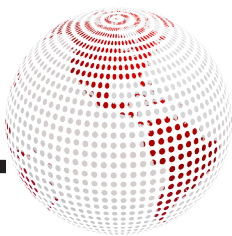
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"Torture". Wikimedia Commons. 3 April 2010. <http://wikimediafoundation.org/wiki/Home>  
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# NATO's Dilemma: Asset Specificity and the Challenge of Securing Afghanistan

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Colgate University, 2010, International Relations

*"We must not—we cannot — become a two-tiered alliance of those who are willing to fight and those who are not. Such a development, with all its implications for collective security, would effectively destroy the Alliance."*  
- US Defense Secretary Robert Gates speaking on NATO in Afghanistan at a 2008 security conference in Munich<sup>1</sup>

On the 60th anniversary of the North Atlantic Treaty Organization's founding, Afghanistan provides a unique opportunity for the alliance to prove its strength beyond Europe and combat global security threats from terrorism and instability.<sup>2</sup> But despite proving its early critics such as John Mearsheimer wrong during the 1990s, NATO's credibility is once again on the line – Afghanistan is proving to be a difficult test of the alliance's political will and military capabilities.<sup>3</sup> NATO's mission – the International Security Assistance Force (ISAF) - has been marred by a lack of collective action amongst its member states and led new critics to claim that NATO has been 'pushed to the edge of collapse' in yet another crisis.<sup>4</sup> Analysts have pointed out to the stark disparity in ISAF troop contribution and financial commitment amongst member states as illustrative of the uneven burden sharing in stabilizing Afghanistan. In this paper, I ask the question: why does the NATO face a problem of weak collective action in Afghanistan? In answering my own query, I will argue that the weakness of collective action in Afghanistan arises from NATO's failure to develop specific assets to deal with the unique security challenges it faces in Afghanistan. In particular, I will show that strategic ambiguity over mission objectives, absence of uniform funding channels and problematic civilian assets combine to raise costs without tangible benefits for contributing members and impede collective action within NATO in the ISAF mission.

## Free-Riding: Evidence from the Ground

Despite the fact that shared risk and responsibility is still regarded as a 'founding principle of NATO,' the ISAF mission in particular presents a classic case of uneven burden sharing. Peter Forster and Steven Cimbala define 'burden sharing' as "the distribution of costs and risks among members of a group in the process of accomplishing a common

goal." The table below illustrates the scenario in Afghanistan.<sup>5</sup>

Such disparities reflect a choice of 'selective commitment' by certain member states.<sup>6</sup> Joel Hillison highlights such behavior — the inadequate contribution to attainment of the common goal — as evidence of free riding by NATO member states such as Belgium, Italy and Norway amongst others.<sup>7</sup> The interdependency of military operations in Afghanistan with civilian tasks of policing and economic reconstruction requires financial and logistical contribution along with military assets; as not *all* member states contribute in these areas towards NATO's goal of stabilization and reconstruction, free-riding by some proves costly for the alliance as a whole.<sup>8</sup>

| Troop Contribution in ISAF, 2008 (%)                        |       |          |      |
|---|-------|----------|------|
| United States   | 43.97 | Belgium  | 0.93 |
| United Kingdom  | 16.87 | Norway   | 0.79 |
| Netherlands   | 3.35  | Portugal | 0.45 |
| Multilateral Aid Contribution to Afghanistan, 2002-2008 (%) |       |          |      |
| United States   | 43.52 | Italy    | 4.19 |
| United Kingdom  | 26.93 | Denmark  | 2.58 |
| Netherlands   | 11.86 | France   | 1.46 |

\* Webber and Sperling, "NATO: from Kosovo to Kabul," 504.

## Assets and Collective Action

Mancur Olson, in examining collective action, argues that in a group setting “unless the number of individuals in a group is quite small, or unless there is coercion or some special device to make individuals act in their common interest, rational, self-interested individuals will not act to achieve their common or group interests.”<sup>9</sup> Despite its current size (with 28 member states), NATO does not appear to be facing institutional problems typically associated with a large scale; Celeste Wallander attributes this to the presence of ‘general assets’ within the alliance such as the North Atlantic Council (NAC), a strong civilian staff and established communication channels.<sup>10</sup>

***“The problem with the ISAF strategy papers is that these represent mostly ‘consensus documents’ and lack detailed expectations or commitment pledges for each member state”***

Hence, what Olson refers to as the ‘other special device’ is the remaining factor which can explain collective action — or the lack thereof — within the NATO’s mission in Afghanistan. Wallander labels these devices as ‘specific assets’ which “facilitate particular transactions and confer efficiency gains.”<sup>11</sup> She argues that in dealing with different sources of instability and threats, alliances need targeted institutional principles, practices and procedures to enable member states to mitigate the security concern. A military threat needs to be addressed with assets that allow the alliance to mount credible defense and, if needed, combat capabilities; dealing with political instability requires assets for mediation and engagement while peacekeeping requires mobile ground forces, multinational command and police-like rules of engagement.<sup>12</sup> For ISAF, it currently faces all of these challenges in Afghanistan: there is an acute security threat from the Taliban

insurgency, a challenge of reconstructing the weak Afghan economy and it needs to be able to secure a stable and transparent government. As Wallander argues, a responsive institution ensures collective action by addressing these diverse mission needs through constant adaptation and development of new specific assets. I will illustrate that in the context of Afghanistan, NATO has failed to develop such a range of specific assets; its repertoire of general assets facilitate necessary cooperation in Brussels but are not sufficient to address the unique security demands in Kabul. The absence of specific instruments and mechanisms — namely strategic ambiguity, absence of an uniform funding structure and problematic civilian assets — limit the scope and raise costs of contribution to ISAF (such as exposure to combat risks and uncertainty in planning for long term objectives) without providing any discernible and immediate benefit to each member state.<sup>13</sup> As a result, member states such as Belgium, Italy and Norway are disincentivized to contribute to the mission objectives which in turn lead to a complex collective action problem.

## The Case of ISAF

Wallander shows that with out-of-area missions, NATO’s “mission-specific command structure needs to be as mobile as its forces.”<sup>14</sup> For the ISAF, the failure to develop the specific assets in security and reconstruction operations means that such a responsive structure has not materialized across its five phases of operations since 2001.<sup>15,16</sup>

### Strategic Ambiguity

ISAF was originally created by UN Security Council Resolution 1386 in December 2001 with military responsibilities limited to Kabul. In 2003, it assumed full command of ISAF in Afghanistan from the US and by 2008, it was responsible for (i) providing law and order, (ii) promoting governance and development, (iii) helping reform the justice system and (iv) training an Afghan police force and army under UNSCR 1883.<sup>17</sup> Within the

alliance, NATO has attempted to adapt and internalize these evolving responsibilities by adopting new strategies and declarations: in the 2004 Berlin Agreement, NATO committed itself to 'sufficiently constitute and [make] operational' Afghan security forces while the 2008 Strategic Vision confirmed NATO's 'long term commitment' to Afghanistan and shift to a 'comprehensive civilian-military approach' while increasingly engaging with neighbors, 'especially Pakistan.'<sup>18</sup>

The problem with the ISAF strategy papers is that these represent mostly 'consensus documents' and lack detailed expectations or commitment pledges for each member state (or the means of following up on these). Julianne Smith and Michael Williams label this as NATO's 'lack of a roadmap.'<sup>19</sup> Institutional ambiguity about the scope and objective of the ISAF mission, most importantly at the tactical level, reflects failure on NATO's part to develop a specific asset that can continually define its mission statement. This infuses uncertainty for each member state, making it difficult to plan for long term military and financial contributions and raises the opportunity cost of commitment. For instance, shortly after the 2004 Berlin Agreement, when the US requested ISAF members to assume selected counter-insurgency responsibilities (originally conducted as part of Operation Enduring Freedom (OEF)), some NATO states balked and cited that, despite their Berlin commitments, combat operations were the purview of the US-led OEF and the preceding UN Resolution required ISAF to engage in stabilization operations only.<sup>20</sup> With mission statements lacking clarity and defined responsibilities for contributing states, NATO members have no incentive to engage in riskier operations of counter-insurgency and are rather incentivized to free-ride in the complex security environment.

Similarly, a 2008 NATO Parliamentary Report cited that several nation states, including Italy and Spain, hold strong to the belief that "the formal responsibilities of the

Alliance itself have always centered almost exclusively on one area: the provision of a safe and secure environment." The report continues to state that these states feel that NATO should not have the lead in providing for democratic development, agricultural reform, or literacy programs, which "more appropriately fall under the responsibility of other organizations and agencies."<sup>21</sup> The German Defense Minister went as far as asserting that, "[Even] this [counter-insurgency] is not what the NATO is supposed to do."<sup>22</sup> This is problematic in the context of the challenges faced in Afghanistan: stabilization efforts need to be preceded by mitigation of threats from the Taliban insurgency and specific assets, in this case institutional guidelines, are necessary to motivate states to engage in the mission in a comprehensive manner, instead of making 'selective commitments'.

Perhaps the most detrimental outcome of this strategic ambiguity is the national caveats. As of 2008, there were as many as 62 caveats in place for the ISAF mission, which had a 'direct negative impact' on mission goals in Afghanistan.<sup>23</sup> Almost half of the forces in ISAF have some form of caveats. These include ban on night-time operations, consultation with national governments, exclusion of specific operations (notably, counter insurgency) and even ban on fighting after a snowfall. The lack of a specific institutional guideline (that systematically outlines expectation from member states) means that ISAF ground commanders have had to shape and compromise their conduct of missions to fit the caveats of national troops — instead of member forces adapting to mission-specific requirements mandated by a clear strategy paper. For instance, Germany provides a large number of troops to stabilization efforts (nearly 9 percent), but imposes restrictions on where German troops can be deployed and on rules of engagement.<sup>24</sup> In 2006, this led Germany to refuse requests by the US to redeploy to the volatile south-eastern region: absence of a well-developed

strategic statement as a specific asset means that member states can opt for self-designed restrictions and consequently hamper the operational effectiveness of ISAF. National caveats forfeit NATO's inherent advantage in intelligence, speed, firepower, and other attributes over any adversary in Afghanistan, and therefore put NATO soldiers at higher risk and impose additional costs on contributing members, creating disincentives from acting collectively.<sup>25</sup>

It is important for the ISAF to swiftly develop a comprehensive and targeted 'road map' if it is to overcome the current strategic ambiguity in its operations. The New Strategic Concept for NATO—a consensus document on strategies to counter new security challenges and expected to be approved in late 2010—is one such opportunity for all member states to articulate their commitments to the coalition anew as well as outline expectations of partner states in complex missions such as the ISAF.<sup>26</sup> Recent progress on the formulation of this strategy paper, recognizing the importance of securing Afghanistan, provides reasons for optimism. A key part of any redefined Strategy Concept should include a reiteration (or realistic revision) of the alliance's benchmark of military expenditure 'at 2 percent of GDP' expected of each member state.<sup>27</sup> Similarly, the concept of civilian-military counterinsurgency needs to be officially adopted as a key focus for the alliance as a whole, combining military commitment with civilian partnership efforts. Renewed commitment outlined in a strategic agreement is likely to motivate member states to contribute proportionally to the crucial mission in Afghanistan.

More importantly, the issue of national caveats needs to be addressed at the tactical level for the ISAF. Any solution would ideally involve a closer level of coordination amongst national force commanders in Kabul who should be granted greater autonomy to exchange information and logistical support in respective mission areas: interaction with military commanders from partner states

should be prioritized over relying on directives from civilian bureaucrats in the respective European capitals. Specifically, an asset in the form of an unambiguous mission manual that specifies expectations of military commanders on the ground will be critical in overcoming these national caveats. Recent successes in Operation Moshtarak in Helmand, though largely a US-Afghan effort, signal scopes of interoperability of different member state forces when there is greater tactical clarity and suggest the possibility of correcting problems of national caveats in future missions.

### ***Absence of Centralized ISAF Budget***

Despite possessing effective general assets, NATO's budget rules appear to perpetuate the inequity in burden sharing, more acutely in high cost and long-term missions such as the one in Afghanistan. When a member state agrees to deploy troops to a NATO operation, that nation is obligated to pay the costs associated with that deployment.<sup>28</sup> Thus, there is a built in disincentive for nations to agree to commit troops to a mission or increase the size of forces already deployed. This complicates efforts for ISAF, especially as additional costs have to be borne to counter the current Taliban offensive and the urgency to secure areas for civilian reconstruction projects to start. For many member states, this budgetary obligation imposes significant domestic opportunity costs: one, they have to allocate portions of their national budget towards ISAF and two, leaders of fragile governments or coalition governments often have to expend serious efforts to convince their legislatures and publics to support deployment and the associated costs. A specific asset—in this case, a common operational funding system—could have otherwise minimized the burden on certain member states with unique domestic political (and economic) conditions; reluctant states could have still committed troops while leaving costs of deployment to be funded by a commonly pooled budget.

Smith and Williams label the approach of the current funding system as one based on “costs lie where they fall.”<sup>29</sup> This system deters nations from going ‘first in’ for a given operation since they have to bear the high costs of establishing the very facilities to start up in a new theater. For Latvia and Estonia amongst other smaller member states, this is particularly problematic: these start-up expenses are prohibitively high and despite their political willingness to contribute, they are disincentivized to take the lead on establishing new mission bases. During Phases I and II, this left the larger member states with the burden of setting up most facilities as ISAF expanded geographically through Afghanistan. Additionally, these ‘entry costs’ (even if borne by a willing ‘first in’ member state) arguably leads to reluctance by states to redeploy to a different theater as they become unwilling to leave behind the facilities they originally funded and constructed, often tailored to the specific requirement of their national forces.<sup>30</sup> This may partly explain the long time hesitance of Germany to redeploy

part of its 3000-member troop contingent to southern Afghanistan despite continued requests by the US and the UK. Having established facilities in northern Afghanistan since the early stages of the ISAF, Germany had no incentive to volunteer or accept request by allies to undertake new operations in the more volatile areas, which could have otherwise benefitted from efforts of a well trained and experienced German contingent. Hence, the absence of common ISAF funding means that states are likely to decide on commitments unilaterally and complicate opportunities to act collectively.

The recent collapse of the Dutch government over whether to extend its mission beyond August 2010 is evidence that the obligation on each member state to bear deployment-related costs remains problematic. To that end, the alliance should ‘rechannelize’ its ISAF budget, that is it should develop a centralized funding system for the mission: each partner state should be asked to only contribute proportionally to a Brussels-based NATO budget as per alliance



*US and British armed forces patrol Sangin District area of Helmand Province in Afghanistan as part of the NATO operation.*

commitments. The North Atlantic Council should remain in charge of allocating a portion of this central budget to the ISAF and the allocated central fund should subsequently be managed by the Kabul-based multinational command structure. Mission commanders on the ground can secure funding according to operational needs by coordinating with the ISAF headquarters in Kabul. In the process, the national units will not have to directly apply for funding to their own governments and publicly burden the political administration at home: a 'rechannelized' budget would eliminate the 'costs lie where they fall' approach with the ISAF Headquarters now technically responsible for managing *all* mission-related expenditure.

### ***Inadequate Civilian Assets***

In a multidimensional security environment where civilian reconstruction efforts are as critical as military successes, especially during the stabilization and transitional phases, ISAF's difficulties have been complicated by the poor quality of civilian assets at its disposal. Perhaps the most notable civilian asset developed by the ISAF is its PRTs: these are civilian-military units assigned to work with Afghan provincial-level officials to provide and promote governance, development and security. And yet, owing to their structures, these PRTs face serious challenges, deterring many member states from contributing to PRT-based operations. A total of 26 PRTs are in place led by 14 different nations, each run using an unique national approach.<sup>31</sup> Officially, the military component of each PRT falls under ISAF command; however, there is no established *modus operandi* (or overall concept of operations), many are dominated by military forces rather than civilian technicians and prefer reporting directly to their national representatives than the ISAF Headquarters.<sup>32</sup> As a result, there is little coordination amongst the PRTs and no scope for exchanging information on best practices. For instance, the Netherlands

channels funding for PRTs directly to the Afghan government instead of through the ISAF mission as it deems that the latter must take responsibility for planning and implementation of projects. In contrast, the US government controls the funds for PRTs itself but for the very opposite reason: it is apprehensive of corrupt Afghan officials misusing the funds and prefers to exercise direct overview of its PRTs.<sup>33</sup> Without a uniform ISAF approach for the PRTs, each member state operate these teams at will, perceive the effectiveness of these civilian assets differently and hence contribute in varying scale and in the process frustrates Afghan, UN and other partners in their efforts to apply resources strategically and effectively.

In addition, some states such as Germany are weary that in some areas, civilian relief organizations should not be too closely associated with the military forces assigned to the PRTs since they feel that "their own security and perceived neutrality is endangered."<sup>34</sup> As a result, many European member states do not provide for an optimum number of civilian and military personnel in their respective PRTs (in addition to being minimally funded, as shown in the Netherlands case) and are hesitant to engage with the Afghan population. Some states, notably France, have even refused to lead a PRT and questioned the NATO's role in operating these reconstruction teams. For what could have been an impactful civilian asset as part of the ISAF's comprehensive civilian-military approach in Afghanistan, the PRTs have been marred by operational deficiencies and differences and limit the channels for member states to contribute through.

It is important to note the ISAF has witnessed the positive impact of an effective civilian asset in another instrument it has developed for itself since Phase III, albeit on a minimal scale: the Operational Mentoring Liaison Teams (OMLTs). These are teams which support the Afghan National Army (ANA) deployments and coordinate between ISAF

and ANA to provide critical Allied support such as medical evacuation. While OMLTs may not be a purely civilian asset, there is much that the ISAF can learn from the OMLT structure to strengthen its repertoire of assets in Afghanistan. These teams are comprised of 12-19 personnel, a small size that ensures mobility and are deployed for at least six months in each theater to build strong relationships with the ANA and maximize mentoring effort.<sup>35</sup> Moreover, there are specific objectives that each OMLT is assigned with along with a tactical guideline that allows for incorporation of feedback from local Afghan units — such strategic clarity combined with flexibility have allowed the OMLTs to concentrate on training ANA forces on the ground while fostering strong connections with Afghans, in this case ANA soldiers. While France has largely led the OMLT-based efforts and there is still a shortfall of the recommended 59 units till date, the OMLTs provide example of a well-developed asset that the ISAF can emulate. The OMLT model — with institutionalized guidelines, responsiveness to changing security needs and an optimum size that facilitates close interaction with locals — allows for an asset to be effective in achieving specific security or reconstruction goals. Such assets in turn provide a channel for NATO member states to contribute into the ISAF mission, especially for those who opt to support reconstruction efforts and avoid military engagement.

In order to address the shortfall of specific civilian assets, the ISAF will need to establish a *modus operandi* for its PRTs: a uniform approach to the operations of these

teams can be initiated by ensuring that they report directly to the ISAF Headquarters instead of their national representatives. This is likely to result in more coordination and exchange of best practices amongst the PRTs. Similar to the OMLTs, these PRTs would have to adopt an optimum operational size, increased interaction with local Afghans and importantly, delineate its specific objectives and timetable for each mission.

## Conclusion

Ivo Daalder and James Goldgeier had suggested that NATO should be expanded to include partners outside Europe in a bid to become a 'global NATO'.<sup>36</sup> And yet those aspirations seem premature before the alliance completes its mission in Afghanistan — and does so successfully. The multidimensional challenges in Afghanistan raise questions whether NATO is capable of redefining itself as a security alliance capable of committing beyond Europe. However, despite these current shortcomings, it is important to remember this is not the first time that the NATO has faced such a challenge. Similar critique was put forth at the end of the Cold War but NATO successfully proved its worth by engaging in Bosnia and Kosovo during the 1990s. Success there was largely attributable to its ability to develop specific assets to address the unique security needs of the operations. And if the alliance is to stabilize Afghanistan, it needs to do the same. This is the only way NATO can ensure the collective action that is an absolute necessity in winning the complex war in Afghanistan.

## Endnotes

- 1 Frank Cook, "NATO Operations: Current Priorities and Lessons Learned," in *NATO Parliamentary Assembly Report 2008*, (158 DSC 08 E, 2008), 14.
- 2 Article 6 of the Charter applies NATO's collective defense to territories of 'the Parties in Europe or North America...to the islands under the jurisdiction of any Party in the North Atlantic area north of Tropic of Cancer'; what lies beyond the confines of this definition 'out-of-area operation'. Afghanistan falls into this latter category.
- 3 Writing in 1990, John Mearsheimer had predicted that 'without a common Soviet threat or an American night watchman', a transatlantic institution such as the NATO would lose its *raison-d'être* and dissolve. John Mearsheimer, "Why We Will Soon Miss the Cold War," in Richard Betts, ed., *Conflict After the Cold War*, (New York: Pearson Longman, 2008), 22.
- 4 Mark Webber and James Sperling, "NATO: from Kosovo to Kabul," in *International Affairs* 85:3 (2009), 491.
- 5 In NATO's 2007 Parliamentary Report, only six NATO members were at or above the benchmark of military expenditure 'at 2 percent of GDP' standard: Bulgaria, France, Greece, Turkey, the United Kingdom, and the United States. Peter Forster and Steven Cimbala, *The U.S., NATO, and Burden-Sharing*, (London: Routledge, 2005), 164.
- 6 Paul Belkin and Vincent Morelli, "NATO in Afghanistan: A Test of the Transatlantic Alliance", *Congressional Research Services Report for Congress*



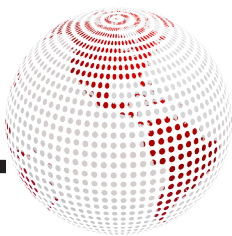
- (August 2009), 22.
- 7 Joel Hillison, "New NATO Member: Security Consumers or Producers?" in *Strategic Studies Institute Quarterly*, April 2009, 3.
- 8 It is important to note that this uneven burden sharing is not so much a transatlantic issue but rather an intra-European problem – along with the US, some European states have been engaging in risky and costly missions in the ISAF but another set of European states opt out of their commitment in Afghanistan. Regardless, such a 'two-tiered' status of the Afghanistan mission is highly problematic, especially in context of the growing Taliban insurgency and a severe crisis of confidence in the Kabul government. Stanley McChrystal, "Commander's Initial Assessment", *International Security Assistance Force Headquarters – Afghanistan*, August 2009.
- 9 Marcus Olson, *Logic of Collective Action*, (Cambridge: Harvard University Press, 1971), 4.
- 10 Celeste Wallander, "Institutional Assets and Adaptability: NATO after the Cold War" in *International Organization* v.54, Autumn 2000, 707.
- 11 Wallander, 707.
- 12 Wallander, 710.
- 13 Well-developed specific assets have been attributed for NATO's success in previous missions. The creation of a new planning staff at SHAPE and a Crisis Coordination Center in Brussels in 1994 allowed for a planned and swift deployment of a joint task force in Kosovo as the crisis there escalated in 1999. Wallander, 718.
- 14 Wallander, 719.
- 15 NATO planned that ISAF operations in Afghanistan would have five phases. The first phase was "assessment and preparation", including initial operations only in Kabul. The second phase was ISAF's geographic expansion throughout Afghanistan completed in 2006. The final three phases would involve stabilization; transition; and redeployment. At the start of 2009, ISAF was operating in Phase III, "stabilization" and Phase IV, the "transition" of security responsibility to the Afghan National Security Forces (ANSF) may follow soon. Belkin and Morelli, 9.
- 16 The fast changing environment in Afghanistan requires ISAF to cope with threats that arise from well organized militants, drug lords as well as splinter local groups and governance challenges require balancing local *loya jirgas* and national government agencies. To that end, specific assets pose a dilemma for ISAF; once developed and utilized successfully, the specific assets lose their usefulness and operational mobility necessitates new specific assets to be deployed.
- 17 Belkin and Morelli, 1.
- 18 Sperling and Webber, 502. Belkin and Morelli, 4.
- 19 Julianne Smith and Michael Williams, "What Lies Beneath: The Future of NATO Through the ISAF Prism", in *Royal United Services Institute Report*, March 2008, 2.
- 20 Belkin and Morelli, 16.
- 21 Frank Cook, "Afghanistan: A Turning Point?" in *NATO Parliamentary Assembly Report 2009*, (172 DSC 09 E), 4.
- 22 Belkin and Morelli, 17.
- 23 As described by Commander of NATO's Joint Forces Command Brunssum. Webber and Sperling, 509.
- 24 Belkin and Morelli, 22.
- 25 Cook, "Afghanistan: A Turning Point?", 3.
- 26 NATO, *Nato's New Strategic Concept – Why? How?* Available on <http://www.nato.int/strategic-concept/what-is-strategic-concept.html>. Accessed March 7, 2010.
- 27 Forster and Steven Cimbala
- 28 Cook, "NATO Operations: Current Priorities and Lessons Learned", 14.
- 29 Smith and Williams, 5.
- 30 Cook, "NATO Operations: Current Priorities and Lessons Learned", 14.
- 31 Cook, "NATO Operations: Current Priorities and Lessons Learned," 5.
- 32 Belkin and Morelli, 14.
- 33 Belkin and Morelli, 13.
- 34 Belkin and Morelli, 12.
- 35 Cook, "NATO Operations: Current Priorities and Lessons Learned," 5.
- 36 Ivo Daalder and James Goldgeier, "Global NATO," in *Foreign Affairs*. 85,5, 2006.

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"Army Patrol in Afghanistan." *Spc. Daniel Love. US Army. 3 April 2010. <http://search.ahp.us.army.mil/search/images/index.php?per=10&page=2&search=afghanistan>*



# Judging Wars:

## *The International Politics of Humanitarian Adjudication*

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The past sixty years witnessed a global proliferation of international courts and tribunals of almost all sizes and purposes. Today, they play important roles in international governance by handing down decisions in compelling areas ranging from global trade to environmental protection. In the past two decades, their reach has even extended into the realm of armed conflict and humanitarian policy. However, unlike domestic courts, international tribunals lack centralized enforcement mechanisms. Does this follow the classical assumption that they are merely toothless tigers and instruments to further state interest? This paper attempts to dissect the under-theorized and complex activity of international humanitarian adjudication. It seeks to understand how the judging of war crimes differs from judicial policy-making in other less controversial areas. It contends that even though states retain significant influence over the behavior of international humanitarian courts, the latter are not entirely irrelevant in contemporary international affairs. The establishment of two ad hoc UN tribunals and the recent inauguration of the International Criminal Court provide

researchers with important case studies to test these propositions.

The six decades after the end of World War II saw the flowering of adjudicative institutions on multiple levels of international governance. More than fifty international courts and quasi-judicial organizations have been set up only in the past two decades.<sup>1</sup> As of 2006, at least seventeen "long-standing" tribunals which use international law and issue binding judgments to resolve disputes were in active operation.<sup>2</sup> International adjudicatory bodies have become one of the main sites for the coordination of global and regional policies, from "multibillion dollar" trade disputes to the use of seabed resources<sup>3</sup> and from labor standards to environmental regulation.<sup>4</sup> Many international courts now impact profoundly on international politics. For instance, the European Court of Justice constantly weakens state power<sup>5</sup> by acting as an institutionalized mechanism of transnational conflict resolution within the European Union.<sup>6</sup> The World Trade Organization (WTO) Appellate Body has been regarded as instrumental to the emergence of a set of coherent world trade norms.<sup>7</sup>

By the 1990s, the reach of international

judicial institutions has finally extended into the politically sensitive areas of armed conflict and humanitarian policy. Special humanitarian tribunals have been set up to manage cases from the former Yugoslavia and Rwanda. Mixed courts consisting of both international and domestic judges were created in states like Cambodia and Sierra Leone. On 1 July 2002, the long-awaited permanent International Criminal Court (ICC) was formally inaugurated. It remains a question whether international humanitarian adjudication, like European or trade adjudication, can generate new norms regulating state conduct and alter the political landscape of international affairs.

### **Judging the Sovereigns: International Tribunals in International Politics**

Traditional diplomatic methods of conflict resolution no longer dominate the scene as the only major means to settle international disputes. Legalization is now gaining prominence. International tribunals, involved in virtually every area of international conflict, often appear physically like domestic courts – their members, who wear robes,

are called “judges;” they adopt adversarial systems; depend on legal arguments; and deliver reasoned and binding public rulings.<sup>8</sup> Brubaker advocates that an accelerated legitimation of international judicial bodies will further enhance the public confidence in the rule of law and motivate both governmental and private parties to rely on international law to resolve conflicts, protect individual rights, and facilitate political stability.<sup>9</sup> However, to draw an analogy between international and domestic courts can be misleading. The “critical difference” between the two is that the former lacks an effective and coercive state apparatus to enforce their decisions.<sup>10</sup>

In international relations theory, realists and some rationalists contend that international legal institutions, if not also international law itself, are created by influential and self-interested states to further their political objectives.<sup>11</sup> Writing within the rational choice tradition, Guzman argues that the “primary role” of international tribunals is simply “informational.”<sup>12</sup> International courts influence state behavior by clarifying, in a particular dispute, whether a certain state has



*Former UN Secretary-General Kofi Annan visits the International Criminal Tribunal for Rwanda*

violated the rules of international law. This declaration of the law will indirectly shape the future behavior of other states when they experience a similar situation. Posner holds a more pessimistic view. For him, the profusion of international courts is “a sign of the weakness of the international system, not its strength.”<sup>13</sup> In other words, the installation of new specialized courts is an outcome of the failure of states to manipulate existing generalist tribunals.

Apparently, liberal democratic states are more likely to submit to the jurisdiction of international tribunals as opposed to undemocratic regimes.<sup>14</sup> But when compared to smaller states, major powers, whether democratic or not, tend to be reluctant to let international judges intervene with their disputes. The United States, the remaining global superpower after the Cold War, adopts a somehow ambiguous attitude towards international courts. On the one hand, it opposes international criminal judiciaries for their potential roles as scrutinizers of transnational American military operations, and on the other hand, it is less hostile to the use of judicial settlement in economic areas like trade.<sup>15</sup> In contrast, smaller states are typically more content with international judicial arrangements, because supranational courts can provide them with greater security of interests before powerful states.<sup>16</sup>

However, it may be naïve to argue that international rules are solely dictated by powerful states, and material power relations dominate everything in international affairs.<sup>17</sup> Through international dispute resolution and a variety of other mechanisms, international norms can be relevant even to powerful states. International adjudication, like other forms of “formal triadic dispute resolution,” can “substantially mediate the effects of material power resources” and “dilute...the effects of material disparities” by forcing parties to argue within normative frameworks and precedent structures. As Sandholtz and Stone Sweet argue, when third-party judges are

asked to resolve disputes, their authoritative interpretations of pre-existing rules will inevitably modify the norms that structure international relations.<sup>18</sup> Using the WTO as an example, they suggest that international adjudication, in the form of “judicialization,” in fact serves a form of “socialization” which enables states to gain experience in dispute resolution and benefit from the enhanced certainty of interpreted legal rules.<sup>19</sup> In a sense, international adjudication is paradoxical. Being creative at times, international tribunals neither engage in a mechanical process of rule application nor a guarantee to the settlement of all international disputes.<sup>20</sup>

International courts stand in fragmented political universes. Although officially created to interpret international law, they are actually something more. In addition to being one among many forms of dispute resolution mechanisms, many international tribunals are political actors in their own right. Inevitably, states, especially the powerful ones, can exert immense influence on the selection of judges, the compliance of judgments, and sometimes also the course of judicial policies. But international adjudicators can also make use of the fragmentation within the existing system to create new norms that may have the effect of gradually adjusting the state’s definition of interests, if not also state conduct.

## **The Judicialization of International Humanitarian Law**

Contemporary international humanitarian law, or the law of armed conflict, reinforces the classical *ius in bello* or “law in war.”<sup>21</sup> Traditionally, humanitarian norms were largely customary in nature and deeply influenced by religious and philosophical thinking.<sup>22</sup> Modern international humanitarian law can trace its roots to a strand of Christian just-war theory.<sup>23</sup> But what we know as the law of armed conflict today really began life by the latter half of the nineteenth century. The “internationalization of humanitarianism” has been made possible by a network

of international institutions and non-governmental organizations — they helped “embed practices of humanitarianism in... law.”<sup>24</sup> The foundation of the International Committee of the Red Cross in 1863, the conclusion of the first Geneva Convention one year later, the Hague Regulations in 1899 and 1907, the Hague Convention in 1899, and the four Geneva Conventions in 1949, added momentum to the legal codification of humanitarian norms. Instead of articulating individual human rights during times of warfare, armed conflict norms mainly aims to prevent the infliction of unnecessary suffering on combatants and the abusing of war prisoners, civilians, and surrendered combatants in international and domestic armed conflicts.<sup>25</sup> Unfortunately, the ongoing efforts of lawyer-diplomats and norm entrepreneurs to legalize humanitarian law had not reduced the “savages of war.”<sup>26</sup>

Before the twentieth century, international conflicts were frequently settled by war and not judges.<sup>27</sup> Indeed, the International Military Tribunals of Nuremberg and Tokyo had been established after the Second World War but their decisions had “no significant precedential effect so far.”<sup>28</sup> Even after the Cold War, international proceedings against war crimes were largely impractical.<sup>29</sup> Like the Korean War, most international armed conflicts did not have a clear date of conclusion and lacked unconditional surrender. Humanitarian interventions have sometimes been utilized as one of the measures of enforcement. In other situations, media attention, education programs, promotional and campaigns serve as important means to encourage compliance with humanitarian norms.<sup>30</sup> However, humanitarian intervention may easily conceal predatory intentions.<sup>31</sup> Things began to change in the 1990s. After the demise of Soviet communism, the world saw the creation of two UN *ad hoc* criminal tribunals, and several other special and hybrid criminal courts. In 2002, the ICC, the first permanent humanitarian court in history,

was inaugurated. Thereafter, the judicial development of humanitarian norms or the judicialization of international humanitarian law began to take flight. Perhaps, less enthusiastic states have started to realize that adjudication can help parties to avoid a return to costly armed violence in the process of achieving a “sub-optimal” outcome.<sup>32</sup>

### **International Humanitarian Adjudication-in-action**

Around 1991, widespread genocide, mass-rape, and abuse of non-combatants took place in a crumbling Yugoslavia. In response, North Atlantic Treaty Organization (NATO) forces launched an extensive bombing campaign against Serbia.<sup>33</sup> The UN Security Council also established the ICTY over the region to oversee the adjudication of “war crimes, grave breaches of the Geneva Conventions, crimes against humanity, and genocide.”<sup>34</sup> The ICTY suffers from many typical problems of international adjudication, albeit more acute in some circumstances. For instance, organizational complications took the Tribunal as long as six years to function normally in 1999. The Judges of the ICTY were further confronted by the unwillingness of state authorities to arrest suspected criminals and help gather evidence. They have also experienced logistical complications.<sup>35</sup> The International Criminal Tribunal for Rwanda (ICTR), another UN-backed *ad hoc* court, was instituted following the global outrage towards the April 1994 genocide which killed 800,000 people.<sup>36</sup>

The judging of humanitarian crimes is a distinct form of social activity that relies heavily on perceived neutrality of courts as a source of legitimacy. Instead of approaching international humanitarian courts as part of an abstract legal system, it may be more accurate to conceptualize them as part of the broader picture of international affairs. Empirical research seems to suggest that international adjudication is less likely to succeed in the area of armed conflict.<sup>37</sup> This may be explained by a

dilemma which troubles international judges. They are often confronted by state elites who fear that international prosecutions may threaten their vested interests. But at the same time, there is an ongoing urge, from almost all directions in the international society, to punish aggressors and enforce the laws of humanity. If judges fail to fulfill their functions as law enforcers, they may be viewed as mere paper tigers. If they act on a particular issue, they may be charged as politically motivated and thus having their perceived legitimacy eroded.<sup>38</sup> These difficulties may account for the small number of indictments in the two UN *ad hoc* tribunals, when measured against the considerable costs and time spent.<sup>39</sup> Similarly, the decisions of the ICTY, the European Court of Human Rights (ECtHR) and the International Court of Justice (ICJ) to reject Serbia's case against the 1999 NATO bombing have been seen by some as nothing more than "political."<sup>40</sup>

***"The judging of humanitarian crimes is a distinct form of social activity that relies heavily on perceived neutrality of courts as a source of legitimacy."***

The ICC is the first permanent international criminal and humanitarian court. It tries some of the most severe humanitarian crimes like genocide, war crimes, and crimes against humanity. The ICC's official stance is to complement that of national courts. It is not supposed to try cases unless the concerned states are unwilling or unable to do so. The Court has a unique institutional structure, which curiously resembles one of an international organization, with an assembly of member state, a permanent secretariat, and a Headquarters Agreement with its host state.<sup>41</sup> It is formally independent from the UN but maintains certain links with the latter. As of 2009, 110 states are parties to the ICC. So far, the Court has focused exclusively on the African Continent, with proceedings activated

in the Central African Republic, the Democratic Republic of the Congo, Darfur/Sudan, and Uganda. In July 2008, the ICC issued its first proceedings against an incumbent head of state — Omar Hassan Ahmad Al-Bashir, President of Sudan.<sup>42</sup>

The ICC has yet to emerge as a global humanitarian institution. To date it has not been backed by powerful states like the United States, China, Russia, India, Israel, and Pakistan, which altogether wield enormous military powers. The United States rejects the vision that the ICC ought to be an institution which exercises centralized coercive authority over states. Accordingly, it is not acceptable for the Court to hold states accountable, even indirectly, through the prosecution of nationals. The ability of the ICC to do so has been viewed as an usurpation of the political authority of other institutions, like the UN Security Council.<sup>43</sup> In addition, politics seems to play a big role in the "highly articulated" process of ICC judicial selection.<sup>44</sup> Not only states, but also international non-governmental organizations like Amnesty International are increasingly interested in influencing the process.<sup>45</sup> Alternatively, from a more wholistic perspective, Oberleitner criticizes that the relevance of international criminal courts is largely restricted to the punishment of a few individuals and that they have little to contribute to local justice or empowerment.<sup>46</sup> Provided that the ICC does not correspond with the interests of the powerful states, Posner predicts that, through time, the only remaining parties to the ICC will be those that are not militarily active outside their own territories.<sup>47</sup>

But these challenges do not necessarily imply that international humanitarian adjudication is utterly meaningless. International criminal courts now employ a range of self-empowerment strategies, including the assertion of inherent powers and the mobilization against any "obstruction of justice."<sup>48</sup> In particular, the ICTY and ICTR have engaged in the progressive development of

international humanitarian legal norms. One of the controversial “primary mechanisms” that the ICTY has used to push forward the boundaries of international humanitarian law as well as its own jurisdiction is a formula enabling the manipulation of customary international law applicable to state practice.<sup>49</sup> It has also asserted ancillary powers to issue binding orders for legal assistance from states and elaborated the implied power to hold individuals accountable when they fail to comply with a summons.<sup>50</sup> Besides, international humanitarian adjudicators have through specific application, interpretation, and modification of humanitarian rules detailed the law of genocide.<sup>51</sup> Sometimes, the ICC manufactures international public policy at the expense of sovereign power.<sup>52</sup> One example is the ICC’s reluctance to defer to state judicial systems by aggrandizing its juridical power and narrowly constructing the principle of complementarity — that it is not only complementary to national judicial power.<sup>53</sup>

In an empirical study of the subject, Burke-White discovers that the relationship between the ICC and the Democratic Republic of Congo during a humanitarian investigation is in reality “far deeper and more complex than the simple substitution model of complementarity.”<sup>54</sup> According to him, the ICC has provided the authorities of the Congo with a “politically expedient solution...to deal with potential electoral rivals,” stirred up a division between those Congolese factions which oppose international intervention and those who favor it, as well as exerting a “deterrent effect” on renegade leaders of that country.<sup>55</sup> Analogous incidents also take place in Uganda, where the ICC’s uncompromising arrest warrants have been viewed at least by some as positive to encouraging the rebel group Lord’s Resistance Army to return to peace negotiations.<sup>56</sup> As such, the ICC has become an actor in domestic political processes, changing policy outcomes, if not also being appropriated as a tool in national

political struggles.<sup>57</sup>

## Concluding Remarks

International courts are more important than ever. However, like other international institutions, they are not entirely free from the political influences of powerful states, transnational actors, and non-governmental organizations. The judicial development of the law of armed conflict through humanitarian adjudication is a distinct form of the judicial settlement of international dispute. Because of the highly controversial and political sensitive nature of humanitarian law-enforcement, international criminal judges may face even more problems than their counterparts in other areas of adjudication.

It is unrealistic to dismiss international courts and humanitarian adjudicative bodies simply as useless only because they can not compel powerful states to comply with the norms of international law. Indeed, even within nation states, whether authoritarian or democratic, domestic judiciaries often fail to ensure powerful executives to abide to its judicial review decisions. International courts, including humanitarian tribunals, are created primarily as dispute resolvers and not administrative policy-makers. Moreover, they are only one among many political mechanisms of international relations and governance. To overload international adjudicators with impractical expectations would not yield productive results. The fact that the ICC and the two UN *ad hoc* tribunals are plagued by criticisms of all sorts does not naturally lead to the conclusion that they play insignificant roles in creating new legal norms and affecting domestic political processes. It is important not to overlook the ability of creative judges to expand their power within a fragmented international order. Judging wars is never a straightforward undertaking.

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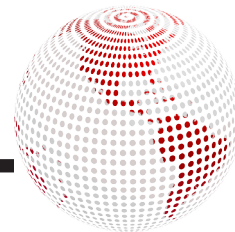
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"Kofi Annan visits Rwanda." Shari. 2 April 2010. [http://shwari.com/ict\\_rarusha.html](http://shwari.com/ict_rarusha.html)



# Human Trafficking, the Japanese Commercial Sex Industry, and the Yakuza:

## Recommendations for the Japanese Government



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Human trafficking is a global issue that is only recently being recognized with global action. The United Nations' Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (UNTIP), the first global initiative of its kind, entered into force in 2003. This protocol defined human trafficking in order to set an international standard for the criminalization and prosecution of trading in persons.

Both the UN and the U.S. Department of State conduct global reviews of state actions to prevent human trafficking. Both reports indicate that human trafficking, especially that related to sexual exploitation, continues to be an issue in Japan. Their reports indicate that Japan implemented some of the policies required by UNTIP and that it has the resources with which to carry out these policies, but the reports suggest that Japanese officials lack the will to carry out these policy initiatives to combat human trafficking. This lack of will by government officials appears to be related to three key factors:

- The demand for sex by Japanese citizens
- The prevalence of sex within the Japanese culture
- The level to which the yakuza, gate-keepers to the commercial sex industry, are engrained in Japanese society

The yakuza worked with the Japanese government during World War II to provide Imperial soldiers with "comfort women." From there, the yakuza expanded into sex tourism, human trafficking of women to Japan, pornographic enterprises, etc. in addition to gambling businesses and the trafficking of drugs and weapons. The yakuza developed working relationships with other organized crime syndicates abroad to globalize their network and their legitimate and illegitimate businesses. The influence of the yakuza reaches almost every island in Japan, and the yakuza continues to be relatively accepted in Japan.

Upon visiting Japan, tourists are bombarded by bright lights and advertisements, many of which advertise for "massage parlors" or call girl services. Often, these shops serve as fronts for large-scale prostitution rings. The Japanese population supports thousands of these "shops", highlighting the high level of demand for the commercial sex industry in Japan.

To decrease human trafficking in Japan, government officials should implement policies aimed at decreasing demand for the commercial sex industry, dismantling the yakuza, increasing support for the

identification of victims, and developing a regional partnership against human trafficking.

### **A Global Issue: Human Trafficking**

Human trafficking is a criminal act that results in a loss of an individual's human rights, increases global health risks such as HIV/AIDS, and promotes the growth of organized crime.

The UN defines human trafficking as:

"the recruitment, transportation, transfer, harboring, or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation."<sup>1</sup>

Exploitation may include forced labor, sex slavery, domestic servitude, forced marriage, organ removal, ritual killings, and the use of children for begging and warfare. The definition for human trafficking applies to the exploitation of people domestically, regionally, and/or globally.

Although human trafficking has existed for centuries, the demand for the criminalization of human trafficking did not gain widespread support until the late 1990's. In 1999, the U.S. and Argentina presented a proposal to the United Nations for a protocol against human trafficking. The UN adopted the UN Convention against Transnational Organized Crime in November of 2000 and the affiliated UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (UNTIP) came into force in December of 2003. The U.S. Department of State began researching global human trafficking trends in 2000 and has since released eight comprehensive reports on the subject. The UN released their first global human trafficking report and launched a global awareness campaign in February of 2009.

As of November 2008, sixty-three percent of the 155 countries reviewed by the

UN had passed laws against human trafficking. An additional sixteen percent of countries surveyed passed anti-trafficking laws covering some aspects of the UNTIP. Additionally, the number of countries implementing UNTIP has doubled in the last few years from 54. Despite these new protocols, though, the UN believes that human trafficking increased over the last year.

The exact number of humans trafficked annually is unknown, but the U.S. Department of State estimates that 800,000 people are trafficked across borders each year (this figure does not include domestic trafficking of persons); eighty percent of those trafficked are women and girls and up to fifty percent of victims are minors.<sup>2</sup> Seventy-nine percent of human trafficking is conducted for the purposes of sexual exploitation.<sup>3</sup>

### **History of Human Trafficking for Sexual Exploitation in Japan**

The issue of human trafficking for the purpose of sexual exploitation is nothing new to the people of Japan. The commercial sex industry has flourished in Japan since before World War II. During World War II, the yakuza, an organized crime syndicate, worked in conjunction with the Japanese government to provide sex slaves or "comfort women" to the members of the Imperial Army. The majority of these "comfort women" were exported from South Korea and other Asian countries after being attacked by the Japanese army.<sup>4</sup> After World War II, the yakuza operated brothels for American servicemen to utilize throughout the U.S. occupancy.<sup>5</sup>

To this day, the Japanese government refuses to acknowledge the criminal activity of human trafficking during and after World War II. Officials claim that women volunteered to provide these services to support their country in a nationalistic endeavor to protect the interests of Japan, but neglect to mention that the majority of the women "offering" their services were Korean, not Japanese. The Japanese government's unwillingness to

accept responsibility for these crimes against women continues to affect the perception of prostitution and the sex industry in Japan today.

### **The Yakuza and Human Trafficking:**

After helping the Japanese government procure “comfort women” for Japanese and then American soldiers, the yakuza continued to develop the commercial sex industry in Japan. The 1970s and 1980s proved to be a prosperous time for Japan and the yakuza. Towards the end of the 1960s, the tourism industry exploded as Japanese citizens earned larger incomes and a strong yen made travel abroad relatively inexpensive. Tourism was not utilized to strengthen cultural education, though. Rather, Japanese men lined up at airports to experience wild weekends abroad with an itinerary focused on sex parties. Although the yakuza did not invent sex tourism, they capitalized on this new tourism frenzy by organizing large-scale sex tours throughout East Asia.



*Many kisaeng, like those shown above, became known as prostitutes in the 1970s.*

The yakuza first exploited this new industry in Taiwan and then Korea. In Korea, they organized trips to *kisaeng* parties. *Kisaeng* is a Korean word traditionally associated with female entertainers, very similar to Japanese geisha, but with the influx of tourists these women simply became known as prostitutes. By the end of the 1970s more than 650,000

Japanese citizens visited Korea annually with eighty percent of visitors listing *kisaeng* as the primary focus of their trip.<sup>6</sup> Sex tourism became so popular that major airlines such as Japan Air Lines listed *kisaeng* parties amongst the recommended tourist activities in their guidebooks for Korea.<sup>7</sup>

During the 1970s the yakuza expanded the sex tourism industry to Thailand and the Philippines where many of the sex workers were sold into sex slavery by their poor families. The Yakuza did not control the industry in these countries; instead they worked with local gang members to bribe local village leaders to convince families to sell daughters into the sex industry. The yakuza also financed many of the clubs in which Japanese men frequented in these foreign countries and led many of the sex tours as guides to the best “sex spots.”

In the early 1980s sex tourism began to receive negative attention. Protesting women’s groups popped up throughout Japan and pressured the Prime Minister to put a halt to sex tourism. Sex tourism decreased but the overall demand for the commercial sex industry did not; therefore, the yakuza changed tactics and began to import foreign women so Japanese men wouldn’t have to risk traveling abroad for sex. Japanese men continue to travel abroad for sex tourism (particularly for sex with children),<sup>8</sup> but the yakuza focuses their efforts on importing foreign women.

### **Response to Human Trafficking by Japanese Officials:**

Japan has not ratified the United Nations’ Protocol to Prevent, Suppress and Punish Trafficking in Persons (UNTIP).<sup>9</sup> Although several news stories highlighted the plight of foreign sex slaves in Japan throughout the 1990’s, the Japanese government did little to decrease human trafficking until 2004. In 2004 the U.S. Department of State placed Japan on the “Tier 2 Watch List”<sup>10</sup> which harmed Japan’s image as a safe and relatively crime free country and motivated the Japanese government to act.

To counteract this negative media attention, Japanese officials created and implemented a National Plan of Action to combat human trafficking in 2004 and in 2005 introduced the offence of buying and selling human beings. The government also defined trafficking in persons in Article 2 of the Immigration Control Act of 2006, criminalizing all forms of exploitation defined in Article 3 of the UNTIP. In order to prevent the human trafficking of sex workers, the Japanese government distributed 500,000 brochures throughout the country concerning the traumas faced by trafficked persons and information on how to receive assistance; distributed 25,000 trafficking awareness posters to police stations, foreign embassies, and consulates; and donated \$79,000 to a Thai NGO for the construction of a dormitory for vulnerable Thai citizens in Japan.

***“In 2004 the U.S. Department of State placed Japan on the ‘Tier 2 Watch List’ which harmed Japan’s image as a safe and relatively crime free country and motivated the Japanese government to act.”***

The Japanese government provides various services to victims of human trafficking in accordance with UNTIP, such as legal protection and legal services, temporary stay programs, medical and psychological support, housing and shelter, and repatriation assistance. The government created the Women’s Consulting Office to aid battered women in the 1990s but it now also serves as a refuge for trafficked women. As of 2006 the Women’s Consulting Office had 47 offices throughout the country with the ability to house 720 women at any point in time.

### **Analysis**

#### ***Demand for the Commercial Sex Industry:***

Sex has played a prominent role in the Japanese culture for centuries. Shunga, erotic art and pornographic paintings and

woodblock prints, dates back to the Edo Period of the 17<sup>th</sup> – 19<sup>th</sup> centuries. Although pornography has changed greatly since that time, it is still a mainstay in Japanese culture. Hentai Anime is a type of pornographic comic originally created in Japan that is now exported around the world; it is estimated to net twenty million dollars in sales in the U.S. alone. In addition, there are over 1,000 companies producing more than thirty new legal and illegal adult videos per day in Japan.<sup>11</sup> These videos are sold in stores and in vending machines. The production companies operate “adult video acting schools” for young women and many of these actresses have online fan clubs. Although it is illegal to produce child pornography in Japan, it is not illegal for Japanese citizens to own or possess child pornography. Many critics of child pornography relate the acceptance of child pornography to the continued demand for sexual exploitation of children by Japanese men.<sup>12</sup>

“Massage parlors” typically serve as fronts for the commercial sex industry. The yakuza are responsible for opening the first “massage parlors” throughout Japan and continue to operation the majority of these shops. This industry has expanded to include *soaplands*, bath houses where men receive personal bath experiences with a beautiful young helper; *fashion-health delivery services*, an escort home delivery service; *image clubs*, a place where men can live out their fantasies with their choice of women in themed rooms; and *pink salons*, semi-public pubs where men can receive oral sex while enjoying sake or beer. These shops have been able to subvert the anti-prostitution laws by limiting their advertising to the non-intercourse services offered.

Surveys conducted throughout Japan indicate that over fifty percent of men have paid for sex and seventy-five percent of junior and high school girls have been solicited by middle aged men.<sup>13</sup> These survey results and the prevalence of sex-related shops indicate



Signboards promote sex-related services at a red light district in Shinjuku, Tokyo.

that the demand for sex is directly integrated within the Japanese culture, and has been for centuries. One signal that Japanese women are pushing for a change in this culture is the demand for female only subway cars during rush hour. The groping of women on railways is a common practice for *chikan*, Japanese for pervert. Over 2,000 arrests were made for the molestation of women on railways last year alone, but experts believe this number represents only a tiny fraction of those women accosted on public transit annually.<sup>14</sup>

#### **Yakuza – A Mainstay in Japanese Culture:**

The yakuza enjoy a relative acceptance by the people, national government, and local police forces of Japan. For decades the yakuza have offered services that even the national government approved, albeit not publicly. Japan places a cap on the number of lawyers allowed to practice in the country and the government is known for its reluctance to litigate. In Japan, there is approximately one lawyer per 8,500 people, in the UK there is one lawyer per 900 people, and in the U.S. there is one lawyer per 400 people.<sup>15</sup> Because of the lack of lawyers in Japan, it is very expensive to file civil suits in Japan. Some members of the yakuza have become known as *urashakai no bengoshi*, lawyers from the dark side of society, and are increasingly used by citizens to solve disputes. David Kaplan and Alec Dubro unearthed a poll from 1993 which found that “23 percent of men and 17 percent of women believed that hiring gangsters to collect

money, obtain contracts, or settle disputes by threatening violence is ‘not bad’ or ‘can’t be helped.’”<sup>16</sup>

In addition, the yakuza and the police force have had a relatively peaceful co-existence and many times are on a first name basis with one another. Many attribute the generally low violent crime rates to the yakuza because organized crime in Japan is less violent than unorganized crime. For instance, if an individual hoodlum commits a violent crime in a neighborhood “owned” by a yakuza affiliate, the yakuza are likely to reach and punish this individual before the police even hear about the crime. This co-existence is also sponsored by bribes and pay-offs. To appear as though the police force is above corruption, they periodically stage large scale crackdowns on the gangs. These “busts” are generally pre-orchestrated and serve as publicity stunts for the newspapers.

#### **The Yakuza Connection Abroad:**

Between 2005 and 2006, the Japanese National Police Agency (NPA) found that forty percent of identified human trafficking victims were Filipino, thirty-three percent were Indonesian, fourteen percent were Thai, eight percent were Chinese/Taiwanese, and three percent were Russian or East European.<sup>17</sup> The yakuza has very strong ties with Filipino business leaders and bureaucrats, with various gangs throughout the Golden Triangle (Burma, Laos, and Thailand), the Chinese Triads, and the Russian mob; the nationalities of identified victims provide ample evidence for these connections.

Due to these various gang connections of the yakuza, breaking the chain for human trafficking would prove to be incredibly difficult. Once one connection or source was severed another connection in another part of the world would surely be created as the yakuza’s network spans the globe. Any approach to disrupting the yakuza’s illegal global activities would have to be performed in a multilateral forum to ensure governments around the world would help clamp down on organized

crime simultaneously. Unfortunately, many governments of developing countries have few resources with which to crack down on organized crime.

### ***Japanese Response to Human Trafficking- Is it Working?***

After being placed on the Human Trafficking "Tier 2 Watch List" by the U.S. Department of State, Japanese officials energetically passed several new legislative policies aimed at cracking down on human trafficking. After 2005, though, the Japanese government again awarded less attention to the plight of victims being trafficked into the country for the commercial sex industry. The number of victims identified decreased two years in a row. The number of victims reaching out to NGOs and help hotlines indicates that the actual number of trafficked victims is larger than the statistics kept by the Japanese government, though; thus, it is unlikely that the number of humans trafficked into Japan decreased in the last few years but rather suggests that the commercial sex industry has most likely moved underground.

In addition, the number of prosecutions for human trafficking decreased in 2007 from seventeen in 2006 to eleven in 2007. Of the twelve offenders convicted in the eleven prosecuted cases in 2007, seven of those convicted received sentences between two to four years and five received suspended sentences. In comparison, those convicted of human trafficking in the U.S. receive a minimum of ten years in prison with the possibility of being sentenced to life in prison if convicted of organizing the human trafficking operations.

Although Japan offers many services to victims of human trafficking, they don't explicitly advertise these services. The NPA lacks language experts to help translate foreign victims' testimony and often foreign victims are not educated on their rights to legal aid, temporary stay programs, and repatriation assistance. Against protocol, Japanese officials repatriated 16 of 43 victims in 2007

without referring them to the International Organization for Migration (IOM) for risk assessment and formal repatriation. Many of these women may have become victims of reprisals in their own country because the Japanese officials did not appropriately gauge the risk of sending them back to their home countries. Additionally, because of the yakuza's continued ability to infiltrate the police forces, many victims are scared to approach the police for help for fear of being returned to their handler.

### ***Policies Utilized to Combat the Sexual Exploitation of Trafficked Humans in Other Countries:***

Trafficking in persons for the purpose of sexual exploitation continues to be a problem in almost every country in the world. In their 2008 report on human trafficking, the U.S. Department of State recognized the contributions of Madagascar, Brazil, and France for their national campaigns to increase awareness about human trafficking.<sup>18</sup> The government of Madagascar distributed a film highlighting the dangers of child sex tourism to schools throughout the country in hopes of educating the youth about various scams human traffickers may utilize to ensnare them. With a similar goal in mind, the government of Brazil implemented a national awareness campaign which described the crimes and punishments associated with human trafficking and provided contact information for those seeking help. Brazil's national awareness campaign was broadcasted in several languages so that vulnerable foreigners could access the information. France's state controlled airline, Air France, shows in-flight videos that define the crime of human trafficking and the associated penalties. These campaigns educate large groups of people about the dangers of human trafficking.

In 1999, Sweden criminalized the purchase and brokering of sexual services and decriminalized the selling of sexual services with the hope of decreasing human trafficking. This was the first policy of its kind and was

not warmly received in Sweden or elsewhere. Many feared that prostitution would move underground or that those women who knowingly offered these services would be subject to higher rates of sexually transmitted diseases, abuse, etc. Initially, the policy focused solely on the penalties associated with the new crime but did little to support those women involved in prostitution. More recently, the government began to offer services to help prostitutes emerge from the commercial sex industry, such as drug rehabilitation treatment programs, work training programs, and other health and psychological services.<sup>19</sup>

Almost ten years after the implementation of this policy, evidence suggests the policy has been extremely effective in lowering human trafficking and overall prostitution rates. In 2008 Swedish police estimated that 400-600 people were trafficked into the country annually, whereas an estimated 10,000-15,000 women were trafficked into neighboring Finland. The Swedish police also estimate that the number of active prostitutes in Stockholm dropped to approximately 105-130; the estimated number of active prostitutes in Oslo reaches 5,000.<sup>20</sup>

More importantly, though, the perception of the crime by Swedish nationals has changed drastically over the past ten years. In 1996, three years before the ban was implemented, only thirty percent of the population felt it was wrong to pay for sex. A similar survey conducted in 2008 indicated that seventy percent of respondents favored maintaining the ban criminalizing the payment for sex.<sup>21</sup> These cases signify a shift in the "norm" with regards to attitudes towards the payment for sex, a changing "norm" which ultimately decreases the overall demand for the commercial sex industry.

## **Recommendations**

In order to decrease human trafficking in Japan, government officials must take a multi-dimensional approach to the problem, and approach that includes the signing of

the UNTIP, forcing a shift in the perception of paying for sex, dismantling the strong organized crime networks, an increase in funding for operations to identify trafficking victims, and a cooperative regional agreement with members of the Association of Southeast Asian Nations (ASEAN).

### ***Sign the UNTIP:***

By signing the UNTIP Japanese officials prove, to the world and to their own citizens, they recognize that human trafficking is a global issue for which every country is responsible for remedying. By accepting responsibility for combating national and international human trafficking, Japanese officials will set a standard in Japan and help force a shift in beliefs concerning the commercial sex industry.

### ***Force A Shift in the "Norm":***

As the Sweden case indicates, it is possible to alter the perceptions of a nation in a relatively short time period. The demand for the commercial sex industry remains high throughout Japan and the relative acceptance of organized crime (the yakuza), the primary instigator behind human trafficking in Japan, induces an environment in which human trafficking thrives. In order to destroy this environment, the Japanese government must prove they have the political will to combat human trafficking throughout Japan. The following actions should be taken to decrease demand for the commercial sex industry:

### ***Follow Sweden's lead -***

Criminalize the act of paying to have sex with trafficked women and children. This policy would need to be implemented in conjunction with increased funding for support services, such as health and psychological services, for prostitutes and victims of human trafficking. This policy idea is gaining prominence in the Netherlands, where prostitution is currently legal, as there is little evidence to indicate that legalization of prostitution has decreased crime as originally expected.<sup>22</sup>

### ***Increase prosecutions-***

Japan currently has multiple laws addressing human trafficking (albeit not an all inclusive, comprehensive anti-trafficking law). One of these laws allows the Japanese government to prosecute Japanese nationals for crimes committed overseas, but this law has not been enacted since 2005. According to the U.S. Department of State, Japanese men continue to travel abroad to have sex with children and so violate the Japanese law protecting minors from abuse. If criminal activities such as this were prosecuted at a higher rate, it may cause a shift in behavior.

### ***Criminalize possession of child porn-***

Although it is illegal to produce child pornography in Japan, it is not illegal to possess it. By decreasing access to child pornography, overall demand for the sexual exploitation of children will decrease.

### ***Increase punishments for human trafficking-***

The current Japanese laws against the buying and selling of persons limits prison terms to ten years. By increasing the punishment associated with human trafficking, the Japanese government can increase the stigma associated with the commercial sex industry.

### ***Dismantle the Yakuza:***

Although the yakuza has lost a great deal of prominence amongst the people of Japan over the last decade, their presence and the services they provide continue to be engrained in the Japanese culture. The Japanese government must diminish the role of the yakuza in Japanese society before they can dismantle the organization.

### ***Implement a "strike force"-***

To combat the U.S. Mafia, the United States established a national investigative unit, the United States Organized Crime Strike Force, to inspect organized criminal activities and collect evidence to prosecute high ranking members of the mafia families. This body worked with other national and local law enforcement agencies to bring members of organized crime syndicates to justice. Because

the yakuza ranks as one of the top four most complex criminal organizations in the world,<sup>23</sup> the Japanese government should create a specialized investigative unit within the NPA to address organized crime.

### ***Create a zero tolerance policy for corruption-***

The Japanese government must alter perceptions concerning the acceptance of the yakuza. The government should crackdown on police members and government officials who accept bribes from yakuza members to distill any beliefs that the government coexists peacefully with the yakuza.

### ***Crack-down on suspected commercial sex businesses-***

Many commercial sex businesses advertising oral sex or call girl services pose as fronts for full scale prostitution rings. The Japanese police forces must monitor these businesses more closely to detect and break-up more prostitution rings and collect evidence against top yakuza members. This increased surveillance may also increase the number of victims identified.

### ***Increase Funding for the Identification of Victims of Human Trafficking:***

Japanese police forces require additional training to better equip their members with the knowledge necessary to unearth non-mainstream commercial sex businesses in order to identify foreign and domestic victims of human trafficking. In addition, further training may help police forces track the yakuza money trail which may enable the government to more closely monitor new or changing business structures of the yakuza.

### ***Increase training for investigative practices concerning the commercial sex industry-***

With the introduction of more stringent laws aimed at decreasing human trafficking in 2005, many fear the commercial sex industry has gone underground. The decreased number of prosecutions and the number of victims identified since 2005 may be indicative of this movement underground.



## **Work with ASEAN to Create a Regional Human Trafficking Policy:**

The flow of human beings to Japan is a regional issue. More than fifty percent of those trafficked in and within Japan are foreigners,<sup>24</sup> and of those the large majority comes from developing countries in Asia. To decrease human trafficking in Japan and throughout the region, Japan should work with other members of ASEAN to create a regional, comprehensive human trafficking policy.

### **A Multi-Lateral Approach-**

The European Union created the Council of Europe Convention on Action against Trafficking in Human Beings in December of 2008 to combat the increase in human trafficking throughout the EU.<sup>25</sup> Although ASEAN member countries are not as closely linked as those of the EU, they can simulate the actions taken by the EU in implementing a regional policy targeting human trafficking.

### **Japan Must Lead the Way-**

Throughout Asia, the primary concern

will be the need to combat poverty as poverty serves as a catalyst for many of the schemes the yakuza and other gangs utilize to deceptively recruit sex workers. Japan will need to offer funding to many of these countries (particularly the Philippines, Thailand, and Indonesia) for national campaigns aimed at educating the population about tactics utilized to trick citizens into sex slavery.

### **Regional Action Against Organized Crime-**

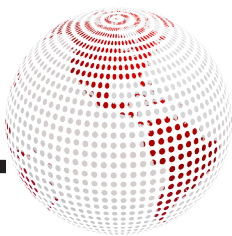
Japan should also offer funding for increased training of immigration officials and police forces in ASEAN countries so that they may be better trained to identify potential victims of human trafficking. In addition to funding, Japan should provide better intelligence to other countries concerning the identities of yakuza members and international gang connections so that police forces in foreign countries can intercept criminals abroad. With more funding, training, and better intelligence per Japan, ASEAN can attempt to weaken links between the yakuza and other regional organized crime syndicates.

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# Elusive Economic Development in the Maghreb and Beyond

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How many political, economic, and social mistakes will a population accommodate before it rebels? Due to the self-checking mechanism of elections in democracies this question can be superfluous, yet it still haunts politicians, high ranking officials, and wealthier classes in developing countries characterized by inequality and precarious equilibriums. These are countries where ballot boxes do not settle the voting of political figures nor assign true power to trustees. This leads to disputed legitimacies which inadvertently nurture an instinct of political survival among these leaders. In turn, the unaccountability of leaders to their publics leads them to avoid becoming entangled in situations that are difficult to control. This 'avoidance' policy is truly an implementation of alleged development policies, but mocks the democratic process.

In the long run, this often leads to a waste of vast amounts of energy nationwide and bouts of empty rhetoric, the sole result of which is power devoid of true force. Indeed, the political families, created by leaders or satellite institutions, are organized to form a force of opposition to the more genuine, and supposedly more ambitious and more sovereign 'opposition'. It is the task of these families to channel the ideas of or even absorb the opposition groups. Ultimately, the real opposition groups are trapped by the confrontational style of the fake political

groups, and by entering such verbal battles, the opposition groups end up sacralizing those truly empowered. This process deflects issues of national debate and real concern to the periphery. They get caught up in a face-to-face confrontation which, while contributing to the sacralization of those real power holders, gears the national debate to issues that are peripheral to what should be the central concern. The key concern to the nation here, that is being ignored, should be the seat of responsibility for the country's economic and social development (or underdevelopment). Such common situations of poverty and deflected governmental power cannot be a sheer coincidence; there must be accountability even if it is diluted in the multidimensionality of the problem.

The government, political families, financial communities, intellectuals and other economic agents have made a pattern of continually criticizing and blaming one another. In doing so, these groups constantly deflect problems back and forth between each other. Should the responsibility of a country's development be entirely and exclusively placed upon the government, as is done usually? Should the government be accountable for all of the socio-economic, institutional, educational, cultural, and religious policies it implements? Can the community relieve any of these charges or does it rather lack entrepreneurial vigor? Within the community

does a section exist that is change-resistant and modernity-proof, which could possibly constitute a political force? Could such a force exist that is politically and socially active and economically inert enough? Do the economic theories supplied about development in underdeveloped places indeed supply an understanding on how to bring about growth or are they just adapted aspects of other less specified economic theories? Perhaps this is a case of deficient basic understanding and knowledge about developmental economic theory, or could development economics as a type of applied economics recommend some economic policies that might favor growth? Finally, do these democratic prerequisites, which might have remained unfulfilled, give an explanation for the development levels in several countries? Can any informative conclusion be surmised from the relationship between development and democratization?

All these issues interact and contribute, on different levels, either to the reduction or increase of poverty. Modeling

their effect is particularly laborious. After all, what information should be gathered and in what order to work out a given development model? The numerous failures observed in the elaboration, implementation, and conducting of economic development policies raise questions about the attributes of the development economists. The transversality<sup>1</sup> of the new economic, political, anthropological, and sociological approaches have certainly contributed to the development and improvement of knowledge related to this issue. On the other hand, it has also brought to attention the extent of ignorance and the complexity of the problems yet to be solved for a substantial improvement in living standards. That is — to put it more prosaically — a significant drop in poverty. Certainly, some antithetical economic development models (capitalist, socialist, and even collectivist ones) have been adopted and forsaken. Accordingly, they can be interventionist and liberal, or inward looking (e.g. the substitution of imports for national production), the economy



*Young villagers outside their home in southern Morocco.*

can be subject to introversion or extraversion, according to a process called “the Washington Consensus” (banning protective measures, currency devaluation, financial liberalization, not to say the abolition of money exchanges). A form of eclecticism is formed in favor of this empiricism. This, nonetheless, took a heavy toll on populations that remain desperately poor. Today’s lessons<sup>2</sup> shed more light on the policies that should not be implemented rather than on those which have been carried out because this matter is not a zero sum game. To do nothing and not engage policies could come to be more gratifying and less costly to the wealthy than implementing policies dictated by emotions, ideologies, nationalism, egocentrism, and the perennial fears of politicians.

### **Lost Opportunities and New Hindrances to Development**

In this regard, the Algerian example is instructive. Paralyzing centralism, all-out interventionism, self-satisfying economic and social policies, and the quest for a preponderant role among developing countries have all proven to waste resources, although these policies were expected to be the very opposite: generating resources for the community. Algeria’s industrialization has been an utter failure and the collateral damage persists. This is most notably seen in the abandonment of agriculture which formerly positioned Algeria as France’s main wheat supplier, yet which presently leads the country to allocate a considerable part of its oil revenues for the importation of food products.

The increase in the Arabian population, additionally, limited the availability of farming land and crushed the prospects of many citizens to produce agricultural products by curtailing their visions and effectively restraining their perspectives; the influx of Arabs contributed to the poverty and injustice at the start of a population predisposed to religious indoctrination. By being active, this part of the population is not only out of phase

with the development model which had gathered the greatest number of supporters, but the new religious fanaticism among some sees the model as a hindrance and as dangerous. These groups think it necessary to protect themselves against the new economic policies by crusading against its principles. The involvement of human capital considerably complicates the economic and social modernization and development choices facing the state. Unlike a model where it is possible to restructure, revise and improve, an important faction of the population that did not adhere to the model or wished to rather follow a model of society, which a large percentage did, creates a circumstance where the model cannot be revised or improved. More succinctly, to develop an operative model is already a challenge, but trying to develop a policy while facing issues of a rebellious population that may counter the initiatives of socio-economic progress and adopt uninhibited attitudes and postures against the development strategies adds to the complexity of development and renders the development process even more difficult.

The ground gained by religious groups that generally remain in a state of precariousness allows them to threaten the balance of power within the community. This is an issue based on the community condition in which the government makes its socio-economic choices (as the state of precariousness is the consequence of an economic polarization, accentuated not only by weak economic growth but also by a heedlessness in the problems of resource allocation). That is to say that—even when kept away from the decision centers—the political and economic influence exercised by politicians relying on religion is already visible in the Maghreb and beyond. However, when dealing with economic development issues, these religiously inspired politicians insist that these issues are dealt with in their religious references, which moves further from the unanimously accepted model;

these leaders pursue this in order to claim another one which is yet to be defined.<sup>3</sup> This would consist in undertaking a social leveling downwards, which only an upward planning would make possible. One can wonder about the pertinence of their ideas in economic terms, about the value of the debate these ideas can raise, and finally about the best choices to be made in order to decrease—not just appease—poverty. These religious groups see showing the credible alternatives to the policies put forth by the government as their work through reticular organizations. The mitigation of poverty, the time to harness, to recruit, to indoctrinate and to resort to clientele-centric practices is nothing but posturing. Religious groups have been very careful, perhaps as a result of feeling at the risk of being impervious to recommendations for economic development, even when emphasizing, in a scattered way, a preference for an interdependent capitalism, which they have vaguely regulated.

Morocco and Tunisia seem to be relatively better off with respect to their capacities to contain the ambitions of their political figures, whose references sit in the religious texts.

Algeria, which has more financial resources, has often been, despite its will, a laboratory for the Maghreb where experimentation and subsequent abortion of economic and social policies are commonly observed. The modest means and resources of the two other countries, Morocco and Tunisia, have been spared some extravagances and, instead, are in need of economic policies that rehabilitated profit in order to develop more innovative capacities. However, due to a budget surplus reached in the mid-seventies, Morocco too, decreed the “morrocanisation” of its economy. At the same time, it brought under state control an important aspect of its industry, which was moroccanized through the SNI [*Société National d'Investissement* (*trans. National Investment Company*)]. The “morrocanisation” process saw capitalists

offering to buy some enterprises, the founding of which the capitalists could not afford at the time. Through this process, the country simply deprived itself of an important enterprising human capital with a tradition and an industrial experience, and substituted it for civil servants and trades people who acted as industrialists. Morocco was breaking with a developing policy that could have acted in a path-forging way, like a catalyst, for a twofold economic and social plan. Today, Morocco is using its seductive treasures to return to the economic situation it enjoyed before. “Morrocanisation,” recovering farming-lands, streamlining the economy and the politics of education, was related to the anti-development movements for which one has yet to finish paying the price even though these policies were enacted in the 1970s.

“Morrocanisation” and Arabization constitute the stock in trade of the Istiqlal Party, which is now in power in Morocco. Even today some of these members, who sit in the second chamber, out of what appears to be atavism and in the name of an insatiable “quest for identity”, still demand more Arabization. It is certainly for these political positions that these declarations are made, which is a disconcerting attitude to say the least.<sup>4</sup>

Much closer to us is the Moroccan economic leveling policy. This policy has led to national mobilization and to the allocation of some considerable political, economic and financial resources. Without questioning this aforementioned policy, Morocco seems to be headed quietly towards these policy objectives. After all, the country could gain great benefit in implementing these policies even if many highly ranked officials think that this objective cannot be ignored and insist on its pursuit. Yet, the chances to fulfill this seem negligible for what is being recommended is not immobilism. What is desired is improved managerial efficiency and modernization of production tools. This modernization process, however, should not be undertaken in accordance with business opportunities,

nor should it seek to satisfy the investments of politicians, whose quest for financial leverage lead to indebtedness. These investments may hinder the firms that incur them; discourage their industrial restructuring; compromise their stand-by strategies; and, when all is said and done, increase the risk of these enterprises' disappearance because the industrial fabric is made up of small and medium-sized and weakly capitalized enterprises. The textile industry is a good case in point. Leveling a country's economy, and more particularly its industry, means considering that the level aspired to is fixed before hand and can be achieved. Hence, the industrial organization and the optimization of the combination of the production factors (capital and labor) are subject to a dynamic equilibrium which makes "the optimum" – the level to be reached – always pushed upwards for a permanent improvement of the overall production factor. Such are the teachings of Schumpeter. He calls these innovations (of intelligent combinations of production modes and factors; in the labor factor it also includes the leaders' performance), which he distinguishes from inventions (ideas and concepts) and which precede innovations. These perspectives do not constitute matters that Morocco needs or should explore and follow as development axes; Morocco's delays are already considerable and the failures of its experiences important. Some lucid and pertinent diagnoses have been conducted with a dissuasive effect on any new attempts to be made to that effect.

### **The Development "Strategies" Presently at Work**

Morocco will need to reconcile this idea that while everything is concurrently changing, it and its competitors, there is never any true change. Industrial disparities will persist or might even grow wider. In the harsh competition of the international economic order, no respite is possible for industrial redeployments, especially when the gaps are so abysmal. Such are the facts

that will confront Morocco in the choices it must make when deciding its development strategy towards a tertiary economy oriented to industrial assembly (specifically in airplanes and cars), and tourism development. While these choices might look less ambitious, they are much more appropriate for the country's "competitive advantages," although there is

***"What is desired is improved managerial efficiency and modernization of production tools. This modernization process, however, should not be undertaken in accordance with business opportunities, nor should it seek to satisfy the investments of politicians, whose quest for financial leverage lead to indebtedness."***

still a question of the labor force's qualification, though this is an easily solvable issue. On the other hand, what might jeopardize the success of this policy is the rise of protectionist policies, which the present economic crisis seems to favor. Another factor will be the pressure from the European governments on the enterprises that will be benefiting from public funds—this could cause an end to outsourcing activities. The arbitrations between the firms' political and social costs, on one hand, and the economic ones, on the other, will henceforth be in favor of the latter at the expense of the former. Thus, early stirrings towards de-globalization are beginning. The other development axis, which Morocco has succeeded relatively in implementing, is the improvement of its attractiveness for foreign direct investments (FDI). Seen as a strong development vehicle, these were the origins of the impressive development of Ireland. The FDI effects deserve a closer look. The policies relayed by the press are numerous. These policies extol the breaking up of a state's

property and highlight the importance of FDI attracted by privatization of enterprises and by opportunities offered to Morocco. Indeed, Morocco does remain a privileged destination for FDIs in the Maghreb.<sup>6</sup> Still, concerning Morocco's attractiveness and the contribution made by FDIs to its economic development, self-congratulatory discourse should be tempered. By focusing on the big investors' economic and financial strategies, their vision, and their objectives, one understandably comes to the conclusion that the major concern is the latter of these enterprises,<sup>7</sup> which is by no means developmental. These enterprises are rather obsessed with the extraordinary contraction of a time-table for the pay-back of invested capital, as it is vouched for by the equally extraordinary extension of their payout (the distributed profit rate in comparison to the profit made). Vivendi- Universal<sup>8</sup> illustrates this example in the policy it implements in Maroc Telecom, its Moroccan subsidiary.<sup>9</sup> At a time of stock market collapse, Maroc Telecom has been short listed among the CAC 40 top ten most performing enterprises – the only ones to have experienced a marked rise in share prices during the eleven months of 2008. While Vivendi registers at -37%, and France Telecom at -20%, Maroc Telecom registers +16.5%. The dividend policy conducted by Vivendi in its Moroccan subsidiary impacts its price and accounts for this performance. In 2008 it distributed 100.68 % of the profit made against only 53% made in France.

Sonasid, Areclor, Mital's Moroccan subsidiary has done even better. The level of benefit distribution that Arcelor-Mital has fixed its subsidy can be characterized as smoking policy. The payout in 2008 was of 213% against 19.7% in France. But that which is at stake is not investment or development, but rather disinvestment and growth potential impoverishment.

A different case is Renault Maroc which, like most transnational companies' subsidiaries, controls neither its products, the costs of its material, nor its prices

or performance. Numerous are the multinationals companies which, in normal times, would plan profit level to be made by their different industrial or commercial branches worldwide in a centralized manner. These performances would be modest, not to say unprofitable if the host country's tax system is deemed impounding, and the number of local shareholders relatively important. On the other hand, it would be considered consistent should the tax system be deemed favorable and the number of local shareholders insignificant (which is more often the case). Multinationals organize themselves by means of transfer prices, by the marking up or down of profits through abroad transfer, and by according to the group's sales or purchase prices. Renault Maroc imports a great deal from Renault Romania. The corporate tax was 16% in 2007 but increased to 30% in Morocco in 2008, plus a 10% tax on proceeds of stock in the two countries.<sup>10</sup> Luckily, the tax law now encompasses measures which could be taken against these practices, namely article 213 of the Moroccan General Tax Code, or Article 57 of its French counterpart. However, their enforcement results in some difficult national and international economic and political negotiations. The sizeable investments made by Renault Maroc for its industrial branch in Tangiers are particularly important; they improve its bargaining power with the tax administration and, as is the case everywhere in the world<sup>11</sup>, lead the administration to deal with this "tax avoidance" by means of a flexible enforcement of the tax code. This is because the administration does not lose sight of Tunisia and its other competitors that display a readiness to practice tax dumping and the fact that Renault will create job opportunities in Tangiers (6000 direct employments and 30,000 indirect ones), bring technology and know-how.<sup>12</sup>

The evidence presented shows that FDI does not systematically create wealth, although they can act for a period upon the host country's volume of currency reserves.

Portfolio investments and equity participation, accompanied by take-over, result in important, and sometimes exaggerated earnings for technical assistance and other services. They also entail the payment of interest on authorized advances, the sometimes excessive distribution of dividend and as a last resort the realization of capital gains (and on occasion losses). On the other hand, construction or extension investments aid in the creation of jobs, the transfer of technology and in know-how; they can also contribute to the creation of competitive advantages and therefore to economic development. The remunerations of subsequent interventions are then allowed without discussion.

For Algeria, however, no summary could permit divesting responsibility from a coherent development strategy adopted by the government. The state's economic policies, much more than its social policies, seem more reactive than proactive, despite the Growth Support Complementary Plan (a policy to which the US gave \$180 billion over a five-year period). The growth rate achieved by Algeria during the last four years reached an average rate of 5%. What significance can be afforded this level of economic growth when it is largely stimulated by public demand (more than 50% of the GDP in 2007), and when it is supported by oil revenue which stands for more than 98% of exports? These revenues revealed a 12% GDP budget surplus and made \$108 billion of currency reserves. Nevertheless, no economic sector activity generates a sufficient value-added for diversification of exports.

The Algerian leadership's responsibility in the role of economic developer, in regard to the spending of the state, is becoming increasingly great compared to those of its neighbors, who do more with less, despite the classification of the UNDP.<sup>13</sup> Algeria could have, given its quality of human capital and the importance of its resources, acted as an engine of change for the Maghreb. But, the proper conditions for the release of the human capital, the materialization of some

initiatives, and the allocation of development shares to human capital have failed to be put in place. Instead, these systems seem rather to be discouraged if not foiled.

The Algerian financial system lacks fluidity. An efficient banking system tries to assert an efficient allocation of funds, at least when securing the credit payment which itself goes through the viability appreciation of the investments to be financed. The Algerian banking system has not really secured its first mission, much less optimized resource allocation. It does not meet the basic condition for paving the way to development: the fluidity of financial relief for development. One can also wonder about the level of banking service used by the Algerian population, even among wealthy. The majority of banking services currently manage operations budgets. Even in important transactions, fiduciary money is



*Maroc Telecom has performed far better than other Vivendi - Universal subsidiaries.*

still more widely used than deposited monies; this is mostly like due to tax considerations and general tendency to favor the materiality of money. A great part of the money supply circumvents regulations because it is held in piggy banks and safes when not exchanged, therefore is it degraded against the euro. This is to say that the efficiency left to the monetary policy is limited despite its being a "strong" tool for economic policy which cannot be ignored.



A cope of defiance seems to be shrouding the whole country. These deficiencies are beyond all comprehension and can only arouse feelings of grief for a country like Algeria.

The Algerian leaders' negligence is best explained by the important, yet dwindling resources drawn from oil revenues. These revenues allowed for the development of soporific policies that permit the government to remain condescending, imbued with self-complacency and unrepentant about its choices. This is because government officials are conscious that sources of private income and other privileges will not be able to resist development nor resist in a long-term manner underdevelopment. This fact must be understood.

Concerning foreign trade, the Algerian open trade initiatives are partly thwarted by the irresoluteness of the leaders who are in no hurry to act. They claim their longest negotiation period was to join WTO, which took twenty years. Additionally, the January 2008 round was not conclusive either. They floundered on finding a solution for the service sector and for gas prices, which are both issues of great interest to leaders. Gas prices, an issue that they would really like to continue to administer over, the Algerian leaders forget, it seems, that the price that has been accepted for gas in France is not the market price of gas, but an expiatory compensational and repentant price.

In Algeria, the intensity of political life tends to check the intensity of economic life. In fact, politics is indispensable for confidence in capital to commence, to take risks, and to create wealth. The fleeting new growth of Algerian capital, legal or illegal, that is invested in France or is deposited in Switzerland are precisely in the vein of this confidence, even at the price of negative outputs. It is not haphazard that the most prosperous and most developed regions of the world are those where the intensity of political life is the weakest and where political life is virtually reduced to a quest for greater efficiency of

regional administration and local governance.

Finally, and in more general terms, the Maghreb has also yielded to the new liberal tendency, hence the necessity to reconsider the perimeters of its state's assets and the fulfillment of privatization.<sup>14</sup> While being at an advanced stage both in Morocco and Tunisia, these processes are less significant in Algeria. Still, one can pinpoint a similarity between the states' economic disengagement, despite the difference in these countries' respective levels. Most of these privatization operations consisted both in denationalizing and politicizing the state's economy. These measures had a negative influence. Admittedly a state without policy is much preferable to a policy without a State. In the first case, there is no room for any political interference, and the efficacy of the state is the main objective. In the second case, substituting the state with a cadre that personifies power and comes from the innermost circle or have some political connections is very often translated into clientism, favoritism and preferential treatment. This creates more defiance and consequently exercises an explosive action by pushing away some economic initiatives from materializing into economic activity.

### **Economics, Politics and Religion: *What Direction to Take for Social and Economic Development***

The evolution of development economics—provided that development economics exists and that it is not only reduced to applied economics — will solidify through the contribution of political, sociological and anthropological perspectives, in addition to public governance. In other words, new transversal concepts that will call upon more imagination—and some daring applications—must be explored. The world economic crisis, which is just beginning, promises some hard times for the South and North alike. The Maghreb's economic relationship to Europe and its inability to operate under regional integration will force it to undergo

the effects of this economic crisis head on. Nevertheless, the hard times on the horizon can be taken advantage of if deep reflection is followed by the launch of stringent reforms. Such actions could even put the Maghreb in a leading position to either trigger or consolidate development processes when more favorable economic times return. Alone economic policies cannot extricate a country from underdevelopment or keep poverty at bay. All in all, in Morocco and Tunisia, the least disputed economic policies are already at work and acting with variable degrees of success. In these countries, economic growth by means of capital accumulation, productive gains and the increase of the necessary savings for these investments is very encouraging. The volatility of the governmental policies concerning the macroeconomic policies are better contained: the management of demand by means of monetary and tax policies and by a exchange rate policy is making room for more stability and visibility than ever before. Extroverting their economies by means of free trade agreements (FTA), the suppression of quota-based barriers and the gradual softening which ultimately should lead to the elimination of tariff barriers were launched many years ago. Morocco was even considering a liberalization of foreign exchange besides that of trade. As confirmed by the IMF, however, that the growth rate of the last five years has fluctuated between 5 and 6%, means Morocco's economy still remains insufficient<sup>15</sup> to absorb the unemployment and poverty.

If the liberal reforms and the economic policies prove to be insufficient for diminishing poverty, what type of reform could be significant enough to oversee that the socio-cultural and politico-institutional plans reinforce cohesive action?<sup>16</sup> Another observation stems from the trilogy made of politics, religion and development. Concerning this "trilogy," the Maghreb countries' governments adopt some antinomic postures that seem paradoxical. Out of attempts to legislatively prevent the mixing of politics

and religion, they end up mixing religion with politics, all the while resolutely promulgating legislative texts in an effort to keep the two domains apart. Indeed, the Maghrebi governments try to break the monopoly of religion by untying the "political religious parties" from the populace, and then they try as hard as possible to win back the religious parties sympathy. In doing so, governments try to recover religious practices and are practically competing with their antagonists. Rather than limiting or even inverting the development of the political and the religious sphere, these governmental policies widen the base and add a cultural dimension to the religious references. Religion is used in both politics and economics, while neither of these institutions are moral or want to become moral. Any attempt at moralizing economic life through the use of religion means rising up against the values, without which no single important economic activity can be conceived of in the first place and no plan of economic or social development could be possible. This is all the more true in states where the 'leisure' economy occupies an important place. When applied without any abuse of authority or corrupt practice to delegitimize the resort to religion and reassure investment capital holders, commercial law or general law may become more coercive and dissuasive. It can even display a greater capacity to organize and make business links more fluid than religious ties which, in some adapted cases, is the very source of these laws.

However, the individual practice of religion should continue to be scrupulously respected and facilitated. Religious practice should never exclude secularism (laïcité), even in unthreatening homeopathic doses, from the state and economy. A state's religious practice and secularism are not mutually exclusive. Rather, it is governmental frailty coupled with frivolity, which creates this belief of mutual-exclusivity. Furthermore, governmental interest in politics over economics (which, in democracies, are strongly intertwined and

in developing countries can be, too) does not make a strong campaign for secularism. Religion can secure social and political stability, ensuring a leader's legitimacy, unlike secularist policies, which tend to be viewed as extremism. The observation of acquiescence, whatever the circumstances, brings an assimilation of poverty with divine will and also to the resentful acceptance of destitution. This fatalism works like a shock absorber for social tensions and contentions. For these reasons, it would seem suicidal for governments to do without it. For these reasons too, no observance can be made concerning any true socio-economic activism which might alter these beliefs. Most certainly, policies of secularism were much more at ease in the past than in the present. A first measure that should be taken is to progressively depoliticize and secularize education. The reasons that used to account for the introduction of more religion in schools curriculum<sup>17</sup> are not timely anymore. The desecularization occurred during a time when the aims were to cannibalize collectivist ideologies that were infiltrating and posing a real threat, especially in Morocco. The present governments have fallen into the trap their predecessors created to ensnare the state's former opponents, not suspecting that they were building a platform for the radicals of today.

As we consider the responsibilities of economic and social development, a quick response might be that responsibilities are proportional to the power held by economic agents. This is in reality only partly true because of interdependence and overlap. Even a hierarchical organization of such responsibilities would only elicit a minor interest because, continually, they only elicit intellectual and contextual development. One has to keep in mind, however, that it is not only with a national mobilization that development process can be launched. This is the common attitude adopted by settled states. After a phase of mobilization a lull generally follows, during which the old problems resurface.

Economic and social development is not just a matter of resolutions and economic policies, nor is it a linear process, as we are reminded by the present day crisis. It is rather a matter of maturation cycles, and temporality in the sense of a "before" and "after" succession, as well as in the sense of a temporal dynamics where a before phase may become an after phase, and where the causes may become the effects. These maturation cycles and temporalities presuppose the cultivation of certain values and the promotion of certain policies. Development is foremost a matter of collective responsibility, where everyone should be whole-heartedly involved. Development is a matter of creating trust to increase the intensity of entrepreneurial activity, strong involvement, and collective reflexes to contain the volatility of policies, power and reaction, which is borrowed from altruism and pragmatism. Development is also a matter of widening the socio-cultural base at the regional and world level. These policies might look laborious; nevertheless, starting their pursuit may improve many aspects of economic and social life. Development is no short-term job. These issues should be put back at the heart of national debates. Once released, national energies can take control of more promising initiatives. The complexity of the development problems and the uncertainty about new policies should remind politicians to focus not just on prerequisites for development, but also on follow-up policies (e.g. corruption control). In this way, more reverberations in the population can be spotted and more political dividends shared. Reflecting on issues geared towards the adoption of the most convenient development policies seems to fall today on the share of multilateral organizations who, from the height of their observation towers, inform people about some rare success stories. What is for sure, however, is that transpositions have hardly ever been so. They fall through because of the lack of preparation, the idiosyncrasies of each country, the risks of instability. This also

implies the country's inability to implement major reforms politically, culturally, socially, culturally and institutionally. It is true that the debate has not been settled on which reforms to settle first. One can still think that these reforms are interactive, and that under the pressure of either progress or hindrances; either these or those reforms might occur on the ground of opportunities. It is usually said that poverty stricken, autocracy driven and resource-less countries have virtually no chance to develop. On the other hand, natural resources and democracy are seen as prerequisites for development. We can see that no oil exporting country is truly developed, that China, which is not a democracy, now overshadows France economically and that Japan has virtually no agriculture. No apology for totalitarianism is being made here, but what is at stake is to draw the outlines for analysis.

Meeting the requirements for a human being's political rights, which – in other words – stands for democracy, cannot resist eternally to the non-fulfillment or satisfaction of this very human being's elementary economic rights. Democracy and economic rights interact with each other.

Numerous are the African and Maghrebi citizens who risk their lives in order to reach Europe by trying to cross the Mediterranean, in a quest for peace; nothing more overwhelming could be imagined by a person with the most infinitesimal portion of responsibility. This emphasizes, in an alarming manner, the urgent necessity to actively devote ourselves to this task, so that risking one's life while trying to extricate oneself from poverty is no longer a concern.

## Endnotes

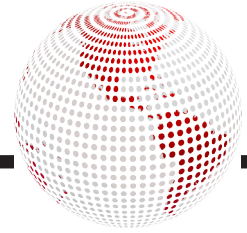
- 1 Aux Frontières Économiques du Développement (Trans. On the Borders of Economic Development), Collective work of the World Bank, Edition ESKA
- 2 Op. cit.
- 3 The government called "reform" (assainissement in French) the act of sending to jail, or putting into police custody, for a month or even more, some business people who were considered dubious. In fact, the regime wanted to terrorize the capitalists who started taking too much liberty, so that nobody should dare go astray again.
- 4 It is really amazing to see that many developing countries admit their lack of experience only in football when they resort to buying the expertise of non-national coaches for the training of their national teams. These choices are made because they clearly seem to win everybody's (or almost everybody's) support. They must – in some countries – be extended to other more serious fields when the national competencies are rather approximate, durably unsatisfactory and more particularly unable to abandon their ideology, their subjectivism and self centeredness.
- 5 Ireland's spectacular development, with a living standard which (before the present recession) caught up with and even exceeded that of the UK or France can be explained mainly by FDI, and more particularly by Ireland's capacity to attract them by means of fiscal dumping and the work force quality, in addition to the social covenant. The European structural funds also contributed to this development. Twenty years ago the country's GDP per capita was less than a third of the European standard.
- 6 Between 2001 and 2007, FDIs in Morocco reached bn. 11.5 €, (against bn. 1.4 € in Algeria in 2000 – 2006) . The European investments totalled 74%. Out of these France and Spain come first (43%), followed by the Gulf countries whose FDIs moved from 9.9% in 2006 to 19.3% in 2007.
- 7 Apart from the Moroccan case, some managers who are entrusted with the destination of these FDIs endeavor to maximize these investments' profit, which in the long run stands for the maximisation of their own profit, even if this should make them rely on what is improperly called creative accounting. This means doctoring the accounts, dissimulating worthless securities and losses which insane finance, not to say financial delinquency, was able to normalize by talking about account embellishment, financial ingenuity and accounting fitness (all of which can legally be resorted to), save for some rare agency tension cases in which shareholders are opposed to managers.
- 8 In 2001 Vivendi Universal contributed to the "rescue" of the Moroccan State's budget when, in the scope of the country's privatisation program, it offered to purchase 35% of the country's chief telecom operator. Initially, it invested bn 2.4 €. In 2005, its capital share reached 50%, for which it paid an additional bn 1.1€. Finally, and in a share exchange deal with C.D.G. (Caisse de Dépôt et de Gestion (trans. Deposit and Management Fund) Maroc Telecom versus Vivendi ) Vivendi's participation totalled 53%.
- 9 Through its ownership of 53% of Maroc Telecom's capital, Vivendi became the company's majority share holder. This company made in 2008 a neat profit of mn. 836 € and a 50.8% return on equity against 46.2% in 2007.
- 10 Whatever the source countries, France for the built up (assembled vehicles) or Romania for the CKDs, (spare parts for the local assembly), Renault Maroc has always organized itself in a way that will only help it keep afloat. Its activity would recurrently present a hardly profit making status. Profits would always vary between 0.5% (a rare case though) and 1.5% of the overall business volume, even when it was controlling 60% of the car market, before its opening, against 30% today.
- 11 P.BELTRAME : Consensualisme fiscal et consentement à l'impôt, (trans. Tax Consensualism and tax Consent), in Revue Française de Finances Publiques. N° 100, November 2007.
- 12 In this time of economic crisis, one is yet to remain hopeful that Renault will not reconsider its project's dimension. There are some serious concerns as to whether or not the project, when carried out, is going to keep its initial size, although Renault is trying to appear rather reassuring, and although some investments have already been made.
- 13 The UNDP classification, on the basis of the human development index, does not confirm these words. Morocco is ranked 126th, while Algeria is ranked 104th and Tunisia 91st out of 177 countries. Morocco has vigorously contested this composite index. The 2007 - 2008 classification ranked Iceland first worldwide, and we all know the state into which this country turned before that year ended. As for the GDP per capita and other indicators, many supposedly credible sources refer to some contradictory figures, which putspit their reliability into question.
- 14 Taha Oudghiri, Restructurations, privatisations, le patrimoine étatique à l'épreuve du libéralisme (trans. Restructuring and privatisation: Putting the State's Assets to the test of Liberalism) , in Revue française de finances publiques. 1989 N 29.
- 15 J.P CLING, Ph. De VREYER, M. RAZAFINDRAKOTO et F.ROUBAUD, "La Croissance ne Suffit Pas pour Reduire la Pauvreté" (trans. Growth Does Not Suffice to Reduce Poverty, in Revue Française d'Economie n° 3 Vol XVII. See also M. TRABELSI, "Finance et croissance : évidence empirique des pays en voie de développement" ( trans. Finance and Growth : Empirical Evidence of Developing Countries), in Economie Appliquée, tome LVII, 2
- 16 Women's status in Morocco has gone through a considerable progress. Nevertheless, the L.D.D.F [ la Ligue Démocratique pour les Droits de la Femme(trans.Women's Right Democratic League)] denounces the gap between the legislative provisions and their practice, five years after their implementation.
- 17 Given the fact that its exacerbation might lead to the establishment of a value system, faith is not to be subject to any evaluation which may in turn give rise to a marking system.

Photos Courtesy of:

"Young Faces of Morocco." Flickr. 3 April 2010. <http://www.flickr.com/photos/peacecorrespondent/2416710489/>

"Call Me if You Can." Flickr. 3 April 2010. <http://www.flickr.com/photos/14791620@N08/4072596246/>

# The Burdensome Neighbor: South Africa and the Zimbabwe Dilemma



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## Introduction

In 1980, Robert Mugabe became the first leader of a free Zimbabwe after fighting a bitter and ultimately successful struggle against white minority rule in Rhodesia. Independence and the country's role as the "breadbasket" of southern Africa brought hope to millions of black Zimbabweans who felt that they finally controlled their own future. Thirty years later, however, President Mugabe has refused to relinquish power and brought his country's economy to the verge of collapse. Two million Zimbabweans, as a result, have turned to neighboring South Africa in search of political freedom and livelihoods.<sup>1</sup> This sudden influx of jobless migrants has imposed a heavy burden on South Africa's already strained economy. Their native citizens have even taken to the streets to attack the largely undocumented Zimbabwean community as they fear greater competition for scarce employment opportunities. These events not only result in violent deaths, but also threaten the very core of South Africa's national identity and image.<sup>2</sup>

With the hosting of the 2010 FIFA World Cup this summer, it is critical that the South African government implements a durable solution to the Zimbabwe dilemma. What steps should the President Jacob Zuma's administration take to solve this increasingly urgent issue? South Africa's high unemployment rate and limited public

resources means that permanently resettling the migrants does not present a viable option. Any policy framework, therefore, must promote political stability and economic viability in Zimbabwe to facilitate their eventual repatriation. While recent changes in the Zimbabwean economic policy have resulted in some positive trends, it will likely take years to adequately improve living conditions in the country. Accordingly, the undocumented Zimbabwean migrants must be provided with an official temporary asylum status in the short-term.

In order to achieve these short- and long-term outcomes, the Zuma administration should adopt the following policies: (1) apply diplomatic pressure on President Mugabe to compromise on core issues needed to reestablish the Government of National Unity (GNU); (2) lobby for full funding of Zimbabwe's 2010 Consolidated Appeals Process (CAP) to codify recent economic and political gains in the country; and, (3) grant temporary asylum status for undocumented Zimbabweans to dissuade xenophobic attacks, facilitate adequate living conditions, as well as abide by the South Africa's common law and international treaty obligations.

## Background

The origins of the Zimbabwean presence in South Africa date back to the late 1990s when President Robert Mugabe allowed

veterans of his revolutionary movement, the Zimbabwe African National Union (ZANU), to seize many of the country's white-owned commercial farms. The subsequent decline in agricultural productivity alongside international sanctions, foreign capital flight, and the government's unchecked monetary policy resulted in an economic collapse. It was not long before unemployment reached 85% and hyperinflation rendered the country's dollar essentially worthless leading many Zimbabweans to migrate abroad in search of basic sustenance.<sup>3</sup>

***“While the international community and other neighboring countries can have an impact, it is widely recognized that South Africa holds the greatest degree of influence over President Mugabe and ZANU-PF.”***

In addition to the economic turbulence, the instable political environment also played an important contributing role in the exodus. When the opposition party, Movement for Democratic Change (MDC), and its leader Morgan Tsvingirai rose to prominence as a viable political challenge, President Mugabe's actions became increasingly irresponsible and repressive. Such actions included *inter alia* the 2005 forced evictions of shantytown dwellers known as “Operation Murambatsvina”, which left 18% of the country's population without shelter.<sup>4</sup> This crackdown coincided with the parliamentary election victory of President Mugabe's ZANU-PF party that same year labeled by Western election observers as “neither free nor fair”<sup>5</sup> In the 2008 presidential elections, the political turmoil boiled over when Mr. Tsvingirai won a majority vote in the first round, but dropped out from the run-off due to harassment by the police and widespread violence against his supporters.<sup>6</sup> As a result of the instability, 34% of Zimbabwean migrants in South Africa cite

political concerns as one of the factors causing them to flee.<sup>7</sup>

Given Zimbabwe's geographic proximity and the analogous historical experience of living under white minority rule, South Africa has made it a priority to stabilize the country. Its policy goals vis-à-vis Zimbabwe are two-fold: prevent mass migration by promoting politico-economic stability, and tacitly support President Mugabe given his legacy as a freedom fighter. To this end, despite the objections from the international community, South Africa recognized ZANU-PF's 2005 parliamentary election “victory” in order to support President Mugabe and maintain stability.

During the 2008 elections, then-President Thabo Mbeki held a more balanced role as a mediator acting through the Southern African Development Community (SADC) to negotiate a compromise. As a result of Mr. Mbeki's efforts and pressure from the international community, the Government of National Unity (GNU) was formed in late-2008 with President Mugabe remaining in his post and Mr. Tsvingirai becoming Prime Minister. The developments have improved living conditions in Zimbabwe leading aid organizations to call for a “humanitarian plus” donor package, which includes food and medical relief as well as long-term structural assistance. Despite these gains, significant hurdles still exist. Most notably, Mr. Tsvingirai has disengaged from the government due to President Mugabe's failure to uphold core principles of the GNU agreement, and the Zimbabwean migrants in South Africa have yet to begin repatriating.<sup>8</sup>

### **Threatening South Africa's Identity and Image**

Zimbabwe's deterioration poses a threat to both to South Africa's national identity and international image. First, its post-Apartheid identity is built on the idea of national unity between different races and cultures. In his 1994 inaugural presidential

address, Nelson Mandela declared his vision of South Africa as a “rainbow nation at peace with itself and the world.”<sup>9</sup> Scarred by decades of minority rule, Mr. Mandela presented this idea in hopes of encouraging reconciliation and tolerance among the diverse range of people residing in the country. This message has proven effective between the white and black communities as there has been remarkably little race-based violence since the transition to majority democratic rule.

The series of xenophobic attacks against Zimbabwean migrants, however, demonstrates that the call to build a “rainbow nation” has not been headed by large segments of South African society. In the most prevalent example of xenophobia, mobs of native South Africans took to the streets in May 2008 lynching and raping foreigners, which forced then-President Mbeki to domestically deploy the armed forces in response.<sup>10</sup> Another spate of attacks occurred in the summer of 2009 when mobs hunted migrants, who were attempting to integrate into the local economy.<sup>11</sup> With unemployment at 34% and South Africa recovering from its first recession in seventeen years, the violent contest for jobs is not likely to dissipate in the near future.<sup>12</sup>

Moreover, these attacks could have reciprocating effects by discouraging foreign investment, thereby furthering economic strains. Given that Western media outlets including *The New York Times* and *BBC* extensively covered both the 2008 and 2009 incidents, they have received significant attention abroad.<sup>13</sup> The attacks serve to reinforce international concerns that crime and internal fissures make investing in South Africa risky. Without confidence in the country’s social stability, foreign investors will look elsewhere for more attractive business opportunities. In the short-term, the violence may dissuade tourists who are considering travel to South Africa for the World Cup, which will result in a loss of potential capital flows for the country.

The stakes for solving the Zimbabwe

dilemma are clearly high for South Africa, but the Zuma administration has the adequate leverage to facilitate a resolution. While the international community and other neighboring countries can have an impact, it is widely recognized that South Africa holds the greatest degree of influence over President Mugabe and ZANU-PF. This is largely due to their international isolation and the close diplomatic ties between the bureaucracies of the two countries. During the ongoing SADC-mediated negotiations, South Africa has the critical opportunity to use this leverage to draw concessions from the president and ZANU-PF.

### **The Way Forward**

The reestablishment of the GNU is critical to the political stability of Zimbabwe. Under President Mugabe’s rule, the political situation greatly deteriorated, most notably due to his decision to takeover white-owned farms as well as the increasing corruption in the ranks of ZANU-PF. Furthermore, he has committed numerous repressive acts such as “Operation Murambatsvina” and the detainment of MDC supporters by the thousands.<sup>14</sup> Despite these actions, however, President Mugabe still enjoys strong support within the country’s military including its Commander-in-Chief Constantine Chiwenga.<sup>15</sup> As a result, President Mugabe has the means to further entrench himself and cause significant instability if South Africa attempts to him out of a power-sharing agreement.

Since Mr. Tsvingirai disengaged with the government in October 2009, South Africa has worked through SADC to reestablish the unity government and should continue in this role. Although South Africa did not support the MDC’s decision to withdraw from the GNU, numerous infractions, such as unilaterally appointing cabinet members and arresting MDC officials, demonstrate that President Mugabe has failed to uphold his terms of the agreement.<sup>16</sup> Specifically, there are 27 outstanding issues that must be

addressed in order to secure Mr. Tsvingirai's reengagement—the most important of which include the appointments of the Reserve Bank Governor and Attorney General, the seating of MDC Deputy Minister of Agriculture designate Roy Bennett, sanctions against ZANU-PF, and continued farm takeovers.<sup>17</sup> In order to achieve an agreement during the ongoing SADC-mediated negotiations, all options including the imposition of sanctions on President Mugabe and his party should be put on the table during these discussions.

While the political discourse resumes, South Africa should lobby the international community to fully fund the \$378.4 million CAP “humanitarian plus” donor initiative. This requested aid package recognizes that major humanitarian concerns still exist in Zimbabwe, but also that recent economic gains must be consolidated through transitional assistance. The key humanitarian priorities to be addressed include containing the 2008 cholera outbreak that has spread to 55 of the country's 62 districts resulting in over 4,000 deaths; compensating for the national cereal deficit that will leave 1.9 million Zimbabweans hungry; treating the 1.2 million people infected with HIV/AIDS; and, providing nourishment for the 35% of children under the age of five who suffer from malnutrition.<sup>18</sup> Despite the starkness of these figures, they mark an improvement from previous years; the CAP also includes transitional programs such as funding for educational activities and infrastructure reconstruction to facilitate long-term development.<sup>19</sup>

South Africa should lobby donor governments to give generously to the CAP, particularly for transitional assistance, as these activities will make repatriation more attractive for the Zimbabwean migrants. Given that only 2.4% (\$8.9 million) of this year's request has been funded, South Africa should instruct its ambassadors in donor countries and the UN to hold high level discussions in order to maximize appropriations.<sup>20</sup> It should be noted that western governments are often reluctant

to provide funds citing corruption within the Government of Zimbabwe (GoZ) and their belief that the aid will be used for political purposes. The United States, for instance, has declined repeated requests to provide financial assistance to the GoZ while President Mugabe remains in power.<sup>21</sup> Consequently, South Africa's ambassadors should stress to donors that the CAP is a consolidation of UN agencies, other inter-governmental organizations, and NGOs. Thus, the funding will not be transferred directly to the GoZ.

In the interim period while Zimbabwe rebuilds, the Zuma administration should grant temporary asylum status to the two million undocumented migrants already living in South Africa. This enactment will serve to dissuade xenophobic attacks against migrants, provide adequate living conditions, as well as abide by South Africa's common law and international treaty obligations. Providing temporary status to undocumented migrants serves as an important first step against preventing attacks since victims will be more willing to come forward to the police without fear of deportation.

In addition, granting Section 22 status will facilitate more adequate living conditions for the asylum seekers. The UNHCR has labeled the South Africa's response to the migrant influx as having “significant protection gaps”. The High Commissioner cites transit shelters in Musina, for instance, as being “extremely basic” and “inadequate”.<sup>22</sup> Given the strains already placed on the South African government for public service delivery to its own citizens, it may not be able to provide significantly improved conditions. With temporary asylum status, however, the migrants can find short-term employment to support themselves, thereby relying less on South Africa's public safety net. This policy will likely draw discontent from the domestic workforce, but the administration should emphasize that this status is only temporary and will not take away permanent job opportunities from South African citizens. Finally, the government has a legally binding



obligation to grant temporary asylum status to Zimbabwean migrants based on the South African Refugee Act; the UN's 1951 Convention relating to the Status of Refugees; and the Organizations of African Unity's (OAU) 1969 Convention governing the Specific Aspects of Refugee Problems in Africa.<sup>23</sup> The Refugee Act defines a refugee as a person who is fleeing due to events that "seriously disturb or disrupt public disorder," and similar language is imbedded in the UN and OAU conventions.<sup>24</sup> Given the upheaval caused by President Mugabe's political and economic mismanagement, the vast majority—if not all—of the Zimbabweans in South Africa meet this criterion.

Due to the inability of the South Africa's Department of Home Affairs (DHA) to process the high volume of individual asylum applications, I recommend the implementation of Section 35 of the Refugee Act. This mechanism allows the Home Minister to provide an entire group of asylum seekers resulting from a "mass influx" with temporary Section 22 status. Thus far with the individualized recognition procedure, the DHA has only granted temporary asylum to 10% of Zimbabwean migrants and has a backlog of 250,000 applications.<sup>25</sup> By implementing Section 35, the migrants could be given Section 22 status *en masse* until economic and political conditions in their home country warrant repatriation.

### Alternative Proposals

This section will present two alternate proposals that exist on opposing ends of the political spectrum. Within the Zuma administration, there are likely a number of government officials who propose full support for President Mugabe. Their policy to address the Zimbabwe dilemma would likely include the following key tenets: publically endorse President Mugabe; lobby the international community for funding of a broad-based assistance package controlled by the GoZ; and return the migrants to Zimbabwe. This



*South African President Zuma embraces Zimbabwean President Mugabe at a Zanu-PF conference.*

policy framework, however, would alienate Mr. Tsvangirai and lead to a collapse of the negotiations to reestablish the GNU. With power squarely in President Mugabe's hands, he would potentially accelerate the farm takeovers and other hazardous activities reversing the recent political and economic gains made by the GNU. Moreover, encouraging GoZ control of aid flows would likely lead to waste, fraud, and abuse due to ZANU-PF's corrupt culture. Deportation would remove the migrants at an extremely high cost to the South Africa's image abroad and would be illegal under international treaties and South African common law.

Conversely, some administration officials may seek to put the full weight of South Africa's diplomatic efforts behind Mr. Tsvangirai, which could prove equally problematic. Their proposal might look as follows: publically endorse Mr. Tsvangirai; lobby the international community for funding of "humanitarian plus" assistance controlled by the MDC; and grant permanent refugee status to undocumented migrants. This policy framework would further isolate President Mugabe leading him to use his influence with the military and police forces to further entrench himself. A fierce political battle would likely erupt given that the MDC or possibly even elements within ZANU-PF might attempt a coup. The "humanitarian plus" package coupled with this political digression

would not create the necessary conditions for the return of the migrants. And, as discussed above, granting permanent refugee status to the undocumented migrants could lead to domestic instability given that the South Africa does not have adequate public services or employment opportunities to fully absorb the two million person strong community.

## Conclusion

While the proposals that fully back either President Mugabe or Mr. Tsvingirai will satisfy their respective constituencies in the South African government, a more moderated approach is needed to successfully resolve the Zimbabwe dilemma. As presented in

this essay, the Zuma administration should pressure President Mugabe to abide by the GNU agreement, lobby the international community to fund aid organizations in distributing the “humanitarian plus” assistance package, and grant undocumented Zimbabwean migrants temporary asylum status. This policy framework addresses the urgency to protect the Zimbabwean migrants and to create the circumstances facilitating their eventual repatriation home. The story of Zimbabwe is truly a tragic one, but South Africa has the leverage to resolve the dilemma. The question remains, however, does the Zuma administration have the political will to use it?

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“Zuma Mugabe” Denford Magora’s *Zimbabwe blog*. 13 April 2010. <http://denfordmagora.blogspot.com/2009/12/south-africas-anc-praises-and-damns.html>



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