

CONFERENCE PROCEEDINGS

# ON STRATEGY

STRATEGIC THEORY AND CONTEMPORARY  
AFRICAN ARMED CONFLICTS



EDITORS

Francois Vreÿ, Thomas Mandrup & Abel Esterhuyse





# ON STRATEGY

Strategic Theory and Contemporary  
African Armed Conflicts

EDITED BY

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*On Strategy – Strategic Theory and Contemporary African Armed Conflicts*

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FROM THE EDITORS



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# FOREWORD

## Strategy Making: The Theory Versus The Practice

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### Introduction

In his famous dictum on the relationship between war and politics, Clausewitz implied that war, if undertaken, had to be a rational instrument of politics (Von Clausewitz 1976:92).<sup>1</sup> In their introduction to this volume, the editors note that what we observe, by contrast, is often difficult to explain in terms of a rational instrumentalisation of war. They also note that several theories attempt to explain the observed dynamics of war. Here, by way of a short foreword, are some thoughts to add to these theories, unsatisfactory as the editors find them. These thoughts concern mainly bureaucratic policy making, or to put it differently: the emerging of strategies from collective decision making. The strategies emerging from such collective processes are rarely as rational and instrumental as Clausewitz postulated that they should be: he started from the premise that the use of armed force should above all be appropriate to the actions and behaviour of the enemy, to the conflict in hand. Clausewitz did not have collective decision makers in mind.

### Strategy making in theory

The Greek term ‘strategy’, or skills of the general, had long fallen out of use before it was imported into West European languages in the late eighteenth century. It

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1 See passages such as this: “Since war is not an act of senseless passion but is controlled by its political object, the value of this object must determine the sacrifices to be made for it ... ” (Von Clausewitz 1976).

was only in the twentieth century, however, that writers on war defined strategy to include higher, political dimensions, building on the much older realisation (famously captured by Clausewitz) that war is or should be a tool in the service of higher political aims. Thus we find the British captain, Basil Liddell Hart, opining during the Second World War that “strategy is the art of distributing and applying military means to fulfil the ends of policy” (Liddell Hart c1944:229).

Strategy in peace – which was recognised especially in the Cold War as something just as real as strategy in war – was thus closely akin to defence policy making. Most of the literature on the subject assumed that in peace or war, the policy one adopted would be formulated to affect a particular enemy, a particular crisis or dangerous situation. It assumed that such policies would be a function only of few variables: the assessment of a threat situation, and the most rational, albeit cost-effective way to contain it or counter it with the means available, or with new means yet to be found. Admittedly, the literature on the art of war over centuries prescribed complex measures; it exhorted the commanding general or the strategist or even the prince to take care not to bring about unwanted side-effects; it considered how to deal with complications and how to weigh clashing priorities. It recognised that choices had to be made and that one could not have one’s cake and eat it (Heuser 2010; Heuser 2010b).<sup>2</sup>

Nevertheless, the problem with this literature was that most of it – from Aeneas Tacticus in the fourth century BCE to Clausewitz and Jomini – presupposed that the decision maker was a single entity with a coherent and unitary political will. The ideal strategy maker was thus an Alexander the Great, a Gustavus Adolphus, a Frederick II of Prussia or a Napoleon. Little was written on the policy- and strategy-making process when there were multiple decision makers.

## Multiple actors

In the twentieth century, however, more with the intention of analysing and explaining past events than of prescribing particular procedures of policy making, academics studied these processes systematically. The literature they produced has somewhat unfortunately become known under the heading of ‘Bureaucratic Politics’, even though it was not only bureaucrats and civil servants who complicated the process which had once taken place within the head of one man.<sup>3</sup> The authors explaining US foreign policy in applying bureaucratic politics as analytical framework were not doing much more, but doing it more systematically, than good historians had done over several centuries, when they explained why certain policies or strategies had been adopted and pursued in past wars and peace. What they all recognised, however, was that in most states or organised social entities,

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2 For such themes, see Beatrice Heuser, *The Evolution of Strategy: Thinking War from Antiquity to the Present*; Beatrice Heuser (ed), *The Strategy Makers: Thoughts on War and Society from Machiavelli to Clausewitz*.

3 See examples in the literature on this topic by Graham Alison, Morton H Halperin, David C Kozak and James M Keagle.

multiple agents – not just bureaucrats, hence my unhappiness with the term – interacted in the policy- and strategy-making process. In modern democracies, the process of strategy making would include the institutionalised criticism voiced by the opposition parties in any parliament, but also by rivalling ministers within the governments. The editors note that in Africa, even today, it is mainly the army that counts in conflicts, but elsewhere, navies, air forces, and any other service branches engage in institutionalised wrangling over their share in the budget pie.

In short, there is no unitary actor in strategy making, but many actors, each with their own agenda. Such agendas range from ensuring their own re-election or promotion to safeguarding or augmenting their slice of any future budget, the influence of their ministry, service, sub-service section, directorate, etc. within the government. They have many other goals to pursue, quite apart from that of tackling the security problem for which strategy is formulated. Each actor seeks not only to address the issue for which strategy is made, but also to exploit the process of strategy making for his/her group's, the institution's, and his/her own narrow benefit in relation to other policy makers. Garry Gifford has rightly commented that “intramural struggles over policy” – and he might have added, strategy – “consume so much time and attention that dealing with external realities” – and indeed with the enemy, and his intention – “can become secondary” (Clifford 2004:94).<sup>4</sup>

All this applies fully not only to the wrangling within the military or among the government departments of one country, but of course, by a greater order of magnitude, to all interstate (or alliance or coalition) decision making. In our times, interstate decision making adds clashing national interests to the many often conflicting agendas of personal ambition, institutional rivalry, greater economic constraints and interests and resource constraints. At the highest level, there will, in addition to all this, be the question of whether a particular strategy to be adopted will ultimately promote or ensure (world) system level stability – a consideration to which many local or regional issues are readily sacrificed.

## Compromise and inertia

Decisions on policies and the strategies to implement them tend to be made collectively, often in committees. These are particularly widespread in the Anglo-Saxon world, but even cabinets presided over by Prime Ministers, or the US National Security Council presided over by the US President, function to a large extent as committees. This also applies to the United Nations Security Council (UNSC), the North Atlantic Council, the EU Council of Ministers, and so on. Even the most dominating president will be forced to listen to the members of such a committee before taking a decision, and will usually wish to satisfy the concerns of as many members as possible in the final decision. Consequently, decisions taken tend to be compromises, rather than the undiluted pursuit of strategy option A or strategy

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<sup>4</sup> J. Garry Clifford: “Bureaucratic Politics”, in Michael J. Hogan & Thomas G. Paterson (eds). *Explaining the history of American foreign relations* (2<sup>nd</sup> edn. Cambridge: CUP, 2004), p.94.

option B. Even during the Cold War, British Admiral Richard Hill thus called strategy documents “a distillation of compromises” (Hill 2006:61).

Another dimension of bureaucratic politics is that of any big organisation’s reaction to orders. Not only does collective decision making take longer than the decision making of a dictator or tyrant. We are often told that ministries of defence or armies or navies, not to mention international organisations, are, like supertankers, slow to change course. Where at all possible, they will follow precedents or already existing standard operational procedures (SOP) (Allison 1971:93). For in complex decision-making processes with multiple players, the best way to secure agreement on anything will be to present it as a SOP or as something that has a precedent and therefore *has been agreed before*, obviating the need to revisit all the arguments for or against the procedure itself. Similarly, any good officer or civil servant, being asked to write a draft text for a group of decision makers to discuss – for example, a strategic concept, a policy paper, or a forceful deterrent statement to respond to an adversary’s actions – will thus begin by piecing together passages from documents that the same group or at least the same government or international organisation has previously agreed upon. Moreover, there is the proclivity of bureaucracies to continue doing whatever they have been tasked to do, unless they have been specifically told to stop. If then the leaders of a government are unaware what detailed applications an overall strategy they have devised has given rise to, they may not think to terminate all of its manifestations when changing the strategy.

In sum, strategy making will be influenced by how important any one of the following is for any player in the decision-making process relative to all the others:

- To resolve a crisis or terminate a war in the best interest of the people directly affected.
- To protect or even strengthen the International Order (order on the ‘system level’).
- To ensure the survival of the International Organisation mobilised to tackle the task (e.g. the UN, the African Union and NATO), which in turn is seen as a beneficial element of the International Order.
- To further his/her own state’s particular interests (e.g. trade, or stopping the incursion of refugees).
- To serve the interests of his/her current government (party/parties in government, as opposed to one or several party/parties that might be elected into office), current minister, institution (international organisation or state ministry or service; division; section) or own career.

Juggling all these different interests and criteria is thus a most complex process. Neither is the reasoning of any individual necessarily illogical (as is so often claimed, usually about decision makers in other states) if it does not focus narrowly on resolving a security problem, nor is the overall outcome illogical. It is merely the balancing of many mutually incompatible and often irreconcilable considerations

and interests that are indirectly related to the problem in hand. It is thus not surprising that the strategy that is adopted by a group, a state, or an alliance is rarely something Clausewitz would have thought the most rational instrumentalisation of armed forces for the purpose of rational policies.

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# INTRODUCTION

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## Introduction

The conference theme *On strategy: Strategic theory and contemporary African armed conflicts*, jointly presented by Stellenbosch University in South Africa and the faculty of the Royal Danish Defence College, attempts to draw attention to two matters. First, the importance and contribution of strategic theory as an explanatory framework to better understand armed conflict, and second, to elevate the importance of the policy – strategy nexus that is often lost or misinterpreted when viewing African armed conflicts. This conference represents a combined enterprise to bring a better understanding of the seemingly intractable African armed conflicts, and the world of strategy, to be understood as the consequences of the past use of armed forces for future outcomes (Gray 1999:18).

In a sense, the African theme of this publication alludes to the constant ebb and flow of the need for security amidst so many emerging non-state armed groups, and ideas on how to use, or refrain from, armed coercion in the pursuit of security. Vinci (2006:33) argues that armed groups pursue more security through power in order to survive and employ numerous instrumental means (so often related to armed force or violence) to ensure this security and ultimate survival to which decision makers have to respond. Africa is no exception and although African leaders tend to declare their opposition to the use of armed coercion to pursue security and settle disputes, African strategic reality often points the other way. Armed coercion, or the threat thereof in the strategic equation of ends, ways and means, appears as a prominent fixture on the African strategic landscape (Howe 2001:5). In the classical realist sense, armed forces, however, remain a mere tool of policy that decision



makers (both military and political) need to consider carefully. From a more idealist point of view, and perhaps also one held by constructivists on the ideational meaning of concepts, the use of coercion may offer more fungible or malleable options that are better suited for the perceived threat at hand. It is with regards to this latter dilemma of how to use armed coercion, or the threat thereof, more intelligently to bring political solutions to fruition, that strategic theory features as one focus of the conference: how to better understand the strategic bridge between the broad policy and more pointed military domains in the African security environment.

### On strategic theory

“Strategies are made and carried out by *people*.” Strategic practice is also dependent upon ideas and these ideas so often reside in the realm of strategic theory (Gray & Johnson 2010:375, 377). Although not the sole answer or ‘silver bullet’ to strategists and decision makers, strategic theory has a role to play. Contemplating force is never totally absent when actors have to contend with decisions about threats and vulnerabilities – whether force enters the equation of responding to threats and vulnerabilities through coercion, the threat of coercion or its denial. Strategic theory has a contribution to make, albeit so that it is often not fundamental as in the case of informing decisions about employing nuclear weapons, the value of possessing nuclear devices or deterrence theory. In contrast, the African conflict typology is not always well accounted for by contemporary strategic theory and, as such, represents a field for scholarly attention (Gray & Johnson 2010:383).

In a normative sense, the Clausewitzian outlook on strategy leans towards a social scientific theory of war being rational and instrumental (Williams 2008:153), or, at the minimum, containing elements of such a theory. This view follows that of Howard (1983:1) who sees the work of Clausewitz as superior to all other influential texts on military theory. Although judged as transcending time, the work of Clausewitz is not beyond criticism – regarding its shortcomings on technology and maritime power, for example (Howard 1983:3). Some theorists aver that strategic theory is not a proper scientific theory with a significant predictive value (Osinga 2007) and Clausewitz is a case in point as his work rejects the notion of mastering rigid scientific laws (Howard 1983:13-14). The often-quoted complexity and unpredictable behaviour accelerated by chance and friction contribute to the views of those that question the scientific basis of strategic theory. If measured against the requirement of a predictive value, few of the strategic theories on offer meet this requirement. From a theoretical approach, the expectation of a strategic theory that satisfies the elements of social theory by ultimately explaining what we observe is difficult to come by. As a lens to explain what we observe, strategic theory, as a possible singular parsimonious theory, can barely elucidate all the complexities involved in the making and execution of strategy (Osinga 2007:3).

Proliferation characterises the domain of strategic theory. As opposed to a single general theory, several theories within an ongoing pattern of evolution – some quite immature – attempt to explain or account for the dynamics and multiplicity that one observes. This proliferation to describe events and trends in an ongoing

manner is not strange. Theory proliferation reflects the tendency outlined by Neuman (2003:42) that classical or developed and mature theories often give rise to lesser theories with limited explanatory powers, and often theory is merely implicated in views, expressions and stances that stem from the lesser theories. The more fundamental theories on war of Sun Tzu, Clausewitz and Jomini, for example, were only later followed by those from the likes of Mahan, Douhet, Fuller and Tuchachevski who added their particular insights to the evolution of strategic theory. This of course underlines the matter of a classical or original theory of war from which lesser theories eventually derive, or emerge to add to the original explanations offered.

In arguing the case for strategic theory, Mahnken (2010:68) maintains that it helps to understand war – in whichever format it unfolds. This argument by Mahnken holds obvious implications for those questioning the utility of strategic theory and in particular the arguments from proponents who attempt to pry apart the nexus between post-modern conflicts such as resource wars, new wars, war amongst the people, and the more classic domain of interstate conventional wars between peer or near peer competitors (Duyvesteyn & Angstrom 2005:4). It is not unlikely that the complexities of war proper are mirrored by the complexities of new wars. The latter irregular armed conflicts are perhaps even more demanding of progress in the realm of strategic theory to promote understanding. Irregular armed conflicts are often low-tech, but with destructive weapons, savagery, private actors and a plethora of non-state actors shifting or forcing the paradigm (how we prefer to see things or events) of state-controlled armed coercion to illegitimate armed violence. Armed groups now also often fight against or together with formally structured armed forces for political gains, and frequently for material benefits as well (Sheenan 2010:61-62). Theory orders complexity through parsimony if at all possible (Neuman 2003:42), and it is the endurance of an unambiguous theory to explain growing complexity that catches the attention. The more fundamental nature of a clear-cut theory allows for the growth of more innovative ideas by serving as the rock bed of subsequent thought. Although the pathway for theory development is thus perceivable, its building blocks of concepts and constructs, terms and narratives in the realm of strategic theory remain less clear. Given the complexity of war, the need for order remains and the theoretical pathway remains one option, although one often disputed.

The antagonism towards strategic theory frequently originates from misunderstanding or misreading its role, and readers of the work of Clausewitz often show such misunderstanding (Brodie 1984:45). Theory does not contribute a skill, but adds to the intellectual and conceptual enhancement of existing insights and beliefs to cover and comprehend a situation with greater certainty. Any mastering of the theory thus augments the skills that are in place. In this regard the contribution of theory is said to be a “process by which we co-ordinate our ideas, define the meaning of the words we use, grasp the difference between essential and

unessential factors, and fix and expose the fundamental data on which everyone is agreed” (Widen 2007:130).<sup>1</sup>

The eventual contributions offered by theories are of individual and collective benefit. Individual benefits confer upon commanders a broadened outlook and the ability to simplify complexity in order to focus on the key issues at stake. Collectively, theory enhances communication vertically between different levels and horizontally between peers. Theories, specifically the concepts and wording by theorists and analysts that construct and give meaning to theories, eventually become verbal tools to communicate and promote better understanding. Consequently, theory “fosters intellectual cohesion and serves as a common vehicle of expression and creates a common plane of thought” (Widen 2007:113). In a sense, theory, as discussed by Widen (who compares Corbett with the hermeneutics of Clausewitz and positivism of Jomini), serves to organise a domain that tends to oppose the imposition of rules or prescripts by offering a common framework to collate thoughts and place it upon a recognisable plane.

If one turns this theoretical perspective towards the strategic domain, strategy as a theoretical concept plays out as matching goals with resources – or ends with ways and means. Theory organises knowledge about the world of matching outcomes with the resources. One finds in Gray’s (1999:17) interpretation of this understanding of strategy – “the use that is made of the use of force, and the threat of force for the ends of policy” – the classical or fundamental nature of the theoretical insight offered by Clausewitz – “the use of engagements for the object of war”. This demonstrates just how explanatory the parsimonious definition of Clausewitz is and how it can be stretched or expanded conceptually to explain how to use the military to pursue policy objectives (Gray 1999:17). Both definitions offer scope to direct military, as well as other resources and instruments of policy in the pursuit of objectives. The role of theory to order and create or promote understanding thus becomes visible from this explanation by Gray.

Although difficult, the argument for ordering the complex field of war must not be shunned (Paret 1984:15). Strategy is essentially a pragmatic and practical activity in a high-risk environment. Strategy affects and involves the means of violence and destruction where the line between its correct and legitimate employment and getting it wrong is often very thin. Relevant theoretical explanations, exploration and descriptions thus deserve some consideration if they hold the potential to prevent the wrong or improper use of a potentially destructive policy tool. The worlds of strategic theory and strategy in practice nonetheless often remain at odds and the desired interface of theory and practice somewhat partial, rather than perfect (Gray & Johnson 2010:378).

When moving from the clinical academic debate on how theory contributes to an understanding of war, towards the more empirical realm of doing strategy, it

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1 Widen, J.J. 2007. Sir Julian Corbett and the theoretical study of war, *Journal of Strategic Studies* 30(1):130 (Widen paraphrasing Corbett, J. *Some Principles of Maritime Strategy*, Part 1: Theory of War).

serves one well to understand two matters. Firstly, a preference held by some to see war as a mere observation without apparent context or explanation. Secondly, explanations by those deciding upon going to war time and again, but who hold a rationale built upon layman views that, according to Neuman (2003:42), are often not well formulated, less systematic, and hard to test and thus to refute. The thrust is therefore (when possible) to work with theories of strategy or a theory that explains observed regularities and to group classes of phenomena (Babbie 2004:43). To an extent, it becomes inductive theory construction by working from events, observations and experiences towards patterns and relatively universal principles and a theory that encapsulates as much as possible of the phenomenon called war (Babbie 2004:55). Although perhaps typical of Clausewitz's contribution through *On War* as explained by Paret (Paret 1984), Gray nonetheless holds the view that strategic theory failed to significantly enhance understanding, making and executing strategy (Gray 1999:98).

Murray and Grimsley (1994:1) rightly maintain that theories regularly turn upon fixed values while strategy (although not restricted to the military) so often "... involves human passions, values, and beliefs, few of which are quantifiable". Unfortunately, ideas of theory playing a major role through the notion of strategic theory has perhaps few proponents that fully embrace the role for theory in the field of strategy as practiced by politicians, soldiers and the growing array of non-state actors that employ armed coercion or the threat thereof.

In the Clausewitzian theory of war (as found in *On War*) one finds the conceptual space to group different phenomena, but under the rubric of war expressed as the use of engagements for the object of war. It is in his subsequent theoretical writings (Book Six of *On War*, *The people in arms*) that Clausewitz offers the leeway for manifestations of other forms of war that he typifies as popular uprisings, or a general insurrection as "simply another means of war" (Paret & Howard 1984:479). Clausewitz (although largely interested in the military value of the phenomenon) nonetheless delimits its political character and military value and so warns against the threat of instability this "expansion of the element of war" holds for domestic social order. Even at the time of writing this, Clausewitz identified the difficulties and suggested that irregular war must be studied more closely over time, as he did quite comprehensively even before writing *On War*. It is this very matter, which is so often disputed or contested by theorists and analysts, as to whether insurgency, civil wars or terrorism qualify as war are explained or are possible to explore through the Clausewitzian paradigm and so receive closer scrutiny. In effect, the aforementioned difficulty unfolds as Clausewitz's work on insurgency, people's war and guerrilla warfare are ignored, alternative paradigms are constructed and each draws its own audience of adherents.

Paradigm theory explains how we look at the phenomena that we observe. It is plausible that paradigms are more subjective than theories as the latter tends to explain, explore and describe what one observes and, to an extent, is also predictive in some way (Babbie 2004:43). It is the explanatory value of theory, and strategic theory for that matter, that is relevant and needs understanding, but amidst

its limitations. Contributing a better understanding, and not an added skill to fight more effectively on the battlefield, remains at odds with those claiming the superiority of skills over understanding, whilst it is rather about understanding the contribution that each offers. Not all soldiers, sailors and airmen employed on the battlefield require a sound theoretical backdrop to what they are doing. Those who place them on the battlefield and have to conduct operations, however, surely require some deeper understanding of what guides or should guide their decisions.

Strategic theory is conceivably better understood if not perceived or preferred as a single theory and paradigm housing a general explanation of war. As an explanatory theory it hardly suits the need of parsimony and by the second decade of the twenty-first century it is challenged by a complexity that promotes unpredictability and some explanation of new phenomena that resemble war or armed conflict. Strategic theory, as a theory that is much governed by the Clausewitzian notion of war, is thus constantly challenged, resulting in debates on whether to include or exclude the new armed phenomena that resemble war (Smith 2003:37). The debates often unfold as arguments to include new armed conflicts under the Clausewitzian theory or opinions that many of the new armed spats are different with very little or no place in the Clausewitzian paradigm of war.

The competition between different paradigms is relevant to the theme of the conference. Conflict and violence in Africa reflect phenomena that seem to support the arguments of those proposing the demise of the classical Clausewitzian outlook upon war and (in the words of Colin Gray) of war having one nature but many faces, but faces that ultimately generate strategic effect – irrespective of how irregular or unconventional the tactics are (Gray 1999:278). It is the ‘big battle’ philosophy (of the super- and major powers) that is under pressure – and often a cause of military forces regularly arriving in a conflict situation somewhat unprepared for what awaits them, or after long intervals facing a world of armed coercion more influenced by humanitarianism and the media, and less by traditional political diplomacy backed up by armed coercion (Clark 2002:418-419).

Fortunately, the realm of strategic theory is not only characterised by flux and uncertainty. The use of or the threat of armed coercion manifests in various ways, but four major domains of strategic theory have become salient over time. These theories on land, sea and aerial warfare, and the cyber domain, reflect recognition that war is shaped by its geographical setting; that the making of war is first of all about maximising strategic changes within the constraints imposed by nature (Moran 2010:125). Whether seen as strategic in the sense that each contributes (independently or in some joint or collective manner) to the military and political objectives, land, maritime and air power thought have evolved over time to culminate in rather mature theories on land, maritime (naval) and aerospace warfare. The use of cyberspace and information is the latest addition to the more traditional strategic geographical domains. To an extent, the former three (land, sea and air) represent lesser theories, albeit so that they are conceivably the more classical paradigms to better explain events and thoughts about warfare in their respective domains. The cyberspace and information theories are fast emerging,

but not in isolation, as theoretical thought on irregular war remains competitive in order to explain a range of less classical phenomena on the strategic landscape (Duyvesteyn & Angstrom 2005:4; Gray 1999:280).

Given the complexity of war, even lesser theories are not limited to simple military ways and means. The culmination of changes in politics, technology and finance streams forces changes in the preparation and employment of armed forces to pursue political goals (Farrell & Terriff 2000:3). The more traditional outlook of coercion, the threat thereof or using the engagement for the purpose of war, sometimes remains at odds with peacekeeping in its different variants, so-called do-good roles and policing styled duties, but then again the question remains: are we looking at one of the many faces of strategy as the use or threat of coercion through military means for political ends? Armed forces of the early twenty-first century are expected by their leaders to cover ever-growing political demands for their services, but demands not conforming to the classical roles articulated by Clausewitz and preferred by soldiers. A growing legal regime under the banner of International Humanitarian Law further tries and tests the stretched and often unfamiliar roles now attributed to armed forces (Roberts 1999:107-108). Growing demands stem from military, economic and political realms that strain the traditional capabilities ascribed to military forces (Wulf 2008:193). All these matters tend to make the lenses of strategy proper somewhat opaque, but strategy and war have many faces. One is therefore tempted to argue that by the early twenty-first century, scholars, decision makers and soldiers are merely striving to come to grips with a particular face of war, such as the one visible on the African continent.

## On African armed conflicts

Africa calls for a better understanding of the use or the threat of armed coercion for the ends of policy. Contemporary African armed conflicts portray a conflict spectrum that is depicted in the *Correlates of War Project* as being extra-state and intrastate in kind and the prevalence of which compelled an expanded typology of war. The growth in non-traditional modes of warfare increasingly blurred the distinction between interstate armed conflict and armed violence with the state being one of several actors party to the conflict (Sarkees, Wayman & Singer 2003:59-60).

Few conventional interstate wars are visible amongst contemporary African armed conflicts. African political leaders tend to get involved or drawn into messy armed conflicts where external third parties regularly have to step in and resolve the conflict – although often not through the conventional use of armed coercion, but rather in the form of collective diplomacy backed by threats of armed coercion (Howe 2001:1). It therefore becomes all the more difficult to trace the classical theory of armed coercion in support of political objectives in ongoing African armed conflicts as the impact of military unprofessionalism, irrelevance and/ or dangers of military solutions often upsets the use of armed coercion for political ends (Howe 2001:9, 13-14). If matters of strategy become veiled, if not deliberately obscured, the coercion-political goal connection suffers conceptually, although not always in the practice of strategy. This is when strategic theory, its aim to make better

decisions possible and what strategy entails become important to understand and assume prominence as an explanatory framework for both soldiers and politicians.

African armed conflicts are typified as being intra- or extra-state conflicts of an unconventional nature. It is necessary though to also register the obvious – that African conflicts are predominantly land/ground-based conflicts (Howe 2001:74). Armies are the most prominent military instrument on the African continent *vis-à-vis* their maritime and air counterparts and perhaps more suitable to oppose salient landward threats to regime security than the latter two arms of service. This is also reflected in the reality of armies as personnel-driven instruments of power compared to maritime and air forces which are dependent on (new) technology as technological instruments of power. The level of African industrial and technological development, together with the availability of manpower (albeit mostly semi-schooled) has a defining influence on the nature of African militaries and their utility. Consequently, African armies tend to be more infantry than mechanised in nature. At the same time, Africa is experiencing a population boom that, while availing large numbers of people for military service, creates a huge potential for conflict if the employment and expectations of these youths are not managed (Ashford 2007).

The lack of capacity of African air forces, the absence of air infrastructure in many parts of Africa (including civilian air infrastructure), together with the limited utility of air power in the typical unconventional intra/extra-state African conflict environment, raise questions as to the relevance of traditional air power theory in the African security domain (Vreÿ & Esterhuyse 2008). Stated differently, the primary air threat in the African security domain is most probability not rooted in the existence of an opposing air force and rarely the instrument of choice to pursue policy. Rather, the threat either stems from a ground-based anti-air capacity or ungoverned air space. As a consequence, a small air power capability may strategically be exceptionally effective in Africa.

African navies border on what Geoffrey Till describes as pre-modern navies. Pre-modern navies, Till notes, “... verge on being a contradiction in terms since adverse circumstances mean they struggle to exist or to do anything other than symbolise their country and its problems, while perhaps providing at best a sporadic defence of some of its key interests” (Till 2009:2). It is an historical fact that, with South Africa as the exception, no African country had a navy before decolonisation in the late 1950s. Since then, very few African countries, if indeed any, developed the industrial support base and skills to crew and maintain any naval vessels at the high end of the technology spectrum. Recently, though, Africa has seen a tremendous growth in maritime criminal and security activities. Piracy has become a major problem in the Horn of Africa and the Gulf of Guinea with the poaching of maritime resources in Southern Africa also becoming a serious issue. This translated in a rapid increase in maritime security awareness in certain parts of Africa and a growing involvement of foreign naval powers in the African maritime domain. Sad to say, though, it did not result in a growth of African naval capability (Engelbrecht 2010). Of course, the technological nature of maritime power implies that it takes a long time to develop

the required skills and the naval platforms (not to talk about the experience and culture). An African maritime capacity will thus not to be developed overnight.

At the continental level, African leaders set in place an elaborate security architecture through the African Union (AU) that is underpinned by a philosophy of eradicating war from the continent. The salience of this intent to remove war becomes visible in the progress made with the Peace and Security Council (PSC) of the AU. The PSC represents not only the most mature institution within the AU, but one reflecting an operational plan of foreseen force structures, timelines and geographical demarcations to employ regional African brigades for armed coercion (or the threat thereof) to prevent, stop or turn back the threat and destruction of contemporary African armed conflicts (African Union 2002: Art 13). Of interest is that the AU does not foresee the employment of AU forces in a warfighting role, but rather utilised collectively or co-operatively to prevent the outbreak or escalation or perpetuation of armed violence (African Union 2002: Art 6 and 7). In some sense, the AU, through the PSC, envisages the employment of African military capabilities to adapt to or emulate changes in the use or threat of armed coercion – changes that stretch much wider than Africa.

## Chapter outlines

To keep in touch with the two broad themes of strategic theory and contemporary African armed conflicts, the papers for the conference follow the contours of theory and an eventual focus upon the African continent. Both this introduction and the foreword are attempts to set the scene for better understanding the complexities that underpin or direct armed conflict on the African continent. But as Colin Gray suggests, strategic theory often does not succeed to inform decisions and better understand armed conflicts, and this most probably accounts for regular as well as irregular wars (Gray & Johnson 2010:374). Some papers thus lean towards the role of theory, in the sense that they explain to an extent the development of theory to guide the use of armed forces, while others depict realities of armed conflict on the African continent. Particular African armed conflicts are not discussed *per se* as they are generally over-exposed – whilst the grounding of the conflicts and their resolution are rarely approached and discussed by heeding the insights offered by strategic theory.

The papers commence with a contribution by Professor Beatrix Heuser of Reading University. Her paper, *Strategy making: The theory vs. the practice* (as a foreword to the publication), covers the making of strategy. It shows a rather strong theoretical departure that is embedded in the nexus between how governments go about making strategy and eventually bringing strategy and policy together in a collective effort (amongst others) as armed coercion or the threat of armed coercion in the classical sense.

Professor Annette Seegers of Cape Town University touches upon the matter of security sector reform in Africa in her contribution, *Democratic civil-military relations: A framework for analysis*. Seegers avers that political thought has long



housed three fears about armed forces: that the people will make war on each other; that the government will make war on the people; and that the soldiers will make war on government. The Democratic Tradition has typical responses to temper these fears, among others by commercialising society, limiting and weakening the state, empowering the legislature, encouraging professionalism, and punishing partisanship. When viewed from a behavioural or practical angle, the responses stemming from the Democratic Tradition appear deeply flawed. She presents these responses not in an idealised way, but as they unfold in reality through actual behaviour.

Doctor Bjørn Møller from the Danish Institute for International Studies presents *Security providers: A pluralistic approach?* – a paper that covers the burgeoning number of actors entering the contemporary strategic landscape who complicate the arena that traditional defence institutions have to deal with as political and other decision makers turn to the military to help resolve the resultant insecurity. In a sense, Møller's paper also depicts the growing actor complexity that complicates what strategic theory has to deal with, and fuels the controversy about whom to include or exclude when contemplating the rubric of war.

The following paper, *Reflections on the strategic relevance of the International Criminal Court*, by Salim Nakjavani of Cape Town University, brings a closer focus upon the growing role of International Law that now forms an inherent filter and guide for those deciding to turn to armed coercion in its ever-changing formats. In many ways, International Law has seeped into the rules and even theories that regulate armed coercion. From certain quarters it is allowed more and more room to play its role in bringing order and justice to a conflict landscape, not only characterised by intractable conflicts, but by a savagery towards the innocent for which the perpetrators have to be brought to justice. Attempts to make matters of law more influential during armed conflicts are growing and decision makers have to recognise this phenomenon.

Doctor Joeliën Pretorius of the University of the Western Cape, in her contribution, *Giving asymmetric warfare a bad name and diffusing it to African strategic understandings*, addresses how military norms diffuse to African armed forces. She first deconstructs the current meaning of asymmetry in US strategic theory and practice before moving on to explore what constitutes war proper and how and why the US discourse around asymmetry diffuses to African strategic thinking. Her paper finally addresses the question of whether an African conception of asymmetry exists or can be developed and what such a question means for African strategic theory.

In *Foundations and development of Indian strategic perspectives: Limitations and opportunities for Africa*, Professor Shrikant Paranjpe of Pune University in India outlines elements of Indian strategic culture and strategic perceptions and then turns his discussion to how Africa fits into Indian strategic perceptions. Paranjpe's paper affords the opportunity to view the making of strategy from a non-Western perspective, and one imbued with a strong historic line that stems from Indian culture.

Major Nicolai Møller of the Royal Danish Defence College and Doctor Bjørn Møller of the Danish Institute for International Studies employ geostrategic theory to judge AFRICOM in a paper titled *American security policy in Africa*. The essence of their paper turns upon the strategic thought of Mahan, Brzezinski and Barnett and the somewhat controversial matter of AFRICOM's establishment. The authors briefly cover important thought on matters of strategy (largely US in origin) before assessing the basis and prospects of AFRICOM. They suggest that AFRICOM contains some elements for success, but also certain major voids that could seriously hamper its progress and envisaged partnerships and contributions to African security.

Professor Theo Neethling of Free State University, and Philip Winter of MONUC cover the progress of peacekeeping (a salient extension of the roles of armed forces) on the African continent in dealing with the extensive range of armed conflicts dotting the African continent. Neethling, in *UN peacekeeping operations in Africa: Reflections on developments, trends and the way forward*, shows how different missions progressed, with each reflecting its own unique elements that facilitated or obstructed the ongoing missions. Winter, in *Peacekeeping, protection and stabilisation in the DRC*, provides a report from the field on the UN mission in the DR Congo (MONUC) and the troubled eastern DR Congo in particular with the insights stemming from his first-hand experience and exposure as an advisor to the MONUC leadership.

In *Rumble in the Jungle – Private sources of security for order and disorder in the DRC*, Doctor Thomas Mandrup of the Royal Danish Defence College investigates the weakness of the Congolese state, the 'satellisation' of vast areas of the DRC and the rise of other sources than the government to provide for the provision of (in-) security. This fragmentation has opened up space for foreign and domestic armed groups, often in coalition with "criminal" economic interests, to compete with and challenge the traditional notion of state control over the means of violence to defend its national interest and national sovereignty in particular. Mandrup poses the question of whether we are witnessing a reverse process. Is the central authority, with the help of the international community, attempting to challenge this satellisation in order to, once again, be in a position to exercise governmental control over its national territory and the military instrument?

Lieutenant Colonel Michelle Nel and Colonel Pieter Brits of the Faculty of Military Science (Stellenbosch University) cover *Compliance with International Humanitarian Law in Africa*. Their paper traces the progress of International Humanitarian Law in its efforts to keep in step with the growing number of non-state actors involved in, or affected by, the array of armed conflicts on the African continent. In a sense, Nel and Brits attempt to draw the attention to the wider impact of wars and the growing debate about the rights of non-combatants. Africa portrays the plight of non-combatants most saliently and thus also the dire need to protect them through credible international or universal legal arrangements, legislation and compliance.

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# DEMOCRATIC CIVIL- MILITARY RELATIONS

A Framework for Analysis

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## Abstract

*Political thought has long nurtured three fears about armed forces: that the people will make war on each other; that the government will make war on the people; and that the soldiers will make war on government. The democratic tradition has typical responses to these fears, among others by commercialising society; limiting and weakening the state empowering the legislature; encouraging professionalism; and punishing partisanship. When viewed from a behavioural or practical angle, many of these responses are deeply flawed.*

## Introduction

What does a democracy expect of its armed forces<sup>1</sup> at home? Some would say that satisfactory answers to this question have already been given by civil-military relations scholars such as Cottey, Edmunds and Foster (2002); Huntington (1957, especially pages 80 to 97) and Kohn (1997), as well as democratic peace-theorists to the likes of Brown, Lynn-Jones and Miller (1999). Theoreticians of Security Sector Reform, such as Fayemi and Ball (2004), and the principles developed by the UK's

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1 Consisting of military bodies specialising in maximum force; police forces that include maximum force components, often housed in paramilitary units; and intelligence services, operating independently of military and police bodies, and whose activities include covert action which includes the use of maximum force.

Department for International Development (n.d.) have contributed as well. And true, the existing answers are powerful, especially those given by Huntington. Yet, there are also persistent weaknesses.

First is the relative indifference to armed forces other than the military. One such armed force is autonomous intelligence force(s). Stepan, for example, has insisted that autonomous intelligence organisations are critical to democratisation in the Southern Cone and that the intelligence forces' often covert use of armed force makes them a problem equal to that of the military (Stepan, 1988). Another armed force is paramilitary or militarised police forces. These are found even among older democracies, France for example, but also in younger democracies such as Portugal and Spain.

Second is the reification of methods and techniques such as the formulas of Security Sector Reform: the legislature must control declarations of war and the military budget; the military must be professional; civil society has watchdog duties; etc. By turning methods into ends-in-themselves, advocates avoid the question whether a method really works in the presumed manner. 'Oughts' may have nothing to do with actual behaviour. And what should be done in situations where the requisite institutions are either absent or feeble?

Third, it is impossible to escape the impression that the existing scholarship's understanding of democracy is thoroughly anglophilic. Whereas American and English notions of democracy drew on the historical fight to limit monarchical power, the French experience, for example, can be understood as emboldening the state. The French Revolution's legacy soaks democracy in the heady waters of societal transformation. After 1789, the state's power provided the leverage for massive changes in the French economy and society.<sup>2</sup>

The French Revolution was, in large part, informed by the ideas of Jean-Jacques Rousseau about the general will, a notion that asserted the popular will was a moral entity that consisted of more than the sum of its parts. French revolutionaries directed "the nation as though it were no longer composed of a multitude but actually formed one person ... it was the theoretical substitute for the sovereign will of an absolute monarch" (Arendt 1965:156). Although the nation was indivisible, the Revolution's politicians were divided, thus making France vulnerable to invasion. Eventually Napoleon came to the rescue. This story was to end at Waterloo, but in the process Bonapartism was born: The French military were the guardians of the general will created by the Revolution, and thus have the right and duty to guard against betrayals of France by civilian politicians and bureaucrats. Soldiers have the right to disrupt political authority because the "Army takes responsibility for the People" (Horne 1984:92; see also Arendt 1965:163-183, 190-191; De la Gorce 1963).

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2 My interpretation is based on Furet (1981) and Skocpol (1979).

French soldiers have not been reluctant to claim the role once played by the absolute monarch.<sup>3</sup> And the French have not kept Bonapartism and the social revolution to themselves. Mamdani, for example, has shown how the Rwandan state, after the social revolution of 1959 started to define the military as a nation-in-uniform, defined the nation as an indivisible entity, and dedicated the state to completing the revolution started with the uprising against colonial masters. These notions smoothed the road to mass participation in state-organised killing designed to rid the Rwandan nation of any trace of political pluralism (Mamdani 2001:103-131, 184-233).

In the post-1970 era of democratisation, understandings of democracy have shied away from the ambitions of the French and the Anglophone love of freedom and liberty. Minimalist understandings of democracy are currently much in favour, described by Shapiro as a system of managing conflict by means of procedures and rules. Beliefs, preferences and values are left intact (Shapiro 2003:10-34). The pioneer of this school is Joseph Schumpeter (1942), although Isaiah Berlin follows the same line (Berlin 1992:10-13), as do Conflict Management-scholars such as John Paul Lederach. North American Conflict Management-scholars tend to believe in managing diversity so that it does not escalate into violence. A negative peace or the absence of war is triumph enough (Lederach 1997).

The understanding of democracy as the absence of war is quite popular among democratising African countries, especially those of Africa's southern regions. Here countries have embraced democracy after devastating experiences of war. During the war, elites came to understand they were caught in "hurting stalemates" (Zartman 1989), and then embraced democratic ideas and procedures because they offered a way to end the war. Constitutional democracy and proportional representation, for example, ensured that outvoted and vulnerable (but spoiling and potentially violent) groups could be accommodated (see Bratton 1999; Bratton & Van de Walle 1997). This type of democracy and democratisation has its critics: it is said to be elitist, superficial, and top-down. This criticism is not entirely fair as high voter turnout (when outcomes are not in doubt) and other bottom-up indicators suggest that people in these types of African democracies are deeply committed to making democracy work. People behave around democratic procedures as if their very lives depended on it, as it probably does (Little & Logan 2009; Logan & Machado 2002).

Acknowledging different meanings of democracy is not to dilute the conception. By democracy we refer to a system with universal franchise, genuine and regularly-held elections, and accountable governance. Democracies may vary in, for example, their executive systems, voting systems, and legislative structures; yet variation should not disguise the central purpose of a democracy, which is to serve individuals, collections of individuals, and/or communities (Dahl 1956:1). We use the term 'democratic

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3 It challenged the leaders during the Franco-Prussian War; senior soldiers fought with Clemenceau because he was too radical for their taste; De Gaulle disobeyed a legally elected Petain; the Algerian coup-makers challenged De Gaulle; and so on to the rift with Mitterrand over his communism. It is only with the Fifth Republic (post-1958) that a more confident civilian control over the military has been established. See Martin (1981).



tradition' to refer to these necessary components but the term also includes other components of democracy that have developed over centuries in different contexts.

Armed forces, however, do not always fit in comfortably with the democratic tradition. Political thinkers have long nurtured three fears about armed forces: that the people will make war on each other; that the government will make war on the people; and that the soldiers will make war on government. The purpose of this article is to (a) identify and explain these fears and (b) to discuss the typical means by which the democratic tradition has responded to these fears.

### **The fear of a warlike culture and society**

Theorists argue that economic, cultural and social (that is, societal) conditions can make or break democratic government. Much of the recent writing in the so-called Third Wave of democratisation has framed this argument as being about either the preconditions of democracy or conditions affecting the consolidation of new democracies. If a societal foundation remains weak, democratic governance will not survive (see, for example, Huntington 1991; Putnam 1993).

For our purposes, one societal condition is important: a warlike or militarised culture and society.<sup>4</sup> However, how do we recognise a militarised culture and society? What are its causes? And cures? A militarised culture and society can derive from minority rule, the fear of insecurity or because a democratic society loses its commitment to democratic values. The cure has traditionally been economic in nature. When it is not found, the people of a militarised society will always be "either at your throat or at your feet."<sup>5</sup>

One of the earliest descriptions of a militarised society is Thucydides's description of Sparta in *The Peloponnesian Wars*: Spartans are calculating even when they do the right thing; ungenerous and deceitful in their dealing with others; xenophobic; they think education should cultivate military spiritedness; and believe individual initiative and talent had to be sacrificed to the greater good (Thucydides 1972:142-144, 161-164). Sparta's slave population was large and because of limited assimilation into Spartan society, also restless. A love of freedom, equality and commerce was going to be of no help in war, and worse, quelling a slave revolt during war. Therefore Spartans required of themselves to love discipline, hierarchy and inequality: they needed to produce warriors.

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4 The term culture will here refer to beliefs and ideas about what is fitting and proper for human beings to do in one context. Beliefs and ideas are abstract but they also can be materialised in art, entertainment, letters, and practices. The term society here refers to more than a collection of individuals but also to societal formations such as families, ascriptive and associational groups, classes, communities and regions. Neither culture nor society is static; change is permanently in motion but it is rarely dramatic or sudden.

5 Said by Churchill of Germans but also commonly cited as an "old European" saying. See Germany: Cops and robbers (1945) and Germany: Last call for Europe, 1950.

Although Athens was not a democracy, as we would understand the term,<sup>6</sup> Thucydides's description of the Athenian manner is meant to illustrate democratic attitudes and behaviour. The Athenian manner is "daring, permissiveness ... [and shows] generosity without pettiness and calculation, freedom, generous gaiety and ease, courage in war which stems not from compulsion, dictation, and harsh discipline" (Thucydides 1972:142-151). Athenians are energetic, individualistic, self-assured risk-takers, tolerant of differences, and welcome foreigners because they would like to trade with them.

Hobbes thought warlike behaviour flowed from a naturally equal human condition. For Hobbes, human beings had equal capacity to kill each other and because of that capacity, were equal. Our equality – the sameness of our human desires and fears – makes us fight others, and fighting requires both force and fraud. With the human character dominated by the love of force and fraud, life is grim: "No arts ... no letters, no society; and which is worst of all, continual fear and danger of violent death; and the life of man, solitary, poor, nasty, brutish and short" (Hobbes 1977:98-99).

An escape out of the warlike condition is possible and lies in giving up a portion of freedom in exchange for gaining protection from violence. But yet once again, how does this escape come about? Hobbes thought it happened when a sovereign or power beyond our ordinary, fearful selves emerged with the capacity to overawe us and provided us with a life free from the fear of an early death. We are therefore obliged to subordinate ourselves to the creator of that order and safety, the sovereign. Yet regression into a condition of war and/or the resurgence of force and fraud are always possible. We fear such a return to war, something that the leviathan can of course exploit (Hobbes 1977:80-112; 166-167).

De Tocqueville is no more convinced that a democratic society will always remain democratic: a regression is possible when "the laxity of democratic mores combined with the restless spirit of the army" (De Tocqueville 1969:735). Regression results in, among others, societal militarisation. Military things become an ideal that all society should imitate. Hierarchy is ranked higher than equality; force higher than consent; and discipline and order higher than freedom: "... the people would become a reflection of the army, and societies would be regimented like barracks" (De Tocqueville 1969:735).

The list of cases illustrating cultural and societal militarism is unfortunately not a short one. Besides Latin American political cultures, a popular citation is the case of Germany, not least because German militarism was connected to frequent wars against its neighbours and because of the horrors of the Nazi era (Calleo 1978:1; see also An 2006; Larres 2002).

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6 In Athens power was not in the hands of a minority but the majority and, although Athenians owned slaves, the slave population was small and relatively well-integrated into society.

## The commercial cure

How do democrats act on the fear of a militarised culture and society? Since the days of the Peloponnesian wars, the major corrective has been seen to lie in commerce. Hirschman (1977:4) explains how early capitalist thinkers addressed the twin problems presented by warrior ideals and military elites devoted to seeking glory.

The love of glory was challenged on the grounds that it lacked realism about human nature. A more realistic interpretation, a host of capitalist theorists argued, was an individual motivated by interests, not glory, and the dominant interest was avarice, action in accordance with your economic interests, and/or the love of profit. This “acquisitive drive” would result in commerce, banking and industry. Commerce would make the ways of men gentler and more polite because commercially-minded people realise they need others. Barbarian ways would be polished and softened.<sup>7</sup>

The early capitalist thinkers did not expect the glory-loving elite to disappear; it would be counteracted, however, by the rise of a “middle rank of men”, an elite based in trade and industry (Hirschman 1977:82-83). Of course this middle rank of men presupposed the institution of private property. Locke told how labour would privatise nature’s bounty (Locke 1952:16-30). For De Tocqueville, too, the devotion to property was important. He adds:

The ever-increasing number of men of property devoted to peace, the growth of personal property which war so rapidly devours, mildness of mores, gentleness of heart, that inclination to pity which equality inspires, that cold and calculating spirit which leaves little room for sensitivity to the poetic and violent emotions of wartime – all these causes act together to damp down warlike fervour, among civilized nations warlike passions become rarer and less active as social conditions get nearer to equality. (De Tocqueville 1969:646)

While the majority of the early capitalist thinkers were at pains to show that the acquisitive drive was somehow natural, later thinkers started to think more historically about human motivations. What historical conditions or factors will thus foster or cultivate a commercial temperament? Religion is one condition or exposure deemed to foster a commercial disposition.

The answer was that a conversion to Protestantism stimulated capitalist thinking and behaviour. Protestant thinking differentiated itself from Catholic thinking by arguing that an individual could have a relationship with God without the intervention of the Roman Catholic Church. Another major differentiation from the Catholic thinking was the stress on human activism and energy in this life on earth. No longer accepting of the quietude that flowed from arguing that the City of Man was inferior to the City of God, Protestant thinking argued that the purpose of the individual in this life was to show devotion by cultivating God’s creation. Christians should work and work hard, and they deserved to own the fruits of their labour. They were not supposed to flaunt their wealth or become materialistic. The

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<sup>7</sup> The phrases are those of Montesquieu (in *Esprit des Lois*) as cited in Hirschman (1977:12, 51-52, 66).

material plenty that was produced, testified to the great- and goodness of God. One should approach the fruits of one's labour in the spirit of asceticism, piety, and self-denial – not pride and vanity (Weber, Parsons & Tawney 2002).

Can the commercial path be taken by every country and community? To the writers of *The Federalist Papers*, the answer was 'no' and the reason was more complicated than not being a Protestant. James Madison envisioned a dynamic societal base for democracy: since money was constantly being made *and* lost, classes and groups would never consist of the same members. Dynamic commerce and industry required an "extensive republic" or wide swaths of territory with abundant natural assets. Such commercial and class mobility was unlikely to occur in small, agriculturally-based countries (*The Federalist Papers* 1961:77-84; see also Smith 2003).

By the nineteenth century, the reasoning that militarism flourishes when there is not enough commercial dynamism, started to fray. One critic was Lenin. Too much capitalism, he said, would produce militarism or, more precisely, finances from capitalism's workings would produce a surplus that had to be got rid of, among others by spending on military things, foreign military adventures, militarism, and war-mongering (Lenin 1971). Lenin was undoubtedly influenced by the arms race between Britain and Germany and it is the same combination of military build-up and economic growth that prompted later critics within the democratic tradition to sustain the argument. These critics used the concepts of a "garrison state" or a "military-industrial complex" to capture the essential failure of the highly developed capitalist cure (Lasswell 1941; Mills 1956).

One of the problems of this line of reasoning is that it focuses too heavily on the state and state-driven militarism (see Berghahn 1981). That the state or government can cultivate, even demand, militarism in society, is historically obvious. Yet culture and society may be militarised without the state requiring and/or stimulating it.

### **The fear that government makes war on the people**

Here the fear is that government will seek foreknowledge of war by spying on people; will arrest and detain people in preparation of the killing; and will then kill people. Democratic scholars are divided about why armed forces and politicians make common cause of their attack on people and how one addresses the problem:

Some scholars believe the faults will be the creation of the elite, party or person who monopolises power (Dahl 1989:49, 348 [fn 8]). Their solution to this problem is to limit the power of the state and to require of the state to obtain the consent of the governed for their actions. Government is only allowed to perform a narrow range of functions, thus limiting the reach of political rulers.<sup>8</sup> Another group of scholars, described as representing a republican tradition,<sup>9</sup> believe the problem does not derive from who holds power in government; the fault lies in the very nature of government power, which tends to become more concentrated.

8 For full explanations of the logic, see Locke and Nozick (1974).

9 From Pocock (1975).

But how does the democratic tradition act on this fear? I mention only three avenues of action: limiting and weakening state power, an instrument of the people and a civilianised military.

### *Limiting and weakening state power*

One form of limiting state power consists of reducing the range of state functions or responsibilities. Functions are still supposed to be properly performed but these functions are few (De Tocqueville 1969:690-695). Another form of limiting state power is the separation of powers (SOP) or, more accurately, the sharing of powers by separate institutions, which will stimulate competition among institutions, and thus keep the state divided against itself. Because humans are by nature jealous, the inhabitants of any branch will guard its own powers while envying those of the other branches. By encouraging “ambition to counteract ambition” (*The Federalist Papers* 1961:322) it is impossible for any party or person to dominate the state (*The Federalist Papers* 1961:320-325).

Contemporary democratic thinking extends the idea of limiting and weakening state power to the political marketplace. Politicians’ competition for votes, for example, stimulates political participation, which can check the power of incumbents. Politicians’ need to market themselves discourages politicians from behaving like pigs and rascals. And voters need to be provided with alternatives about which political product to buy. The contemporary division of power, in other words, needs a good deal of political participation and a strong opposition (see Schumpeter 1942).

One criticism of the SOP is that the powers given to the legislatures and judiciary (to implement SOP) are superficial; it is really the executive who rules the roost. Judges and lawmakers do not have the power to leave a mark on substantial issues about the armed forces, such as their deployment, behaviour and interrogation. Lawmakers monitor action, for example, in asking for reports, because they want to see whether the executive has in fact done what they promised to do. Of course lawmakers do try to influence the executive, but the oversight function usually contains precious little power to act or to make policy.<sup>10</sup> The accountability function of lawmakers implies greater activism as a legislature is, as such, able to forbid, sanction, insist that the executive answer questions, etc. But still, many, if not the majority of, substantive issues remain beyond reach. When the courts review matters, they tend to review whether standards have been correctly applied in principally two areas: staffing issues and military discipline, while avoiding questions of whether, for example, foreign bases are allowed or issues concerning interrogation (Murray & Stacey n.d.).

A second criticism is that, while the diversified authority of the SOP looks impressive from the top-down, from the bottom-up one can only see contradictory demands. The executive will demand efficiency from its soldiers but the judiciary wants, increasingly and even on the battlefield, constitutionality and legality. The executive

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10 The American legislature is an exception to this generalisation: Congressional committees have a great deal of policy-making power.

insists that its spies maintain strict standards of secrecy, but the legislature, political society, and the public want transparency (see Lustgarten & Leigh 1994). These contradictory demands bring confusion, paralysis and, most of all, inefficiency. In many areas of policy, some measure of the inefficiency produced by democracy is tolerable. But when divided state power is at the core of events such as 9/11, or seen to be at the core, the tolerance dwindles.

A third criticism is that the executive dominates particularly the legislature because of legislative weakness or executive imperialism or because of both. In practice the legislature of an established democracy such as the USA, for example, may control legal declarations of war, but the use of force is firmly in the hands of the executive. Until 1999, the United States had been involved in five declared wars, one civil war, three undeclared wars (Korea, Vietnam, and the 1990 Gulf War) – as well as 244 lesser international military operations driven by the executive branch (Noonan 1999:1-2; Grimmert 1999).

But the story of executive dominance is more complicated than imperial personalities and incompetent, foolish or timid legislatures. Executive branches have benefitted from structural shifts in power.

In the nineteenth century, democratic thinking successfully argued that the military was an instrument of the legislature. Clausewitz, for example, expresses the relationship as war being a “continuation of policy by others means”. How so? War, Clausewitz thought, contained a “remarkable trinity”: “the people”, “the commander and his army”, and the “government”, with the legislature declaring war, the commander and his army conducting operations, and the people supporting the war effort (Von Clausewitz 1976; see also Aron 1983; De Nooy 1997; Gat 1989; Keegan 1993). For Clausewitz, the legislature retains control of the military, while the executive branch functions as the legislature’s day-to-day managers of the military.

Until fairly recently, intelligence services in many democracies were merely provided by specialists housed within traditional institutions; the military, for example, would have a division specialising in intelligence. But steadily over the course of the twentieth century, intelligence services developed into independent institutions, such as MI5, MI6 and the Central Intelligence Agency (CIA). Who would own these bodies? On the one hand, political ownership by the legislature has been actively opposed: a major reason for this is lawmakers’ lack of discretion and their inability to keep their mouths shut. On the other hand, many democrats say that giving the intelligence services to the executive branch would unfairly empower them, lead to domestic partisan abuse, and lead the executives into all sorts of foreign mischief.

By the end of the twentieth century, the debate seems to have been settled: intelligence is said to be an “executive function” or intelligence services exist principally to “serve

the needs of the executive authority”.<sup>11</sup> Executive branches have evolved to the point where they think it imprudent to keep every inch of this power to themselves; they share some – only some – of it with the legislature. The US Congress, for example, has not been understood to be entitled to intelligence; it receives what the executive branch thinks is “appropriate”.<sup>12</sup> In the UK, it was customary practice not even to officially or publicly admit to the existence of the intelligence services, although this has changed and intelligence-sharing with the Houses of Commons and Lords has now been established.

In other words, the SOP no longer divides power in a way that encourages institutional competition. The executive branch takes the lion’s share. In addition to its already substantial powers over the armed forces, it has now added the power to accumulate foreknowledge of war.

### *An instrument of the people*

How can a legislature help prevent the state making war on people? For a start, the legislature has to hold genuine power over the armed forces, especially the power to declare war and spend money. In using these powers, the lawmakers will not turn on the people because, so the argument goes, the legislature consists of the people’s representatives. But these representatives inevitably have to decide, and when they do, majorities and minorities are produced. So the state may still make war on citizens, albeit a minority of citizens. Legislative majorities can indeed be tyrannical: outvoted citizens are at risk of being spied upon, intimidated, persecuted, and killed.

One way of counteracting majority tyranny is judicial review. This option is available, provided that the country is a constitutional democracy. Another way is to hope that the majority takes an enlightened view of their own interests. Political majorities are rarely permanent and the fear that you will be paid back with interest is usually reason enough for self-restraint. But in some situations, such as the Roman Catholic voters of Northern Ireland, the outvoted are a permanent minority.

Legislatures in general fare poorly in their efforts to control the resort to force. “Presidentialism” creeps in (Linz 1990) and tends to erode the workings of a multiparty democratic imperative, the legislature and perhaps, in some cases, the desired democratic control over armed forces that could well marginalise the military as an instrument of the people.

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11 One of the most important conclusions of the 9/11 Commission in the US was to confirm the principle of intelligence services as an “executive function”. See Chapter 13 of the final report (National Commission on Terrorist Attacks 2007).

12 In 1992 the National Security Act (1947) was revised to include, among the duties of the Director of Central Intelligence (DCI), the obligation to provide intelligence “where appropriate, to the Senate and House of Representatives and the committees thereof”. What is appropriate, however, is for the DCI to decide.

*A civilianised – not standing – military*

Democratic thinkers have an acute dislike and suspicion of large standing militaries. In *The Government of Poland*, Rousseau observes:

Regular armies have been the scourge and ruin of Europe. They are good for only two things: attacking and conquering neighbors, and fettering and enslaving citizens ... .

and

[Professional soldiers should never] ever be charged with any sort of policing of citizens ... Even the mildest police function you might entrust to them would result in acts of violence, irritations and abuses on a tremendous scale; in due course your soldiers and citizens would become enemies – a misfortune that accompanies regular troops everywhere ... . (Rousseau 1985:80-82)

If the absence of a regular army were to lead to a sudden invasion, Rousseau says, this would undoubtedly be a calamity but “permanent chains are a far greater [calamity]” (Rousseau 1985:86).

Most democratic thinkers prefer a militia, a collection of armed citizens, usually only assembled in times of danger, as opposed to a permanently available body of (career) soldiers. Arguments about the citizen-soldier are consistent: the rights enjoyed by citizens require a complement of duties, including those of helping with defence; participating in defence inculcates appropriate democratic values, such as discipline and fraternity; because a militia exists only as need arises, governments are not tempted by the availability of an armed body; and defence by citizens is likely to show more courage and commitment because citizens defend their families, friends, and their home (Machiavelli 1950:44-55, 226-227; Rousseau 1985:81). The American Constitution illustrates the response to the threat posed by a standing army: arm the citizens so that they can fight back (United States of America 1789; see also De Tocqueville 1969:168-169; *The Federalist Papers* 1961:67-71).

In contemporary circumstances, however, most democratic scholars concede that a standing military is necessary, but then add that these soldiers need to be good soldiers but simultaneously be able to resist being used to fight fellow-citizens. How does one manage to have both obedience and democratic sensibilities in a soldier?

One path lies in educating and socialising the officer corps in the behaviour, ideas, relations, etc. that a democracy requires of its armed forces. The ideal outcome of the education/socialisation process is for the soldiers to exercise self-control: the soldiers themselves want to do certain things and refrain from others. The self-control ideal can be achieved by, for example, having civilians teach in military academies and schools and during training (Sarkesian, Williams & Bryant, 1995) and by professional penalties and rewards that tell the officers what roles to play. Critics of the educational/socialisation path claim that the efforts to inculcate the right values in career soldiers will be flawed or insufficient; sooner or later, they say, the soldier learns that his career will be unfulfilled without a war – and any war, even one against fellow-citizens, will do.



A second path lies in manipulating the social composition of the military: the military needs to include enough soldiers whose civilian-social origins discourage authoritarianism. The right mix of people is pursued through, among others, national service and recruitment practices. National service is often sold on the grounds that it is good for the servicemen and –women. It inculcates values useful to individuals, such as discipline, or it makes a national contribution by maintaining key ingredients of citizenship. But the presence of national servicemen in the military is also a useful counterbalance to career soldiers. How so? National servicemen come from a civilian world and their unmilitary relations, habits and values are carried into a world where hierarchy and obedience are the usual trump cards. De Tocqueville remarks:

They perform their duties as soldiers, but their minds are still on the interests and hopes which filled them in civilian life. They are therefore not colored by the military spirit but rather carry their civilian frame of mind with them into the army and never lose it. (De Tocqueville 1969:652)

Democrats are reassured when they see that a military is composed of people with familial and social ties to the citizenry; surely, the reasoning goes, brother will not fight brother. Securing civilian influence ensures that the military is not a dangerous “little nation apart” (De Tocqueville 1969:648). Probably the best example here is France. French soldiers and theorists have long defended the *levee en masse* ordered by the Revolution in 1792. The persistence of compulsory military service over the last two centuries partly explains why the French military, rather than developing separateness, has been a mirror of economy, society and politics (De la Gorce 1963; Horne 1984).

### **The fear that soldiers will make war on government**

The military’s coup-making ability or their praetorianism is usually seen as “*the* central challenge, of civil-military relations” (Cottey, Edmunds & Forster 2005:2). This centrality is for very good reasons. In Central and South America, praetorianism is ubiquitous (Collier 1979; O’Donnell, Schmitter & Whitehead 1986; Stepan 1988). African militaries, especially in West Africa, are notorious for their coup-making taste, which derives from their corporate self-interest rather than devotion to their country’s modernisation. Middle Eastern militaries are not far behind. Even in Western Europe, Greece, Portugal and Spain have seen long periods of military rule, not to speak of the several French coup-attempts in the twentieth century alone (Perlmutter 1977; 1980).

Why do so many militaries do this? Democrats usually argue that it is not due to personality, although an authoritarian personality certainly will help. One reason is that the military necessarily has a hierarchical mindset and organisation, which can easily slide into contempt for civilians and their representatives. Another reason is that, having chosen a career of specialising in violence, a soldier must be deeply disappointed with a professional life without a war. If soldiers are true to themselves,

in other words, there is a natural tension with civilian government. Even democratic armies have a “restlessness of spirit”:

... all the ambitious minds in a democratic army ardently long for war, because war makes vacancies available ... honors within the reach of all, causes soldiers to dream of battlefields. (De Tocqueville 1969:647)

Today’s Praetorianism, understood as the armed forces’ domination of political and other societal realms and not just the literal replacement of civilian rulers, is not confined to the military. Intelligence services also have a well-deserved reputation for manipulating policy and politics, including in established democracies.

How do democrats act on the fear of praetorianism? I mention only four avenues of actions: external orientation, representative state control, non-partisanship and professionalism.

### *External orientation*

Until roughly the nineteenth century, most countries saw the military used domestically, as a type of police force. This orientation became increasingly unacceptable as democratic development accelerated during the nineteenth century. The new ideal was to give the soldier no cause to develop political interests, asking certain political questions, for example, “How well is the incumbent doing?” or “Is government as efficient as it should be?” The new ideal was made practical by externalising the military: the military fought the militaries of a foreign country. The soldiers’ eyes were thus redirected to what might arrive from across the border, and the soldiers were given space to develop an attitude of indifference to the political process in their own country.

### *Representative state control*

This set of action is comparable to Huntington’s subjective dimension. Both executive and legislature are given powers to maintain their power over armed forces (Huntington 1957, especially pages 80-83), and they are entitled to do so because of their electoral base of representivity. The civilian state is superior not because it is civilian but because its power rests on genuine elections or other devices of representation (Fayemi & Ball 2004:Chapter 3). The purpose of the civilian state’s powers is to find evidence of disobedience and, worse, plotting.

Legislatures (for example) have powers of oversight, that is, the right to ask questions, and powers of accountability, meaning the lawmakers can penalise, forbid, or sanction actions. Money is an important tool for the legislature. Armed forces are obliged to spend money as instructed by the legislature; if the lawmakers do not like what they see, they simply take the money away.<sup>13</sup>

13 In the context of the fear of soldiers replacing elected civilians, oversight and accountability function to discover praetorian conspiracies in the armed forces. The purpose of oversight and accountability in the context of the fear of government making war on the people is to counteract the power of elected civilians and the armed forces they have at their disposal.

Civilian control can never be presumed to be entrenched, regardless of whether the sky is darkened with constitutions and laws. Power struggles of some sort are always in motion. And it is sobering to see how many attempts at regaining or strengthening civilian control are ineffective or counterproductive. In the early 1970s, for example, the Church Commission revealed details about American covert actions in Chile and elsewhere, some hilarious but others striking in their mindless venality. Congress imposed stricter control over the intelligence agencies, for example, the Clarke Amendment banning all covert aid related to Angola. Less than a decade later, it was obvious that these measures had resulted in driving the intelligence agencies deeper underground. The Tower Commission Report of 1987 revealed arms transfers to Iran, support for the Contras of Nicaragua, etc. (Draper 1991). Because the legislative financial backing was suspended, the armed forces simply retreated deeper into the shadows and sought money by illegal means, while the National Security Council's staff filled vacuums created by Congressional prohibitions applied to the CIA. The intelligence agencies had become more secretive and less accountable than they had been before Congress acted so assertively (see Persico 1990; *Tower Commission Report* 1987; Woodward 1987). Certainly during the Reagan Administration, armed forces dominated American foreign policymaking about Central American and Southern Africa (see Crocker 1992).

Opportunities and power of representative state control are just that; they are no guarantee of success. In established democracies, as we saw above, lawmakers' efforts to assert themselves may be counterproductive, maladroit and superficial. Certainly the new democracies have their work cut out for them: their efforts to expose bad soldiers and spies may well leave them very dead indeed.<sup>14</sup> Yet there is no alternative: if bad soldiers and spies are to be exposed, high risk political battles need to be fought repeatedly and skilfully.

### *Non-partisanship*

Civilians under pressure may well dream of prohibiting political thinking in the minds of members of the armed forces but abolishing politics is, of course, impossible. However, one can get quite far by making punishable any display of partisan loyalties. Soldiers and spies' political views are defined as private business severed from professional lives. They should not lend their services to a political party or group or manipulate the political process to their own ends. If members of armed forces do so, their careers must suffer. Looking at the problem from a different angle, opposition politicians must not seek sympathetic ears in the military.

### *Professionalism*

As noted above, Huntington saw that the political subordination of the military is, to a large extent, a matter of self-control. Soldiers seek to be professional rather than political; they want political neutrality or do not want to govern the political

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14 Guatemala's recent history is a graphic illustration of how the soldiers can strike back at civilians. See Goldman (2007) and Schirmer (1998).

realm (Huntington 1957:80-97).<sup>15</sup> The mechanisms by which professionalism is produced are very similar to those producing a civilianised military: education/socialisation and manipulating the social composition of the officer corps.

Although perhaps once a single vision about improving the quality of strictly military action, professionalism today varies according to context. The French have fought over professionalism for centuries. French officers and civilian leaders have very few values in common, with the soldiers usually taking up extreme positions on the right, while many politicians are inclined to leftist beliefs and opinions. Among Latin American security forces professionalism extends traditional roles so that a soldier has legitimate duties other than war, including a duty to ferret out domestic enemies of the state. Latin security forces have been encouraged to believe such role extension is legitimate, among others by national security doctrines and training in such places as the School for the Americas (Shafer 1988). No specialist of Latin politics has doubted that national security is the major culprit in sustaining praetorian habits (Enselaco 1995; Pion-Berlin 1989; Stepan 1988). This praetorianism is not temporary intervention to accomplish limited goals; it is structural intervention, which creates for the coercive forces permanent roles at the centre of the economy, politics and society (Barros & Coelho 1981).

## Conclusion

The three fears about armed forces have been matched with how the democratic tradition has addressed those fears. In my discussion, fears and means and methods are not idealised but presented as they have happened or in actual behaviour; that is, warts and all.

The result is a framework that can be applied to study civil-coercive relations behaviour in old as much as new democracies, as well as to democracies in times of peace and war.<sup>16</sup> And it applies when democracy is associated with freedom, with transformation, or, as most contemporary theorists and southern Africans would argue, when it means the absence of war.

The first fear is of a warlike culture and society. The traditional democratic cure for this condition has been commerce, either by arguing that the acquisitive drive was natural or by noting that some historical conditions, notably Protestantism, produced the acquisitive drive.

The second fear is of state power, of which the armed forces form part. When state power is concentrated, a large standing army is available, and legislatures are powerless. The fear is that politicians and armed forces will spy on their own people, arrest and detain them in preparation of the killing, and then kill them.

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15 Huntington refers to the self-control as the objective dimension of civilian control over the military.

16 For a contrary view, see Cohen (2003:271).

And finally, out of a third fear of soldiers replacing elected and representative government, democrats have punished partisanship while externalising the military function, strengthening representative state control and relying on armed forces' professionalism.

It remains now to illustrate in greater detail especially how the new democracies of the last few decades have acted on each of these fears. The framework is thus not another set of 'oughts'; its real test is in whether the fears do exist and how these are addressed in actual behaviour.<sup>17</sup>

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17 See my longer *Democratic civil-coercive relations: A framework for analysis* (forthcoming).

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# SECURITY PROVIDERS

## A Pluralistic Approach?

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### **Introduction: The need to think ‘out of the box’**

The term ‘security sector reform’ (SSR) has become something of a buzzword in the international community, which includes international organisations, such as the United Nations and the Organisation for Economic Co-operation and Development (OECD), individual states in the Global North and, not least, their development agencies, as well as a wide range of non-governmental organisations. Indeed, it has come to be seen as part-and-parcel of the ‘post-conflict peace building’ (another buzzword) which is being promoted by the same international community and based on what some have labelled a ‘neo-liberal consensus’ (see, for instance, Paris 1997; Richmond 2007:*passim*).

According to sceptics, this alleged consensus does not so much reflect a genuine global meeting of minds as a hegemony exercised by the West, seeking to transform the rest of the world in its own image. They see it as promoting SSR as part of peace building alongside other desirables which the Northern (or Western) world has come to cherish, such as multiparty democracy, secularism, free trade, market economy and consumerism. This ‘consensus among hegemons’ has even been described by certain analysts as an instance of neo-colonialism, the main difference from its predecessors being the inherent benevolence which characterises (at least most) contemporary efforts at security sector reform and peace building. It is no longer a matter of a cynical pursuit of selfish interests, but of unselfish efforts to help and guide other countries down the same straight and narrow path which the West has trodden with so much success. Just as the best political system is one based on

democracy and the rule of law, and the ideal economy one that is based on market principles, the preferable security sector – namely, the armed forces, the police and the judicial and penal system – is one that is in conformity with western standards. It should thus be subordinated and accountable to the state, which should enjoy what the German sociologist Max Weber (1864-1920) called a “monopoly on the legitimate use of force” (Weber 1946:78).

There may well be elements of selfishness involved – as when the West pushes for reforms of Third World security forces intended to equip and train them to better help the West in its struggle against international terrorism.<sup>1</sup> Virgil may thus have a point in his famous admonition in the *Aeneid* to “beware of the Greeks even when they are bearing gifts” (*Timeo Danaos et dona ferentis*). The support offered by donors may be dangerous to accept, as all kinds of problematic things may jump out of the belly of the Trojan Horse, once it is within the city gates. This may well prove to be the case of the various US support programmes offered to African (and especially East African) states, *inter alia* for security sector reform (Adebajo 2003).

In most cases, however, the predominant motives seem to be genuinely altruistic. Alas, however, one cannot conclude from the inherent benevolence motivating an action to its having beneficial consequences. Ironically, the very same unselfishness seems to protect the actors from critical scrutiny, as the underlying assumptions are rarely questioned. It is thus usually taken for granted that what works in and for the West will automatically also work elsewhere. The western approach may also entail a certain ‘ethnocentric blindness’ in the sense that the western politicians, administrators and even experts are inclined to reject or disregard what they do not understand. Forms of societal order may thus be dismissed as tantamount to chaos unless they are established under the auspices of, and at least nominally subordinated to, a state; and institutions or agencies which form integral parts of the security sectors of Third World countries may not be recognised as such, simply because they are too different from those known to the West.

Underpinning the peace building consensus we may find what might be called a hegemonic discourse, which is being promoted, sustained and reproduced by an epistemic community comprising both politicians, bureaucrats, NGO executives and academics both in the donor and recipient countries, yet with a clear predominance of the former, if only because they are the ones paying the piper and thus entitled to call the tune. Members of this epistemic community are recognisable as such by employing largely the same terminology, arranging problems and issues according to the same taxonomies, applying similar standard operating procedures to dealing with them, and so forth. It is constituted as a community not only by reciprocal recognition, but also by marginalising those who think ‘out of the box’ (see Haas 1992). The hegemonic discourse of the epistemic community may even be seen as one of those “regimes of truth” highlighted by the French philosopher-sociologist Michel Foucault (1926-1984) (Foucault 1980). There is thus a need for critical approach as a corrective to the problem-solving approach which should seek

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1 For an elaboration, see Møller (2007a).

to uncover the various interests underlying the various theories and assumptions and ask exactly those questions that are usually and conveniently overlooked. The following pages should be seen as a modest and preliminary attempt at this.<sup>2</sup>

It begins with the identification of a certain terminological confusion about the terms 'security sector' and 'reform,' and then attempts a logical definition of the security sector as comprising all actors and agencies providing security to their respective constituencies, which seems a reasonable definitional point of departure. As this turns out to yield an almost all-encompassing (and *ipso facto* useless) definition of the security sector, for the sake of analytical practicality the field is then narrowed down to the statutory security forces and their functional equivalents and possible substitutes in the informal or private sector.

Reform reveals itself as almost equally difficult to define, depending on the scope and intentionality of changes in the structure and configuration of the security sector. The hegemonic discourse is usually characterised by a teleological bias by only recognising as reforms such as point in the right direction – namely, the direction of where the West is now and towards which it wants the rest of the world to move. It also tends to disregard those reforms which other governments undertake at their own volition and without any change of regime (representing the vast majority of security sector reforms in history) and focuses exclusively on reforms connected with transitions from military, totalitarian or theocratic to civilian or democratic rule, as well as transitions from armed conflict to peace. Upon closer inspection, however, SSRs are at least as frequent in the opposite situations, namely, when the military or totalitarian or theocratic regimes assume political power, or when an armed conflict breaks out – the main difference being that these tend to be 'bad' reforms.

### Security sector or system?

The Development Assistance Committee of the OECD (OECD-DAC) occupies a central position within the epistemic community mentioned above, including the donor community, since it decides what to count as official development assistance (ODA), namely, what is 'daccable'. Not only because of this position of authority, but also because it has in fact published several works on SSR, representing the state-of-the-art of the discipline, it makes sense to take its conceptualisation as our analytical point of departure.

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2 The present paper forms part of a larger work in progress which will, *inter alia*, offer a historical account of the evolving security structures and empirical data on the various contemporary security actors.

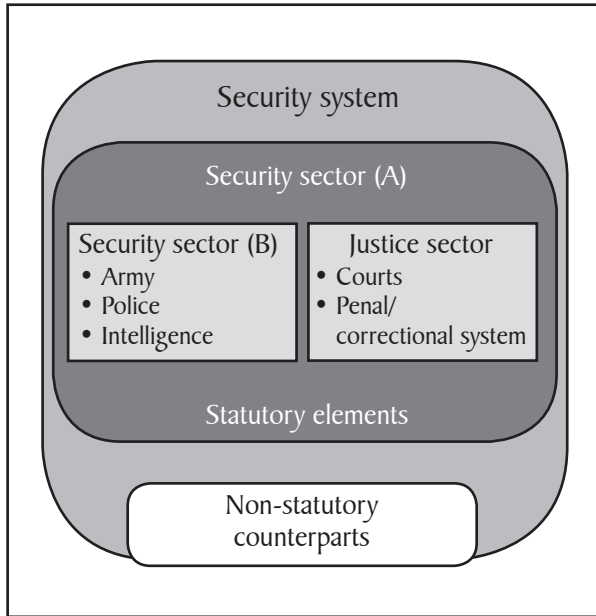


Figure 1: Security sectors and system

Already at this stage of the analysis we encounter a certain conceptual confusion, partly pertaining to the term itself, illustrated in Figure 1. Whereas OECD-DAC has decided to promote the term *security system* (OECD 2005; 2007), most agencies continue to use the term *security sector*. What exacerbates this terminological confusion is that both terms use the same acronym, SSR, for the reform of this sector/system. Even though the OECD-DAC claims that the two terms are synonymous (OECD 2005:68) there seems to be a certain conceptual distinction in the way the two terms are used.

The term 'security sector' often, albeit not always, seems to be conceived as somewhat narrower than 'security system,' *inter alia*, by usually excluding the non-statutory elements which are included in the security system of the OECD-DAC (see, for instance, Schnabel & Ehrhart 2005). Whereas statutory elements have a formal and legal existence, usually by belonging to the state or at least being regulated by it, non-statutory elements are informal and private. National armies thus belong to the former category as do national police forces, whereas private military and security companies as well as ethnic or tribal militias belong to the latter. Occasionally, the security sector/system is conceived of as also including the justice sector – courts, prisons, and the like, whereas others authors and agencies keep the two sectors separate, usually whilst acknowledging a partial overlap, for example, by referring to the 'security and justice' sector.<sup>3</sup> Moreover, security sector

3 An example of the latter, using the terms "security and justice reform" is Call (2007). The term does, however, seem to be quite rare; a Google search (18 January 2008) yielded only 773 hits.

reform is sometimes defined as including the disarmament, demobilisation and reintegration (DDR) of former combatants, initiatives pertaining to the collection and destruction of small arms and light weapons (SALW) and similar initiatives which are habitually undertaken after an armed conflict, including reforms of civil-military relations (CMR). In other contexts, however, SSR is conceptualised as excluding such initiatives that are merely seen as its usual companions.

In the following, we shall stick to the most common term, namely, security sector, whilst using as our point of departure the following OECD-DAC definition of the security system, which recommends itself by virtue of its broader and more comprehensive scope:

Core security actors (e.g. armed forces, police, gendarmerie, border guards, customs and immigration, and intelligence and security services); security management and oversight bodies (e.g. ministries of defence and internal affairs, financial management bodies and public complaints commissions); justice and law enforcement institutions (e.g. the judiciary, prisons, prosecution services, traditional justice systems); and non-statutory security forces (e.g. private security companies, guerrilla armies and private militia). (OECD 2007:5)

The definition and delimitation of the security sector thus entails dilemmas: It is either defined narrowly as referring only to the statutory security forces, in which case it obviously does not capture all the relevant non-statutory providers of security in a society; or it is defined broadly enough to include all of these, in which case it may become too all-encompassing to remain analytically or politically. Similar dilemmas arise when it comes to conceptualising 'reform' of this security sector.

The first question is whether and how to distinguish between reform and simple modification or transformation. As is the case of all other policy areas, the statutory security sector is constantly being modified by politicians and bureaucrats in order to accommodate the adoption of new regulations, the introduction of new armaments or other equipment, the implementation of new procedures, and bureaucratic reorganisations. Unintended changes also occur when the environment undergoes major transformations, for example, with the waxing and waning of threats, or when the surrounding society impacts on the security sector. Even without deliberate changes in the latter, it is bound to undergo a metamorphosis when, for instance, the demographic basis changes or as a result of major cultural shifts. Even in the absence of deliberate reform, the security sector is bound to experience a subtle transformation, but it would seem odd to refer to this as security sector reform and more sensible to reserve this term for deliberate reorganisations to accommodate these transformations. It would also seem odd to use the term 'reform' for each and every step in this continuous process and more sensible to reserve it for major reform packages, but it is not self-evident that all such packages should count as reforms. It seems reasonable to reserve this term for such packages that are both explicitly intended to, and actually do, affect major changes, and exclude both seemingly incremental changes which turn out to have major unintended and unforeseen consequences and major reform initiatives with few and minor actual consequences.

Even though there seems to be a strong tendency to do just that, it seems less reasonable to define 'reform' in terms of who is undertaking it or whether it is for the better or worse. Just because security sector reform has recently entered the donor vocabulary, it does not follow that the donor countries and international agencies have invented the phenomenon or the concept (as opposed to the term), or that it should thus presuppose external involvement. It is entirely conceivable that domestic actors may, for whatever reason, want to undertake thorough reforms of their security sector on their own volition, even though this is more likely to happen in case of regime change or following dramatic disasters, such as losing a war.

In all cases, such reforms are for what those undertaking them regard as the better, however much others may regard the result as worse. It is, of course, possible to adopt a teleological approach to definition, reserving the term 'reform' for (what one regards as) improvements, but this presupposes proclaiming one's own values as universally valid. Unless they are indeed that, this very approach is likely to cause resentment. This may well be the case if external actors impose on a country a reform of its security sector to make it better (in the sense of more like their own), but the people on whom this is imposed happen to disagree on the desirable direction of change.

## What is security?

Rather than simply looking at the actual use of a term 'security sector' we shall proceed in the logical or lexical way of tentatively defining the security sector as comprising the providers of security, be they actors, agencies or institutions. This approach, however, takes us straight to the question of what security means, as the definition or re-definition of the concept of security is bound to have implications for the sector in charge of its provision.<sup>4</sup> In the following argument, we shall approach this issue from two alternative angles, first looking at the expansion of the concept from an 'objectivist' point of view, based on the assumption that concepts refer to phenomena in the real world; and then from the vantage point of social constructivism. Both have clear, but different, implications for the delimitation of the security sector.

### *New concepts of security*

The concept of security has all along been 'essentially contested' as well as, until rather recently, surprisingly under-researched and under-theorised. One of the few international relations (IR) scholars who bothered to come up with a definition was Arnold Wolfers, who suggested the following: "Security, in an objective sense, measures the absence of threats to acquired values, in a subjective sense, the absence of fear that such values will be attacked" (Wolfers 1962:150). Such a definition leaves open questions such as whose and which values might be threatened by whom

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<sup>4</sup> The following is partly based on a previous work by the present author: Møller (2001).

or what and by which means. This does not so much speak against the definition as such as call for a further subdivision into different forms of security.

Notwithstanding the lack of explicit definitions, within the field of IR, security came to refer almost exclusively to the absence of threats to the state, namely, its unchallenged sovereignty and territorial integrity. The IR realists also tended to focus almost exclusively on military threats from other states. This IR concept was usually, albeit misleadingly, referred to as 'national security.' This is misleading both because it has often not so much been the security of the state as an institution which has been protected, as that of the incumbent regime; and because there is in most cases a significant difference between state and nation, at least in the European terminology where the latter refers to a community and the former to a bundle of political institutions.

For the last decade-and-a-half or so, however, this traditional and narrow conception has been challenged in various ways as summarised in Table 1, which takes as its point of departure the identification of various 'referent objects' for security, namely, those institutions or entities whose values may be challenged, but also distinguishes between different kinds of values and the various potential threats to them.

**Table 1: Concepts of security**

Label	Reference object	Value at risk	Sources of threat	Form of threat
<i>National security</i>	The State (Regime)	Sovereignty Territorial integrity	Other states (Sub-state actors)	Military attack
<i>Social security</i>	Nations Societal groups	National unity Identity	(States) Migrants Cultures	Genocide Ethnic cleansing Discrimination
<i>Human security</i>	Individuals Mankind	Survival Quality of life	The State Globalisation	Crime Under- development Terrorism
<i>Environmental security</i>	Ecosystem Species Planet	Sustainability	Mankind	Pollution Warming Destruction of habitats

The focus on military threats has been challenged by pointing to several other sectors from which national security might be challenged, for example, that of the economy or the environment (Buzan 1991; Buzan, Kelstrup, Lemaitre, Wæver & Tromer 1990), and the almost total preoccupation with external threats has been abandoned and threats to state security from within a state's boundaries have been included, particularly as far as weak states in the Third World are concerned



(Ayoob 1995). Moreover, the concentration on the state and the resultant neglect of communities, such as nations or ethnic groups, has been challenged with the concept of 'societal security,' referring to the cohesion and identity of human collectives (Buzan, Wæver & De Wilde 1998; Wæver, Buzan, Kelstrup & Lemaitre 1993). Finally, a strong case has been made that the focus should be shifted towards what is after all the final yardstick, namely, human beings, their survival and well-being – their 'human security.'<sup>5</sup> The latter concept seems to be gaining ground quite rapidly, pointing towards new, or at least previously overlooked, security challenges, such as poverty, crime, human rights violations and disease. For all its merits, however, this conceptualisation risks making the concept of security all-encompassing and thereby analytically useless.

*Securitisation: The power of discourse*

We are thus far from unanimity about how to define and delimit security, and it becomes even less clear if one adopts a constructivist approach along the lines of Ole Wæver with his concept of 'securitisation' (Wæver 1995). Thus conceived, security or insecurity are not properties of reality as such, but social constructions which only become constituted as (social) reality when talked about. A 'securitisation move' (i.e. a discursive attempt to securitise something) is identified as such by referring to an issue as being of existential importance as well as urgent and *ipso facto* as warranting a resort to 'extraordinary measures.' If successful, it means that the proverbial gloves can come off and the existential nature of the end (survival) can be used to justify the use of just about any means (Buzan *et al.* 1998:23-25)

In principle, anything may be securitised by anybody through a securitisation move, but whether this move will succeed depends on whether the audience accepts it or not – which in turn also depends on the 'weight' of the securitising actor. Just as knowledge and the ability to determine what is true is power, as claimed by Foucault, the power which an actor already possesses also determines the chances of his or her securitisation attempts to prevail. However, this power need not be political or economic, but can also be access to the media and thereby to the audience. Especially if actors form a network and constitute one of those epistemic communities referred to above will they stand a good chance of succeeding in their securitisation attempt.

Not only can anybody take his or her chance as a securitising actor, but securitisation attempts can also pertain to any kind of threat to any referent object, ranging from individuals to entities such as states and nations, civilisations or perhaps even rather metaphysical phenomena such as freedom or religion. Even before proclaiming a war on terror the United States thus has something of a tradition of proclaiming wars against various phenomena – which is logically tantamount to securitisation – including drugs, crime and even obesity. The issue of immigration has motivated several (mainly right-wing and/or xenophobic) political actors in Europe and elsewhere to securitise migrants or immigration as such as threats to national

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5 On the concept, see Commission on Human Security (2003).

identity. This is sometimes also referred to as ‘ontological security,’ namely, security about what one is, either individually or collectively. On the same basis it is also possible to securitise others for what they are, rather than for anything they might presumably do, for instance on the basis of their religion – or their ethnic or racial identity for that matter.

Securitisation does not even have to pertain to an actor, but can also be applied to threats from nature such as disease. HIV/AIDS has thus arguably been securitised – mainly as a threat to the aforementioned human security – even by the UN Security Council which in its resolution 1308 (17 July 2000), stated that “the HIV/AIDS pandemic, if unchecked, may pose a risk to stability and security” (see also International Crisis Group 2001). It is also possible to securitise natural hazards such as the Tsunami, or global warming for that matter. This was arguably what former Vice President Al Gore did with his controversial film *An Inconvenient Truth*, which even earned him half a Nobel Peace Prize, the other half going to the United Nations’ Intergovernmental Panel on Climate Change. In his speech to the Nobel Institute he said, *inter alia*, the following, couched in unmistakable ‘securitisation rhetoric’: “We, the human species, are confronting a planetary emergency – a threat to the survival of our civilization that is gathering ominous and destructive potential even as we gather here” (Gore 2007). The referent object of securitisation certainly does not have to be universal, but may just as well be particularistic, as when (usually self-proclaimed) spokespersons for one ethnic or religious group securitise another group as threats to their collective identity or survival. One of history’s most terrifying examples of this was the systematic hate propaganda against the Tutsi by Hutu extremists in Rwanda in the run-up to, as well as during, the 1994 genocide. The media apparently succeeded in convincing a staggeringly high percentage of the Hutu population that the Tutsi represented such a mortal danger that they had to be exterminated as a group.<sup>6</sup> It is impossible to predict in advance whether a securitisation move will succeed or not, but this may be ascertained *ex post facto*, the criterion being whether extraordinary measures have been taken and generally accepted. Whether something has been securitised is basically an empirical question to be determined for a particular country at a particular point in time, and there is no *a priori* reason to expect the same issues to be securitised by all countries at all times.

This social constructivist approach may be highly relevant for the analysis of the security sector in two respects. First, it will serve to determine the delimitation of this sector, as this will depend on which issues, challenges or threats have been successfully securitised. Those agents and agencies dealing with the threat would then *ipso facto* have to be included as parts of the security sector. Second, it may be useful as a caveat. Not only does the securitisation of a political issue allow for legitimising a resort to extraordinary measures, perhaps including a relaxation of

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6 See the documents from the ‘media trial’ at the International Criminal Tribunal for Rwanda against Ferdinand Nahimana, Jean-Bosco Barayagwiza and Hassan Ngeze, Case numbers ICTR-96-11, ICTR-97-19 and ICTR-97-27, all available from the ICTR website at <http://69.94.11.53/default.htm>.

human rights constraints on the security sector. It also provides good arguments from making that particular issue the *domaine réservé* of the security agencies. In times of economic squeezes or austerity, an expanded set of responsibilities, such as may result from securitising new issues, may provide valuable protection against budget reductions and resultant job losses. Securitisation may thus be a tactic in the game of bureaucratic politics described by Graham Allison and others (Allison 1971:*passim*; Halperin, Clap & Kanter 2006). Either the agency or branch of government in question will seek to securitise new issues for tactical reasons or it may simply rejoice over, and benefit from, the securitisation of certain issues by other actors, which may both provide it with extra resources and protect it against inconvenient public or parliamentary scrutiny with reference to security concerns.

This should serve as a caveat against unwarranted or even frivolous securitisation, which may eschew or pervert the ordinary political process of “authoritatively allocating societal resources,” as David Easton formulated it, namely, deciding “who gets what, when and how” (Easton 1953:129). Not only are there a wealth of different potential security threats to choose between, but there are also other values than security, for example, freedom or prosperity, which had better not be sacrificed for the sake of alleged security threats that may be little more than corporate interests camouflaged as concerns for the public good. There may also be very good reasons not to let security concerns determine policies for, for instance, development aid. Whereas securitising it may bring additional resources, it may also entail different priorities which may be incompatible with the original ones such as poverty alleviation (see, for instance, Abrahamsen 2005; Eadie 2007; Møller 2007b).

### **The security sector: A multi-headed hydra**

All of the above has obvious implications for how and by whom security should be provided. Whereas the traditional and narrow concept pointed towards a correspondingly narrow concept of the security sector, largely comprising the armed forces and the intelligence agencies, more expansive concepts bring into play a wide range of other actors, both national and international as will be apparent from Table 2, which does not even pretend to be exhaustive. The securitisation approach, in turn, simply adds diversity and unpredictability to the total picture, as there is no way of telling in advance which issues will be securitised and therefore what kind of services will be required to provide security (which agents or agencies would belong to the security sector).

Table 2: Concepts of security and security providers (examples)

Form of security		Threats	Providers of security	
			National	International
<i>National security</i>	Narrow	Military attacks	Armed forces Intelligence agencies Civil defence Diplomatic corps	UN Alliances
	Expanded	Economic threats	State Treasury Customs services Private actors	WB, IMF, WTO, EU Development agencies
		Terrorism	Police Judiciary	Interpol UN
<i>Societal security</i>		Genocide Ethnic cleansing	Armed forces Self-defence groups	Intervention forces Peacekeepers
		Discrimination	Lawyers Human rights NGOs	UN NGOs
		Immigration	Immigration controls Integration agencies (schools, etc.)	Development agencies UNHCR
<i>Human security</i>		Crime	Police, militias, courts	ICC
		Disease	Doctors, nurses hospitals	WHO UNAIDS
		Poverty	Companies Charities	Donors Diasporas
<i>Environmental security</i>	<i>S. from the environment</i>	Natural disasters Global warming	Rescue agencies Planning agencies	UN States NGOs
	<i>S. of the environment</i>	Global warming Poaching	Planning agencies Game wardens	UN NGOs
<i>Legend:</i> EU: European Union; ICC: International Criminal Court; IMF: International Monetary Fund; NGO: Non-Governmental Organisations; UN: United Nations; UNHCR: United Nations High Commissioner for Refugees; WB: World Bank; WHO: World Health Organization; WTO: World Trade Organization				

It is fairly obvious who would be in charge of traditional threats to national security such as military attacks from other states. This would be the armed forces, with the ability to both deter and defend; and intelligence agencies, to predict when, where and how attacks might occur. Diplomacy might also be useful, for example, as a means to dissuade prospective attackers. To this should be added such international organisations as might either help prevent such attacks from occurring in the first place or provide assistance to a country under attack. For these purposes collective security organisations such as the United Nations and collective defence organisations such as alliances would be valuable.<sup>7</sup>

If the concept is slightly expanded to include, for example, economic threats such as (unilateral or multilateral) economic sanctions, threats to cut off development aid or sever trade relations – which might also be used coercively and threaten national sovereignty – the range of relevant actors would grow considerably. A country will be less vulnerable to any form of coercion, the stronger its economy is, which in turn will depend both on the capacities and the policies pursued by various government ministries and agencies and on its private sector. Membership of various international organisations may also add to a country's resilience – but the very same organisations may also be exploited by other states to add to the coercive pressure, as may be the case of development agencies which can simply withhold their assistance.

If we expand the concept of national security to include (international or any form of) terrorism, then the police and the judiciary are likely to be the primary agencies charged with the prevention of and punishment for terrorism, alongside the emergency management services, who would shoulder most of the burden of dealing with the consequences of such attacks.<sup>8</sup> International agencies, such as Interpol and various others under the auspices of the United Nations, would also be significant contributors, obliging states to help preventing terrorism in other states.<sup>9</sup>

As far as societal security is concerned, an ethnic, religious or other minority group may find protection against discrimination from the legal profession, human rights organisations and institutions, both domestic and international. The primary agency for containing the (usually much exaggerated) threats to national cohesion represented by immigration would be the immigration services and the border police, to which might be added whatever could be undertaken in the countries of origin of the prospective migrants or refugees to make them stay at home, for example, by means of development aid. As far as the actual immigrants are concerned, whatever threat they might arguably represent to national identity could surely be minimised by integrating them in society, for which tasks the educational system as well as the labour market would be central.

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7 On collective security, see Kupchan and Kupchan (1991); on alliances, see Snyder (1997:*passim*).

8 For a US perspective, see, for instance, Waugh (2003), Perry (2003), and Perry and Lindell (2003).

9 For an overview of the UN's role in setting norms to this effect, see Nesi (2006:*passim*).

As far as the most serious threats to societal security, namely, genocide and so-called ethnic cleansing,<sup>10</sup> are concerned, a country's own armed forces would usually be of little help – in fact they may well be the perpetrators as in Yugoslavia, Rwanda or Darfur – but those of other countries would be central, albeit mainly for 'saving strangers' in humanitarian interventions which have little to do with their own security. International legal institutions, such as the International Criminal Court or its predecessors in the form of the two international tribunals for Rwanda and Yugoslavia, would also be useful, mainly for the deterrence of the planners or perpetrators of future genocides or campaigns of ethnic cleansing.<sup>11</sup>

With the almost all-encompassing category of human security, the contours of the security sector become even more blurred, as just about all public and quite a few private agencies might help prevent, contain or protect against crime, disease, poverty, and such like. The same is the case of the two varieties of environmental security, namely, the protection of people or states from threats related to the environment and the protection of the environment, for example, the biosphere or particular species, against various man-made or natural threats. We might, of course, define the security sector as comprising all the actors and agencies providing some form of security, whether they are national or international. This would, however, make the term almost all-encompassing and thus unwieldy and less analytically useful. In the following discussion, we shall therefore adopt an intermediate approach, limiting the term to the formal security agencies designated as such along with their counterparts in the non-public sphere, namely, the armed forces (mainly in charge of national security) and the agencies responsible for the law-and-order elements of human security, namely, the police, the judiciary and the penal system.

### **Statutory/non-statutory – security/insecurity/non-security**

For practically every formal or statutory security agency there happens to be a fairly close counterpart or functional equivalent in the informal or non-statutory sector (see Table 3). The latter tends to be very large, especially in Third World and/or post-conflict countries, as is the case of the economy, with which the informal security sector is in fact often intimately linked – hence the concept of 'war economies.'<sup>12</sup>

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10 On ethnic cleansing, see Petrovic (1994), Simons (1999) and Walling (2000).

11 On the ICC, see Knoop, Geert and Alexander (2004) and Hayden (2004).

12 On war economies, see Keen (1998).

**Table 3: Statutory and non-statutory security agencies**

Formal/Statutory	Informal/Non-statutory
Armed Forces (Regular and home guard/territorial defence)	Rebel/guerilla groups Pro-government militias Self-defence groups Private military companies
Police (Regular and gendarmerie)	Vigilante groups Neighbourhood watch groups Court militias Private security companies
Intelligence (external and internal)	Networks and informants ‘The grapevine’/‘ <i>Radio Trottoire</i> ’ <sup>13</sup>
Judiciary (courts, judges, lawyers)	Informal courts
Penal system (prisons)	Executioners Avengers Collectors of compensations

The performance of informal or non-statutory agents in terms of providing security to their respective principals or constituencies is not consistently worse than that of the statutory counterparts. It must, however, also be acknowledged that all agencies have several functions, some of which may have nothing whatsoever to do with security in any sense of the term. This is illustrated in Table 4, where a ‘security function’ is only counted as such if it is either intended for, or actually serves, the security of the principals of the agents in question, namely, representatives of the above ‘referent objects’ of security.

13 On the “Pavement Radio”, see Ellis (1989).

**Table 4: Security, insecurity and non-security agencies and functions (examples)**

Status	Agency		Security (for whom)	Insecurity (for whom)	Non-security (for whom)	Introverted functions
PUBLIC	<i>Armed forces</i>	At home	National defence (own state)	Deterrence/defeat (other states)	Rescue missions (own citizens)	Jobs Bribes Prestige
			Counter-insurgency (own regime)	Oppression (Rebels/Opponents)		
		Abroad	Alliance contributions (other states/own state)	Containment/Deterrence (other states)	Peacekeeping (other states) Humanitarian intervention (other people) Revenue creation (own defence ministry)	
			(Pre-emptive) attack (own state)	Aggression (other states)		
	<i>Police</i>			Law and order (own society)	Apprehension (criminals)	Traffic control (own society)
				Riot control (own regime)	Oppression (opponents)	
				Counter-terrorism (own state/society)	Apprehension (actual/suspected terrorists)	
	<i>Intelligence</i>	External	National defence (own state)		Innocent suspects	Jobs Bribes
			Counter-terrorism (own state/society)			
		Internal	Rule of law (own society)			
			Counter-terrorism (own state/society)			
	<i>Judiciary</i>		Rule of law (own society)	Litigation (other citizens)	Arbitration (citizens, companies)	Jobs Bribes Prestige
	<i>Penal system</i>		Rule of law (own society)	Punishment (criminals, terrorists)	Prison industry (own society)	Jobs Bribes



Status	Agency		Security (for whom)	Insecurity (for whom)	Non-security (for whom)	Introverted functions	
PRIVATE	<i>Rebel groups</i>	At home	Protection (own community)	Rebellion (incumbent regime)	n.a.	Looting Smuggling Extortion	
		Abroad	n.a.	Proxy war (Neighbouring state)			
	<i>Pro-government militias</i>		Defence (government)	Counter-insurgency (rebels)			Contracts
	<i>Self-defence forces</i>		Protection (own community)				
	<i>Private military companies</i>		Defence (government) Protection (private companies)				
	<i>Neighbourhood watch group</i>		Protection (own community)	Apprehension/punishment (criminals)		Safe environment for tourism/investments/trade	Extortion
	<i>Vigilante groups</i>						
	<i>Court militias</i>		Law and order (own community)	Apprehension-trial-punishment (criminals)			Prestige
<i>Private security companies</i>		Protection (private lives and property)	Criminals	Jobs Bribes			

What further complicates the picture is that security is often achieved at the expense of insecurity of others through the intricate workings of the so-called security dilemma, so well known from IR theory and recently also applied to intra-state conflicts.<sup>14</sup> Quite a few security agencies only provide security for their clients or principals by simultaneously generating insecurity for others. Whether to count them as security providers or the exact opposite entirely depends on one's vantage point.

Furthermore, the various security agencies of the state ('statutory' in the sense of being regulated by law) perform a wide range of functions. The armed forces are not only involved in national defence against other states, but also (especially in the Third World) in counter-insurgency warfare against domestic rebels and in various constabulary tasks, in addition to which they sometimes interfere in politics, for example, through military coups. Besides this, they also serve the national interest

14 On the security dilemma between states, see Jervis (1978), Buzan (1991: note 15), Collins (1997) and Glaser (1997). On the intra-state security dilemma, see Posen (1993).

in other ways which are only very marginally related to security. Third World countries typically provide 'blue helmets' for UN peacekeeping missions,<sup>15</sup> whereas western countries occasionally provide troops for humanitarian interventions – both of which missions are about 'saving strangers' rather than about the national security of the respective countries themselves.<sup>16</sup> Moreover, to the extent that such missions take place under the auspices of the UN, the expenses will be reimbursed (often according to quite favourable standards) implying that peace support operations (PSOs) may contribute to the national, and especially the defence, budgets. In the past, most countries only participated in such PSOs as a secondary task, but considering the lack of military threats to the West, the armed forces of most western countries are now primarily pre-occupied with functions that have little to do with national security.

The police force is mainly in charge of upholding law and order as a public good (see, for instance, Rumabut 1979),<sup>17</sup> but it is often also involved in protecting the incumbent regime against political opponents – something that will, at most, enhance the security of the regime, sometimes at the expense of the population at large. This was, for instance, the case of the police in apartheid South Africa (Cawthra 1993; Shaw 2002). In addition to this, the police in many Third World (and other) countries perform a wide range of non-security functions, such as all too often engaging in income-generating activities by setting up roadblocks in the middle of nowhere and accepting bribes from passing citizens. The same may be the case of the judiciary, which is furthermore available for settling disputes among citizens. Intelligence services (often formally parts of the military and/or the police) perform their activities both in the interest of the society as such and of the state, but sometimes they serve to protect mainly the regime in power, as was the case of the KGB, the Stasi and several other intelligence services (see, for instance, Childs & Poppelwell 1996:*passim*).

Among the non-statutory security providers, some directly challenge the state (the very *raison d'être* of rebel groups) but some of these *ipso facto* enhance the security of, and are consequently supported by, other states,<sup>18</sup> and quite a few rebel groups are the primary security providers of their own communities.<sup>19</sup> Private military and security companies offer their services to state as well as non-state principals for money, and the fact that somebody is willing to commission their services is strong evidence that they are at least expected to provide security.<sup>20</sup> Just as many private security companies specialise in the kind of services which would otherwise be performed by the police (see, for instance, Abrahamsen & Williams 2008), the same could be said of a number of informal and highly irregular groups such as

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15 For an elaboration, see Møller (2006).

16 The term is that of Wheeler (2000).

17 On public goods, see Desai (2003).

18 For examples of such proxy warfare by means of rebels, see Prunier (2004).

19 An excellent analysis of several rebel groups from this perspective is Weinstein (2007).

20 For an elaboration, see Møller (2005).

neighbourhood watch and vigilante groups – the Nigerian ‘Bakassi Boys’ or the South African PAGAD (People Against Gangsterism and Drugs) being merely notorious examples of a widespread phenomenon (Kynoch 1999; Nwankwo 2006). However, just as may be the case of statutory security providers, such groups may gradually develop into threats to security, even for those whom they were initially protecting. Finally, some groups may never actually have provided security for anybody, but nevertheless have been believed to do so by seemingly protecting against fictitious threats, as might be the case of the genocidal *Interahamwe* militias who claimed to protect the Hutu population of Rwanda against the alleged Tutsi threat (see, for instance, Hatzfeld 2005).

## Conclusion

We have thus seen that what may reasonably be called the security sector is quite amorphous. Unless one deliberately defines it more narrowly, it logically comprises all agents and agencies providing security for somebody or something. Hence, the hegemonic West may in the Third World be confronted with a multi-headed Hydra. It is not self-evident that the appropriate strategy is to chop off the other heads of the Hydra in order to transform it into a Hobbesian Leviathan, providing order and helping society move from the proverbial state of nature into modernity, where the state enjoys a monopoly on the legitimate use of force – as might seem to be the gist of ‘security sector reform’ as conceptualised by the West.

This does not mean that all agents claiming to provide security actually do so, and that post-conflict peace-builders should uncritically rubber-stamp every armed group as legitimate – and it would surely be naïve to expect to be able transform genocidal *Interahamwe* militia members into ‘friendly neighbourhood cops’. It does mean, however, that there is no one-size-fits-all form of security sector reform that the West should impose on countries around the world, but that it all depends on local circumstances.

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# REFLECTIONS ON THE STRATEGIC SIGNIFICANCE OF THE INTERNATIONAL CRIMINAL COURT

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## Abstract

*Military forces have perhaps the most direct and special interest in the effective enforcement of the laws of armed conflict on the ground – rules that legitimise certain means and methods of warfare over others, and protect those no longer taking an active part in hostilities. While history might teach that the power and opportunity to prosecute those responsible for war crimes is a consequence of victory, the establishment and early operations of the International Criminal Court shift the terrain. The Court, through its Prosecutor, is a ‘distant watcher’ on the battlefield, and an independent actor whose objectives do not necessarily align with those of the belligerents, both during and after conflict. This paper examines the potential strategic relevance of the International Criminal Court to military operations. It surveys the role and early practice of the Court as a mechanism for the enforcement of the law of armed conflict, including the protection of forces engaged in peacekeeping missions; the special legal rules applicable to the military commander and the ordinary soldier before the Court; the potential for scrutiny of military justice systems through the Court’s complementary jurisdiction, and the compatibility of provisions of Status of Forces Agreements with state obligations under the Statute of the Court. This survey seeks to demonstrate the Court’s potential*

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*for both scope and depth of influence, to consider its role as a strategic actor, and to recommend, on this basis, that close familiarity with the legal regime governing the work of the Court is a necessity for military legal advisers and strategists alike.*

## Introduction

*“Both strategy and tactics may have to yield to policy”  
– Prince Kraft zu Hohenlohe-Ingelfingen (1827-1892).*

Policy has an intriguing dialectical relationship to both strategy and tactics – for policy considerations may at once constrain the range of available options and serve to generate novel approaches. The adoption of the modern rules of armed conflict (the *ius in bello*) – governing the means and methods of warfare as well as the protection of those not taking an active part in hostilities – can be seen as disadvantaging certain types of conduct, which may well have strategic value (for instance, forcible transfer of populations, mass killing of civilians, scorched-earth or guerrilla tactics) by using the law to allocate additional risk to such conduct, while favouring other approaches (for instance, ‘smart’ weaponry or recourse to embedded legal advisers). As long as victory mitigated or extinguished one’s risk of legal exposure – that is, where the right to impose justice was a mere spoil of victory – the motivator for enforcement of the law of armed conflict – its ‘teeth’ – were limited to the mutual interest of reasonably matched parties faced with an uncertain outcome to the conflict. Each side recognised their self-interest in upholding basic, common principles of humanity in the conduct of hostilities *as long as the outcome was uncertain*. This did not stop allegations of victor’s justice at Nürmberg or, 60 years later, in Iraq. Furthermore, mutual interest as a motivator for effective enforcement of the law starts to break down rapidly in a world of small-scale armed conflicts within the borders of a single state, where inequalities of power between the belligerents drive ideologically-charged fighters with scant regard for military discipline or the rules of armed conflict.

Enter the International Criminal Court (ICC), the world’s first permanent international criminal tribunal, established in 1998 and fully operational from 1 July 2002,<sup>2</sup> with jurisdiction over the most serious crimes of concern to the international community as a whole – namely genocide, crimes against humanity and war crimes – and, when a definition is finally agreed, the crime of aggression. Its key characteristic as a complementary court, exercising jurisdiction only when states are unwilling or unable to do so, is not so much evidence of toothlessness as a recognition that states have not only the sovereign prerogative, but the primary duty to punish those who commit ‘core international crimes’. Its mode of establishment – a consent-based, multilateral treaty attracting the support of most states in Africa, Latin America, the Caribbean, Europe, Japan and pockets of Asia; largely ignored by Russia, China, India and the Middle East; and initially promoted

2 See *Rome Statute of the International Criminal Court*, 2187 UNTS 90 (entered into force: 1 July 2002). By 2010 there were 111 States Parties to the Statute.

but subsequently vigorously opposed by the United States – has created a global player with little claim to hard power but significant reach and influence. Its initial theatres of operation – in the Democratic Republic of Congo, Uganda, Sudan and the Central African Republic – demonstrate, amidst cries of neo-colonialism, a concerted focus on African conflicts.

Indeed, as one leading African international criminal lawyer and negotiator at the Rome Conference observes, the Court is highly significant for Africa:

Contrary to the view that the ICC was shoved down the throats of unwilling Africans who were dragged screaming and shouting to Rome and who had no alternative but to follow their Western Masters under threat of withholding of economic aid if they did not follow, the historical developments leading up to the establishment of the court portray an international will of which Africa was a part, to enforce humanitarian norms and to bring to justice those responsible for the most serious crimes of concern to the international community ... No other continent has paid more dearly than Africa for the absence of legitimate institutions of law and accountability, resulting in a culture of impunity. Events in Rwanda were a grim reminder that such atrocities could be repeated anytime. This served to strengthen Africa's determination and commitment to the creation of a permanent, impartial, effective and independent judicial mechanism to try and punish the perpetrators of these types of crimes whenever they occur. (Mochochoko 2005:243, 249)

African states comprise the largest regional bloc within the Court's Assembly of States Parties, with 30 of 111 members. Currently, the Court's first Vice-President is from Mali. A Ugandan judge and distinguished academic presides over the influential Appeals Division of the Court. A total of five African judges sit on the Court – among a bench of eighteen – and a respected Gambian lawyer serves as Deputy Prosecutor.

Having briefly reviewed the establishment of the Court and its African orientation, we now survey six ways in which the Court may have strategic relevance to the planning, execution and review of military operations.

### **The Court as a mechanism to investigate, prosecute and punish serious violations of the law of armed conflict**

The subject-matter jurisdiction of the Court extends, at present, to genocide, crimes against humanity and war crimes. The inclusion of the crime of aggression – which would introduce, for the first time since Nürmberg and Tokyo, criminal sanctions for violations of the *ius ad bellum* – will depend on a currently-contested definition being agreed upon and added to the Statute at a review conference scheduled for 2010, or an amendment to the Statute at a later date.<sup>3</sup>

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3 See Rome Statute, Article 123.

The repression of war crimes, previously a treaty obligation of national authorities and a handful of *ad hoc* tribunals with limited geographical and temporal reach, is now shared by a permanent judicial institution (albeit with strictly prospective temporal jurisdiction, applicable to crimes committed no earlier than 1 July 2002, and later in certain cases).<sup>4</sup>

The ‘catalogue’ (Bothe 2002:386) of war crimes included in the Statute can be classified by context and by source of law, into four major groupings: (a) grave breaches of the Geneva Conventions, applicable only to international armed conflict (11 distinct crimes); (b) other serious violations of the laws and customs of war applicable to international armed conflict (35 distinct crimes); (c) serious violations of Common Article 3 of the Geneva Conventions, applicable to internal armed conflict (7 distinct crimes); and (d) other serious violations of the laws and customs of war applicable to internal armed conflict (18 distinct crimes) – a total of 71 enumerated offences that can be prosecuted as war crimes before the Court.<sup>5</sup> The great majority of these crimes are drawn from conduct that was criminalised or at least prohibited by The Hague Regulations of 1899 and 1907, the Geneva Conventions of 1949, and the two Additional Protocols of 1977. But the Rome Statute goes beyond merely codifying pre-existing Hague or Geneva law: new crimes address forms of sexual violence such as sexual slavery and enforced prostitution; unlawful attacks against peacekeeping and humanitarian missions; and causing massive environmental damage in war.

The Rome Statute also includes a ‘dormant’ offence, applicable only to international armed conflict, of using weapons which (a) by their nature cause superfluous injury or unnecessary suffering; or (b) are inherently indiscriminate (i.e. between civilian and military personnel or objects). This war crime, drafted in part to allow room for the future prohibition of cluster munitions, can only be ‘activated’ once a list of the offending weapons are annexed to the Rome Statute by amendment.<sup>6</sup>

The first trial before the Court, that of a commander of Congolese rebel forces, Thomas Lubanga Dyilo, focuses mainly on charges of recruitment and use of child soldiers as a war crime – defining ‘children’ as being under the age of 15, in deference to the continuing practice of allowing 16- and 17-year-olds to join armed forces in some parts of the world. Preliminary proceedings in the *Lubanga* case are already a useful source of jurisprudence on the issue of ‘internationalisation’ of previously internal armed conflicts through the intervention a third state – in this

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4 For instance, the Rome Statute includes a curious ‘opt-out’ provision for war crimes – included at the insistence of the French delegation – whereby states accepting the jurisdiction of the Court may exclude war crimes from that jurisdiction for a non-renewable period of 7 years; see Rome Statute, Article 124. Furthermore, states becoming parties to the Rome Statute after 1 July 2002 are not bound retrospectively unless they so declare; see Rome Statute, Article 11(2).

5 See Rome Statute, Article 8; and its subordinate ‘Elements of Crimes’ document, which in some cases teases out individual crimes which the Statute enumerates under one provision.

6 Rome Statute, Article 8(2)(b)(xx).

case Uganda.<sup>7</sup> It is likely that the first judgement to be finalised before the Court will centre on application of the Statute's war crimes provisions.

Of greater interest, though, is the role played by the Court in situations where *crimes are ongoing* – that of a 'distant watcher' on the battlefield. Here, the much-touted 'soft power' of the Prosecutor invites closer analysis. A product of a common negotiating platform by a coalition of 'like-minded' states in Rome, from both North and South, and intense lobbying from NGO coalitions, the so-called *proprio motu* power of the ICC Prosecutor enables investigation and prosecutions to be launched with judicial oversight, but without state or Security Council consent in the particular instance. Reliable empirical evidence of the Prosecutor's deterrent effect on the commission of war crimes is difficult to establish;<sup>8</sup> nonetheless, the rhetoric of deterrence and soft power abounds. The Prosecutor is also empowered to receive 'communications' from individuals, corporations and non-governmental organisations in order to analyse that information and to decide whether to initiate an investigation.<sup>9</sup> There does not seem to be any requirement that the Prosecutor receive a specific communication from outside the Court before acting, rather than basing his action on in-house analysis of open source information. For instance, as the 2008 conflict in the region of South Ossetia drew to a close, the current Prosecutor, Luis Moreno-Ocampo (Argentina), made a proactive public statement indicating that his Office would monitor the conflict, without any express reference to communications having been received about that situation. He took this step on 14 August 2008, one week after the start of the Georgian offensive and several days before the signature of the ceasefire agreement:

Georgia is a State Party to the Rome Statute. The Office of the Prosecutor considers carefully all information relating to alleged crimes within its jurisdiction – war crimes, crimes against humanity and genocide – committed on the territory of States Parties or by nationals of States Parties, regardless of the individuals or groups alleged to have committed the crimes.<sup>10</sup>

The language is carefully crafted to avoid any reference to jurisdiction over Russian nationals or military personnel – Russia not yet having ratified the Rome Statute.

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7 See *Prosecutor v. Thomas Lubanga Dyilo*, No. ICC 01-04/01-06, *Decision on the confirmation of charges*, 29 January 2007 (PTC), paras. 200-226.

8 As the Office of the Prosecutor itself acknowledges, 'Measuring the performance of the Office in helping to end the culture of impunity and contributing to the prevention of crimes under the Court's jurisdiction is a complex task that requires a clear evaluation of the entire Rome system ... Establishing a system to measure the impact of the entire Rome system is the most difficult performance indicator to develop, but remains an important one ...'; see Office of the Prosecutor, *Report on prosecutorial strategy*, 14 September 2006, at [www.icc-cpi.int](http://www.icc-cpi.int) at 10.

9 Rome Statute, Articles 15 and 53; see also Office of the Prosecutor, *Annex to the 'Paper on some policy issues before the Office of the Prosecutor: Referrals and Communications'*, 21 April 2004, at [www.icc-cpi.int](http://www.icc-cpi.int) at 2-12.

10 Office of the Prosecutor, *Prosecutor's statement on Georgia*, 14 August 2008, at [www.icc-cpi.int](http://www.icc-cpi.int).

## The Court as a mechanism to protect forces engaged in peacekeeping operations

As the African Union and regional integration organisations grapple with the establishment and effective functioning of continental peacekeeping brigades, recent events in Darfur and elsewhere highlight the vulnerability of such forces in the field. The firm (but not uncontroversial) policy of the Prosecutor of the Court is one of selective and representative prosecutions against those high-ranking leaders and officials who “bear the greatest responsibility”<sup>11</sup> for crimes. In this context, it is notable that institutional priority has been given to the prosecuting acts of violence committed against peacekeeping forces in the *Abu Garda* case – one of only seven cases publicly-known to be under investigation or prosecution.

The Rome Statute criminalises the following acts, whether in the context of an international or internal armed conflict:

Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict.<sup>12</sup>

It is noteworthy that the first prosecution of this crime by an International Court should arise in the context of an attack against the troops of a regional integration organisation – the African Union’s AMIS (African Union Mission in Sudan) deployment to Darfur, Sudan – rather than against UN peacekeepers, in relation to whom this crime was first envisaged in the *Convention on the Safety of the United Nations and Associated Personnel* (1994). While the wording of the Rome Statute extends only to peacekeeping missions “in accordance with the Charter of the United Nations”, the Prosecutor made carefully-constructed submissions to the Court that the UN Charter’s recognition of regional peace and security mandates in general,<sup>13</sup> together with the Security Council’s encouragement and support of the African Union’s mission<sup>14</sup> as a form of “international dispute settlement by peaceful means”,<sup>15</sup> implies that AMIS is indeed a peacekeeping mission in accordance with the UN Charter. The Prosecutor has also maintained that there is no requirement to prove actual harm to persons or loss of property in order to convict an accused

11 Office of the Prosecutor, *Report on Prosecutorial Strategy*, 14 September 2006, at [www.icc-cpi.int](http://www.icc-cpi.int) at 5, 7.

12 Rome Statute, Articles 8(2)(b)(iii) [in international armed conflict] and 8(2)(e)(iii) [in internal armed conflict].

13 *Charter of the United Nations* (1945), Articles 51(2) and 52(3).

14 See, *inter alia*, Security Council Resolution 1556 (30 July 2004); Security Council Presidential Statement (26 May 2004); and Security Council Presidential Statement (13 October 2005).

15 *Situation in Darfur, The Sudan*, No. ICC-02/05, *Prosecutor’s Application under Article 58 filed on 20 November 2008 now filed pursuant to the request of Pre-Trial Chamber I of 7 May 2009*, 20 May 2009 (OTP), paras. 112; see generally paras. 108-114.

of this crime, and that the “mere attack” is sufficient.<sup>16</sup> While the Court eventually declined to confirm charges against Abu Garda because of insufficient evidence of his participation in the attack,<sup>17</sup> the application of the Rome Statute’s protections to the AMIS mission was accepted by the Court.<sup>18</sup>

## Assessing the objective commander

In the context of mass violence, individuals participate in crimes in different ways – they may be the actual perpetrator ‘on the ground’, but the prosecutorial strategy articulated above suggests that the Prosecutor is unlikely to bring a case against a low-level perpetrator, preferring to encourage domestic legal systems to take action. Those who bear the greatest responsibility are likely those who planned, ordered or instigated crimes. Two forms of participation in offences (or *modes of liability*) are especially relevant to military commanders: directly *ordering* the commission of a crime as a form of individual criminal responsibility, and the possibility of responsibility *as a military superior*. In this regard, the Rome Statute provides:

### Article 28

#### *Responsibility of commanders and other superiors*

- a. ... a military commander or person effectively acting as a military commander shall be criminally responsible for crimes within the jurisdiction of the Court committed by forces under his or her effective command and control, or effective authority and control as the case may be, as a result of his or her failure to exercise control properly over such forces, where:
  - (i) That military commander or person either *knew* or, owing to the circumstances at the time, *should have known* that the forces were committing or about to commit such crimes; and
  - (ii) That military commander or person *failed to take all necessary and reasonable measures within his or her power* to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

The text raises many complex legal issues, but especially noteworthy is the so-called *negligence* standard (‘should have known’) to which a commander may be held. This represents a departure from the general requirement that an individual can only be convicted of crimes under the Rome Statute if the prosecution proves, beyond a reasonable doubt, that the crimes were committed with *intent* as to consequences

<sup>16</sup> Ibid., par. 107.

<sup>17</sup> See *Prosecutor v. Bahar Idriss Abu Garda*, Decision on the Confirmation of Charges, Case No. ICC-02/05-02/09 (P.T.Ch.I), 8 February 2010.

<sup>18</sup> *Prosecutor v. Bahar Idriss Abu Garda*, Decision on the Prosecutor’s Application under Article 58, Case No. ICC-02/05-02/09 (P.T.Ch.I), 7 May 2009, par. 19.

and *knowledge* as to circumstances.<sup>19</sup> The Statute is also innovative in introducing a broader notion of superior responsibility in the context of superior-subordinate relationships not captured by the terms above – high-ranking civilians exercising authority and control over military structures come to mind.<sup>20</sup>

How is an International Court, remote from the battlefield, entirely independent from the military, far removed from military culture – and indeed, from the social and cultural milieu of the country concerned – to assess how a commander can be expected to have known that his troops were committing or about to commit serious crimes? The jurisprudence of the *ad hoc* international criminal tribunals for Rwanda (ICTR) and Yugoslavia (ICTY) applies the negligence standard of command responsibility<sup>21</sup> through the notion of *inquiry notice*. In the case of Milorad Krnojelac, the warden of a notorious detention camp in the former Yugoslavia, accused of allowing his subordinates to commit torture, the ICTY Appeals Chamber observed:

The Appeals Chamber holds that the external context (i.e. the circumstances in which the detention centre was set up) and the internal context (i.e. the operation of the centre, in particular, the widespread nature of the beatings and the frequency of the interrogations), taken together with the facts ... mean that no reasonable trier of fact could fail to conclude that Krnojelac had reason to know that some of the acts had been or could have been committed for one of the purposes prohibited by the law on torture. Krnojelac had a certain amount of general information putting him on notice that his subordinates might be committing abuses constituting acts of torture.<sup>22</sup>

Evidence that a commander knew that his troops had a tendency to take revenge on civilians,<sup>23</sup> that they lacked proper training,<sup>24</sup> or even knowledge of a subordinate's bout of drinking prior to a mission<sup>25</sup> have been held to satisfy the requirement of inquiry notice.

In order to establish command responsibility under the Rome Statute, the prosecution must prove, in addition, that the commander failed to take all necessary and reasonable measures within his power to prevent or repress the crimes. The standard is high – for instance, where crimes were committed as a result of the

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19 Rome Statute, Article 30.

20 Rome Statute, Article 28(b).

21 The Statutes of these *ad hoc Tribunals* use the term “had reason to know” to describe the objective requirement of command responsibility.

22 *Prosecutor v. Milorad Krnojelac*, Case No. IT-97-25-A, *Judgment* (AC), 17 September 2003, par. 171.

23 *Prosecutor v. Zlatko Aleksovski*, Case No. IT-95-14/1-T, *Judgment* (TC), 25 June 1999, par. 114.

24 *Prosecutor v. Dario Kordić and Mario Čerkez*, Case No. IT-95-14.2-T, *Judgment* (TC), 26 February 2001, par. 437.

25 *Prosecutor v. Zeynil Delalić et al.*, Case No. IT-96-21-A, *Judgment* (AC), 20 February 2001, par. 238.

commander failing to protest an attempt by a subordinate to usurp his authority, the ICTY Appeals Chamber nonetheless held the commander responsible.<sup>26</sup>

### The ‘fog of law’: comments on the defence of superior orders

The law attempts to recognise the singularly unenviable position of the ordinary soldier called upon to make moral choices or exercise complex judgement in the midst of battle. The defence of superior orders is one such device. In the words of Justice Cory of the Supreme Court of Canada:

The whole concept of military organization is dependent upon instant, unquestioning obedience to the orders of those in authority. Let us accept that the military is designed to protect the physical integrity of a nation, its borders and its people. The orders of the commander in chief must be carried out through the chain of command. The division commanders must carry out the orders of the army commanders. The regimental commanders must carry out the orders of the divisional commanders, the company commanders those of the battalion commanders, and the men in the platoons those of the lieutenant in charge. This requirement of instant obedience to superior order applies right down to the smallest military unit. Military tradition and a prime object of military training is to inculcate in every recruit the necessity to obey orders instantly and unhesitatingly. This is in reality the only way in which a military unit can effectively operate. To enforce the instant carrying out of orders, military discipline is directed at punishing those who fail to comply with the orders they have received. In action, the lives of every member of a unit may depend upon the instantaneous compliance with orders even though those orders may later, on quiet reflection, appear to have been unnecessarily harsh.

The absolute necessity for the military to rely upon subordinates carrying out orders has, through the centuries, led to the concept that acts done in obedience to military orders will exonerate those who carry them out. The same recognition of the need for soldiers to obey the orders of their commanders has led to the principle that it is the commander who gives the orders who must accept responsibility for the consequences that flow from the carrying out of his or her orders.<sup>27</sup>

There is a delicate, uneasy but necessary balancing-act in upholding the integrity of obedience to command and repressing criminal conduct. So delicate, in fact, that states may be asking to Court to use the fog of law to accommodate the fog of war. The statement of the defence in the Rome Statute follows:

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26 *Prosecutor v. Pavle Strugar*, Case No. IT-01-42-T, *Judgment* (TC), 31 January 2005, par. 445.

27 *R. v. Finta* [1994] 1 SCR 701 (Supreme Court of Canada) at 147-148.



*Article 33**Superior orders and prescription of law*

1. The fact that a crime within the jurisdiction of the Court has been committed by a person pursuant to an order of a Government or of a superior, whether military or civilian, shall not relieve the person of criminal responsibility unless:
  - (a) The person was under a legal obligation to obey orders of the Government or the superior in question;
  - (b) The person did not know that the order was unlawful; and
  - (c) The order was not manifestly unlawful.
2. For the purposes of this article, orders to commit genocide or crimes against humanity are manifestly unlawful.

The approach in the Rome Statute has a South African pedigree; in a case arising from the Anglo-Boer War, a soldier acting on the orders of his superior killed an African for not performing a menial task. While the court acquitted the soldier, it also introduced the ‘manifest illegality’ test for the defence of superior orders, which remains as one of three criteria for the application of the defence under the Rome Statute:

... it is monstrous to suppose that a soldier would be protected where the order is grossly illegal. [That he] is responsible if he obeys an order [that is] not strictly legal ... is an extreme proposition which the Court cannot accept ... especially in time of war immediate obedience ... is required ... I think it is a safe rule to lay down that if a soldier honestly believes he is doing his duty in obeying the commands of his superior, and if the orders are not so manifestly illegal that he must or ought to have known that they were unlawful, the private soldier would be protected by the orders of his superior officer.<sup>28</sup>

Perhaps the most evocative statement on the concept of ‘manifest illegality’ arises from the *Kafr Qassem* case before the District Court of Israel, which compares manifest illegality with the “black flag” which waves over the illegal order; the “certain and obvious unlawfulness that stems from the order itself, the criminal character ... unlawfulness that pierces and agitates the heart, if the eye is not blind nor the heart closed or corrupt.”<sup>29</sup>

The defence is only available for war crimes, and it is difficult to understand how orders to commit certain subspecies of war crimes – sexual violence, for instance – will be anything other than ‘manifestly unlawful’. The defence is more likely to be invoked in connection with unlawful targeting of civilians, for instance, or use of unlawful munitions.

28 *R. v. Smith* (1900) 17 SC 561 (Cape of Good Hope).

29 *Kafr Qassem* (Appeal, 279-283-58 Psakim, *Judgments of the District Court of Israel*, vol. 44) at 362.

## Willing and able: the compatibility of military justice systems with the test of complementary jurisdiction in the Rome Statute

It is common to refer to the Court as one of 'last resort', but this is slightly misleading. Proceedings at the ICC do not depend upon a procedural requirement of 'exhaustion of domestic remedies', such as final appeals, but rather on a substantive inquiry into the *availability and quality of justice* at the national level. In the case of war crimes committed by members of armed forces, the use of expedited proceedings for military justice or the structure of military justice systems within the chain of command may come under scrutiny from the Court. This possibility emerges from the text of Article 17 of the Rome Statute, which articulates the *complementarity test* applied by the Court:

### *Article 17*

#### *Issues of admissibility*

1. ... the Court shall determine that a case is inadmissible where:
  - (a) The case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is *unwilling or unable genuinely* to carry out the investigation or prosecution;
  - (b) The case has been investigated by a State which has jurisdiction over it and the State has decided not to prosecute the person concerned, unless the decision resulted from the *unwillingness or inability of the State genuinely* to prosecute;
  - (c) The person concerned has *already been tried* for conduct which is the subject of the complaint, and a trial by the Court is not permitted under [exceptions to the rule *ne bis in idem*];
  - (d) The case is *not of sufficient gravity* to justify further action by the Court.
  
2. In order to determine unwillingness in a particular case, the Court shall consider, having regard to the principles of due process recognized by international law, whether one or more of the following exist, as applicable:
  - (a) The proceedings were or are being undertaken or the national decision was made for the *purpose of shielding* the person concerned from criminal responsibility for crimes within the jurisdiction of the Court ...;
  - (b) There has been an *unjustified delay in the proceedings* which in the circumstances is inconsistent with an intent to bring the person concerned to justice;
  - (c) The proceedings were not or are *not being conducted independently or impartially*, and they were or are being conducted in a manner which, in the circumstances, is *inconsistent with an intent to bring the person concerned to justice*.

3. In order to determine inability in a particular case, the Court shall consider whether, due to a *total or substantial collapse or unavailability of its national judicial system*, the State is unable to obtain the accused or the necessary evidence and testimony or otherwise unable to carry out its proceedings.<sup>30</sup>

Certain military justice systems refer core international crimes to the ordinary civilian courts;<sup>31</sup> however, where military structures investigate, prosecute or adjudicate cases involving war crimes or other international crimes committed by military personnel, it is likely that those proceedings will need to be compatible with ‘principles of due process recognised by international law’.

Military tribunals adjudicating cases of war crimes committed by a state’s *own* service members are especially prone to criticism on human rights grounds. Assessing the quality of military justice in Columbia in 1998, for instance, the local delegation of the United Nations Office of the High Commissioner for Human Rights observed:

Another factor favouring impunity is the leniency of the military criminal courts in investigating and trying members of the security forces involved in human rights violations and breaches of international humanitarian law. Very few soldiers and police officers have been sentenced by the military courts, even though the Office of the Attorney-General of the Nation has established the disciplinary responsibility of the accused for the offences for which they are being tried. The decisions of the Constitutional Court clearly show that, in the Colombian legal system, military jurisdiction is of a special and exceptional nature and may handle the offences committed only when the punishable acts have a clear-cut, close and direct link with official duties. However, the military courts continue to claim that they have jurisdiction to prosecute members of the armed forces who have been accused of wrongful acts, which, by their very nature and seriousness, cannot be considered to be related to the duties of the security forces. According to the Court, any doubt about jurisdiction to try an offence committed by members of the security forces must be resolved in favour of the ordinary courts. This criterion has not been stringently applied. In settling conflicts of jurisdiction, the Supreme Judicial Council has continued to refer proceedings to the military criminal courts which should, according to the above-mentioned ruling, be tried by the ordinary courts.<sup>32</sup>

The difficulty, notes a South African military prosecutor, is that international law offers only “limited regulation of military justice” (Tshivhase 2006:99). Nonetheless, the same author notes that a case can be made that international law requires that

30 Rome Statute, Article 17 [emphasis added].

31 At one end of the spectrum of ‘civilianisation’ of military justice was Japan’s post-war Constitution of 1946, which envisaged the armed forces as a national defence force; members were subject to the jurisdiction of the ordinary civilian courts in all matters; see International Commission of Jurists (2004:158) (hereinafter *ICJ*).

32 *Ibid.* at 109.

military courts conform, in the least, to a standard of independence; standards that cannot readily be compiled into an exhaustive list, but which include the following “critical areas”,<sup>33</sup> for which reference can be made to general international human rights standards for the independence of the judiciary, namely “manner of appointment and discharge; degree of stability and non-removability from office; conditions of service as well as physical, political, legal and logistical protection against outside pressures and harassment” (Lehtimaja & Pellonpaa 1999:228). Based on this analysis, recommendations are made concerning the South African military justice systems, involving additional institutional guarantees of financial security and extension of the length of judicial appointments (tenure).<sup>34</sup>

In addition to independence, however, the complementarity test in the Rome Statute refers to *impartiality*, an approach common to the Third Geneva Convention.<sup>35</sup> In Columbia, the United Nations considered that military trials for military and police personnel charged with human rights violations fall foul of principles of judicial impartiality, noting that “the trial function is entrusted to the hierarchical superior and there is no separation at all between the functions of command and that of prosecution.”<sup>36</sup> In the South African context, Tshivhase concludes that the fact that military judges are formally removed from the chain of military command in the exercise of their judicial function, and shielded from executive interference, suggests a sufficient degree of impartiality, but may nonetheless create a *reasonable apprehension of bias* given that military judges carry a military rank, serve in uniform in the armed forces, and “share the values of the service community” such that they may not be able to set aside prejudices and impartially decide the case before them.<sup>37</sup> Even prior to the constitutional dispensation in South Africa, military tribunals were held to be courts of law in substance and thus bound by principles of natural justice, including the right of the accused to request recusal upon reasonable apprehension of bias.<sup>38</sup>

If military courts do not satisfy international legal standards of due process, independence and impartiality, there is a marked risk that proceedings before such courts will fail the Rome Statute’s complementarity test and that the Court may, in those circumstances, find the state concerned ‘unwilling’ genuinely to prosecute the crimes in question, thereby allowing for the assertion of the Court’s own jurisdiction over such crimes.

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33 Ibid.

34 *Tshivhase, supra* note 33 at 119-120.

35 75 UNTS 135, Article 84.

36 ICJ, *supra* note 31 at 110.

37 *Tshivhase, supra* note 33 at 118.

38 *Council of Review South African Defence Force and Others v. Monnig and Others* [1992] 4 All SA 691 (AD) at 19.

## Comments on the compatibility of SOFA jurisdictional provisions with state obligations under the Rome Statute

The interest of powerful states in the deployment of their forces by consent on foreign territory, together with the proliferation of international and continental peacekeeping efforts involving multinational military units, give rise to state obligations relating to criminal jurisdiction found in Status of Forces Agreements (SOFAs) and Status of Mission Agreements (SOMAs) – typically, but by no means exclusively, bilateral in character – as well as in other multinational instruments (see in general, Fleck 2001:33-44; Rowe 2001:27-32).

The Rome Statute attempts to safeguard rights under SOFAs or similar instruments by limiting the power of the Court to proceed with a request for surrender of a person for trial where that surrender would oblige the sending state (in terms of the Rome Statute) to violate its legal obligations as a receiving state (in terms of a SOFA, for instance). The following provision appears in the Part of the Statute relevant to international co-operation and judicial assistance:

### *Article 98*

#### *Co-operation with respect to waiver of immunity and consent to surrender*

...

2. The Court may not proceed with a request for surrender which would require the requested State to act inconsistently with its obligations under international agreements pursuant to which the consent of a sending State is required to surrender a person of that State to the Court, unless the Court can first obtain the cooperation of the sending State for the giving of consent for the surrender.

This reasonable provision was put to unreasonable use, particularly in the period 2002-3. As mentioned previously, the United States was initially a supporter of the establishment of the Court before and during the Rome Conference, but found its position untenable in the face of the finalised draft of the Statute – the *proprio motu* powers of the Prosecutor being a particular sticking-point. Apparently driven by the concern that an independent Prosecutor might act against its military personnel without its express consent, the US initiated a vigorous diplomatic effort to negotiate and conclude ‘Bilateral Immunity Agreements’ with over 100 States Parties to the Rome Statute, typically on condition of renewal of defence aid or technical assistance. These agreements, which followed a standard form, began by “reaffirming the importance of bringing to justice those who commit genocide, crimes against humanity and war crimes”, and then entrenched a supposed bilateral obligation to obtain the consent of the troop-sending state before transferring, directly or via a third state, any nationals of that state (not only members of its armed forces) to the ICC (see Crawford, Sands & Wilde 2003:4-5). A Joint Opinion of three distinguished international lawyers requested by an NGO coalition has concluded that the adoption of such agreements falls foul of state obligations to uphold the

object and purpose of the Rome Statute. In particular, the authors observed that, “It is inconsistent with the object and purpose of the ICC Statute for a state party [or a signatory to the Statute] to enter into or to apply a bilateral nonsurrender agreement if purpose or effect of doing so would be to provide impunity to a person credibly suspected of having committed a crime within the jurisdiction of the ICC ...”<sup>39</sup>

### **The International Criminal Court as a strategic actor?**

The role of the International Criminal Court on the battlefield may well be limited to that of a ‘distant watcher’ – depending, as it does, on the co-operation of states to carry out actual investigations and prosecutions. Alternatively, the Court may be a mere instrument of the will of states with power and influence among the Parties to its Statute. Reflecting on the practice of the Court in its interaction with states lends credence to views of both the realist and the cosmopolitan.<sup>40</sup>

The realist might see in the Court a fig leaf of multilateralism, inadequate to address the root causes of the Great Lakes conflict and an obstacle to peace in Sudan, incapable of calling powerful actors to account, or providing relief from the spectacle of failed states beset by ethnic conflict, religious and nationalistic fundamentalism and crimes of terrorism and piracy that fall well outside the its jurisdiction. Two examples from the early practice of the Court, among others, serve to bolster the cause for pessimism:

- a. First, in February 2006, the ICC Prosecutor decided not to investigate allegations of war crimes committed by British soldiers during Operation Telic in Iraq,<sup>41</sup> finding the available evidence disclosing an intentional attack on a marketplace resulting in loss of civilian life to be insufficiently grave, and further noting the ongoing courts martial in the UK<sup>42</sup> – proceedings which subsequently either collapsed for want of evidence or resulted in light sentences. One observes that the UK is a powerful Western State Party to the Rome Statute and a major contributor to its budget.
- b. Second, more recently, one observes the remarkable travel schedule of President Omar Al Bashir of Sudan following the decision of the Pre-Trial Chamber of the Court to issue a warrant for his arrest on charges of crimes against humanity and war crimes on 4 March 2009; as the first sitting head of state to

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39 Ibid. at 2.

40 For a useful comparison of realist and cosmopolitan theories of international relations, and their relation to cosmopolitan approaches to law, see R Fine, ‘Taking the ‘ism’ out of cosmopolitanism: an essay in reconstruction’ (2003), 6 *European Journal of Social Theory* 451; noting that, “The cosmopolitan paradigm breaks down the categorical distinction within International Relations between the domestic field in which individuals freely submit to the state as to their own rational will, and the international field that is taken to be devoid of all ethical values” (at 453).

41 The codename for British operations in Iraq from 2003.

42 Office of the Prosecutor, *OTP response to communications received concerning Iraq*, 9 February 2006 (online: [www.icc-cpi.int](http://www.icc-cpi.int)).

face charges before an international court. Al Bashir has visited Egypt, Eritrea, Libya, Saudi Arabia, Qatar, Ethiopia and Zimbabwe, without execution of the warrant. Notably, though, none of these states has ratified the Rome Statute or had a formal legal obligation to co-operate with the Court. South Africa, a State Party to the Statute, has been openly critical of the issuance of the arrest warrant, but nonetheless advised Al Bashir that he would face arrest if he attempted to attend the inauguration of President Jacob Zuma in Pretoria, to which he had been invited (Johwa 2009; see also Du Plessis & Fritz 2009). Al Bashir stayed away.

In fairness, the world has become a smaller place for Al Bashir, and the behaviour of States not Parties to the Rome Statute does not so much damage the prestige of the Court as it does the Security Council, on whose authority the Court was granted jurisdiction to proceed with its investigations and prosecutions in Sudan, and whose preferences are disregarded when Member States of the UN fail to co-operate with the Court. As noted above, while the Security Council Resolution referring the situation in Darfur to the Prosecutor of the Court<sup>43</sup> creates an international legal obligation on Sudan to co-operate with the Court, the Security Council did not extend this obligation to other States not Parties to the Rome Statute, choosing instead to “urge all states” to “cooperate fully.”<sup>44</sup> Furthermore, a June 2009 declaration of the African Union seeking a deferral of the prosecution by the Security Council has revealed splits in the Union, with Botswana and Uganda (both States Parties to the Rome Statute) reiterating that Al Bashir faces arrest on their territory, and even South Africa – the continental powerhouse – begrudgingly admitting that they are legally bound to co-operate with the Court.

For the cosmopolitan, the Court is an efficient and transparent instrument of a genuine international public policy, acting with the full support of states, which uphold its independent judicial character. Adopting this optimistic position, one observes:

- a. The arrival of the Minister of Justice of the DRC, accompanied by the Prosecutor-General, the Advocate-General of the Supreme Military Court and other officials at the Court’s Trial Chamber on 1 June 2009, in response to a request for co-operation from the Court – the first state to formally participate in proceedings at the Court. The Congolese delegation was requested to supply information on the state of a military trial against Germain Katanga, a former leader of an armed group which used child soldiers and allegedly committed war crimes in attempting to raze a village of members of a targeted ethnic group. Following the peace settlement in the DRC, Katanga was promoted to Brigadier-General of the Armed Forces by President Joseph Kabila, a post he held at the time of his arrest and transfer to the Court. The Court was called upon to determine whether domestic Congolese proceedings dealt with the same conduct as the case against Katanga at the ICC, and the ability of the

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43 Resolution 1593 (2005); 11 in favour, none against, 4 abstentions (Algeria, Brazil, China, USA).

44 Ibid.

domestic military justice system to carry out proceedings, in which case the Court would defer to those domestic proceedings, even over the preferences or objections, political or financial, of the state.<sup>45</sup> Yet the DRC has not withdrawn its co-operation from the Court.

- b. The voluntary surrender to the Court on 18 May 2009 of Bahr Idriss Abu Garda, commander of a Sudanese rebel group opposed to the government, and allegedly responsible for the 2007 attack that killed 12 African Union peacekeepers, destroyed installations and pillaged property at Military Group Site Haskanita in North Darfur. Abu Garda responded to a summons to appear in The Hague as one might go to traffic court, stating simply, “We are struggling in Darfur because there is no justice in Sudan so we cannot refuse to face justice .... I call on Bashir and the others to come and face justice here” (Corder 2009). If this disarming conduct is the cynical product of political manoeuvring, one might ask the Ciceronian question: who benefits?
- c. the filing of a dossier with the South African National Prosecuting Authority (Ahren 2009) and related communication to the Office of the Prosecutor of the Court (Feldman 2009) by two South African NGOs, alleging the commission of war crimes by South African nationals implicated in Operation Cast Lead – the Israeli Defence Force’s (IDF) air and ground operations in Gaza from 27 December 2008 to 18 January 2009 – with the most specific allegations concerning an IDF military legal adviser. Domestically, the statutory basis for the submission of the dossier was, at least in part, the domestic legislation incorporating the Rome Statute into South African law.<sup>46</sup> The communication to the Office of the Prosecutor was subject to preliminary examination as with any other communication received under article 15 of the Rome Statute, but was also the subject of early remarks by the Prosecutor – in person – noting his conviction that a legal basis would exist to initiate an investigation on account of the particular individual’s South African nationality, given the jurisdiction of the Court over nationals of States Parties.<sup>47</sup> By providing common standards for proscribed conduct and applicable procedures, implemented in rule-of-law states,<sup>48</sup> the Court’s potential for scope and depth of influence may well be enhanced through networks of NGOs,<sup>49</sup> not subject to the dictates of the

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45 See *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, No. ICC-01/04-01/07, *Transcript*, 1 June 2009 (TC).

46 Implementation of the Rome Statute of the International Criminal Court Act 27 of 2002.

47 Rome Statute, Article 13(a); see Ephron 2009).

48 The concept of a rule-of-law state – one where the exercise of public power is legitimised only by law – become highly relevant, as the capacity of non-state actors to effectively deploy the legal machinery of the state to repress core international crimes will depend upon the day-to-day operational independence of the prosecution service from the dictates of the executive. On the Anglo-American conception of rule-of-law in contradistinction to the German concept of *Rechtsstaat*, see Barber (2003).

49 On the proliferation and operation of international advocacy networks, see for example, Keck and Sikkink (1998).



Court, but operating within domestic legal frameworks closely aligned to its mission.

Were the Court a mere instrument for the expression of the will and power of its States Parties, strategists would be correct to mitigate the risk of involvement by the Court simply by constraining strategy and tactics within the bounds set by the policy dictates of civilian authorities and allies. Yet the Court as a whole, and its Prosecutor in particular, represent an independent international entity that warrants a different approach. Where the observer on the battlefield has independent agency with the potential to marshal shame,<sup>50</sup> to obtain custody of,<sup>51</sup> prosecute and punish high-ranking military and other state officials,<sup>52</sup> and to stimulate or channel action by influential non-state networks aligned to its mission, it may no longer amount merely to a strategic object, but may rather be best assessed as a strategic actor.

To date, the literature in strategic theory does not appear to have grappled specifically with the strategic capacity of the Court. Recent assessments of a more elaborate international organisation (the European Union) as a potential strategic actor reveal some differences at a definitional level: for Cornish and Edwards, for instance, the EU as strategic actor would need to have “the capacity and confidence to use military force and non-military coercion as policy tools” (Cornish & Edwards 2005:814); for Heisbourg, a strategic actor “can wield force on its own account” (Heisbourg 2004:28); whereas for Mayer, “a unified EU pole” as a “security actor” would “combine soft and hard power tools ... willing to influence world order through economic, military and civil means” (Meyer 2009:207).

The Court, as currently conceived, clearly lacks any direct capacity (let alone legal basis) to marshal military force. Nonetheless, some examples of practice – from the defensive ‘treaty shield’ deployed by the United States in response to the Article 98 of the Rome Statute, to the co-operation of states such as South Africa and the DRC with the work of the Court even in the face of a perceived challenge to state sovereignty; to the self-imposed restrictions on travel adopted by high-ranking military and civilian officials – provide ample evidence of a growing soft power and even glimpses of the exercise of coercive force through the limited civil means of an international society. This is amplified by the gradual adoption of parallel, complementary legal standards and policies by States Parties in their domestic legal systems, effectively lending the coercive authority of over half the world – and significant global or regional powers such as the UK, France, Germany, South Africa, Nigeria, Australia and Japan – to support the mission and actions of the Court.

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50 A term attributed to John Humphrey, a celebrated Canadian lawyer and initial drafter of the United Nations Declaration of Human Rights; see Bayefsky (2000) 47 McGill Law Journal 693 at 694. For a discussion of early use and implications of the concept, see Keenan (2004:435).

51 The Rome Statute compels States Parties to transfer suspects upon request of the Court, subject to the exercise of complementary jurisdiction by the domestic legal system; see Article 89; see also the general obligation to co-operate in Article 86.

52 Noting the explicit exclusion of immunities on the basis of official position in the Rome Statute, Article 27.

Further research would be needed to adapt the concept of a 'strategic actor', initially conceived for application to state military powers, to the context of international organisations independent of the will of their member states, with potential for both scope and depth of influence in shaping state choices and actions. This survey of the legal infrastructure and early practice of the Court has demonstrated that the Court is more than mere strategic object situated off the battlefield, if not yet a strategic actor. Close familiarity with the work of the Court becomes a necessity for military legal advisers and strategists alike.

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# GIVING ASYMMETRIC WARFARE A BAD NAME AND DIFFUSING IT TO AFRICAN STRATEGIC UNDERSTANDINGS

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## **Introduction**

A particular US discourse has evolved around the concept asymmetric warfare with roots that reach back to the Vietnam War, but became more pronounced since the 1991 Persian Gulf War through the 11 September 2001 (9/11) attack, and the ongoing Afghan and Iraq wars. The concept asymmetric warfare denotes the idea of a “natural predilection to maximize any comparative advantage we may hold over potential rivals” (Stephens & Baker 2006:88), but for US strategists has come to connote a pejorative meaning as well. The meaning of concepts is important for strategy, because they interact with the strategist’s sense of self, others and appropriate behaviour in war. The meaning associated with the concept asymmetric warfare thus performs a function in strategic scripts. It tells us who we are and how we fight, who the enemy is and how they fight, what is expected, and accepted tactics in a clash with the enemy. This paper firstly critically deconstructs the current meaning of asymmetry in US strategic theory, juxtaposing it with a perception of what constitutes ‘war proper’. Secondly, it explores how and why the US discourse around asymmetry diffuses (filtrates) to African strategic thinking. Finally, the paper moves toward a post-colonial question, namely, whether an African conception of asymmetry exists or can be developed and what such a question means for African strategic theory.

## ‘War proper’<sup>1</sup> and asymmetric warfare: A question of identities?

### *The idea of asymmetry*

The idea of asymmetry in warfare is not new. Metz (2000:22) notes, for example, that Sun Tzu, Liddell Hart and Luttwak all propose avoiding the enemy’s strength while exploiting its vulnerabilities and in that way making optimal use of the own side’s advantages. When facing a superior enemy, asymmetric tactics might include hit-and-run operations, deception, or forcing battle in complex terrain. These tactics have been employed successfully in colonial liberation struggles, such as those in Algeria and Zimbabwe, for example. When facing an enemy that outnumbers one’s own forces or when casualty avoidance is of the essence, asymmetric tactics might involve superior planning, training or the employment of technology, as in the Battle of Blood River.

In addition to the asymmetry of strong versus weak, asymmetry can also mean guerrilla warfare, in which a force draws personnel and sustenance from the underlying population – whose cause it professes to champion – in warfare against a foreign invader or oppressive government. Here the asymmetry is a well-supplied oppressor versus ‘the people’ as in the Anglo-Boer war, the Maoist revolution, the armed struggle against apartheid and the Algerian war of independence. The term ‘guerrilla’ is particularly significant for the discussion in this paper. Coined in Spain, it is the diminutive of the word ‘*guerra*’ (war) and literally means ‘small war’, but was used to refer to the Spanish fighters that harassed the invading French armies in the Napoleonic Wars. Davidson (1981:3) quotes a French observer of these tactics as saying: “It was neither battles nor engagements against regular forces which exhausted the French army, but the incessant molestation of an invisible army, who, if pursued, became lost among the people, out of whom he reappeared immediately after with renewed strength.”

Increasingly a third meaning of asymmetry is dominating discourse, namely war or violence for which some unusual or unconventional technology is a massive force multiplier for a state or party which seeks to disrupt normal life and expectations of security and stability. Examples could include the 9/11 attack, Aum Shinrikyo’s attack on the Tokyo subway, suicide bombers, nuclear weapons in the hands of terrorists, or shutting down social infrastructure, like hospitals, through attack on information and communication networks. Here the asymmetry is the settled life of the current world order versus exploiting disruptive technologies (see e.g. Plant 2008:12).

Although these asymmetries are distinct, they may overlap and are often discussed in literature as one phenomenon, for example, as so-called Fourth Generation Warfare, post-modern warfare, irregular warfare or new wars (see e.g. Hammes 2006; Kaldor 1999; Metz 2000). Scholars that promote these concepts implicitly draw a distinction between symmetric and asymmetric opponents to the effect that

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1 The concept ‘war proper’ is also used by Gray (1999).

symmetric enemies are still comparable in terms of tactics, techniques, weapons and doctrine. When one side applies “strength against vulnerability” by employing better tactics, taking advantage of terrain or surprise, or by employing manoeuvre to obtain victory against a seemingly stronger adversary, it is not asymmetric warfare (Ruiters 2003:37). An asymmetric foe does not engage in conventional military terms according to its opponents; its tactics are unexpected, almost unimaginable to its opponents and therefore not recognised on the battlefield as conventional. This brings the conceptual clarification section to the heart of the argument of this paper, namely, that asymmetric warfare is a function of perception – culturally informed. For what is imaginable and indeed quite rational for one enemy at a certain point in time may seem irrational to the other (Ruiters 2003:39). The concept asymmetric warfare has been predominantly informed by a Western (especially American) cultural view of an asymmetric enemy using asymmetric tactics. It has thus lost its objective or generic application in favour of an understanding of Western military tactics and doctrine as the norm and any effort to circumvent, especially the technological superiority of Western forces, as asymmetric warfare.

### *Asymmetric warfare in US strategic thinking*

Asymmetric warfare in US discourse presumes a situation of both imbalance and irregularity. Imbalance refers to the overwhelming superiority that high-tech militaries (e.g. the US and its allies) have or will have in the future. This imbalance (or asymmetry) is to be pursued and in the case of the US, maintained. It is rooted in a cultural understanding of what constitutes ‘war proper’ and compounded by thinking that new information technologies would herald a revolution in military affairs (previously known by the acronym RMA and more recently labelled ‘transformation’) that would give US forces ‘full spectrum dominance’. Whenever an adversary is seen as trying to undermine the US asymmetric military advantage, the second connotation of asymmetry is invoked, namely, warfare by unconventional (WMD), disruptive or irregular means (terrorism, guerrilla warfare, tactics of harassment). This is illustrated by the following excerpt from the 2006 US Quadrennial Defence Review Report:

Although U.S. military forces maintain their predominance in traditional warfare, they must also be improved to address the non-traditional, asymmetric challenges of this new century. These challenges include irregular warfare (conflicts in which enemy combatants are not regular military forces of nation-states); catastrophic terrorism employing weapons of mass destruction (WMD); and disruptive threats to the United States’ ability to maintain its qualitative edge and to project power. (US Department of Defense 2006:4)

This circumvention of US predominance, or asymmetric warfare, has evolved an openly pejorative connotation in the US strategic lexicon. The asymmetric adversary somehow cheats the economic and militarily stronger out of victory by not “playing by the rules” of war proper (Goulding 2000:21). What constitutes war proper seems to draw on a certain reading of Clausewitz’s *On War*, a prescribed text for the

US armed forces since the 1970s (Bassford 1994:Chapter 21). This reading (one that Keegan [1993] subscribes to and enhances through his notion of the “Western way of warfare”) sees Clausewitz expressing a particular modern conception of war, Western in origin. Since the Peace of Westphalia, which established the principles of territorial integrity and non-interference that underlie state sovereignty, war is fought on behalf of the state. The Napoleonic Wars that Clausewitz drew his experience from are seen as the extreme manifestation of mobilising states to war in an anarchical international system of nation states. France made the very existence of the nation dependent on the French Revolution and as such made war a political issue. Forthwith, war for the West is not about spoils or religion; it is about the political ambition of the state.

This reading of Clausewitz not only expresses why wars are fought (nationalism), but also offers a logic and rationality to Western warfare (Rasmussen 2001:4-7). War is the continuation of political intercourse, with the addition of other means – other means being large scale, sustained combat operations. This separation of means and ends gives war a logic over and above its violent acts, which are only the means to political ends (or the ultimate way to solve inherent opposites in the ideas of societies). To learn the reasons why a state has gone to war we simply look at its political aims. Once the rationale is known, the best way to achieve it can be found and taught to soldiers. War becomes a science.

The notion that war has its own rationality also comes from a translation of Clausewitz’s famous dictum as: war is the continuation *of policy* by other means. Stated in this way, Clausewitz is seen to advocate that war is a rational phenomenon because it is state policy by other means, and policy, after all, involves manipulating initial conditions and the chain of causality to produce outcomes that will improve the state of society. This is a rational process. This reading of Clausewitz is criticised in several respects, not least that it favours the influence of the Enlightenment (and therefore rationality) over the influence of Romanticism in his worldview (Bassford 1994:n.p.). The latter stresses the irrationality of politics. In war, it is not only ‘the fog’ or friction that obscures rational decision making, but the very nature of war defies rationality. In fact, rationality has to be imposed with difficulty on war. This reading of Clausewitz holds that his experience in the Napoleonic wars convinced him that war is chaotic and feeds off itself in ever more violent ways irrespective of any rational purpose. Clausewitz perceives nationalism as the breeding ground of passions, rather than rationality.

The aim here is not to debate which reading is correct, although the evidence that Clausewitz is co-opted to serve the idea that strategy is a science in the Brodian sense is convincing. In his 1949 article, *Strategy as a science*, Brodie (1949:476) compares strategy to economics in terms of the efficient application of human and material resources.<sup>2</sup> In economics this leads to maximising the wealth of the nation and in

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2 Brodie is, for example, referred to as the American Clausewitz in an advertising blurb for Barry Steiner’s book *Bernard Brodie and the foundation of American nuclear strategy* on the University Press of Kansas website (<http://www.kansaspress.ku.edu/steber.html>).

strategy it leads to maximising the nation's effectiveness in war.<sup>3</sup> Of more importance is thus that the idea and pursuit of rationality in warfare inform how technology is conceptualised in the United States. More than ever, US strategists believe that the fog of war can be lifted or rationality can be imposed on war, because the information age has produced the means to do so. Steven Metz (2000:15), a lecturer at the US Army War College, writes: "For the complex militaries of advanced states, the change [that developments in information technology bring about] is even deeper, leading – at least according to American military thinkers – toward a fully digitized force where information technology eradicates fog and friction."

The 1991 Gulf war popularised this kind of thinking. The asymmetric paradigm, as Bédar (2001:3) refers to it, within this discourse thus results from the expectation that technology will create such a gap between US capabilities and those of their potential enemies that the latter would only attempt to "counter the prowess of the US military through asymmetric means" (Metz 2000:40). Although there was already a sense in US policy documents that asymmetric tactics from a technologically weaker opponent amounted to not abiding by norms of war proper (necessarily differing from the Western way of war), this notion has intensified since the 9/11 attack. Increasingly the use of the term 'asymmetric warfare' in US discourse implies a diversion from acceptable tactics in conflict to suggest warfare that is somehow uncivilised.

This view stems in one way from the notion that war proper does not entail "premeditated, politically motivated violence perpetrated against non-combatant targets by sub national groups or clandestine agents" (the US State Department's definition of terrorism) as it manifested on 11 September 2001. But this alone cannot explain why warfare that differs from Western warfare (when the enemy chooses not to bargain or to be dissuaded by US prowess) is described in terms of barbarism or evil behaviour. It seems rather to flow from a way of imagining the 'other'. The meaning of asymmetric warfare that US conceptualisations imply carries an Orientalist understanding of the 'other': the other is either digitally deprived, reactive not active, a peasant, uncivilised, or without dignity, pride, resolve or the capacity or integrity to defend in symmetric terms. Note, for example, former President Bush's description of the Iraq insurgency as reported in the *Timesonline* (Reid 2005:n.p.): "Referring to the murder of children, the bombing of mosques and those that 'cut the throat of a bound captive,' Mr Bush said that Islamic radicals were displaying the same 'shameless cruelty and heartless zealotry' witnessed in the Soviet gulags, the Chinese Cultural Revolution and the killing fields of Cambodia."

This inability to recognise the right of the other to fight war on their own terms and by their own means (what Barkawi and Laffey [2005] call "denial of the right to bear arms") plays out in the negation of another meaning of asymmetry. Asymmetry might also refer to asymmetry of interests where it is more important for the other side (the weak in military terms) to win the war. Hammes (2006:viii-ix) identifies

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3 See also Barkawi's discussion of Brodie's role in developing the scientific approach to strategy (Barkawi 1998:162).



two traits of insurgent movements that the pejorative meaning of asymmetric warfare denies, namely, the political currency of their cause and the ingenuity they portray against a stronger enemy. Of the first he writes: "The idea they [insurgents] fought for was central to their resistance. In fact, they were counting on political power generated by that idea to neutralize the overwhelming military power of the government." Of the second trait, ingenuity, he remarks: "Whether the problems were tactical, logistical, doctrinal, or political, they often attacked them from a direction that simply would not occur to a Western-trained soldier." He assigns respect to asymmetric techniques; they are not cheating, but the result of practical people realising that they could not possibly win a fight against a stronger enemy using conventional means.

Kenneth Waltz, in a letter to the editor of the journal *International Security*, responds to a debate on the reasons for the statistical significance between democracy and victory in war. He asserts:

... in the debate between Michael Desch and his critics in a recent issue of *International Security*, a big point is overlooked. The 'fair fight' criterion, the critics say, is misplaced because their theories predict that democracies are good at choosing victims they know they can defeat. But why, when countries are mismatched, need a war be fought? The weaker can hardly threaten the stronger, yet democratic countries go to war against them. If this is true, it tells us something frightening about the behaviour of democratic countries: namely, that they excel at fighting and winning unnecessary wars. (Waltz 2003:181)

Waltz' view is a realist critique of democratic peace theory, but the quotation is useful to illustrate an argument. The West fights wars of choice, although construed as wars of necessity (survival) and their weapons systems are designed to increase the scope of choice. It enables war from a distance with limited casualties of own forces. Defining asymmetric warfare as evil and uncivilised strips it of the rationality that it might have within the other's cultural framework. The US conviction seems to be that symmetry of interests (where 'the other' has more to lose) should yield to asymmetry of power (of the high-tech United States and its allies).<sup>4</sup> The weaker adversary is stereotyped as a terrorist, extremist, or a rogue; not as a worthy opponent.

There is a debate whether the high-tech approach can actually deliver its promises of decisive force in peace operations, low-intensity elements of conflicts or the aftermath of 'major combat' where asymmetric warfare prevails. In his testimony in front of the joint armed service committee Major General Scales quoted an American commander returning from Iraq as saying: "I knew where every enemy tank was dug in on the outskirts of Tallil. Only problem was my soldiers had to fight fanatics charging on foot or in pickups and firing AK 47s and RPGs. I had perfect situational awareness. What I lacked was cultural awareness. Great technical intelligence ... wrong enemy."<sup>5</sup>

4 For a discussion on the asymmetry of interests, see Freedman (1998).

5 Scales testified on 21 October 2003. See Tiron (2004) for an article reporting on his testimony.

Substituting technical intelligence for human intelligence diminishes the place for cultural awareness. An overly technological response to asymmetric threats that would arguably prevent own casualties in the short term could lose the battle for hearts and minds and in that way impede political success. The use of precision strikes on family homes suspected of harbouring insurgents in Iraq is a case in point. In one of many such incidents an unmanned aerial drone spotted men digging a hole “following the common pattern of roadside bomb emplacement”, according to a US military spokesperson.<sup>6</sup> The men were subsequently followed by air as they left the site and entered a building, which the US soldiers then bombed with precision-guided munitions. The building turned out to be a family home and those killed by the strike included women and children of the same family. The local Iraqi police colonel asked why the building had not been surrounded and the terrorist, if they were indeed in the building and indeed insurgents, detained. An Iraqi leader was further quoted as saying: “Once again the occupiers have shown their barbarism. They never learn from their mistakes ... . People’s resentment is increasing” (BBC News 2006).

### *Lessons from recent US experience*

The lessons that the US has drawn from its military experience since 9/11 seems to be that asymmetric warfare is an inevitable characteristic of future wars. This was not always obvious. In the collective strategic memory, the Vietnam War remains a topic of debate both in terms of why the US chose to fight the war and why it ultimately failed to achieve its objectives in the war (Anderson 2007:18). By its nature the war was an asymmetric affair: “The most powerful nation in the world had been defeated by a tiny country with only twenty-two million people and almost no economic power” (Hammes 2006:vii). Following the Vietnam War, there was a sense that the US should not get involved in asymmetric fights; a sense that remained throughout the Cold War and permeated through US preparation for war proper against symmetric adversaries, such as the USSR.

Even in the post-Cold War era, war proper was perceived as a last resort that calls for “large scale, sustained combat operations” when all other policy options to achieve national goals have been exhausted. When war is declared, the nation is put in a state of war and the objective is to conclude hostilities speedily and with minimum casualties on favourable terms for the own country and its allies (US Department of Defence 1996:1). The Clinton Administration distinguished between war (proper) and operations other than war (OOTW), which refer to military operations short of war, such as humanitarian intervention, counter-drug operations, counterinsurgency, and support for civil authorities. OOTW can be undertaken before, after and during conventional war, but there is a measure of constraint on the level of force applied in these operations.

When George W. Bush was running against Al Gore in the 2000 presidential campaign he argued that it was time for the United States to “fight and win wars”,

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6 Note that it was not confirmed that they indeed placed a bomb.

not get involved in the type of wars (read: OOTW, such as in Kosovo and Somalia) that the Clinton administration got involved in (Rasmussen 2001:1). Bush thus envisioned only one kind of war – war proper – and avoidance of asymmetric engagements. The Bush administration differed from the Clinton administration in its reluctance to even acknowledge a role for OOTW, and as such, war at a lower level of force application. The Kosovo and Somalia operations were messy. What Bush envisioned were wars where force could be applied decisively. This is clear from the way the Iraq War was approached. The expectation was that it would be a quick war fought at a high level of intensity and that the end of formal combat operations would be the end of war. Instead the occupation forces are faced with an insurgency and had to scurry to put together a counter-insurgency manual (Burger 2003:n.p.; Hashim 2003:2).

The 2006 QDR and recent pronouncements by US military officials recognise asymmetric warfare as likely, not a choice that can be avoided. Under Secretary of Defence for Policy, Michèle Flournoy and Shawn Brimley write:

America's continued advantages in traditional warfighting provide powerful incentives for our adversaries to employ a mix of traditional and irregular approaches that span the range of conflict. The 2007 Maritime Strategy was correct to conclude that modern wars are 'increasingly characterized by a hybrid blend of traditional and irregular tactics, decentralized planning and execution, and non-state actors using both simple and sophisticated technologies in innovative ways. (Flournoy & Brimley 2009)

Despite this shift brought about by recent experience in Iraq and Afghanistan, asymmetric tactics employed by Al Qaida and exploited by states that the US deemed threatening to its hegemony, such as China, the pejorative connotation of the concept asymmetric warfare has remained in US discourse. This was evident in a speech by Robert Gates (2008), US Secretary of Defence, who states: "These hybrid scenarios combine the lethality of state conflict with the fanatical and protracted fervour of irregular warfare." Still, the asymmetric opponent's political objective and ingenuity are denied and rather portrayed as fanatical and irrational fervour.

### **Africa, asymmetry and identity**

The above discussion argued that the US understanding of asymmetric warfare has evolved a pejorative meaning that ascribes identities to the self and others. This understanding cannot be separated from the US perception of war proper, especially the idea that new technologies can minimise risk to US lives whilst delivering victory in the battles the US chooses to fight. This discourse can be contested by referring to an important second reading of Clausewitz that emphasises the irrational character

of war as well as to the mixed results that the US' technological approach has had in recent conflicts.<sup>7</sup>

This section turns to the understanding of asymmetry in Africa. A presentation on asymmetric threats delivered by Lieutenant General C.E.A. Singogo of the Zambian Air Force on Africa's asymmetric threats in the twenty-first century in 2004 gives some clues as to how asymmetry is seen by African strategists. Not only does Singogo use the US and NATO definitions of asymmetric warfare, but he identifies international terrorism, organised crime, religious indoctrination and psychological operations as the kind of asymmetric threats that Africa faces. Similarly, the pejorative connotations of asymmetry as found in US discourse also pervades his presentation. For example, he writes:

Compounding this complex nature of asymmetric threats is the indiscriminate selection of targets by perpetrators of such attacks which are rather unpredictable as these include innocent and defenceless citizens at large, busy urban locations, tourist sites, mass transportation systems and infrastructure, government institutions at all levels, commercial utilities such as power generation complexes and all other elements of national economies. The primary motive behind all such indiscriminate attacks is to cause terror among the people, so as to instigate resentment against legitimate governance, and thus force a decision on the affected government. (Singogo 2004)

Singogo continues to argue for substantial resources, notwithstanding economic and technological limitations, for balanced air power resources to counter emerging asymmetric threats.

Much of the presentation reflects an uncritical acceptance of the identities and behaviour that US discourse on asymmetric warfare predicts and prescribes. The African air force (and by extension military force) is the arm of the state that legitimately monopolises violence in Weberian terms and is increasingly faced with threats from illegitimate actors, who fight dirty. The African 'self' strongly identifies with the US' position *vis-à-vis* the asymmetric 'other'. It is then no surprise that the way Singogo (2004) proposes to deal with these threats follows the prescriptions as outlined in US discourse, namely through a technological and capital intensive strategy – increased air power. The up-take of US discourse surrounding asymmetry is also pervasive in South African strategy and policy documents and, importantly, in marketing new military technologies for the African battlespace (see e.g. Du Toit 2003).

Lieutenant General C.E.A. Singogo is joined by his South African peers in this understanding of asymmetric warfare. The Chief of the South African Air Force,

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7 Although some writers and senior members of the US government still employ the term 'asymmetric warfare', Plant (2008:5) notes that the uniformed US military has come to prefer the concept 'irregular warfare' to asymmetric warfare as a doctrinal term. Although the idea of irregular warfare still draws on the same ideas of what constitutes war proper, this shift in usage of terms may well be an indication that the US military acknowledges that the pejorative meaning associated with asymmetric warfare has military and political limitations.

Lieutenant General Carlo Gagiano, for example, refers to the “maverick and unscrupulous conduct of asymmetric threat” (Kotane 2007). Major General Mario Brazzoli of the South African Air Force, in turn notes: “Asymmetrical warfare is challenging the parameters of the military domain. There are no limits or rules in this kind of warfare. It is usually radical and associated with terrorism or crime” (Brazzoli 2007:218).

It is puzzling that the US view of asymmetric warfare is so dominant in African pronouncements on the subject. Most African militaries started out as revolutionary forces that employed asymmetric tactics in liberation struggles (see e.g. Davidson 1981; Nkrumah 1968). Despite this heritage, a more nuanced understanding of asymmetric threats seems lacking. Moreover, despite the success of asymmetric tactics in wars against powerful states, they are not revisited by African militaries that face economic and technological limitations to fight symmetric wars. In fact, one of the pertinent questions that military sociologists entertain is why post-independent and post-revolutionary states convert their armed forces to expensive, capital intensive standing armies (equipped and trained to fight war proper) (Farrell 2002:71; see also Eyre & Suchman 1996; Kier 1997). Once statehood is established, the asymmetric tactics that often led these forces to victory seem to be forgotten or marginalised as inappropriate for a national defence force.

This does not mean that there are no asymmetric threats in Africa that fit the US definition or that the way to deal with these threats should not involve increased air power or other capital intensive means. Rather it shows that the uncritical adoption of the derogatory meaning associated with asymmetric warfare in US discourse plays to a Western conception of what constitutes the proper way to organise military force based on the US conception of war proper and thus closes off meanings of asymmetry that may be appropriate to African strategic experience and sensibilities (see e.g. Williams 1999).

How US views of asymmetry come to define African strategic understanding is best understood as part of a larger process by which military norms based on the Western model of standing, standardised, and technologically structured armies diffuse from dominant states in the international system (Farrell 2002:69). Some would argue that these norms are adopted because militaries are competitive institutions and therefore want to stay abreast of new developments that would give them victory in battle. Powerful nations are powerful as a result of their ability to innovate militarily and therefore it makes sense to emulate their military models. However, an expanding body of work argues that military norms spread for historical, institutional and cultural reasons, not because they make objective military sense (see e.g. Farrell 2002; Goldman & Eliason 2003). Eyre and Suchman (1996:112), for example, take a neo-institutionalist approach. They ascribe the process through which military professionals from different nationalities come to hold similar beliefs about military organisation and warfare to two key sets of linkages between military institutions: firstly, the exchange of officers and observers, such as when officers are sent to be trained in foreign military academies, and secondly, the development of international defence literature. Other institutional channels

of diffusion include military advisers, such as the British Military Advisory and Training Team (BMATT) and the US International Military Education and Training (IMET) scheme, the transfer of military equipment and joint military exercises (Farrell 2002:76).

Theo Farrell (2002) found the neo-institutionalist explanation applicable when he explored why the Irish Army opted for the British military model of conventional forces after independence when it would have made military and economic sense for the Irish to capitalise on its guerrilla warfare heritage to deter a British invasion around 1940. He comes to the conclusion that: “Cultural norms explain the Irish Army’s puzzling behaviour: in short, Irish officers viewed themselves as professionals and acted as they believed professional soldiers should act ... its officers corps viewed themselves as professional soldiers and believed that guerrilla warfare was not the business of professional armies” (Farrell 2002:81, 86). He shows how the institutional linkages and availability of British army manuals made it unimaginable for the Irish Army to revert to guerrilla tactics as these tactics did not befit the military of an independent state.

Most African strategists have similar belief sets of what constitutes a professional military. African militaries were created in the image of imperial powers that imposed their model on their colonies. Where colonial powers were ousted, post-independence militaries mimicked the colonial or Soviet forms of military organisation once in power (see e.g. Eisenstadt & Pollack 2003). The pejorative meaning associated with asymmetric warfare spreads through the availability of US and NATO manuals and US literature on the subject. African strategists identify with this interpretation of asymmetry because it overlaps with their sense of identity and belief sets that asymmetric or irregular warfare does not befit professional militaries. In this way the US view of asymmetry also reinforces the inclination to organise African defence forces in capital-intensive ways – asymmetric threats are used to justify acquisition of new weapons systems.

There are, however, good reasons for African strategists to take a more critical view of the pejorative connotations that asymmetric warfare has in US discourse. The neglected reading of Clausewitz that questions rationality in war would seem more appropriate to African conflicts. The idea that technology can impose rationality on war through lifting the fog of war has not only proven dubious, but has had mixed results at best in winning hearts and minds (so important to obtain the political objective in conflict). Finally, there is a danger that African strategists are blind-sided by adopting the US notion of asymmetric warfare. There may well be other options that make military and economic sense both when responding to asymmetric warfare and when organising military force.

### **A post colonial question of asymmetry**

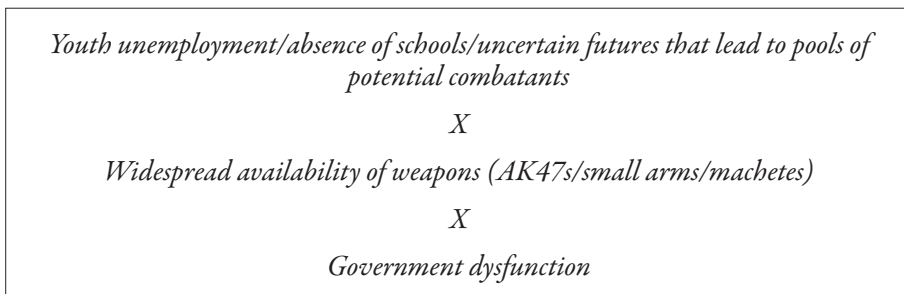
There is a danger that discourses originating in the Global North, such as the US discourse around asymmetric warfare, when transferred to African states is nothing but a form of cultural imperialism. Cultural imperialism should here be understood

not as imposing a Western form of military organisation, but in a Gramscian sense as making certain norms that are characteristic of Western societies seem like common military sense (Pretorius 2008:113). African strategists may become trapped in a certain narrative of what it means to be a modern military, a narrative that draws on the US reading of Clausewitz and the place that it awards to technology in warfare. Ruiters (2003:39) avers in this vein that there is no clear dividing line between symmetric and asymmetric warfare, or asymmetric threats for that matter, because “it comes back to perception. One culture’s asymmetric threat is another’s normal form of warfare.”

An appropriate quotation about African militaries comes from Major General Paul Kagame (later to become the President of Rwanda). He asserts: “We [Rwandans] are used to fighting wars in a very cheap way ... Our people don’t drive tanks, we don’t have any aircrafts. They don’t fight with fighter aircrafts. People move on foot. They eat very little food. We are able to go like that for many years without a problem” (Wakabi & Ochieng 1999). With this statement, he is not saying that Rwandans choose not to fight war proper, because they are too poor or have no military need for weapons systems. He is saying that at that particular point in time, Rwandans’ understanding of warfare, and indeed of themselves and the world, is different from Western societies’. It is this kind of cultural awareness that should ground African military strategists’ understanding of asymmetry in African conflicts.

Post-colonial, in a critical theory sense, can be described as “moments of consciousness when colonization is interpreted, framed and ideas of its subversion emerge” (Ampka 1999:n.p.). Subverting the US discourse of asymmetry would start by acknowledging that the identities of the rational ‘self’ that fights just wars in a fair way versus the asymmetric uncivilised ‘other’ that uses barbaric tactics are cultural constructs not of African making (even though they may well be employed by African politicians or strategists to discredit an enemy or legitimise a certain response against an enemy). Subsequently the task would be to arrive at an African theory of asymmetry.

Although this paper does not propose to develop such a (post-colonial) theory of asymmetry in African conflicts, an example of what it may focus on is socio-technical vulnerability complexes. If we understand asymmetric warfare to be exploitative of vulnerabilities, what vulnerabilities ground African conflicts? An example of such a vulnerability complex could be:



Asymmetric warfare is enabled in this context by the ease with which it is possible to destroy lives, families, communities and institutions.

Arguably the phenomenon of child soldiers that is so characteristic of African conflicts would fall comfortably in the asymmetric paradigm. And yet, the US conception of asymmetric warfare has been ill-equipped to deal with child soldiers because they cannot simply be labelled fanatics or terrorists. A theory that incorporates vulnerability complexes in the way strategists perceive, pre-empt and respond to asymmetric warfare presumes cultural awareness. Such a theory would also give an African meaning to pre-emption, where the focus of early warning systems are not to identify terrorists plotting indiscriminate attacks through information interception or satellite photos, but vulnerability complexes in society. Technology may still be important in the identification of these complexes and pre-empting or responding to the violence that they enable, but it would be embedded in a different value system, one that understands the socio-political-cultural context in which violence takes place.

## Conclusion

The derogatory way that some US military thinkers have come to talk about asymmetric warfare can be correlated with an increasing frustration that US technological superiority has not delivered victory in wars (as in Vietnam, Afghanistan and Iraq) or deterred attacks from weaker actors (such as Al Q'aida). Within the context of a certain reading of Clausewitz that presumes war is a science and winning war a matter of strategic and technological superiority, this frustration is understandable. However, if we understand Clausewitz to have warned that wars are by nature messy and asymmetric tactics as predictable and in fact understandable ways to fight wars where the weak feel that they have more at stake, the US discourse seems hollow. Nevertheless, many elements of this discourse is almost verbatim recognisable in pronouncements by African strategists, especially in identifying future military threats. There seems to be an uncritical acceptance of the US narrative about asymmetry that plays to institutionalised beliefs about what constitutes the proper way to make war and what constitutes a professional military. The essence of these beliefs permits meanings of asymmetric warfare as 'fighting dirty' or the asymmetric warrior as uncivilised. Most African militaries have a rich guerrilla warfare heritage that is negated by such beliefs. Moreover, a pejorative understanding of asymmetry directs strategists in how to identify and respond to such threats. The paper concludes that a more critical, even a post-colonial, understanding of asymmetry is necessary that would develop an African theory of asymmetry by drawing on the African strategic environment and experience.



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# FOUNDATIONS AND DEVELOPMENT OF INDIAN STRATEGIC PERSPECTIVES

Limitations and Opportunities for Africa

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*This paper focuses on two issue areas: first, it is an attempt to put forth a survey of Indian strategic thinking as it evolved over the years and the shape that it has taken in the post-Soviet world order; and second, it seeks to locate perspectives about the African continent in this overall framework of Indian strategic vision.*

## **Introduction**

As a starting point, this paper uses two considerations about decision making on strategic issues in India. The first concerns the primacy of the political; the other, the abstract nature of the debates. Indian decision-making processes, as is in most other countries, rest on the premise of the primacy of the political. Key decisions on security would, in their last sequence of finalisation, be political decisions and not ones based on military choice. Further, Indian security thinking has long been criticised for being abstract. There has been a distinct reluctance by India to present a clear-cut strategic doctrine and articulate the same in terms of policy. This stems from her belief in the realistic utilities of a deliberate ambiguity and not from a lack of strategic culture, as George Tanham (1992) would have us believe.

Traditionally, two competing frameworks have dominated Indian strategic thinking. Each of these frameworks revolves around a set of a 'governing image' – and both

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have diverse perspectives, based on independent ideological presumptions. The governing image is essentially a perception held by a nation or a group of nations to establish a pattern of stability in their mutual relationships (Whitson 1976:327). The development of such an image is part of the desire to establish an 'order' in international relations.

The first part of the framework focuses on the fundamental question of the survival of the nation state wherein national security was the primary concern. As an answer to the question of how security is maintained in a state of anarchy, the Western view has focused on the role of power (Appadorai 1969:111-112). It held that in order to maintain security, and thereby order, primary attention was to be given to the establishment and preservation of power in international relations. To organise peace in such an anarchic system of international relations, the problem of distribution of power had to be addressed. The distribution of power had to be such that individual states would be persuaded not to use force to alter the *status quo*.

The Indian approach to the question of security is not structured in the same framework as that of the Western countries. The fundamental question that India asks is not how to maintain security in a state of anarchy in international relations, but how to maintain peace in a society of nation states. The answer revolves around two fundamental principles/dimensions: first, the recognition that in any conflictual situation the roots of conflict need to be tackled (conflict resolution, not conflict management); and second, the need to resolve conflict without recourse to violence (Appadorai 1969:113-117). The first is a long-term perspective and includes the consideration of the social, political, economic, and other aspects of conflict. It presumes that conflicts are a product of tensions emanating in social, political and economic areas that ultimately escalate into military conflict. The latter is a more short-term view that looks at the means of pacific settlement of disputes. India thus rejects the balance of power approach to security and looks at the world through the conceptual lenses of a co-operative society. It rejects the balance of power, or the deterrence, approach as a *status quo*. It roots its approach in development policies, and thus assumes and demands a possibility of change in the existing order and as such takes a revisionist perspective. This can be seen in various fields: in the economic field it was articulated as a demand for a new economic order; in the political field it found expression in support to national liberation struggles; and in the social field it was reflected in the demand for social justice.

A governing image that seeks to project peace policy with the agenda of development as a base appears to confront the demands of legitimacy of the use of force that India accepts in the real world. In real terms, this dichotomy is visible in the Indian position at two levels: global and regional. The global position rejects the power approach and seeks international governance on the basis of a structure of peace grounded in development. At the regional level, the basis of a structure of peace uses the logic of the regional state system wherein 'order' is a product of hierarchal power

structure.<sup>2</sup> This is the base of the second part of the framework. This simultaneous application of the two frameworks with their governing images also presents a dichotomy of approach. This second set is rooted in a realist / neorealist framework of analysis that is focused on the role of power. It holds that in order to maintain security, and thereby order, primary attention was to be given to the establishment and preservation of power in international relations (Rengger 2000:111-112). This dichotomy, however, is neither duplicity nor a state of confusion, for the regional dimension seeks to incorporate principles of economic and political development through approaches such as 'Panchsheel' (Panchsheel represents five principles of peaceful co-existence based on the Panchsheel Agreement of 1954 between India and China). That the Nehru approach accepted the necessity of national defence but sought to underplay it is perceived in his query: "Why shout it out?" (Mende 1956:142).

The vision that India has sought to project through the Nehru years and which has endured in Indian foreign policy even today rested on such ideological precepts as anti-imperialism, liberal internationalism and Gandhism. At a theoretical level, India would be closer to the liberal institutionalists who accept the key assumptions of the utility of military power and at the same time insist upon the utility of institutions as a framework of co-operation (Power 1977:22).

The post-cold war era has witnessed the emergence of a third set of a framework that is based on a new set of a governing image. This governing image is based on the perceptions about the role of technology. It argues that the source of power today is technology and not traditional military strength. It presumes that the Indian system would continue to move along the path to economic liberalisation, as it would be a facilitator to the acquisition and development of new technologies. It showcases the progress made by India in the field of nuclear, space and electronics in the face of a technology-denial regime that came into existence with the Nuclear Non-Proliferation Treaty (NPT), Comprehensive Test Ban Treaty (CTBT), Missile Technology Control Regime (MTCR), and other dual-use technology restrictions. India now demands space in the decision-making circles of the world.

The three governing images have evolved over the years since Indian independence and today continue to simultaneously influence policy making; sometimes as competing frameworks, sometimes as complimentary ones. The understanding of Indian security policy and Indian strategic perspectives are a product of indigenous or exogenous compulsions that need to be placed in the context of these competing frameworks.

## **Inheritances and Indian strategic thought**

The paper begins with recognition that the Indian governing image about its strategic thinking is a product of its historical, cultural, geopolitical and socio-

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2 For approaches to the concept of the Regional State System, see Cantori & Spiegel (1969) and Myers (1991).

economic compulsions; it is a perspective that has grown from a mindset that can best be described as 'civilisational'. It traces its roots in the understanding and the interpretation of India as a civilisation state with a continuous history that goes back three to four thousand years. Indian society is a product of a series of events that have left their impression on the modern era (Oommen 1998). The first is the Aryan immigration that occurred about 5 000 years ago. This immigration displaced the indigenous Dravidian civilisation and dispersed them into the Southern Indian region where they eventually acquired labels, such as Adivasis, Vanvasis and Girijans. The second is the rise of three major Protestant religions. Buddhism and Jainism rose against the then Hindu way of life while Sikhism sought to redress the Hindu and Islamic orthodoxy. The third event was the induction of the 'world religions' into India. St. Thomas, one of the apostles of Jesus Christ, came to Kerala in the first century AD. Muslim traders landed along the Malabar Coast in the seventh century, and then came the Jews, Zoroastrians and the Bahais. The fourth event is the Muslim conquest of the region. Beginning from the Muslim conquest of Sindh in the eighth century, the Muslims brought with them a new language of administration, a new system of medicine and a new culture. The colonial era is the last major event to influence this region. This historical process that spanned several centuries has produced an extremely complex society that is an amalgamation of four basic dimensions: social stratification; cultural heterogeneity; caste hierarchy; and religious plurality.

The Indian state system was not a unified state system until the advent of British colonial rule. The central (monarchical) authority was distributed amongst the Satraps (essentially feudal barons) who owed loyalty to the central authority but were relatively autonomous within their territory. The strategic perspectives that have emerged during this period of history can be identified as follows:

- Regime security rather than national security: Given the monarchical system of state, the consideration was survival of the ruling dynasty. The military was loyal to the monarch and not to the nation; wars were fought for the King and not the kingdom.
- Understanding of frontiers rather than boundaries: The early empires did have a sense of frontiers that indicated the extent of their influence, however, none had a sense of well-defined geopolitical boundaries.
- Defensive orientation of strategic perspective: Indian empires did not seek to expand beyond the traditional frontiers of the southern Asian region. In all of these times the Indian strategic perspectives remained defensive in terms of territorial defence.

The one serious effort at strategising was done during the Maurayan era by Kautilya. His treatise *Arthashastra*<sup>3</sup> is a classic on the role of the State and the King. He is described as the early realist in Indian thinking, yet his world views remained limited to freeing the Indian rulers from the Greek invaders (Alexander and his

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3 *Arthashastra* was a treatise written by Kautilya in the Mauryan period, fourth century BC.

legacy) and then defending India from foreign invasion. The only exceptions to this inward-looking defensive perspective were the southern Indian empires that had successfully colonised the South-East Asian region.

The establishment of British rule began in 1761 under Lord Clive and eventually consolidated during the early nineteenth century. By 1818, the greater part of India, from River Sutlej in the west to River Brahmaputra in the east and from the Himalayas to the southern coastline, was brought under British control. Control over the western frontier was facilitated by making Afghanistan into a buffer state, and in the east by annexation of Lower Burma. It was only after the Indian revolt of 1857 that the British Crown took over the Indian administration. The authority from the British East India Company was transferred to the Crown by the Government of India Act of 1858 (*The Gazetteer of India* 1997:638-639). The period from 1858 until 1905 saw the consolidation and completion of British imperial rule in India – the frontiers were rounded off, the relations with Indian states were straightened out and placed on a permanent footing, and bureaucratic administrative machinery was created. Economic development and modernised communication unified the country.

The British Indian Empire represents the first systematic attempt at the creation of a ‘unified state’. This period presents the following aspects in terms of Indian strategic thinking:

- The development of an understanding of territorial integrity with a clear definition of boundaries and frontiers.
- Economic imperative of organising of resources for the wealth of the Empire. It was the forces of the modern world, including the communications revolution, that integrated the Indian State with the British Empire.

The Indian national movement saw a tussle between the moderates and the extremists, growth of Muslim separatism and attempts at evolving a representative system in India. The history of the Indian national movement and the predominant positioning of the utility of non-violence under the leadership of Mahatma Gandhi had its impact on Indian thinking in the post-independence era. Indian perspectives came to be articulated, keeping in mind some dilemmas that revolved around the following concepts:

- Peace approach that came to be articulated as one of the key dimensions of India’s foreign policy.
- Independent understanding of foreign policy as a policy that sought to promote anticolonial and anti-imperial struggles in the Afro-Asian region and as an assertion of independence by the post-colonial developing world.

## **The setting**

The civilisational dimension that impinges on Indian thinking is thus a product of the above mentioned pre-independence era considerations. At a conceptual level,



it recognises the fundamental principle of 'unity in diversity'. It recognises the unique social, cultural and ethnic diversity of the people of the region and seeks to identify a thread of unity within that diversity. This plurality of a multinational community based on religion and ethnicity, which is a product of historical inheritances, continues to dominate the society in India. The history of migration and invasion and then the eventual assimilation into Indian way of life has brought forth a culture of assimilation and peace approach that is reflected in India's external behaviour. There is also a strong geopolitical imperative that India has inherited. This is a perspective of frontiers that have bound India to a particular land. There are the natural boundaries of the Himalayas to the north and the Indian Ocean to the south. The north-west region has been the point of entry of all 'foreign' migration and invasion and hence was always looked at as a frontier. In the east, the British defined Burma as a frontier.

The following issues have dominated the discourse on Indian security policy and strategic perspectives in the post-independence era:

- Use of force: The issue of the legitimacy of use of force in certain circumstances versus the traditional peace approach.
- Defence versus development: This was spelt through the approach of defence through diplomacy in the Nehru years to eventually come to an acceptance that both are not mutually exclusive.
- Revisionism versus *status quo*: Has India moved away from its traditional revisionist approach to the global world order to a more 'status quoits' one, at least in certain selected areas like nuclear proliferation? What would be the fate of regionalism and non-alignment in the new scenario?
- Nuclear disarmament: The need to reconcile the demand for global nuclear disarmament with the holding of a nuclear deterrent posture.

### Strategic perspectives

Indian strategic perspectives have always accepted the state-centric formulation of approaches to security policy. Yet while the state was the primary unit of analysis, Indian perspectives about strategy were projected in a framework that was different from Western approaches.

During the early years of independence, India's security policy followed two main trends: one represented India's urge to retain newly-won independence in the practice of security policy even while upholding its peace policy; the second reflected in the application of these principles in the context of building regional solidarity and the spread of regionalism. But regionalism never became a fundamental concern of Asian states. Interstate conflicts caused by unsettled boundaries, existence of large minorities, clash of elites, etc. were some of the serious obstacles. The onset of the Korean War and the resultant Korean system of alliances ended attempts at regional solidarity. The first Afro-Asian conference at Bandung sought to expand the approach towards regionalism to include Africa, however the conference had

its own limitations. The intrusion of cold war alliances in Asia slowly eroded the framework of peace approach based on independent understanding. From Bandung onwards there was a slow shift towards the development of a neutralist policy that addressed itself to the global concerns of the cold war conflict. The fundamental tenets of peace and independence were to become the foundations of the new non-aligned policy. The security dimensions of the non-aligned approach were to draw on these basic tenets. They ensured that the strategic doctrine of a country focused on the fundamentals of national interest, as defined by the approaches of peace and independence, and thereby enabled one to structure a security policy to ensure the goals.

Indian security policy during the Nehru years – almost until the military defeat of India at the hands of the Chinese in the border clash that took place in 1962 – rested on his model of development and the policy of defence through development. In essence, this approach accepted the logic of defence through diplomacy and developed a security framework that had its roots in politico-diplomatic activities and the process of modernisation through industrial development. The key to security then was a long-term strategy of self-reliance through development. It was the 1962 war that brought about a change in these perceptions. Now a direct linkage has sought to be made between defence (military) capability and political role.

The post-1962 reports of the Indian Ministry of Defence reflected this change. The reports acknowledged the need for a long-term view of defence planning for managing tensions across the border. But Indian commitment to peace and non-aggression was affirmed. So was the objective of building a social order by democratic means in which social, economic, and political justice would permeate all institutions of national life (Government of India 1963/1964:2).

The late 1960s brought in several changes. At one level, Pakistan sought to reassert itself. Pakistan did this by moving closer to China and also through conflict with India; first in the Rann of Kutch and later on in Kashmir in 1965. By the early 1970s, a new thinking set in. This was the post-Bangladesh era and there was certain degree of credibility about India's position in South Asia. This period saw some serious efforts being made to develop Indian military capability and the armed forces were consolidated and modernised.

In sharp contrast to the importance that the Indian army has been given in the planning for defence, Indian maritime forces have consistently been unjustly managed. A strong plea for an active maritime policy, as articulated by K.M. Panikkar (1945) remained a lone crusade in a landbound defence perspective. The naval budget of 1950, for example, was only 4.76% of the total defence budget. In 1960 it rose to 12%. This percentage did not improve much in the subsequent years (Paranjpe 1992:225). Further, given the limitations of Indian naval production, India must purchase ships and other naval equipment. It is only recently that India has started to strengthen its shipbuilding industry.

India's perceptions about the role of the navy were exposed in the 1965 war. The Indian fleet was prohibited from crossing the latitude of Porbandar to blockade

Karachi. It was only during the 1971 war that the navy exploited the apparent ambiguity in the country's naval policy and took its own initiatives to pursue an activist policy. The development of the of Diego Garcia, the island base leased by the United States from the United Kingdom and later developed as a joint US-UK strategic military base in the 1970s, growing Australian interests in the Indian Ocean, Chinese entry into the region, and other related developments have ultimately forced India to pay greater attention to a naval build-up.

The 1980s saw a major shift in patterns of conflict. Exclusively conventional border type wars ceased to be key threats and the focus shifted more to problems of internal security. Low intensity conflicts, militancy, and insurgency emerged as key concerns of the decade. This dimension of the threat perception called for new approaches and new strategies. The growth of paramilitary forces and changes in strategic doctrines were expected; nuclear and space science received increasing importance. Furthering of nuclear capability and development of missile systems were the other marked features of this period.

### Post-Soviet era

The post-Soviet era of international relations has brought in an entirely new set of conceptual framework. The emergence of a global economy, enormous technological changes, free flow of finance capital and growth of foreign direct investments are some of the key features of the present world order. The world, especially the Third World, saw a revolution in communications technology. The spread of audio-visual and other means of communication had their impact on social relationships. Another change was that the non-state actors acquired an international legitimacy. International relations ceased to be the exclusive domain of nation states; non state actors were also recognised as actors in world politics. This was to open up the participation of voluntary organisations, non-governmental organisations and international or regional organisations in world politics. Some of the key areas that became significant as global social concerns were ecology and human rights. All this helped to broaden the debate on national security. The concept of security expanded to include political, economic and socio-cultural dimensions of governance.

The post-cold war era saw two transformative events in India's national life that had far-reaching implications for its world view:

- 1991: The economic watershed when India started the irrevocable economic liberalisation and reform process under the compulsion of an economically parlous condition; and
- 1998: The foreign and security policy watershed when India declared itself a nuclear weapon power.

The Indian economic reform program led to a sustained average annual growth rate of 8%. India has emerged as an attractive 'strategic partner' to countries within the European Union, the Association of South East Nations (ASEAN) and the United States. From a country dependent on the Aid India Consortium and food aid from

the United States, India today gives financial and technical assistance to a large number of developing countries and its food self-sufficiency has made it a major interlocutor on issues of food security. Economic diplomacy has now emerged as an important tool in Indian armoury *vis-à-vis* both the developed and the developing world. The focus has now shifted from export promotion to import, investment and services promotion and the Indian Technical and Economic Cooperation programme (ITEC) has become more diverse, both in content and geographical coverage. Current ITEC initiatives in Africa are worth nearly five billion US dollars.

Over the years the issue of nuclear and related technologies like space and electronics had come to symbolise the core of the G-7 (group of seven industrialised nations) 'status quoist' agenda. The NPT regime with its multifarious dimensions like the Nuclear Suppliers Group (NSG), the Missile Technology Control Regime (MTCR) and the Fissile Material Cut-off Treaty (FMCT), had sought to place the P-5 (group of five nuclear weapon powers) in a monopolistic managerial framework. The problem was compounded by the restraints placed on 'dual use' technologies. The key threats to national security as articulated by the technologically advanced countries of the developing world came to focus on these restraints of the G-7/G-8 regime. (The G-7 was expanded to include Russia and has now become G-8.) The first symbolic defiance of this restraint came in the form of the 1974 nuclear test at Pokhran, which had a limited agenda. It presented its revisionist defiance in terms of the technological competence of a Third World country. The international situation of the seventies did not merit a demonstration of weapons capability. The labelling of the test as peaceful and the creation of resultant ambiguity in nuclear policy satisfied the technological and political requirements of an 'anti-status quoist' approach.

The May 1998 nuclear tests represent this defiant independence at an age where the nuclear regime had become more stringent over the years. The indefinite extension of the NPT, the Comprehensive Test Ban Treaty, the Wassenaar Arrangement on export controls for dual use technologies and the Fissile Material Cut-off Treaty, represented the new era of global management. The Indian nuclear tests of May 1998 thus came to represent a demonstration of capabilities – technological and political. Technological capabilities were in the context of the denial of access to advanced technologies that India experienced over the years. The political capability represents the demonstration of political will of the elite to take on the G-7 regime. It is this reassertion of the ability to take independent decisions in face of anticipated sanctions that makes the nuclear test a symbol of a resurgent India.

It is in the backdrop of this nuclear non-proliferation and technology denial regime that one would have to look at the US-India Nuclear Cooperation Agreement signed in 2008.<sup>4</sup> The passing of this deal through the International Atomic Energy Agency (IAEA) and the Nuclear Suppliers Group (NSG) and the acceptance by the US Congress symbolises the success of India to break through the denial regime and gain legitimacy for its stand as a nuclear capable power.

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4 The Civilian Nuclear Cooperation Agreement was signed between US and India in 2008.

The central debates in India about its strategic perspectives today retain state-centricity as a central feature and a belief that the post-Soviet era has not altered the hierarchal structure of the world order. These debates, therefore, tend to be located around specific issue areas: first, at the conceptual level, the legitimacy of use of force and revisionism versus *status quo* in the global order; and second, at the operational level, the geopolitical area focus of India's strategic concerns.

The first debate has a politico-military frame of reference and has now come to be resolved through an implicit recognition of the need to articulate the utility of force. India has moved away from the Nehruvian position of underplaying the use of force. Today there is a willingness to accept the utility of force as an option that needs to be exercised (even if done so with restraint).<sup>5</sup> The efforts at modernising the Indian armed forces in terms of equipment and training; the building up of nuclear and missile capabilities; the opening up of a strategic dialogue with the United States; and the arms purchases from the Western sources, including Israel are some of the indicators of the acceptance of a more open realist posture in international relations.

The second debate appears to be located in the areas of political economy; issues of intervention on humanitarian grounds or for support for the right to self determination and approaches to tackle the problem of terrorism.

On the issue of political economy, India's emergence as a significant economic actor and the nation's ability to protect the interests of its own people and also those of the developing world in an age of globalisation, with core areas being agriculture, intellectual property issues and the services sector, has come to be recognised. The focus has been mainly on the Indian role in the World Trade Organization (WTO). It has been argued (Ray & Sabyasachi 2008) that India's stand at the WTO has been consistently domestic driven while international economic diplomacy has been an important driver. India had been a cautious and reluctant player in the initial years of the Uruguay Round of talks. It started to actively participate in the WTO process only after the opening up of its economy in the post-1991 period. India was able to gain some concessions on trade-related aspects of intellectual property rights (TRIPS) to accommodate public health and issues of medicine for developing countries at the Doha Agreement of 2001. It was in the post-Doha period that India emerged as a leading player in the WTO negotiations. Led by Brazil, China, India and South Africa, the developing countries were able to create a broad-based alliance that took shape as the G-20. A stable and growing economy at home enabled India to play an active role in the global negotiations at the WTO. Whether at Singapore (1996) or at Seattle (1999) where India scuttled the issue of labour standards, championing the cause of the Third World, India has emerged as a key player that could, if necessary, salvage the discussion rounds at the WTO.

There is a large overlap between India's domestic interests and those of the developing world, especially in areas like food security, livelihood, public health, traditional knowledge and bio-piracy. India has also sought for transfer of technology to cater

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5 This restraint was recently demonstrated during the Kargil conflict wherein India ensured that it does not cross the Line of Control in Kashmir.

to environmental and developmental needs. Indian ability to stand up to the US – European Union pressure and press for the interests of the developing world in the areas of agriculture and intellectual property provide for the revisionist ethos of Indian strategic perspectives. However, the Indian stand on the issue of trade in services has been at variance with the developing world. Indian foreign policy has increasingly become economics driven. It is unlikely that India will abandon its commitment towards developmental agenda that it shares in common with the developing world.

Extra regional intervention for resolving humanitarian crisis situations created by problems of governance, or struggles for self-determination in the Third World, has achieved a new legitimacy in the international forum. Such interventions may come under the umbrella of the United Nations or regional organisations. Cases like Cambodia, Somalia or Yugoslavia (where either the UN or the North Atlantic Treaty Organization took an initiative) or terrorism-related situations like Afghanistan (where NATO is operative) or crisis areas in Africa (where the African Union takes initiative) are now 'acceptable' in international relations. India itself has been a party to some of the cases in Cambodia and Somalia. However, one of the insurances that India has been holding on to, as seen in the context of American intervention in Iraq, is the need for a clear UN mandate. Such a mandate would be necessary to protect the interests of the Third World that would be subject to what has been perceived as a neo-colonial form of intervention.

The logic that led India to formulate the non-aligned approach as an alternative world view to the establishment of the cold war does not exist today. The global situation has changed radically. We are presently on the brink of economic and political crisis, in dire need for a restructuring of the fundamental Western-determined philosophical and institutional legacy of the cold war. Two major threats loom: the financial collapse of the Western banking infrastructure based on the Breton Woods Institutions (the World Bank and the International Monetary Fund) and the inability of the UN to deal successfully with series of "disturbed turbulences" or "one hundred pinpricks"<sup>6</sup>, which have become the hallmark of global war on terror. Where does India stand in this? Its traditional revisionist perspective was structured to tackle the *status quo* created by the great powers. Today, given India's own status, it cannot afford to take a purely revisionist perspective, but it needs to participate in the building up of a new order. Indian argument today has centred on the technological and economic capabilities that the country has gained. It is now demanding space in the decision-making circles of the world. At one level such a space would enable it to reassert the demands of the developing world. At another level it may find itself on the same side of the negotiating table along with the countries of the G7/G8. This remains an unresolved dilemma.

The traditional geopolitical area of India's concerns has been the region of South Asia. The current turmoil in almost all the neighbouring states of India has further

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6 Comment made by Gen. Scowcroft at the discussion hosted by the Centre for National Policy, USA, 17 December 2008.

contributed to the need for greater attention to this region. The other area of concern has been the Middle East, partially due to the significant Muslim population in India and partially due to India's dependence on the region for oil. The nineties saw the opening up of East Asia as an area of interest under what came to be termed as a 'Look East' policy. Today, with economic concerns of energy security taking over the debates on external affairs, India has embarked on a more global reach for itself. It is here that one can locate India's policies towards Africa in the contemporary world.

### **Africa perspective**

Where is Africa located in this strategic perspective of India? Africa, in the Indian world view of the fifties and early sixties, was contextualised around the policies of independent understanding of world affairs that in the age of colonialism meant support for anticolonial and national liberation struggles and the question of the Indian Diaspora. The former became one of the tenets of the non-aligned movement along with peace approach. The latter was articulated as a prescriptive policy of assimilation in the local culture.

The initial linkages developed in the fifties did not grow further. Indian world view moved towards identification of cold war as a central problem in world affairs and anticolonialism took the back seat. Further, Indian insistence for peaceful change rather than revolutionary national liberation struggles did not find favour in Africa. This drift came to be rectified during the mid-sixties by Prime Minister Mrs Indira Gandhi. India stopped treating Africa as a bloc and became selective in its relations. Through the next two decades, India continued to support the fight against apartheid and accorded diplomatic status to the African National Congress and the South West African People's Organisation. India also provided financial and material aid to liberation struggles in Africa through multilateral agencies, including the Action for Resisting Invasion, Colonialism and Apartheid Fund (AFRICA Fund) created at the Non-aligned Summit at Harare.

It is in the changing world order of the 1990s and of the new century that Africa has emerged in a new context. This context has come to be defined in the economic framework of the demands for energy security that have come to dominate the world today. Currently about 24% of Indian crude oil imports are sourced from the African continent. Indian oil companies are also investing in assets in the region. ONGC Videsh Limited (OVL) has invested in Sudan and Egypt, ONGC-Mittal Energy Limited (OMEL) has sought ties in Nigeria, Reliance Industries Limited (India's largest private sector enterprise) is negotiating with Nigeria, Angola, Chad, Cameroon and Congo. The importance of the hydrocarbon market was stressed by the Indian Foreign Minister at the India-Africa Hydrocarbon Conference in 2007.

Also important is the interest that the Indian industry has now started to exhibit in Africa. Indian industries are likely to offer technological and material services to the developing countries of Africa. The Indian Institute of Foreign Trade, for example, provided training to Foreign Office officials from 26 African countries on WTO issues (*The Economic Times* 2007). There exist several obstacles to furthering

of trade, like lack of direct shipping lines to Africa, language problems, limited availability of foreign exchange faced by African countries and internal strife in the continent. Yet, given the growing competition for trade in Africa, India would have to co-ordinate its efforts at the domestic level for better results.

Another concern is that of the Indian Diaspora in Africa which is approximately two million people in eastern and southern Africa, and are also now considered an asset by the Indian government.

There is also concern about peace and security of the Indian Ocean area. Countries from Somalia to South Africa fall under the Indian maritime strategic perspective. The Indian Naval Establishment took the initiative for an Indian Ocean littoral countries dialogue to address some of these concerns.<sup>7</sup> The increasing of cases of piracy in Somalian waters as well as the problem of terrorism has made this region sensitive to Indian concerns.

India would like to argue that the growing Indian interest in Africa is not a reaction to the Chinese presence in the region but a logical part of its commitments to the problem of development in the Third World.

The current and the future areas that India are likely to focus on in its Africa policy would include the following:

*In the area of defence and strategy:*

- India is likely to continue its approach of differentiating between sub-Saharan Africa and Africa south of the Sahara. The former is likely to be linked with the Indian concerns about the Middle Eastern Islamic Arab world while the latter would be considered predominantly in the developmental frame of reference.
- At the geostrategic level the focus is likely to be on the eastern coast in terms of the Indian Ocean littoral states. India has long been an opponent of extra-regional intervention in the Indian Ocean region and has sought to promote the Indian Ocean Rim Community. India's maritime policy has slowly changed and India is likely to flex its muscles in this region. The response of the main contenders of this geopolitical region and their linkages with the US, Russia and China would be a matter of concern to India. One of the key competitors to India's efforts at building any strategic linkage in Africa is China. Chinese investments in Africa appear to be growing along with its presence in the Indian Ocean region. This is likely to remain an important strategic concern for India.
- Indian contribution to UN peacekeeping operations in Africa is likely to continue. Indian approaches to peacekeeping in Africa are not antagonistic as there is a cultural consonance between the two actors when it comes to approaches to conflict management and resolution.

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7 The Indian Ocean Naval Symposium was launched on 15 February 2008 in Delhi as a regional forum through which Chiefs-of-Navy of all littoral states can meet to discuss maritime security issues.



- India continues to be one of the destinations for military training in its Defence establishments, including the National Defence Academy (where the Sudan Block is a symbol of co-operation between Sudan and India), the Indian Military Academy and the Staff College at Wellington.
- One of the recent concerns is terrorism and the possible areas of co-operation that India can forge to counter its spread. The Indian Navy's effort to contain piracy along the Somalian coast is an area that is likely to become strengthened over the years.

*In the area of economic co-operation:*

- The Africa – India Forum Summit of April 2008 is widely seen as an example of the growing mutual interest in developing co-operation in the economic field. Areas like pharmaceuticals, information and communication technologies, agriculture, and energy are likely to be some of the areas that may be of interest to Indian investors. Economic liberalisation in India is likely to encourage private sector initiatives for investment in the African continent.
- Energy security has come to dominate the debates on security today. The diversification of procurement of oil from the Middle East to countries of Africa is one of the important trends that one can see in the context of India.
- Any participation in investment opportunities in Africa is likely to be tagged with the concern about the domestic political stability and continuity in economic policies of the country where investment is being made.

*In the political and socio-cultural area:*

- Indian approaches towards the Indian Diaspora or Persons of Indian Origin, as they are now officially called, has not been consistent. India has not been able to balance the strong urge to seek assimilation by the Indians with the local community as against their use as a kind of a pressure group.
- Democracy and good governance have been a matter of public appeal in India. While India had not sought to interfere in the domestic politics of African countries, Indian civil society is likely to play some role in the connection between democracy and good governance in African countries.

India's policy towards Africa has for long suffered from a cognitive disability – or the inability to apply innovative thinking. Globalisation has meant that the whole world is changing at once; its virtues – easy mobility, interconnectedness, and plurality – can equally be vices in the hands of those who seek to misuse them. The dilution of the Westphalian state system; the global political awakening; the shift in the centre of power from the Atlantic to the Asia Pacific and the surfacing of common global problems including poverty, environmental degradation and disease, have made it necessary to reassess India's world view. India's initiatives towards Africa – bilateral, regional or global – have to be structured to meet these and other challenges.

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# AMERICAN SECURITY POLICY IN AFRICA

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## Abstract

*Africa, which was until quite recently referred to as 'the forgotten continent,' had been marginalised by the end of the Cold War and the disappearance, almost overnight, of the strategic significance that this rivalry had given the continent. Over the last five to ten years, however, attitudes seem to have changed with a growing number of politicians in the West arguing that something should be done for the continent. Such humanitarian considerations have been accompanied by the growing geopolitical and strategic significance of Africa. One reflection of this has been the creation of a unified US Africa Command, AFRICOM, bringing the entire continent under one geographic command instead of the previous three that shared responsibility for Africa. This organisational change has received considerable attention,<sup>2</sup> both because it has been accompanied by a growing US interest in Africa – for example, that related to the global War on Terror – and because of its new combination of development and security policy, with the Pentagon as the directing office (Berchinski 2007; Ploch 2009). This article focuses on AFRICOM and questions whether its creation reflects any radical*

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1 Major Nicolai S. Møller was by the time of writing assigned as staff officer to the Executive Office of Defence Command Denmark. Due to his deployment to Kenya as military advisor to EASBRICOM from early 2010, he was unable to finish the paper. Senior researcher Bjørn Møller from the Danish Institute for International Studies, agreed to finish it, leaving the general argument and structure unchanged.

2 This includes a special issue in 2009 of the journal *Contemporary Security Policy* 30(1).

*change of US priorities – whether Africa has in fact gained renewed importance for the United States or whether it merely represents a modest attempt at a rationalisation of what remains a sideshow.*

## US geopolitics and geostrategy

Geopolitics and its sub-discipline of geostrategy form the theoretical basis of this analysis, and we shall therefore commence with a brief recapitulation of the central concepts and a geopolitical/geostrategic analysis of Africa's evolving significance for the United States.

### *Geopolitics and policy formulation*

The United States has quite a long tradition of geopolitical thinking, even though some of its most prominent authors have been European émigrés (Lind 2008). Among the most prominent 'modern classics' we could mention are Alfred Thayer Mahan (1890) (see also Crowl 1986; Sumida 1999; 1997), Nicholas Spykman (see, for instance, Spykman 1938; Spykman & Rollins 1939; see also Furniss 1952), Harold and Margaret Sprout (Sprout 1963; Sprout & Sprout 1957; 1960) and Zbigniew Brzezinski (1988; 1997a; 1997b), all of whom have had an impact on the formulation and implementation of American national security policies of their respective ages.

Geopolitics as an academic discipline (arguably founded by Rudolf Kjellen)<sup>3</sup> might be tentatively defined as "the study of international relations from a spatial and geographical perspective" (Parker 1998:5), and a country's geopolitics would then refer to how it sees the world and its own role therein, viewed from a geographical angle. What determines its policies is thus how it defines its national interests – in turn derived from its national identity, at least according to social constructivism<sup>4</sup> – and the perceived threats and opportunities, in turn determined by such factors as its own location, size, strength and those of other relevant states, some of which may be regarded as adversaries or even enemies, whereas others are seen as likely friends and allies. Some countries (e.g. Switzerland) may thus be rather introverted, perhaps in recognition of their modest strength and inability to exert any major influence on the rest of the world, whereas others (e.g. great powers such as the United States) may be more extroverted and more optimistic about their ability to change the world.

Geostrategy is best viewed as a sub-discipline of geopolitics dealing with security and defence issues from a geopolitical angle. Zbigniew Brzezinski (1986:xiv) defined it as:

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3 At least he seems to have been the first to use the term. See Ó Tuathail (1996:44), and also Holdar (1992).

4 See, for instance, the various contributions to Chafez, Spirtas and Frankel (1999).

... the combination of geographic and political factors determining the condition of a state or region, and emphasizing the impact of geography on politics; strategic refers to the comprehensive and planned application of measures to achieve a central goal or to vital assets of military significance; and geostrategic merges strategic consideration with geopolitical ones.

This in turn should represent the premises for a country’s overall strategy, including its national security strategy – or grand strategy – from which more detailed strategies may be deduced, just as foreign policy strategies for various regions and countries can be deduced from the overall geostrategy.<sup>5</sup>

Figure 1 illustrates the overall strategy policy formulation process.

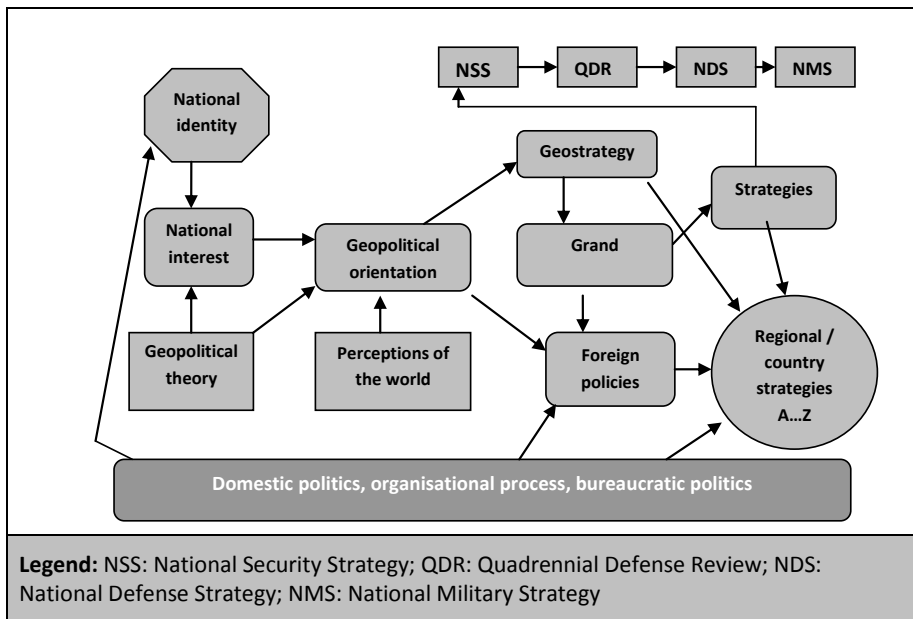


Figure 1: From national interest to strategies

Needless to say, actual policy formulation does not always (if ever) follow such a straight and narrow logical path as depicted in Figure 1, if only because of the ever-present influence of what is here lumped together as domestic politics, which may impact the process at any stage. Likewise, what Graham Allison called organisational process and bureaucratic politics are likely to limit rationality; the former, *inter alia*, by allowing for considerable institutional inertia and the latter by allowing corporate interests to influence preferences (Allison 1969; see also Halperin & Clapp 2006).

5 On grand strategy as a concept see Liddell Hart (1974:320-321). The term is largely synonymous with what André Beaufre called total strategy (1963:24-25). See also Luttwak (1976; 1983). The term has experienced a certain renaissance after the Cold War. See, for instance, Kennedy (1991) and Rosecrance and Stein (1993).

With these caveats in mind, while nevertheless believing that policy formulation aims at representing rational choice,<sup>6</sup> it makes sense to look for general and authoritative formulations of geopolitical strategies as one should expect these to at least provide guidelines for policies and strategies at lower rungs of the hierarchy.<sup>7</sup> The consecutive versions of *The National Security Strategy of the United States of America* (NSS, published in the name of the US President) are the most general formulations of US geopolitics and geostrategy. At least theoretically, they provide the premises for the more operational strategic plans such as the quadrennial defence reviews (QDRs) and the national defence strategies (NDS), both issued under the auspices of the Department of Defence, as well as the national military strategies (NMS), formulated by the Joint Chiefs of Staff.<sup>8</sup>

### *Three geostrategic theories*

Over the last two centuries the United States has evolved from the status as a minor to that of a great power and from there to that of a superpower. This has been accompanied by a corresponding change of outlook from a rather local to a regional one (e.g. formulated in the 1823 Monroe doctrine<sup>9</sup>) and onwards to the truly global outlook in the twentieth century. It stands to reason that these monumental changes are also reflected in the adoption of different geopolitical and geostrategic approaches, and that different theories in these fields have risen to prominence or receded into oblivion, depending on how well they reflected realities and US ambitions.

The remainder of this article focuses on three geopolitical and geostrategic theories, each with its specific focus. That of Mahan focuses on access to resources and control with sea lines of communication; that of Brzezinski on the achievement of (political) control and influence on the Eurasian landmass; and that of Barnett and how the US can limit the number of conflicts in the lesser developed part of the world. Central to all three is the analysis of American access to resources in the widest sense of the term; and all three theories view the geographical situation of other continents and important state actors in the light of US interests (Barnett 2004:295-298; Brzezinski 1997b:38-40; Sumida 1999:4-49). Hence, the application of all three to US-Africa relations in the last section focuses on the importance of Africa's physical resources and its geographical position to the United States.

6 On the pros and cons of the rational choice approach see Brown, Coté, Lynn Jones and Miller (2000), and Geva and Mintz (1997).

7 On the different stages in the process, see Part II of Bolt, Coletta and Shackelford (2005:83-199).

8 The most recent QDRs are from 2001 and 2006, the most recent NMS from 2004 and the most recent NDSs are from 2005 and 2008. They are all available, just as the NSS, at <http://osdhistory.defense.gov/docsreports.html>.

9 This doctrine was formulated by President James Monroe in his 7th State of the Union Address to Congress, 2 December 1823. It is available at [www.state.gov/r/pa/ho/time/jd/16321.htm](http://www.state.gov/r/pa/ho/time/jd/16321.htm).

*Alfred T. Mahan*

Writing towards the end of the nineteenth century, Alfred T. Mahan was the first internationally renowned American geopolitical and strategic theorist. His overall ambition was to advise the US on how to use sea power and sea command as a means to rise to great power status. Many have chosen to interpret Mahan mainly as a naval strategist focused on building a fleet of capital ships – as he indeed recommended (Mahan 1899). However, such a navy capable of establishing sea command was not an end in itself, but a means to the ends of free transit of US commercial shipping and unimpeded access to important resources – most importantly in his age of coal. As a rising power aspiring to a military and industrial potential comparable to that of the European great powers, the US would be well-advised to draw the appropriate lessons from the failure of France and the success of the UK as sea powers in the era leading up to the Napoleonic wars:

The sea power of England therefore was not merely in the great navy, with which we too commonly and exclusively associate it ... . Neither was it in a prosperous commerce alone ... . It was in the union of the two, carefully fostered, that England made the gain of sea power over and beyond all other states; and this gain is distinctly associated with and dates from the War of the Spanish Succession. Before that war England was one of the sea powers; after it she was the sea power, without any second. ... She alone was rich, and in her control of the sea and her extensive shipping had the sources of wealth so much in her hands that there was no present danger of a rival on the ocean. (Mahan 1890:225)

Applied to the present situation, this would mean that the US should ensure free access for commercial shipping along all the sea lanes connecting the US with Europe and East Asia, the other economic dynamos of the world today. Mahan was also keen on the idea of an Anglo-American collaboration business as opposed to unilateral US domination,<sup>10</sup> advice which has partly been followed by most US administrations which have generally preferred small coalitions or larger ones (such as NATO) to unilateralism.

Geostrategically, Mahan wanted the US to abandon the constraints of the Monroe doctrine, which confined the US to the American continents, in favour of a more global outlook, for example, by including Asia. He identified an area lying between the 30th and 40th parallel as one likely to be contested by traditional land and sea powers (Mahan 1900, especially p. 613), a notion which remains relevant even today, even though the contemporary contest might rather be between the 10th and 30th parallel – what in present-day US terms roughly corresponds to ‘the Arc of Instability’.

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10 See Mahan (1894:563-573), with the commentary by Charles Beresford (Mahan 1894:564-573). Mahan’s part is also included in his *The interest of America in sea power, present and future* (1897), available electronically from Project Gutenberg at [www.gutenberg.org/files/15749/15749-h/15749-h.htm#IV](http://www.gutenberg.org/files/15749/15749-h/15749-h.htm#IV). See also Sumida (1997:82-92).



*Zbigniew Brzezinski*

In a certain sense Zbigniew Brzezinski might be seen as the antithesis of Mahan. He underlined the importance of land power, as did Mahan's contemporary, Halford Mackinder, a century ago with his emphasis on 'The Heartland' (Mackinder 1904; see also Dugan 1962; Sloan 1999), and whose admonition, "Who controls East Europe commands the Heartland; who rules the Heartland commands the World-Island; who rules the World-Island commands the World", Brzezinski quotes with seeming approval (1997b:38).<sup>11</sup>

Brzezinski was National Security Advisor to President Jimmy Carter. Known as one of the 'hawks' in US foreign policy, he exerted considerable impact on the formulation of US foreign policy both during and after the Cold War. In 2004, he published a book on the role of the US and the choices it faces under the auspices of the declared 'War on Terror' (Brzezinski 2004), however, we shall mainly focus on the geostrategic outlook in his 1997 book, *The Grand Chessboard*. The main idea is that the Eurasian landmass should be the centre of gravity in the US geostrategic outlook, because this is where all potential adversaries and the most important allies are situated (Brzezinski 1997b:30-36), implying that the US should at all times maintain a foothold on this landmass in order to be able to project power and influence. Like Mackinder, Brzezinski distinguishes between ordinary states and 'pivots' on the Eurasian landmass, namely, those states which are important by virtue of their geographic location and/or due to their links to other geostrategic actors, and advises the United States to focus most of its attention on the pivots (Brzezinski 1997b:41-48).

*Thomas Barnett*

Thomas Barnett belongs to a new generation of strategic thinkers who closely link geostrategy to grand strategy. Even though his main work, *The Pentagon's New Map*, refers to the Pentagon, it is explicitly intended as a proposed US grand strategy, linking all agencies and departments. Its central message is what the author calls his 'Core and Gap Thesis', according to which the global Core comprises a group of functioning states which are economically integrated and increasingly interdependent and among which a range of security regimes diminish the risk of war and conflict, whereas the Gap consists of states unable to cope with globalisation, either because they are not developed enough to function and compete with the states in the Core, or due to authoritarian rulers fearful of globalisation because of the risk it entails for their hold on power (Barnett 2004:131-135, 161-166). Moreover, some of the more recent members of the Core are presumably at risk of falling into the Gap. It is, therefore, important to make them feel welcome, lest they are destabilised by globalisation or disconnect from it for fear of such destabilisation (Barnett 2004:376).

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11 Mackinder's dictum stems from his *Democratic ideals and reality: A study in the politics of reconstruction* (1919:194).

Claiming that the United States, by virtue of its status as the only superpower, has a moral responsibility for handling problems both in the Core and the Gap, Barnett therefore urges the US government to assume two different roles in the two settings (Barnett 2004:158-159, 369). In the Core, the main task for the US is to continue developing security regimes, preferably with itself as an active participant, and to continue promoting a better integration of the four flows of globalisation: people, energy, investments and security (Barnett 2004:369). As far as the Gap is concerned, there is a need for both short- and long-term action. For the short term there is a need to be able to project power (not just military) to help establish a Weberian monopoly on violence,<sup>12</sup> which means that the US should be prepared to assume the role of a Hobbesian 'Leviathan' (Hobbes 1968) in relation to failed and failing states (Barnett 2004:299-303). For the longer term, the US should help states in a transition from the Gap into the Core, requiring a strategy for how to handle the aforementioned four flows of globalisation (Barnett 2004:369-370).

### **Africa's significance for the United States**

As is the case of all other parts of the world, the significance of Africa for the United States has evolved over time, as has been apparent from, for instance, the annual programmatic speeches of US presidents, such as the State of the Union addresses (Flint, Adduci, Chen & Chi 2009; O'Loughlin & Grant 1990; see also Toal 2009).

#### *From Cold War and marginalisation to new battleground*

During the Cold War, when the world was basically looked at as one great chessboard on which the two opposing superpowers played their great game of world domination, Africa was clearly a sideshow to the really important parts of the game played out in Europe and Asia. However, even sideshows were deemed too important to be ignored with impunity. Because of the widespread 'domino beliefs' the United States feared that even modest advances of the Soviet Union had to be countered, producing a quest for allies and beneficiaries over which some influence could be exerted, mainly in order to counter Soviet influence.<sup>13</sup> Even though the importance attached by Washington to the African sideshow was rather low, it still mattered a lot for the African 'pawns' in the great game.

With the end of the Cold War around 1990, however, such considerations vanished completely almost overnight and Africa became strategically marginalised. It simply ceased to matter for US national security, and its significance in other respects (e.g. economically) was dwarfed by just about any other part of the world. Hence, the United States did involve itself in the first stages of the Somali civil war, but after the humiliating 'Black Hawk Down' incident it disengaged almost completely (see, for instance, Hirsch & Oakley 1995; Woodward 2006), as least as far as the

12 The term comes from p. 78 of Weber (1958).

13 On domino beliefs in general, see Jervis and Snyder (1991). See also Rodman (1994:128-140), Sherry (1995:307-334) and Hopf (1994:61-116).

military was concerned. There was still some political involvement – for example, in defence of democracy and human rights – and Africa remained a beneficiary of the (by European standards very modest) US development aid, but none of this was deemed very important in Washington, where the Clinton administration was generally quite content to give its European allies a free hand in, and the primary responsibility for, the African continent.

What did affect a minor change were the terrorist attacks against the US embassies in Nairobi and Dar Es Salaam in August 1998 (Champagne 2005), which raised awareness of the inherent vulnerability of the US global presence – and this was retrospectively amplified in 2001 after the tragedy of 9/11. Since that time, Africa's significance has grown considerably, and especially north and north-east Africa (also known as the Greater Horn of Africa) have become quite important arenas for the US War on Terror. The perception has been that the combination of large Muslim populations with state weakness and occasional failure has provided fertile soil for international terrorism of the jihadist kind (see, for instance, Davis 2007; Le Sage 2007; Rotberg 2005). Even though this assumption has frequently been questioned (Hehir 2007; Møller 2007), there is little doubt that it has been held by just about everybody in Washington and *ipso facto* come to influence US policy for good or bad, as we shall see below (Adebajo 2003; Cohen 2008; Glickman 2003; Kraxberger 2005; Pham 2007). While it had been widely expected that the attention paid to Africa would decline under the Bush administration (see, for instance, Alden 2000; Schraeder 2001), it actually grew (Copson 2007; Van de Walle 2009).

Another factor that began to attract US attention around the turn of the millennium was the emergence of China as a new challenger to the US unipolar position. Even though this was rightly seen as a global rivalry – especially in the realm of economics – the apparently growing Chinese interest in the African continent was bound to also increase that of the United States (Carmody & Owusu 2007; Klare & Volman 2006; see also Alden 2007; Alden, Large & Soares de Oliveira 2008; Ampiah & Naidu 2008), but so far it has remained a much more friendly rivalry than the previous one with the Soviet Union and military matters have played virtually no role.

### *Africa in the NSS 2006*

We could expect these developments to be reflected in the NSS, and so they are. While *NSS 2002* was a direct and almost immediate reaction to the 9/11 attacks, its successor, *NSS 2006*, was formulated in the light of the major US engagements in Iraq and Afghanistan as well as the rather critical response these had received from many states around the world, especially those fearing that they might be next in line. The experience with unilateral actions also led to a recognition in the US of the need for a broader and more multilateral approach to the pursuit of its national security, albeit more often in the form of 'coalitions of the willing' than under the auspices of international organisations – the plans of for a 'thousand ship navy' comprising naval units from around the world being merely one recent example (Ratcliff 2007; Till 2009; US Navy, US Marine Corps & US Coast Guard 2007).

In general, the NSS 2006 acknowledged the rising geopolitical importance of Africa for the United States of the second Bush administration:

Africa holds growing geostrategic importance and is a high priority of this Administration. It is a place of promise and opportunity, linked to the United States by history, culture, commerce, and strategic significance. Our goal is an African continent that knows liberty, peace, stability, and increasing prosperity. Africa's potential has in the past been held hostage by the bitter legacy of colonial misrule and bad choices by some African leaders. The United States recognizes that our security depends upon partnering with Africans to strengthen fragile and failing states and bring ungoverned areas under the control of effective democracies. Overcoming the challenges Africa faces requires partnership, not paternalism. Our strategy is to promote economic development and the expansion of effective, democratic governance so that African states can take the lead in addressing African challenges. Through improved governance, reduced corruption, and market reforms, African nations can lift themselves toward a better future. We are committed to working with African nations to strengthen their domestic capabilities and the regional capacity of the AU to support post-conflict transformations, consolidate democratic transitions, and improve peacekeeping and disaster responses. (Bush 2006:37-38)

Furthermore, the adamant demand on democratisation through forceful regime change had been somewhat softened, the focus of the 2006 edition being placed rather on strengthening moderate regimes (Bush 2006:5-7). By 2006, Zimbabwe was the only African country left on the list of 'rogue states'. (Bush 2006:3). Still, the NSS 2006 maintained the ambition to work to remove dictatorships and build democracies, albeit now mainly by removing the support from other states to dictatorships and by using a range of non-military means. Moreover, it explicitly stated that the US could force democracy on oppressed populations, but that the populations in question must truly want democracy, mentioning positive developments in Africa, especially in Morocco and Egypt (Bush 2006:2). This softened approach seems to have been a direct consequence of the American experiences with forceful democratisation from the Middle East, which might also help explain why the US has not ventured into regime change operations anywhere in Africa. The US has come to see its role more as an indirect force of influence than an intervening power. The NSS 2006 also lists as a focus area in Africa the support for 'immature democracies' which find themselves in a transition phase where they lack full control over their territories. The US considers these immature democracies as areas of instability and as exhibiting dangers of terrorism (Bush 2006:7).

Terrorism remained a central topic in the 2006 edition, even though the rhetoric had been somewhat softened compared to the 2002 edition, mentioning only Morocco and Egypt as African states that had been affected by terrorist attacks

(Bush 2006:9).<sup>14</sup> Hence the emphasis on the prevention of terrorism in Africa through strengthening the capacity of local security forces to fight terrorism ('African solutions to African problems'), albeit combined with occasional US military actions against identified terrorists on the continent.

More generally, the NSS 2006 seems to place greater emphasis on Africa than its predecessor had, promising that the US intended to remain active as a mediator in various conflicts in Africa. It lists the North-South conflict in Sudan and that in Liberia as successes, but expresses concern about Darfur, Ethiopia-Eritrea relations and the various conflicts in the Great Lakes region (Bush 2006:14-16). Besides political and military means, the NSS 2006 also envisages the use of economic means towards the same ends of peace, stability and democracy. It had long been the stated American policy to promote trade in general, new markets for American products and access to resources, all in line with the tradition of promoting free trade and market economy. However, the intention was not merely to reduce American resource dependency on sellers wanting to monopolise their product, but also to be able to reward states acting in accordance with US interests (Bush 2006:26-27). That means to open up markets to liberal competition and to carry through reforms both within the political and economic sectors for which the reward might be the granting of 'most favoured nation' status to states with satisfactory performance in these respects. While the United States consistently imports more from Africa than vice versa, thus accumulating a trade deficit, Africa's share of total US foreign trade remains quite insignificant, as is apparent from Table 1.

**Table 1: Africa's share of US foreign trade**

Year	US-African trade (US \$ millions)			US-World trade			Africa's share		
	Exports	Imports	Balance	Exports	Imports	Balance	Exports	Imports	Balance
1999	9 880	16 990	-7 110	695 797	1 024 616	-328 819	1.4%	1.7%	2.2%
2000	10 966	27 641	-16 675	781 918	1 218 023	-436 105	1.4%	2.3%	3.8%
2001	12 119	25 431	-13 312	729 101	1 140 998	-411 898	1.7%	2.2%	3.2%
2002	10 663	22 100	-11 437	693 101	1 161 366	-468 265	1.5%	1.9%	2.4%
2003	10 613	32 021	-21 408	724 771	1 257 121	-532 350	1.5%	2.5%	4.0%
2004	13 202	45 636	-32 434	814 875	1 468 705	-654 830	1.6%	3.1%	5.0%
2005	15 310	65 212	-49 902	901 082	1 673 454	-772 372	1.7%	3.9%	6.5%
2006	18 583	80 418	-61 835	1 025 968	1 853 938	-827 971	1.8%	4.3%	7.5%
2007	23 426	92 013	-68 587	1 148 199	1 956 961	-808 762	2.0%	4.7%	8.5%
2008	28 393	113 496	-85 103	1 287 442	2 103 641	-816 199	2.2%	5.4%	10.4%
2009	22 245	55 234	-32 988	957 784	1 412 494	-454 710	2.3%	3.9%	7.3%
<i>Average</i>	<i>17 540</i>	<i>57 619</i>	<i>-40 079</i>	<i>976 003</i>	<i>1 627 132</i>	<i>-651 228</i>	<i>1.9%</i>	<i>3.6%</i>	<i>6.1%</i>

Following up on the macroeconomic initiatives, the National Security Strategy also mentions that the US may have an interest in promoting the economical and

14 It should be noted that Egypt normally is not seen by the US as part of Africa, but as belonging to the Middle East.

educational development of the individual Africans. The American support in the area relates closely to American political interests in Africa, and it is assumed that states receiving support for building educational systems, or gaining 'most favoured nation' status, or beneficiaries of free trade agreements will reciprocate by supporting the United States as a kind of *quid pro quo*.

## The Africa Command (AFRICOM)

The NSS 2006 presumably formed the general geopolitical background for the launch of AFRICOM in 2007, to which we shall now turn, commencing with a brief look at its predecessors.

AFRICOM is not the first US military initiative for Africa.<sup>15</sup> In the late nineties, the US embarked upon an institutionalised and multilateral collaboration with selected African countries, initially under the auspices of an African Crisis Response Force (ACRF), which was combined with the African Crisis Response Initiative (ACRI), the main focus being the training of African armed forces for peace support operations (Bah & Aning 2008; Frazer 1997; Henk & Metz 1997; Howe 2001; Omach 2000). After the transition from the Clinton to the Bush administration, ACRI was replaced by a so-called Africa Contingency Operations Training and Assistance (ACOTA) programme, which, in 2004, was subsumed under a Global Peace Operations Initiative (GPOI) (Franke 2007; Handy 2003; Pham 2008, especially p. 264). Interestingly a large part of the implementation of these initiatives have been outsourced to private military companies, such as the MPRI (Military Professional Resources Incorporated) or DynCorp (Aning, Jaye & Atyobi 2008).

Especially the northern and north-eastern parts of the continent have seen direct US military action as well as permanent military deployments, albeit on a modest scale. Most of these deployments, for instance in Somalia, have been undertaken under the auspices of Operation Enduring Freedom (OEF), as has been the case of the operations in Iraq and Afghanistan. A so-called Operation Enduring Freedom-Horn of Africa (OEF-HOA) and a companion Combined Joint Task Force-Horn of Africa (CJTF-HOA) have been formed, both with their operational headquarters in the former French colony Djibouti. The EACTI (East Africa Counter-Terrorism Initiative), an organisational framework covering largely the same geographical area, has been subsumed under a so-called Trans-Sahara Counter-Terrorism Initiative (TSCTI), which also includes what used to be the Pan-Sahel Initiative (PSI) (Cline 2007; Copson 2007:116-125; Ellis 2004; Lecocq & Schrijver 2007).

It is envisaged that AFRICOM will gradually become the general framework for initiatives and programmes such as those mentioned above, but it has remained, by the time of writing (January 2010), work in progress (Burgess, 2009; Forest & Crispin, 2009; Henk, 2009). The stated tasks which have been mentioned of

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15 A good overview is Lake and Whitman (2006).

AFRICOM so far, can be divided into two general tasks: current operations and *ad hoc* tasks, and tasks that are planned for and can be initiated upon request. AFRICOM must be staffed to handle current operations and to plan for future possible operations. The current operations are:

- Capacity building of African security forces.
- Support for stabilisation and reconstruction tasks.
- Support for security sector reform, including promotion of military professionalism in the sense of Samuel Huntington (1957:80-85) and Morris Janowitz (1960).
- Support for the struggle against HIV/AIDS.
- Humanitarian operations and support for disaster management.
- Bilateral military cooperation.

The tasks that AFRICOM is supposed to plan for and command, but that cannot be considered current operations are:

- Non-combatant evacuation operations.
- Support operations.
- The War on Terror.
- General planning of military operations and ability to implement these.

The official papers on AFRICOM underline that AFRICOM it not envisaged to solve the above tasks on its own, but should rather be one element of a balanced approach along with the Department of State and USAID. It remains to be seen how the Department of Defence will be able to co-operate with two government agencies that are considerably smaller, both in terms of personnel and financial resources.<sup>16</sup> Events during 2009 indicate that it is not easy to run up such a newly styled combatant command and presently only half of the intended civilian positions have been filled (Schmitt 2009). It also seems that the marketing strategy for AFRICOM has somewhat oversold the product. However fine a product it may be, it has been advertised to Africans and African partners as a truly co-operative and humanitarian product, while references to the 'sharp end' of AFRICOM have been kept to a minimum. This may actually be a pity, because quite a few African states would in fact welcome a greater US willingness to provide some muscle, and tend to become disappointed when they realise that the world's strongest military power has little to offer besides friendship and engagement. Among Africa analysts, on the other hand, there is a clearly discernable unease with AFRICOM and widespread

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16 USAID has around 3 000 American employees and around 5 000 locally recruited employees and distributes, together with the Department of State, development aid worth some 29 billion dollars. The Department of State has around 19 000 employees and around 31 000 locally recruited employees. US Department of Defence has in comparison around 1.3 million employees and a budget of some 441 billion dollars.

fears that it may evolve into a springboard for renewed American interventionism on the continent and a militarisation of US-African relations (Berman 2009; Dunn 2009; Menkhaus 2009; Nathan 2009; N'Diaye & Africa 2009).

## Geostrategic readings of the NSS 2006 and AFRICOM

We shall conclude by interpreting both the NSS 2006 and AFRICOM in the light of the three geopolitical and geostrategic theories with which we began.

Viewed from a Mahanian perspective, the fact that NSS 2006 presents a picture of an Africa that is becoming more important to the US is not particularly surprising, considering that Mahan saw it as a permanent interest of the US to ensure free access to the world's markets, both by promoting free trade and by keeping sea lanes of communication open (Sumida 1999:50). While Africa may not be a major trading partner yet, many economies in Africa are in fact improving,<sup>17</sup> implying that their importance as export markets is likely to increase in the years to come. It is also worth noting that Mahan wrote his theses when the United States was a rising power (Sumida 1999:50), whereas countries such as China and India are today in a similar position. This implies that the US may want to secure its position on the African continent before its future rivals, with similar interests in the continent, close it off as a US export market. The primary US interest, however, is the access to oil and other mineral resources, and it has increased its imports of these commodities from Africa quite substantially over the last decade, also with a view to reducing its dependency on the supply from the Middle East (Copson 2007:115-116).

This suggests that over the coming years Africa is likely to acquire a higher geostrategic importance for the US, which is why the US, in the Mahanian perspective, would be well advised to closely monitor developments in those parts of Africa where the most significant potential suppliers and trading partner are situated. It also suggests that it would be premature for the US to embark on any major efforts yet. Seen in this context, AFRICOM should be considered as a kind of skeleton organisation, the main rationale of which is to provide knowledge and intelligence and a readiness for having assigned expanded or changed tasks.

Mahan's emphasis on open sea lanes and a large fleet to protect these (Hattendorff 1991:40-41, 284-288) is also relevant for US-African relations, considering that sea transport still stands for around 90% of all the world's imports and exports, including those of the United States, and that a substantial part of this passes by the African continent. Hence, it is only natural that the main US interests lie in the areas around the Red Sea, the Horn of Africa, and the Bay of Guinea as well as along the Mediterranean coastline of North Africa. It is indeed in these parts of Africa that the US is most active today, both in terms of capacity building and actual military operations, and we should expect AFRICOM to maintain this geographical focus in the years to come. Still, Africa is merely one among several

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17 Around twenty states in Africa have for the last five to six years generated annual growth rates of around 5%.



geographical areas and not even a vital one yet, and seen from the vantage point of Mahanian theory there is no reason to expect this to change in the near future.

Seen from Brzezinski's (Mackinderian) perspective there simply are no significant geostrategic actors or pivots in Africa, which remains part of the periphery. He hardly mentions Africa in any of his theses, and focuses mainly on Europe and Asia. For a major geostrategic actor such as the United States, a focus of attention on access to resources is quite natural, but according to Brzezinski this should preferably coincide with where the main political interests are, such as on the Eurasian landmass. Africa should thus remain a 'sideshow' where the US may acquire, at low cost, access to additional resources in order to diversify its imports – but in the final analysis it is preferable to allow adversaries access to resources in Africa if this could make it easier for the US to pursue its ambitions on the Eurasian landmass. Hence, with Eurasia maintaining its paramount importance, the main US interests in Africa would be to maintain the *status quo* in terms of its own role and influence. As other geostrategic actors, like India, China and the EU, are becoming increasingly active on the continent, there may be a need for a somewhat higher engagement within certain defined areas, primarily the fight against HIV/AIDS and the War on Terror (Copson 2007:16).

As a periphery to the all-important Eurasian landmass, Africa may be an area for proxy conflicts – either of a military, economic or political nature – with a view to reducing an adversary's influence on the Eurasian landmass, if and only if the US foothold in Europe or the rim of Asia might be threatened from here. Currently, the threat against the US position in Europe remains low, even though there are signs that Europe may be threatened by transnational terrorism originating in Africa or the Middle East. Hence, the US would be wise to offer its services in this field, despite Europeans not always agreeing with the American approach to fighting terrorism.

Likewise, it cannot be ruled out that a political or economical controversy with China might have repercussions for East Asia and the US foothold there, implying a need, according to Brzezinski, for China and the US to accept and respect each other's geostrategic interests (Brzezinski 1997b:195). Considering that China has for the last seven to eight years exhibited a growing geostrategic interests in Africa and seems to be quite determined in expanding its political and economic influence (Alden 2005, especially pp. 148-152), it would be imprudent to seek to counter this in any major war, and wiser for the US to focus its attention on maintaining the geostrategic status quo on the Eurasian landmass. While AFRICOM would thus have a role to play in protecting the European allies against terrorism, it is only prudent to maintain rather modest and inconspicuous military components whilst retaining its large civilian elements.

According to Barnett's geopolitical theory, an appropriate national security strategy for the United States should be to reward those states in the Gap that open their economies to the forces of the market and make their resources available on market conditions (Barnett 2004:305). This is viewed as the first step upwards from the Gap and is certainly compatible with the NSS 2006 with its stated intention to continue "to promote the opportunities of increased trade to sub-Saharan Africa

through the African Growth and Opportunity Act (AGOA)” (Bush 2006:26). Even though only few free trade agreements have yet been concluded with African states, US imports from the continent have in fact grown and significantly surpass its exports as shown in Table 1.

Barnett predicts that it is likely to take sub-Saharan Africa longer than most other regions to escape the Gap and join the Core of functioning states (Barnett 2004:382), and therefore advises the United States to focus its attention on supporting economies that are already on the right track. Barnett maintains that this should be combined with support for democratic reforms and for reducing pandemic diseases – especially those which may threaten the Core – and with a rather low-key military presence. What may, in his analysis, force the US to intervene militarily in Africa is, somewhat paradoxically, a success in its fight against terrorism in the Middle East (Barnett 2004:382), which may make relatively ungoverned territories in African states more attractive to international terrorist networks such as Al-Qaeda. Such a shift of focus in the fight against terrorism is also mentioned quite explicitly in the NSS 2006:

Weak and impoverished states and ungoverned areas are not only a threat to their people and a burden on regional economies, but are also susceptible to exploitation by terrorists, tyrants, and international criminals. We will work to bolster threatened states, provide relief in times of crisis, and build capacity in developing states to increase their progress. (Bush 2006:33)

Others have, however, warned the United States against potential incompatibilities between building functioning states (in the role as ‘external Leviathan’) and using military means pre-emptively for fighting prospective terrorists, since a too ‘muscular’ approach to the latter may sow mistrust about US intentions (Quaranto, 2008).

## Conclusion

The three geopolitical/geostrategic analyses offer different perspectives on Africa’s importance to the US.

From a Mahanian vantage point, we should expect Africa to become increasingly important in the coming years, especially if important sea lanes are obstructed which will force the US to react. This makes it desirable to possess a certain presence on the continent that could be boosted if the need arises – for which AFRICOM may provide a suitable framework. From the vantage point of Brzezinski, on the other hand, Africa will remain peripheral and mainly of interest in so far as it may impact the Eurasian landmass and the US foothold there, which is not at all likely. The limited promises that Africa may hold for the US have mainly to do with the gradual diversification of the available resource pool. From the angle of a more modern geopolitical theorist, such as Barnett, there are prospects for lifting at least some African states out of the Gap and into the Core which are worth exploring – only not just yet, as the US is too heavily engaged elsewhere. In due course, however, US success in the War on Terror in the Greater Middle East may both free US resources, thus making it possible to devote more of them to Africa, and make

such a shift of focus necessary lest international terrorism relocates to Africa. If it is viewed primarily as a cadre or framework for a potentially more substantial US military presence, AFRICOM may be what is required.

We may thus view AFRICOM as part of a sideshow in the great geopolitical and strategic game, where the US is primarily engaged in 'low politics,' but where there is nevertheless a need for a military component. Hence, AFRICOM is likely to remain and will continue to be atypical, by US military standards. There will only be few sub-units under the full command of AFRICOM,<sup>18</sup> and units will mainly be assigned to it on a case-by-case basis. We may thus expect AFRICOM to mainly use two types of soldiers: A small but effective force of 'shooters,' often Special Operations Forces, to fight terrorists and protect US citizens; and a small force dedicated to provide training and education to African security forces.

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18 So far Combined Joint Task Force Horn of Africa (CJTF HoA) (ca. 1500 pax), 17th Air Force, Marine Corps Forces Africa, US Army Africa are assigned as sub units. However, it is only CJTF HoA og 17th Air Force which dispose of real units. US Navy Europe supports AFRICOM.

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# UNITED NATIONS PEACEKEEPING OPERATIONS IN AFRICA

Reflections on Developments,  
Trends and the Way Forward

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## **Introduction**

Post-Cold War turbulence between 1990 and 1994 led to huge international peacekeeping operations. Troop strength burgeoned from about 12 000 to well over 70 000, with costs over this period escalating six-fold from half a billion dollars to over three billion. In this regard, United Nations (UN) peacekeeping operations swiftly moved from traditional military peacekeeping tasks to multi-dimensional operations in disintegrating and 'failed states'. The situations in Bosnia-Herzegovina and Somalia especially gave a new role to peacekeeping forces. In both the former Yugoslavia and in Somalia, combat conditions, combined with hostility towards the UN from at least one of the parties, led to the partial or limited use of enforcement action (Riza 1995:18).

However, the UN's record since 1993 shows stark evidence of a reluctance on the part of the UN Security Council to become involved in conflicts in Africa since the events in Somalia that resulted in the deaths of 18 US troops. Against this background, it was often argued that the UN Security Council had been lax in carrying out its mandated duty to maintain international peace and security in general and in Africa in particular. In 1993, the time of the UN's involvement in Somalia, UN peacekeeping forces in Africa numbered almost 40 000. By June 1999, these had dwindled to less than 1 600. It is also interesting to note that while there were seven concurrent UN peacekeeping operations on the African continent in 1993, in June 1999 there were only three (Berman & Sams 2000:4-5). In fact, the UN Security Council had reduced its commitment to peacekeeping although the

need for such operations had grown significantly. In the words of Berman and Sams: “At a time of growing challenges to African peace and security, UN peacekeepers are either conspicuously absent from the region or, if present, have had their roles substantially marginalised” (Berman & Sams 2000:4-36).

In recent times, a record number of uniformed and civilian peacekeepers – about 113 000 in 2008 (UN Department of Peacekeeping Operations 2008) – maintained stability in several conflict-stricken states across the globe. In comparative historical context, the figure for uniformed peacekeepers (military personnel, police officials and military observers) stood at 78 444 in July 1993, and after reaching a low towards the end of the 1990s, was gradually boosted to reach 90 883 in January 2008. As far as Africa is concerned, this included large-scale multi-dimensional peacekeeping operations in the Democratic Republic of Congo (DRC), Liberia, Sudan (two operations) and Côte d’Ivoire. Moreover, of the 20 peacekeeping operations administered worldwide by the UN Department of Peacekeeping Operations in the international community on 1 April 2008, ten were in Africa. The question arises: What does this imply or signify in terms of the current position of the UN to contribute meaningfully to peacekeeping operations in Africa? Furthermore, what about the (complementary) role and potential contributions of important African role-players such as the African Union (AU) and the envisaged African Standby Force?

This paper aims to provide a better understanding of UN peacekeeping operations with special reference to African peacekeeping challenges. Specifically, the UN’s completed and current peacekeeping operations as well as the main troop-contributing nations are reviewed. Furthermore, the discussion will focus on Africa’s contemporary peacekeeping requirements in the context of current international peacekeeping trends and related developments on the African continent. The paper will therefore focus on the establishment of the United Nations-African Union Mission in Darfur (UNAMID) as a joint or hybrid peacekeeping operation against the background of the emergence of new co-operative security arrangements in the field of African peacekeeping; and the need to work towards sustainable partnerships between the UN (as a global international organisation) and the AU (as a regional international organisation) within the paradigm of burden sharing and hybridisation.

### **Profile of contemporary UN peacekeeping operations: 2008/2009**

In January 2008, the challenges and the numbers of UN peacekeepers were unprecedented: 20 UN peacekeeping operations were administered on four continents. The budget for peacekeeping also escalated to about \$7 billion over the period 2007-2008. Furthermore, Africa was clearly the major arena for UN peacekeeping operations: An analysis shows that of the 20 peacekeeping operations administered by the UN Department of Peacekeeping Operations on 1 April 2008, ten were in Africa (UN Department of Peacekeeping Operations 2008). This explains why over 70% of the approximately 90 000 uniformed peacekeepers deployed in 2008 could be found on African soil. The focus on Africa was also

reflected in the fact that the bulk of the UN's peacekeeping budget of nearly \$7 billion was budgeted for African peacekeeping operations. Worldwide, the following missions were deployed on 31 December 2008 (UN Department of Peacekeeping Operations 2009a):

**Table 1: UN peacekeeping missions deployed in Africa: 31 December 2008**

Africa	
UN Mission for the Referendum in Western Sahara (MINURSO)	Apr 1991-
UN Organisation Mission in the DRC (MONUC)	Dec 1999-
UN Mission in Liberia (UNMIL)	Sept 2003-
UN Operation in Côte d'Ivoire (UNOCI)	Apr 2004-
UN Mission in Sudan (UNMIS)	Mar 2005-
UN Mission in the CAR and Chad (MINURCAT)	Sept 2007-
UN Integrated Office in Burundi (BINUB)*	Jan 2007-
AU/UN Hybrid Operation in Darfur (UNAMID)	July 2007-
Asia and the Pacific	
UN Military Observer Group in India and Pakistan (UNMOGIP)	Jan 1949-
UN Assistance Mission in Afghanistan (UNAMA)*	March 2002-
UN Integrated Mission in Timor-Leste (UNMIT)	Aug 2006-
Europe	
UN Peacekeeping Force in Cyprus (UNFICYP)	Mar 1964-
UN Observer Mission in Georgia (UNOMIG)	Aug 1993-
UN Interim Administration Mission in Kosovo (UNMIK)	June 1999-
Middle East	
UN Truce Supervision Organisation [Jerusalem] (UNTSO)	June 1948-
UN Disengagement Force [Syrian Golan Heights] (UNDOF)	June 1974-
UN Interim Force in Lebanon (UNIFIL)	Mar 1978-
Americas	
UN Stabilisation Mission in Haiti (MINISTAH)	June 2004-

\* political or peacebuilding mission

An analysis of the strength of the above missions indicates the following in terms of uniformed personnel deployed by the UN on 31 December 2008 as regards missions with a strength of 1 000 uniformed peacekeepers and beyond (UN Department of Peacekeeping Operations 2009a):

**Table 2: Uniformed peacekeepers deployed in UN missions (1 000 or more):  
31 December 2008**

Peacekeeping operation	Strength
MONUC (DRC)	18 422
UNAMID (Darfur – Sudan)	15 136
UNIFIL (Lebanon)	12 341
UNMIL (Liberia)	11 553
UNMIS (Sudan)	10 025
UNOCI (Côte d'Ivoire)	9 190
MINUSTAH (Haiti)	9 089
UNMIT (Timor-Leste)	1 550
UNDOF (Syrian Golan Heights)	1 093

A total of 91 436 uniformed UN peacekeepers (including military personnel, police officials and military observers) were deployed on 31 January 2009 (UN Department of Peacekeeping Operations 2009a). This means that there had been a steady increase in the numbers of uniformed personnel in UN peacekeeping operations since the beginning of the decade. Furthermore, where the UN's peacekeeping budget was decreased towards the end of the 1990s, reaching \$1 billion in 1998, it was increased (again) in 1999-2000 and reached nearly \$3 billion in the budgetary cycle of 1 July 2000 to 30 June 2001 (UN Department of Peacekeeping Operations 2001a). More recently, this figure stood at nearly \$7 billion for the period 1 July 2007 to 30 June 2008 (UN Department of Peacekeeping Operations 2008), with an approved budget of over \$7 billion for the period 1 July 2008 to 30 June 2009 – figures that accord with increased international peacekeeping commitments. As far as Africa goes, more than \$2.7 billion of the 2008-2009 budget was destined for Darfur and the DRC alone (UN Department of Peacekeeping Operations 2009a). It is thus evident that conflict in Africa required considerable attention from the UN Department of Peacekeeping with over 65 000 uniformed peacekeepers currently deployed to African conflict situations, which represents the majority of uniformed UN peacekeeping personnel (UN Department of Peacekeeping Operations 2009a).

### **African peacekeeping requirements in international context**

If Africa's position is considered in the international context, it should be noted that the increase in troop contributions to the UN in the early 1990s was mainly the result of developed countries contributing troops to peacekeeping operations. At the beginning of 1991, only two of the top ten contributors to UN peacekeeping operations were developing countries, namely Ghana and Nepal. By 28 February 2001, the overwhelming majority of the top ten contributors of uniformed personnel to UN peacekeeping operations worldwide were developing countries – three of them were African states, namely Nigeria, Kenya and Ghana.

(UN Department of Peacekeeping Operations 2001c). In this regard, the UN's profile of contributions to UN peacekeeping operations indicates the following as regards the top ten positions (UN Department of Peacekeeping Operations 2001b):

**Table 3: Contributions to UN peacekeeping operations: 28 February 2001**

Country	Observers	Police	Troops	Total
<i>Nigeria</i>	26	205	3 320	3 551
<i>Bangladesh</i>	53	169	3 318	3 540
<i>Jordan</i>	29	838	1 863	2 730
<i>Kenya</i>	36	62	1 930	2 028
<i>Ghana</i>	31	29	1 629	1 950
<i>Australia</i>	26	120	1 649	1 795
<i>India</i>	25	620	796	1 441
<i>Ukraine</i>	12	230	1 177	1 419
<i>Pakistan</i>	60	391	872	1 323
<i>Poland</i>	26	175	989	1 190

By comparison, contributions from the five permanent members of the UN Security Council were as follows:

**Table 4: Uniformed personnel contribution from the five permanent members of the UN Security Council: 28 February 2001**

Country	Observers	Police	Troops	Total
<i>United States</i>	42	827	1	870
<i>United Kingdom</i>	43	227	327	597
<i>France</i>	43	189	268	500
<i>Russian Federation</i>	73	126	109	308
<i>China</i>	42	60	0	102

Figure 1 illustrates the situation regarding contributions to UN peacekeeping operations as at 2001.

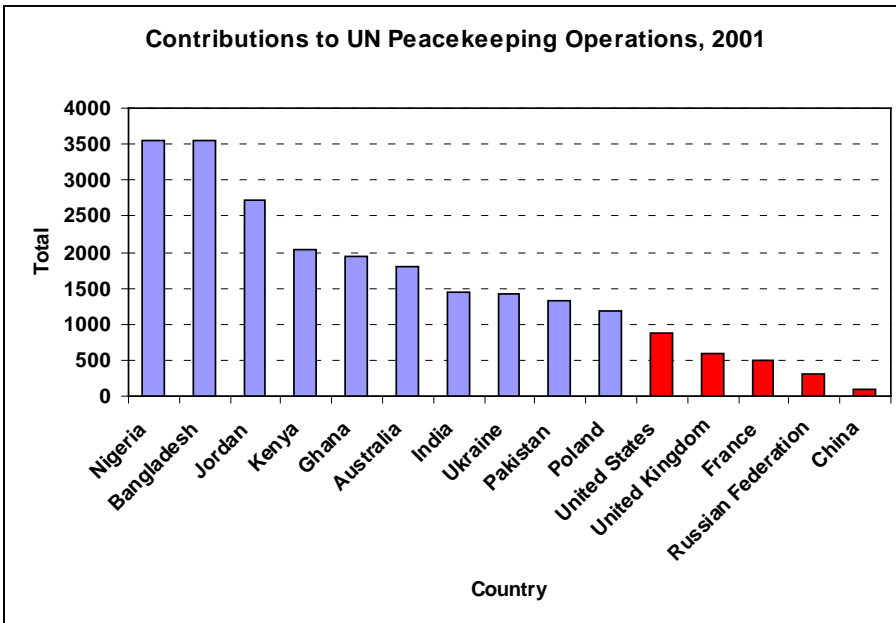


Figure 1: Contributions to UN peacekeeping operations: February 2001

Interestingly, in 1993 France was the largest contributor to UN peacekeeping operations with around 6 000 troops, while the United Kingdom’s contribution had increased five-fold since the end of the Cold War to 3 700 (Kemp 1993:26). Today a different picture emerges.

The profile of the top ten contributors to UN peacekeeping operations on 31 January 2009 indicates the following (UN Department of Peacekeeping Operations 2009b):

Table 5: The top ten contributions to UN peacekeeping operations: 31 January 2009

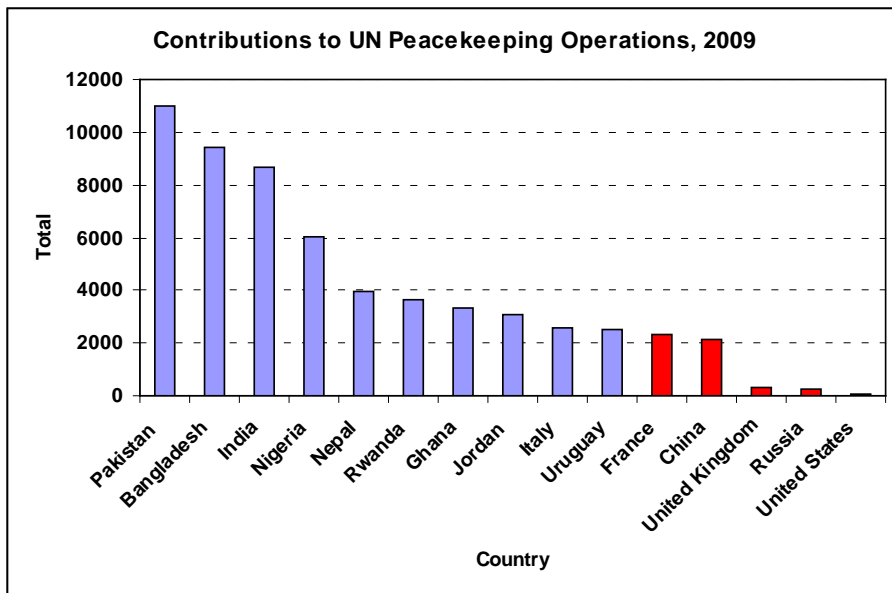
Country	Observers	Police	Troops	Total
<i>Pakistan</i>	126	686	10 177	10 989
<i>Bangladesh</i>	109	959	8 356	9 424
<i>India</i>	84	600	7 956	8 640
<i>Nigeria</i>	90	919	4 992	6 001
<i>Nepal</i>	60	809	3 055	3 942
<i>Rwanda</i>	22	116	3 497	3 653
<i>Ghana</i>	69	607	2 636	3 312
<i>Jordan</i>	65	1 050	1 994	3 109
<i>Italy</i>	20	22	2 523	2 565
<i>Uruguay</i>	65	17	2 456	2 538

By comparison, contributions from the five permanent members of the UN Security Council were as follows:

**Table 6: Contributions of the five permanent members of the Security Council: 31 January 2009**

Country	Observers	Police	Troops	Total
<i>France</i>	25	108	2 175	2 308
<i>China</i>	53	201	1 892	2 146
<i>United Kingdom</i>	11	1	282	294
<i>Russia</i>	75	59	121	255
<i>United States</i>	11	71	8	90

Figure 2 illustrates the situation regarding contributions to UN peacekeeping operations as at 31 January 2009.



**Figure 2: Contributions to UN peacekeeping operations: 31 January 2009**

In January 2009, the overwhelming majority of the top ten contributors of uniformed personnel to UN peacekeeping operations worldwide were still developing states – with African states (still) taking three of the top positions, namely Nigeria, Rwanda and Ghana. It should further be noted that quite a number of other African states also contributed substantial numbers (more than 1 000)



of uniformed personnel to UN peacekeeping operations in recent times, namely Ethiopia, Egypt, South Africa, Senegal and Morocco. As far as the five permanent members of the UN Security Council are concerned, only China and France made any significant contributions to UN peacekeeping operations (UN Department of Peacekeeping Operations 2009b). It should also be noted that the US, Japan and European countries mainly bear the cost of UN peacekeeping operations – more than \$5 billion a year. While the US has made significant financial contributions to the UN, the US does not send military forces for use in UN peacekeeping operations, as it is not politically or militarily acceptable for US military personnel to serve under another country's military command (Paterson 2008).

The above-mentioned figures disguise some additional peacekeeping contributions by African states. Between 2003 and 2007 the AU undertook two major peacekeeping operations in Burundi and Darfur (Sudan) - operations that involved some 10 000 peacekeepers. In addition, the AU and African troop-contributing countries started to play more important roles in UN peacekeeping operations on the continent with specific reference to the establishment of hybrid UN-AU operations in African conflict theatres, specifically in Burundi and Darfur. This begs the question: Does this imply that African role-players and troop-contributing countries are now able to take charge of peacekeeping challenges on the continent, and what does it imply in terms of the future role of the UN in Africa? Some further thoughts in this regard are explored in the following section.

### **New co-operative security arrangements in African peacekeeping**

On 31 October 2007, the UN Under-Secretary-General for peacekeeping, Jean-Marie Guéhenno, stated in an address to the Fourth Committee of the UN General Assembly that the year 2007 had been a momentous year for UN peacekeeping. Opening the Committee's comprehensive review of the question of peacekeeping operations in all their aspects, he stated that the UN Department of Peacekeeping had initiated a major reform of the support aspects of peacekeeping, and had begun mounting two new, highly unique and complex operations in Darfur (Sudan) and Chad/Central African Republic, while supporting 18 other operations.

Mr Guéhenno stated that these two operations (Darfur and Chad/Central African Republic) would be deployed almost to the centre of Africa over extended supply lines in inhospitable terrain and that nowhere were the risks more apparent than in Darfur. The operation in Darfur – the United Nations-African Union Mission in Darfur (UNAMID) – “carried the greatest risk in the past ten years of peacekeeping and it was imperative that the United Nations rose collectively to meet the challenges, or it would fail”. With regard to peacekeeping in Chad/Central Africa, Mr Guéhenno explained that the UN Mission in the Central African Republic and Chad (MINURCAT) would be deployed in close concert with the European Union (EU). Both these hybrid operations, he stressed, called for intensive collaboration with partner organisations and would thus be very challenging. In view of this, he also underscored the unprecedented scale and complexity of contemporary peacekeeping operations, and stated that the trend

in peacekeeping over the last number of years increased in scope, complexity and size. In this regard, it was pointed out that a record number of men and women in the field were deployed worldwide, operating within a budget of nearly \$7 billion (UN Department of Public Information 2007).

As far as EU involvement in African peacekeeping is concerned, the European Union Force (EUFOR) began “its most ambitious military operation to date” when it deployed a mission to Chad and the Central African Republic in February 2008. EUFOR received a mandate under UN Security Council Resolution 1778 of 2007, namely to protect civilians in danger, particularly refugees and internally displaced persons, of whom there were almost 500 000 in camps in the eastern parts of the country; to facilitate the delivery of humanitarian aid and the free movement of NGO personnel; and to contribute to the protection of UN personnel facilities, installations and equipment. The idea was to complement the work of MINURCAT and the ongoing peace process between Chad and Sudan (International Institute for Strategic Studies 2008:1).

The establishment of UNAMID is likewise of great significance and interest. Cilliers rightly argues that African peacekeeping will at some point have to be placed on a more sustainable basis. In this regard, he asserts that more can and should be done between the UN and the AU in pursuit of an integrated system that will play a meaningful part in keeping peace on the African continent (Cilliers 2008:18-19). The establishment of UNAMID should furthermore be viewed as one of the most significant of recent efforts in the field of security co-operation and hybrid arrangements involving combinations of both regional and global powers, namely, the UN and continental bodies, such as the EU and the AU (Othieno & Samasuwo 2007).

New security co-operation arrangements are, of course, not new phenomena in the African context, but can be traced back to UN-African co-operation in the 1990s. In the case of peace intervention in Liberia, for instance, the actual peacekeeping was done by the Economic Community of West African States (ECOWAS), while the UN mission was deployed to observe and monitor the process. The history of ECOWAS peace intervention operations in Liberia – and similarly in Sierra Leone – has been extensively analysed in scholarly literature and will not be covered here. Suffice it to state that ECOWAS’ intervention action set the precedent for devolving peacekeeping responsibilities to African regional role-players (Othieno & Samasuwo 2007).

More recently, peace intervention action in Burundi presented a particularly interesting and relevant case of burden sharing and hybridisation. Following a formal decision by the AU to deploy the African Mission in Burundi (AMIB) in February 2003 (UN Secretary General 2003:5-6), the main aim of AMIB was to safeguard the cantonment areas and to provide technical assistance to the disarmament and demobilisation process (Boshoff 2003:3). AMIB has been described as being somewhere between a traditional peacekeeping and a complex multi-dimensional peacekeeping operation as it operated in a complex mission environment with a peacekeeping mandate. Although it did not perform any of the multi-dimensional

civilian functions typically associated with a complex peacekeeping operation, it provided the security dimension alongside a UN political office in Burundi, similar to the UN Mission in Kosovo (UNMIK). Thus, its functions matched the hybrid operation model where a multi-national force provided the security presence alongside a UN civilian presence (De Coning 2004:21-22).

AMIB was affected by considerable challenges at both the strategic and operational levels. The mission's logistical sustainment and funding were problematic, owing to the lack of substantive support from relevant African and international role-players. Mindful of these points, Agoagye asserts that in terms of its own parameters, AMIB cannot be said to have fully facilitated the implementation of the ceasefire agreements, nor was it able to fully ensure that the defence and security situation in Burundi was generally stable and well managed by the newly created national defence and security structures. The mission was also unable to fully support the disarmament and demobilisation process and advise on the reintegration of ex-combatants. Yet, AMIB should be credited with efforts towards the stabilisation of large parts of the country. In this way, AMIB was able to assist in the implementation of the ceasefire agreements and – to its credit – contributed to the creation of conditions suitable to the deployment of the United Nations Operation in Burundi (ONUB) on 1 June 2004 (Agoagye 2004:14) – a considerably stronger force than AMIB that expanded to a total of 4 656 peacekeepers from 45 countries by February 2006 (The Henry L Stimson Center 2007).

According to De Coning, the practice whereby the AU deployed AMIB in 2003 followed by a UN mission (ONUB) in 2004, seems to point towards a readiness on the part of African regional organisations to contribute towards stabilisation operations, especially when African role-players have been involved in brokering a ceasefire, and then feel obliged to build on that momentum (De Coning 2006:6-7). De Coning writes:

One of the most significant developments in the African context is the formal division of roles that has emerged around the sequencing of peace operations. The pattern that is taking shape is that the AU, or one of the RECs (regional economic communities), first deploys as a stabilisation operation, followed by a UN complex peacekeeping operation within approximately 90 to 120 days. (De Coning 2006:6)

This division of labour between the UN and regional organisations seems to play into the strengths and compensate for the weaknesses of both types of organisations. The UN is relatively slow to respond to crises on the African continent. The regional organisations are not swift either, but they seem to be in a position to deploy somewhat faster than the UN (De Coning 2004:22-23). It should therefore be understood that AMIB was basically a holding operation pending the deployment of a UN Security Council-mandated peacekeeping mission (Agoagye 2004:13). In Burundi (as in the case of Liberia in the late 1990s), the troops contributed by African countries remained behind after a so-called rehatting process – from green berets to blue berets – to form the core of the UN peacekeeping force (De Coning 2004:23).

Yet Berman and Sams remarked in an earlier work that African political and security organisations have relatively few resources and have furthermore encountered obstacles in filling the void created by UN Security Council inaction. While it is important to note that African regional organisations have recognised the need to take primary responsibility for responding to crises and armed conflict, “their political will far surpasses their peacekeeping capabilities” (Berman & Sams 2000:41). This will be further explored in the next section – with specific reference to peacekeeping in Darfur.

### Hybridisation in Darfur: The case of UNAMID

Othieno and Samasuwo defines security co-operation as a situation where two or more entities come together and merge their resources and expertise while simultaneously distributing and sharing the costs and tasks of implementing a particular security operation. In this context, hybridisation is a form of security co-operation that takes the latter further in that these entities may come together under a single or joint command in addressing a common issue (Othieno & Samasuwo 2007), as is the case with UNAMID in Darfur where the UN and the AU have been tasked with a particular role.

Peace intervention in Darfur posed a much greater political and military challenge to African role players and the international community than as was the case of Burundi. The AU established the AU Mission in Sudan (AMIS) initially as a 120-person Ceasefire Monitoring Commission and with more than 5 000 AU peacekeepers. The numbers of peacekeepers grew to about 7 000 in September 2005 (Sharamo 2006:51), but AMIS never really succeeded in bringing security to war-torn Darfur province.

It became clear that the AU deployment to Darfur, “the first significant test of AU forces, has been a failure” (Paterson 2008). The following observations capture much of what was generally observed and widely remarked about AMIS. *The Global Policy Forum* stated that AMIS had been left under-manned, poorly funded and ill-equipped to respond to the rapidly deteriorating conflict (Global Policy Forum 2007). Another NGO, *Refugees International*, likewise reported, that “... AMIS’ shortcomings have come into full focus. AMIS does not have the ability or the resources to carry out its job of monitoring a ceasefire that is widely and regularly violated by all sides in an escalating conflict” (Refugees International 2005). Even where funding was provided, AMIS did not have the logistical infrastructure to handle and manage bulk and urgent purchases worth millions of dollars (Appiah-Mensah 2006:1). Media coverage became progressively critical and the cash-strapped AU mission in Sudan came under pressure to hand over its Darfur operations to the UN.

However, Sudanese President Omar al-Bashir and his government vowed that the regime would maintain its opposition to a UN peacekeeping force for Darfur. In the meantime, insecurity remained the order of the day in much of the Darfur area. In June 2007, after much political arm-twisting in Khartoum, President al-Bashir

and the Sudanese government consented to the establishment of UNAMID as a joint or hybrid UN-AU peacekeeping force with a personnel strength of 26 000 to be deployed to Darfur. Practically, this represented a significant development in African peacekeeping as UNAMID was supposed to become one of the largest UN peacekeeping missions in history, while the UN and the AU also sought to assemble a force that would represent a predominantly African character in an effort to retain both the impartiality and competency required to undertake this challenging mission (UN Department of Peacekeeping Operations 2008; UN Department of Public Information 2007).

UN Security Council Resolution 1769 of 2007 called for the creation of an UN-AU hybrid force that would replace AMIS with UNAMID. This came in response to earlier reservations from states such as China, Russia and Qatar (all states that maintain strong economic links with Sudan) that a 22 000-strong UN force would be tantamount to a violation of Sudanese sovereignty. Resolution 1769 further authorised a force that would incorporate AMIS personnel and consist of up to 19 555 military personnel, including 360 military observers and liaison officers, and a civilian component including up to 3 772 police personnel and 19 police units comprising up to 140 personnel each (UN Security Council 2007:3).

The UN Security Council, acting under Chapter VII of the UN Charter (UN Department of Peacekeeping Operations 2009d), provided in Resolution 1769 for unity of command and control, which in accordance with basic principles of peacekeeping means a single chain of command, while also allowing for command and control structures and backstopping to be provided by the UN. (UN Department of Peacekeeping Operations 2009d:4) This essentially means that the AU would run the day-to-day operations while the UN would have overall control of the mission (Othieno & Samasuwo 2007). The mission force would, as far as possible, be sourced from African countries. In this regard, countries such as Burkina Faso, Djibouti, Ethiopia, Egypt, Nigeria, Rwanda, Senegal, Tanzania and Uganda gave early indications of their interest to serve as troop-contributing countries (Kreps 2007:71).

On 31 December 2007, AU peacekeepers were formally transformed into UN peacekeepers as the former replaced their green berets with blue ones. This was an occasion which many observers and analysts viewed as a positive step toward involving UN forces in Darfur (El Ameen 2009b). The command structure reflected a strong African presence:

- Mr Rodolphe Adada from the Republic of the Congo as Joint AU-UN Special Representative;
- Major-General (ret.) Henry Anyidoho from Ghana as Deputy Joint AU-UN Special Representative;
- General Martin Luther Agwai from Nigeria as Force Commander; and
- Commissioner Michael Fryer from South Africa as Police Commissioner (UN Department of Peacekeeping Operations 2009c).

In the meantime, the Sudanese government continued to dictate some critical elements of the UN deployment, rejecting troop-contributions from Norway, Sweden and Nepal and Thailand (Paterson 2008).

UNAMID was authorised to take the field in January 2008 with a UN Chapter 7 mandate. Towards the end of November 2008, only about 12 000 of the intended 26 000 peacekeepers were deployed and some key elements of UNAMID were still not in place. Logistically, serious challenges confronted the peacekeepers. It became clear that UNAMID peacekeepers were operating in a very challenging operational environment as the UN Secretary-General admitted that it had been difficult to attract and retain staff because of the security situation and harsh living and working conditions.

Many security challenges faced the peacekeepers in the form of high levels of banditry, carjacking, military engagements and deadly attacks on UNAMID forces. UNAMID members continually faced restrictions on their freedom of movement. Governmental aerial bombardments and clashes between the Sudanese Armed Forces and armed rebel movements also continued. Furthermore, sexual and gender-based violence continued to occur, often in tandem with impunity and a lack of action from law enforcement authorities. As far as the humanitarian situation was concerned, the UN Secretary-General reported “critical humanitarian challenges” and mentioned that humanitarian aid organisations continued to struggle to maintain existing programmes and expand operations to accessible areas (UN Secretary-General 2008a:1-7).

Many observers were highly critical of the hybrid UN-AU peacekeeping mission. Barely seventeen months after UNAMID was first mandated by the UN Security Council, Tinsley, for instance, argued, “it is time for the UN to reflect on why this particular experiment has gone so very wrong.” She argued that the most obvious hindrance to UNAMID had been the lack of troops and lack of logistical support. From the start UNAMID lacked helicopters, logistics and communications equipment. “For instance, only four in nine UNAMID trucks in one area have batteries to power them. UNAMID is unable to protect itself from attacks, let alone protect civilians and humanitarian operations in Darfur” (Tinsley 2009). Tinsley also pointed towards the fact that before a single peacekeeper set foot in Darfur, the UN had conceded to al-Bashir’s demand that his government would dictate the terms of deployment. According to Tinsley, “after removing UNAMID’s teeth” by dictating the terms, Bashir then delayed the arrival of the mission by refusing to provide land for bases, stopping equipment leaving airports, delaying visas by six months or more, and randomly imposing restrictions on movement. Tinsley argued that the UN, instead of applying sanctions long before approved by the Security Council, favoured regional conflict management, which in effect implied using inexperienced and outnumbered African troops, some of whom went without remuneration for months (Tinsley 2009).

From its inception in 2007 until February 2009 a total of 25 UNAMID peacekeepers lost their lives in Darfur, comprising 16 troops, six police officials, one military observer and two local civilians (UN Department of Peacekeeping

Operations 2009c). In his report to the UN Security Council on the deployment of UNAMID, dated 10 February 2009, UN Secretary-General Ban Ki-moon stated that conditions in Darfur were characterised by a dramatic deterioration in the security situation. He also referred to an escalation in the level of violence, which signalled an investment in conflict rather than a serious commitment to peaceful negotiations (UN Secretary-General 2009:11). This should be viewed against the background of more than six years of fighting between the Government, allied militia and rebel groups that have led to the deaths of 300 000 people and the uprooting of 2.7 million people (AllAfrica.com 2009). The question is: Where does this leave UNAMID as a peacekeeping mission?

As at 31 January 2009, the total strength of UNAMID military personnel stood at 12 541. This was 64% of its mandated strength and included 11 893 troops, 387 staff officers, 181 military observers and 80 liaison officers. The strength of UNAMID police personnel stood at 2 639, representing 41% of its mandated strength. The number of civilian personnel stood at 3 129, representing 56% of its authorised capacity. All in all, that boils down to 18 300 personnel out of a (newly) mandated force strength of 31 544. The main military- and police-contributing countries were Bangladesh, China, Egypt, Ethiopia, Gambia, Ghana, Indonesia, Nepal, Nigeria, Pakistan, Rwanda, Senegal, South Africa and Zambia – thus mostly African states with the rest from states in the developing world (UN Department of Peacekeeping Operations 2009e). Despite an improvement in the strength of UNAMID early in 2009, the UN Secretary-General stressed the logistical shortcomings of the peacekeeping operation:

... the mission's actual operational impact has been limited by logistical constraints, inadequate supply of critical equipment and the continued absence of key military enabling units such as medium transport units, an aerial reconnaissance unit, a level-II hospital and 18 medium utility helicopters ... One area of particular concern relates to the readiness to deploy personnel by troop- and police-contributing countries. A wide range of contingent-owned equipment still needs to be procured by a number of these countries. In addition, personnel need to be adequately trained and prepared prior to deployment and capacity, systems and materials for maintaining contingent-owned equipment in Darfur must be in place and remain fully operational for units to sustain themselves. (UN Secretary-General 2009:1)

The Secretary-General, however, maintained that, with limited capacity at its disposal, UNAMID has nevertheless been able to make a difference on the ground. He urged that an important requirement would be to consolidate the capabilities of the troops on the ground and that the provision of outstanding equipment remained critical to increasing the mobility and operational impact of the mission (UN Secretary-General 2009:11). UNAMID's predicament and struggle was evident from the fact that it was expected to celebrate its first anniversary on 16 February 2009, but according to its spokesperson, "the celebrations have been postponed due to logistical problems for [an] undetermined date".

However, these were not UNAMID's only problems. UNAMID was under constant pressure from the Sudanese government after the prosecutor of the International Criminal Court indicated that President al-Bashir could be indicted for crimes of genocide, crimes against humanity and war crimes in Darfur. Thus, UNAMID not only suffered from a battle with shortages of resources to carry out its mandate, but also from political heat generated by the Sudanese government over a possible warrant to be issued for President al-Bashir (El Ameen 2009a).

Finally, it should be noted that the above represents only a tentative assessment of UNAMID as the mandate of this peacekeeping operation is likely to extend well into the foreseeable future. At the same time, such a preliminary assessment leads to some reflection on the challenges confronting successful hybrid arrangements, as well as consideration about the future of such arrangements in the African peacekeeping context.

### Assessment and appraisal

The case for hybridisation in the African peacekeeping environment gained significance in a broad international context in April 2005 when the North Atlantic Treaty Organisation (NATO) answered a call for assistance from the AU, providing airlift and training in conjunction with the EU until the end of the mission in December 2007. This was historical in the sense that this was the first time that NATO entertained a task on the African continent and it provides "a case to understanding regional alliances, regionalism and the development of trans-regionalism". In this regard, Segell contends that the AU has been pragmatic about its limited capabilities in many areas, and this includes the lack of experience "in being a regional alliance as well as tangible issues", such as limited airlift capability. In requesting assistance from NATO the AU clearly indicated that it is "willing to recognise its deficiencies and to ameliorate them". The assistance that NATO offered the AU provides a unique framework to develop new theories and notions about trans-regionalism as "regional alliances helping other regional alliances for peace-support operations seem likely to increase" (Segell 2008:17-18).

From the above it is clear that the nature of peacekeeping in Africa has changed somewhat in the last decade. Specifically, the manner in which peacekeeping is comprised, funded and driven has changed (Othieno & Samasuwo 2007). This should be viewed in the context of the current trend or tendency in Africa that the AU tends to deploy first in a conflict situation, opening the possibility for a UN follow-on multi-dimensional peacekeeping operation. This is likely to be the peacekeeping practice for the near future. On 19 January 2007, the AU Peace and Security Council mandated a force of 8 000 to form the African Union Mission to Somalia (AMISOM) with a view to keeping the peace in Mogadishu, after Ethiopia's invading forces, with tacit Western approval, had ousted the Islamist militias in order to sustain a shaky Somali government. On 17 November 2008, the UN Secretary-General indicated that he had requested the UN Department of Peacekeeping Operations to develop the concept of a feasible international stabilisation force for Somalia, "taking into account the presence of AMISOM". Similar to recent



peacekeeping practice, he pointed out that “[i]t would be important for the design of any multinational force to take account of existing AMISOM capacity to ensure a coherent and effective presence on the ground” (UN Secretary-General 2008b) – thereby reiterating and reinforcing a trend of greater security co-operation and hybrid arrangements variously, involving combinations of UN and regional peacekeeping instruments and resources.

It could also rightly be argued that there is an unambiguous need for both UN and regional organisations in Africa. However, as Cilliers purports, African peacekeeping will have to be placed on a more sustainable foundation. He suggests that the way forward is to push for a more integrated concept of peace and security to be developed between the AU and the UN. In fact, he asserts that more can and should be done in pursuit of an integrated system that will play a meaningful part in keeping peace on the African continent. In addition, this implies that the UN should take a leading and more forceful role in developing African peacekeeping capabilities (Cilliers 2008:18-19).

Despite the fact that the trend towards hybridisation raises more problems than previously thought (Othieno & Samasuwo 2007), this seems to be the only route for the foreseeable future as the sheer size of peacekeeping operations basically forces African role-players to accept a complementary or supportive role from partners on the continent, while the UN still has a significant role to play in peacekeeping endeavours on the African continent. Hybridisation also caters for the continuing reluctance of the UN to deploy forces in conflict theatres unless a binding and overarching peace agreement is in place. The UN further seems to accept that there are often extremely long delays in effecting the transition from an AU to a UN mission (Cilliers 2008:7-8), as had occurred in Burundi and Darfur. Practically, events have taken place in Africa that clearly suggest a trend that the AU or sub-regional organisations are the first to respond to emerging crisis situations. Such organisations undertake short robust stabilisation or peace enforcement operations, and after some time, these operations are transformed into multi-dimensional UN peacekeeping operations (De Coning 2004:22).

Hybridisation also coincides with developments since the mid-1990s regarding the fact that African states have started to play more important roles in international peacekeeping, especially in the African context. African states have progressively provided sizable contingents for UN peacekeeping operations, thereby increasing the representivity, perceived impartiality and legitimacy of such operations (Malan 1999). This does not mean, however, that the issue of troop contributions in sufficient numbers to UN peacekeeping operations does not pose serious challenges to relevant role-players. As already mentioned, some observers cited a lack of troops and insufficient logistical support as the most obvious hindrance to UNAMID (Tinsley 2009). In this context, Thobane *et al.* argue that some challenges encountered by the now defunct Organisation of African Unity (OAU) dating back to its peacekeeping operation in Chad in 1981, seem to remain challenges in the African context. Considering some of the most serious peacekeeping challenges that the AU had to deal with in Burundi and Sudan (Darfur) in recent years, it

could be said that the African continent is still battling with some of the old OAU challenges, most notably inadequate allocation of financial and logistical resources (Thobane, Neethling & Vreÿ 2007:111-112).

Having said this, it is interesting to note that the (above-mentioned) Chad peace mission, which the former OAU conducted in 1981, was first mandated to deploy 5 000 peacekeepers, but the final number deployed only amounted to about 3 000. Of the six African states that intended to contribute to the peacekeeping effort and pledged troops, only three finally managed to deploy; the rest failed because of one or more challenges. In a more contemporary context, it should be noted that three AU member states volunteered to send troops to Burundi in 2003, but only South Africa was able to deploy without immediate outside assistance. The other two contributing states, Ethiopia and Mozambique, only managed to deploy with financial and logistical backing from external role-players. In the operational area, South Africa, as the lead nation, supported the other two troop-contributing states logistically on an ongoing basis, which assisted them to sustain their effort. This was basically a replay of the Chad mission in 1981 where Benin, Togo and Guinea failed to deploy because of *inter alia* financial constraints. Like the Chad mission, AMIB also needed more peacekeepers than the numbers that were actually deployed. Such troop strengths could not be realised, because African states lacked the requisite logistical and financial support. An increment only came after the mission was taken over by the UN in 2004 (Thobane *et al.* 2007:110-111).

Since AMISOM was mandated by the AU in January 2007, only 1 600 Ugandan troops have shown up by early 2008 in accordance with the AU undertaking. Expectedly, observers were quick to contend that the AU and African countries have failed to deliver (Anon 2008:17361A-17362B). In view of the above, Baker observes that “the case of AMISOM is by no means the first time this capabilities gap has become evident. While the AU has unquestionably played an increasingly important role in peacekeeping on the continent, its responses have typically been slow, logistically creaky and, piecemeal” (Baker 2007:121). By early 2009, additional AMISOM troops were indeed deployed to Somalia, but AMISOM has very limited capabilities and is “generally accepted as a non-threatening presence insofar as it does not represent a threat to armed interests in Mogadishu” (Refugees International 2008).

The above supports expert opinion that the AU is able to muster little beyond manpower, and even this is in inadequate numbers. The AU also cannot provide logistical and armoured support for troops it is able to deploy. To this end, there are strong arguments to be made that a recapitalisation of African military forces is necessary to remedy current deficiencies. Furthermore, there is a need for major-power assistance, such as ongoing train-and-equip programmes offered by the US and European governments, which is a requirement for African military capabilities to become effective (Engelbrecht 2009). At the same time, one should be realistic about the issue of troop contributions in sufficient numbers. At one point, former US Secretary of State, Colin Powell, stated, “[i]n my mind, there would never be enough troops to impose order on this place (Darfur). The only way

to resolve this problem is for there to be a political settlement between the rebels and the government” (Paterson 2008).

Be that as it may, during a day-long session of the UN Security Council on 23 January 2009 on “a growing demand for peacekeeping operations with increasingly complex and multi-dimensional mandates and confronted with human and financial resources”, the UN Under-Secretary-General for Peacekeeping Operations, Mr Alain Le Roy, stressed that 2009 was a pivotal year for peacekeeping. UN peacekeeping was clearly overstretched, he stressed. “Today we are larger and spread more widely than ever before, with mandates that are more complex and robust than ever,” he said, also noting that a surge in peacekeeping over the past decade continued until today. In view of this, he admitted that a number of peacekeeping operations faced risks that were so significant that there was a potential for ‘operation failure’, with terrible consequences for the UN. In this regard, he asserted that even at full strength, UNAMID would continue to face daunting challenges in Darfur (UN Department of Public Information 2009). This (once again) raises the whole issue of security sector reform and true military professionalism in Africa – issues that still belong to the centre of the contemporary peacekeeping debate. There has indeed been some progress in training and equipping African armies for a peace support role since the 1990s, but peacekeeping in complex emergencies poses high stakes. The entire machinery of peace intervention (involving troops and logistics) should therefore be first rate, up to date and world class (Malan 1999) – as once again witnessed and underscored in Darfur and Somalia.

### Concluding remarks

This paper aims at providing a better understanding of UN peacekeeping operations with special reference to African peacekeeping challenges. It is clear from the above that the post-Cold War era witnessed both the changing and evolving nature of peacekeeping and the growing need for peacekeeping operations. In the African context, there are currently some great expectations of the AU being able to rapidly deploy an all-African standby force for future peacekeeping challenges. After all, this will be the realisation of a long-desired Pan-African ideal. However, the AU and its envisaged African Standby Force (ASF) cannot go it alone in providing the stability which is essential for development (Solomon & Du Rand 2006:1-2). To this end, burden-sharing arrangements between the UN and the AU will have to be in place. Other role-players, such as the EU and NATO, also seem to be willing partners and this is promising for future burden-sharing endeavours between the AU and more resourceful partners. In fact, Segell regards the recent NATO-AMIS experience as positive to the extent that additional consultations between the AU and NATO staff were conducted to identify further specific areas for NATO assistance to the ASF (Segell 2008). Williams likewise views the willingness of Western states to deploy their soldiers to African missions, rather than providing financial assistance only, as a positive development. This tends to strengthen the peacekeeping ability in the African context to conduct high-end military tasks, because of the logistical support that usually accompanies such deployment. It is

also an important barometer of Western political commitment to missions in Africa (Williams 2009). Yet, it should be clear that assistance from partners like the EU to African role-players is no guarantee or blueprint for successful and resourceful missions. EUFOR's deployment to Chad and the Central African Republic, for instance, initially scheduled for November 2007, suffered delays as EU member states faced competing demands from NATO for troops and helicopters in Afghanistan, and struggled to meet force-generation targets (International Institute for Strategic Studies 2008).

Still, hybridisation seems to be the correct approach and the appropriate paradigm for the foreseeable future as the AU is almost wholly dependent on external role-players and partners to assist in critical capacity gaps and to provide the much-needed finances. It simply needs the UN and other international role-players if the ASF would hold any promise for a more joined-up approach in African peacekeeping requirements. At the same time, Othieno and Samasuwo rightly argue that this should be viewed in terms of a critical need to establish the parameters of genuine continental and global partnerships between the UN and the AU, as well as other role-players such as EU and the US (Othieno & Samasuwo 2007). From a African point of view, this is believed to involve a strengthening of the formal linkages and exchanges between the counterpart bodies of the UN and the AU, such as the UN Security Council and the AU Peace and Security Council, the UN Secretariat and the AU Commission, the UN Department of Peacekeeping Operations and the AU Department of Field Support, and several more (UN Department of Public Information 2009).

In the final analysis, it could rightly be argued that the way forward with African peacekeeping challenges is to pursue a more integrated approach to peace and security on the continent between the two most important role-players, i.e. the UN and the AU, and that the UN needs to play a meaningful role in the future of the ASF (Cilliers 2008:19). After all, the UN remains the pre-eminent organisation responsible for international peace and security and also the most resourceful international organisation in this regard. Moreover, Africa is still arguably the most important regional setting for UN peacekeeping operations, and UN peacekeeping operations are still essential instruments for the international community in maintaining international peace and security in general and in Africa in particular.

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# A REPORT FROM THE FIELD

## A HARD PILL TO SWALLOW

Peacekeeping, Protection  
and Stabilisation in the DRC

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### Introduction

In the last forty years of the twentieth century, two key events – the departure of the colonial powers and the end of the Cold War – set the stage for an increasing number of conflicts in Africa. In one of these, in 1997, President Mobutu of Zaire was overthrown by a coalition of foreign and national forces; his successor, Laurent Kabila, then evicted his Rwandan backers, who came straight back in force. Laurent Kabila then brought in Angola, Zimbabwe and Namibia to fight the ensuing rebellions engineered by Uganda and Rwanda, through new rebel movements, the MLC (*Mouvement pur la Liberation du Congo*) and the RCD (*Rassemblement congolais pour la Democratie*). The two regional wars, on top of the legacy of state collapse and plunder during Mobutu's rule, reduced the country to a battleground in which foreign and local forces funded their presence by exploiting the mineral wealth of the country, while the majority of the population saw its poverty worsen and what little governance there was effectively disappear. In particular, state security forces appeared powerless to contain or remove either foreign or domestic armed groups, who terrorised civilians, as they still do today.

The response of the African Union (AU), the European Union (EU) and the United States was to help the Congolese negotiate, sign and implement the Lusaka Ceasefire Agreement in 1999. The United Nations (UN) was asked to send military

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1 The contents of this paper reflect the personal opinions of the author and do not in any way engage either MONUC or the Stabilisation Unit of the UK government, which financed the author's secondment to MONUC.



observers to monitor disengagement and the donors gave funding for the 'Inter-Congolese Dialogue' which, after three years of tortuous negotiation, ended the national war early in 2003, with agreement on an unlikely transitional government. This combined the principal rebel leaders under the presidency of Joseph Kabila, son of Laurent. The transition held and the younger Kabila went on to win elections in 2006, while the leader of the opposition, former MLC leader Jean Pierre Bemba, was forced to flee Kinshasa as the presidential guard fought his bodyguards in the capital. (He is now in The Hague facing war crimes charges.)

### A change of course

The 2006 elections were a huge logistical and political achievement, made possible by the enthusiasm of many Congolese to vote, logistical support from MONUC (*Mission de l'Organisation des Nations unies au Congo*) – the UN Mission in the Democratic Republic of Congo – and financing from donors such as the EU. But they did not entirely resolve the problem of the sovereignty of the Democratic Republic of the Congo (DRC), once Zaire, as rebellion continued in the east, principally through the CNDP (*Conseil nationale pour la Defense du Peuple*), which defeated the national army, the FARDC (*Forces armees de la Republique democratique du Congo*), whenever it attempted to fight it. The FDLR (*Front democratique pour la Liberation du Rwanda*), too, the surviving members of the *genocidaires* who fled Rwanda in 1994, along with some new recruits, continued to stay in the DRC, exploiting its minerals, creating zones where they were in control and demanding dialogue with the government of Rwanda, but not challenging the DRC government.

As local wits pointed out, it was not possible for Congo to change its address: Rwanda and the DRC are obliged to be neighbours for the foreseeable future. With a growing national financial crisis, and without a coherent or effective army, let alone a peace dividend, President Kabila changed course and made a surprise agreement with President Kagame in December 2008. This provided for the dismantling of the rebel CNDP and their rushed integration into the national army, along with most of the 22 other armed groups, in return for a more serious attempt than hitherto to dismantle the FDLR.

In this attempt early in 2009, the Rwandan Defence Force (RDF) played the principal role, but the FDLR was not seriously damaged. MONUC subsequently supported the FARDC with food and logistics in a continuing attempt to dismantle the FDLR, 'Operation Kimia II'. Originally, the UN plan was that each FARDC battalion involved would be accompanied by a MONUC company, as mentors in support, but this never happened, perhaps because the FARDC was not ready for that degree of UN involvement. Nonetheless, the number of FDLR combatants, after having been reduced by about half between 2003 and 2008, with the help of MONUC's DDRRR (Disarmament, Demobilisation, Repatriation, Resettlement and Reintegration) programme, was further reduced during 2009, through the 'push factor' of Operation Kimia II and the 'pull factor' of MONUC's continuing DDRRR effort, despite some new recruitment. The FDLR was also weakened by the

arrest of two key leaders who were based in Germany, Straton Musoni and Ignace Murwanyashaka. However, even if it now numbers less than 3 000 combatants, it is far from being dismantled altogether.

## The contemporary operating context

The years of conflict have also spawned territorial militias, the Mai Mai, and allowed the survival of other foreign armed groups, such as the LRA (Lord's Resistance Army), within the DRC. The situation after elections was relative calm in the west and centre of the country, but conflicts continued in the Kivus, north and south, and Province Orientale. In the Kivus an estimated 1.3 million people were displaced by fighting in 2009; rape seemed to be ubiquitous and unstoppable; and the richness of the land mocked the misery of the people. In Province Orientale, the LRA resumed its murderous campaigns, with the result that more than 1 200 civilians were killed in 2009, an unknown number abducted, and there are probably more than 300 000 refugees and displaced people in the Central African Republic (CAR), West Equatoria in South Sudan and Orientale province of the DRC. Ituri is not yet free of militias and displacement either and MONUC had to intervene in support of the government in Equateur against an unexpected insurgency there, late in 2009.

The fighting in the east has given the impression that Congo's wars have not ended. In fact, they have been, for now at any rate, contained and are being reduced, although the means and will to finish the job are inadequate. There is instead a widespread lack of law and order, which is exploited by armed groups who no longer pose a serious threat to the sovereignty of DRC or its neighbours. Instead they avoid fighting superior forces, loot the population, carry off natural resources and kill and rape; crimes which cannot be stopped by conventional armed forces. To end their activities, the machinery of the state must be rebuilt – army, police, courts, prisons, national and local administration, with some semblance of an *etat de droit*.

While the spotlight has been on the east, human rights organisations have documented the progressive closing of political space in the rest of the country, with opposition members being arrested, tortured and in some cases killed. The resignation of the speaker of the lower house in 2009 was a sign that the presidency is intolerant of opposing or critical views. There has inevitably also been a failure of the government to deliver what the electorate wants – peace, roads, markets, schools and clinics. The national stabilisation and reconstruction programme, adopted in 2009, is a plan to deliver all these, but the government's planning capacity is far ahead of its capacities in execution: a state so seriously damaged as that in the DRC is not repaired in years but rather in decades, while coherent, competent, national armies cannot quickly be forged from feuding militias and foreign-backed rebels.

So the population continues to be vulnerable to violence from agents of the state and others and the investments needed in the provision of public services are slow to materialise. Against this historical backdrop and review of current difficulties, this paper will look firstly at the economic context and then at some of the challenges

MONUC has faced in keeping the peace, protecting civilians and stabilising the eastern provinces.

## A potential to develop

The DRC, at some 2.4 million square kilometres, is the third largest country in Africa. Its population is estimated at between 60 and 70 million but its natural and mineral riches have not removed many of them from the poverty of subsistence fishing, farming and herding in the countryside, or hawking and petty trading in the cities. The DRC's infrastructure is in ruins and roads beyond the cities often impassable, so that the country's cities are mainly linked by notoriously unsafe airlines. The rule of law is not in evidence and, where there is local government, it lacks most of what it needs to work. Whilst the formal mining sector was once a major employer, today artisanal miners forage for coltan, cassiterite, gold and diamonds in open-cast and hand-dug workings. They pay taxes to the army and rebel groups, which appear to control much of this trade, but pay no taxes themselves. The government has plans to establish new *comptoirs*, mineral trading centres, in the Kivus to control mining and extract tax revenue, but the new centres will need time and political will to implement – since they are likely to deprive members of the armed forces and other armed groups of much of the income that sustains them.

Foreign investment is limited because of the history of instability and corruption and a propensity on the part of the government to keep revising the rules of taxation, such as in the mining sector, for example. One area where the regional neighbours at least plan to invest is in hydro electricity, through a joint Southern African Development Community (SADC) project to revive and expand the Inga Dam. Congo's rivers alone could probably power the whole continent. Its forests, the largest in the world after those of the Amazon, are a major planetary carbon sink, and are of great potential value as sources of future carbon credits and of significant value to the hardwood trade. In a recent, controversial deal, the DRC government agreed to the provision by Chinese companies of a substantial part of the infrastructure the country needs in return for access for China to \$9 billion of cobalt and copper from the province of Katanga. The International Monetary Fund (IMF) asked that the terms of the deal be renegotiated to ensure that the national debt was not increased and a programme of debt relief – of approximately the same value – could be put in place.<sup>2</sup> It seems that the plan will now go ahead for \$6 billion, as opposed to the \$9 billion as originally negotiated, and the Chinese will have to bear more of the risk of any future falls in mineral prices. Whatever happens, public security is vital if such plans are to make the difference envisaged to transport, commerce, education and health.

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2 The IMF then also released a \$200 million credit to help the government meet some of its current obligations: it was running out of cash.

## Moving towards peacekeeping

MONUC's initial deployment was of military observers, who monitored the very patchy and slow implementation of the Lusaka ceasefire agreement. As the war drew to a close and the country became slowly more stable, particularly after the 2006 elections, the tasks that the United Nations Security Council (UNSC) requested MONUC to undertake ballooned so that, by the end of 2008, UNSC Resolution 1856 contained some 41 discrete but related tasks, mainly couched in terms of protecting the civilian population, supporting the restoration of state authority – in some cases this involves creating state authority – and dismantling foreign armed groups and their trade in the DRC's natural resources.

By this stage, the number of troops deployed by MONUC had grown to about 20 000, making it the world's largest peace-keeping mission. MONUC also employs several thousand civilians in the east of the DRC, where its main efforts are now focused. Yet what appears to the Congolese to be a UN state within a state is actually less powerful than they believe. A yearly budget recently of more than of \$1 billion is not generous in the sense that it supports only one peacekeeper for every 49 square miles. (Darfur has one for every 7.5 square miles and Haiti almost one for one.) In addition, NATO, the North Atlantic Treaty Organization, spends \$213 000 per soldier *per annum*, while the UN, on average, spends \$31 000. This is 'peacekeeping on the cheap'. In 2007 to 2009, MONUC not only needed more troops, it needed more investment. For example, MONUC requested another 14 military transport helicopters, more capacity in intelligence gathering and analysis and more expeditionary forces to be minimally able to tackle its mandate. Had these been available in that period, they would have increased the mission's reach and capacity.

The new mandate in Resolution 1906 at the end of 2009 continued the same emphasis on protection of civilians as Resolution 1856, but re-emphasised the support the Council expected MONUC to give the government in Security Sector Reform (SSR). Even more challenging, the mandate was extended for five months only and MONUC was tasked to come up with a strategic review of operations in the light of the government's request that it produce a plan for a phased drawdown of the mission before the fiftieth anniversary of the country's independence, on 30 June 2010. In this context, although 3 000 new troops finally arrived at the end of 2009, a year after they had been requested, it seems very unlikely that any more helicopters or expeditionary troops will materialise. And it is now clear that 2 000 peacekeepers will be withdrawn from the west of the country in a gesture to the government, which had publicly suggested the mission should leave altogether in 2010.

What has been the overall effect of this mission, with its ambitious mandates, over the last ten years? On the positive side, most observers would concur that without MONUC's presence the government of transition might not have survived; local wars would have continued, as in Ituri for example; a regional war might have reignited in the Kivus; national elections would not have been possible; and abuses of the civilian population would have been even worse than they are. The fires of war

have thus been dampened and the state has an ally upon which it leans for logistics, military assistance, training and infrastructure.

Early in 2010, the government's push for MONUC to leave produced independent pronouncements, both from Congolese groups and from NGOs like Oxfam and Human Rights Watch that, whatever its shortcomings, it was too soon to send the blue helmets away.<sup>3</sup> Nonetheless, the mission has been unable to meet the expectations raised by its protection mandate, which is discussed below, and, unsurprisingly, both those who pay for it and those who live with it feel that it needs at least now to prepare its exit.

Other voices point out that drawdown should not be driven by the timing and political imperatives of the government in power, but by a realistic assessment of remaining risks. This approach seems to have won the day in that the latest UNSC resolution, having turned MONUC into a stabilisation mission, The UN Stabilization Mission in the Democratic Republic of Congo (MONUSCO), makes the point that "any future reconfiguration will be based on the following consideration – the completion of the ongoing military operations in the Kivu provinces and Orientale province; an improved capacity of the DRC government to effectively protect the population through the establishment of sustainable security forces with a view to progressively take over MONUSCO's security role; and the consolidation of State authority across the territory, through the deployment of Congolese civil administration, in particular the police, territorial administration and rule of law institutions in areas freed from armed groups".<sup>4</sup>

The lesson I discern from watching the changes in mandate is that, ideally, the UNSC should define at the start of a mission the end state to which it aspires; The United Nations Department of Peacekeeping Operations (DPKO) should outline a strategy to achieve that end state; and the mission should write a plan to implement the strategy, with the government, in line with the resources available. This plan should then be reviewed yearly, by the Council. Instead, as in Resolution 1856 for example, the sum of then current international fears and aspirations about the DRC was bundled into an ambitious mandate which lacked the focus to allow strategic prioritisation, did not match tasks to resources and set the goal of protection of civilians above all others, whilst making only a token reference to the ultimate responsibility of governments to protect their borders and their citizens. Subsequent events have forced a review of the mandate and a re-configuration of the mission, for which it is not clear that current military and civilian dispositions are at all suited.

How might the peacekeeping mandate have been improved? With the benefit of hindsight, I suggest by refocusing it, immediately after the 2006 elections, on three strategic priorities: Dismantling of Armed Groups; Restoration of State Authority; and Reform of the Security Sector. Under such a shorter, clearer mandate, protection would become a cross-cutting issue, to be given due consideration in whatever

3 See, for example, reviews of the Congolese press for May, 2010, distributed by MONUC's Monitoring Unit.

4 From UNSC Resolution 1925, in MONUC Monitoring, 29 May 2010.

plan is developed, in line with the skills and numbers of troops available, both indigenous and foreign. If the three key challenges suggested above were dealt with, then enhanced protection would be a part of the outcome, as would key attributes of stabilisation (see below.)

### Protecting those at risk

Neither the state nor MONUC has the resources to protect all those at risk in the DRC; this leads to disappointment on all sides. The three principal risks to civilians in the DRC today stem from the government's own armed forces, the FDLR and the LRA. All prey on the people. In the case of the FARDC, there has been very limited progress in SSR – this stems from a lack of sufficient commitment by the government, which, since 2003, has never really tackled the need for a reorganisation of the armed forces and security services. (Doubters have pointed out that the Presidency may not particularly want reformed and professional armed forces, in case they present a threat to the new order.) Also, the government is still dealing with the political and military repercussions of its March 2009 agreement with CNDP, which showed signs of splintering towards the end of 2009, and ongoing integration of CNDP and the other indigenous armed groups into the army. The result has been a government army even less coherent than before.

In the case of the FDLR, interrogations of DDRRR candidates suggest that the leaders in the field, who received instructions from leaders in Europe, were deliberately targeting civilians in 2009, in order to frighten the international community away from its support to the government's efforts to dismantle the FDLR (the government was of course an ally of FDLR in its earlier incarnations.) The arrest of the two leaders based in Germany was a step forwards and there is no doubt that the influence of the FDLR has been reduced in the last six years. That said, it could always recruit, regroup and bide its time, remaining a threat to law, order and governance in the region, albeit a reduced one. Nonetheless, the 2009 operation against the FDLR in the Kivus caused the humanitarian community to ask that all other avenues be exhausted before the military option was continued, while the UNSC stuck to its position that protection in the long term necessitated the elimination of all foreign armed groups, by force if need be. The civilian suffering caused by displacement, rape and murder during this campaign was very high and it remains to be seen what effect its successor, *Amani Leo* (Peace Today), will have.

In the case of the LRA, most observers feel that the capture or killing of Joseph Kony would bring the LRA swiftly to an end, although some still urge an attempt to get Kony to sign the final peace agreement, since the region's armies appear to be unable to capture a cunning terrorist, who has eluded the Uganda People's Defence Force (UPDF) for more than 20 years. (MONUC fared no better when its special forces attacked the LRA in 2006.) More recently, the campaign known as Operation Lightning Thunder, orchestrated by the UPDF, with the support of the US government, got off to a disastrous start in late 2008, failing to capture the LRA leader and spreading small groups of vicious fighters across three countries, terrorising hitherto peaceful villages to the extent that cultivation was much

reduced and the World Food Programme had to drop food to one of the most fertile and well-watered parts of the continent. Worse, by withdrawing to remote border areas of CAR, Sudan and the DRC, Joseph Kony seems to have put his movement in a position to regroup, train new killers from the ranks of the hundreds of people he has abducted and re-emerge to terrorise new populations, as in Haut Uele in December 2009, for example.

In confronting such groups, a further difficulty occurs: the relative novelty of the concept of protection, which was only invoked for the first time by the Security Council in the case of Sierra Leone in 1999. Human rights advocates and humanitarians approach it differently from soldiers, who, by and large, share no accepted doctrine of protection. Thus most of those involved, civilian and military alike, are now having to work out in practice how to achieve it, without prior agreement on what exactly the term should encompass. Indeed, a recent review of protection in the last ten years, commissioned by the UN Office for the Coordination of Humanitarian Affairs (OCHA) and DPKO, took 402 pages to explain what it can mean and how it has been interpreted by those involved – peacekeepers, civilian staff, NGOs, the UN High Commissioner for Refugees (UNHCR), the UN Children’s Fund (UNICEF), OCHA, etc.<sup>5</sup> Meanwhile, the *International Committee of the Red Cross (ICRC)* – the grandfather of humanitarian work and progenitor of International Humanitarian Law – has its own clear procedures for what constitutes protection, but usually works independently of the UN and non-governmental agencies (NGOs), which only arrived in this field in the late 1960s. As donor, humanitarian, peacekeeping and peacebuilding agendas converge in what are now called fragile states, ‘human security’ may well start to replace the term ‘protection’. Whatever it is called, protection requires such a huge range of interventions and such a commitment by governments that it is going to be more an aspiration than end state for a long time to come.

Practically, what has MONUC done to make better use of what it has in this area? One example is the creation of Joint Protection Teams. In order to increase its capacity during the recent Rwandan Defence Force (RDF) operations against FDLR, MONUC deployed small teams of soldiers and civilians to areas previously identified by the humanitarian agencies (in the ‘Protection Cluster.’) These Joint Protection Teams worked to make sure that the FARDC and RDF gave MONUC an idea of their plans and then devised appropriate ways of protecting the population, moving an entire village at one point from a battle they had persuaded the RDF to postpone. The use of such teams is spreading to the other provinces of the east and being developed with the addition of Congolese Community Liaison Officers.<sup>6</sup> In another example, the UNSC was told, on its May 2009 visit to a MONUC base in North Kivu, how the commanding officer had set up an information network connecting him to the local population, administrators and NGOs, so that he could have a patrol at any place in his area of operations within 7-10 minutes. This system

5 Protecting Civilians in the Context of UN Peacekeeping Operations, DPKO and OCHA. 2009.

6 Author’s e-mails from MONUC Acting Head of Civil Affairs section, November-December 2009.

is being replicated across North Kivu but, unfortunately, conditions elsewhere often do not allow such a speedy response. Other practical protection measures include:

- the Rapid Response and Early Warning Cell, an HQ based information system;
- the Protection Cluster identification of Must, Should and Could Protect priorities;
- dissuasion by presence and patrols;
- screening of FARDC officers;
- support to FARDC human rights investigations and judicial mechanisms;
- delivering rations to FARDC to reduce risks of its looting of civilians; and
- training of FARDC soldiers by CAS, CPS, HRS and MONUC soldiers.

Could the mission have done more? I believe so, insofar as peacekeeping practice, as I saw it within MONUC, could have built still greater synergy between civil and military staff. Co-operation was generally good, communication regular and collaboration common, but the two streams nonetheless thought and planned separately, being from very different traditions of management. Joint Protection Teams were a step in the right direction, but do not go far enough, since *ad hoc* civilian and military deployments are unsustainable. They may also arouse false hopes in vulnerable villagers, who are once more exposed to militia depredations when a temporary deployment is withdrawn.

Instead, all military deployments in areas contested by insurgents or militias should, in my view, involve a small team of international and national civilian staff embedded – ideally for at least a year – in the military operating base, in order to get to understand local personalities and security dynamics, so that the military response can be swift and informed and proper groundwork can be done for stabilisation activities, as and when security improves. This would bring civilian thinking more in line with military experience with ‘inkspots’ of counter-insurgency theory from the 1950s and 1960s. It might be more productive also to concentrate resources in a few areas to be stabilised, rather than spreading limited resources thinly across a wide area in an illusory effort to maximise protection. Lastly, this longer-term approach would go some way to reducing the institutional ignorance which is an inevitable result of *ad hoc* deployments and six month rotations.

## Towards stabilisation in the DR Congo

The economic development, which is a crucial component of a more stable DRC, clearly requires public security, the rule of law, better governance, a restored river, road and rail network and functioning schools and health centres. In the short term, after the Goma peace agreement of January 2008,<sup>7</sup> MONUC devised a

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7 This was concerned only with the Kivus and was signed by 23 of the armed groups in existence at the time.



peacekeeping exit strategy which concentrated on securing and opening six key road axes in the Kivus and Ituri and assisting the state to redeploy administrators, police and judicial and prison services (the UNSSSS, UN Support Strategy for Security and Stabilisation).

This plan was divided into four sectors: political; security; restoration of state authority; and return and reintegration of refugees and displaced people. It took a calculated risk in concentrating on key commercial axes, four of which have subsequently seen sporadic violence from the CNDP, FDLR and FRPI (*Force de Resistance patriotique d'Ituri*). Such insecurity in Ituri and the Kivus meant that progress has been slower than was hoped for. The plan MONUC devised (UNSSSS) was nevertheless adopted by the government in 2009 and enlarged, both geographically and by sector: it is known as STAREC (Stabilisation and Reconstruction) and includes the areas which have suffered the most from gunmen and lack of government (*26 territoires* in Orientale, the Kivus, Maniema and Katanga). Education and health too have been added to MONUC's more basic original design. MONUSCO will certainly be expected to play a key role in helping the government implement STAREC.

Some preliminary lessons were learned during 2008 and 2009. For example, restoring the authority of the state in practice requires equipping skeletal or vanished structures with the means to operate under national and provincial government, which have little capacity to manage those means. And rehabilitating roads by labour-intensive works using local contractors is socially desirable, spreads income and can discourage ex-combatants from taking up their weapons again, but it is slower than more capital intensive methods and more vulnerable to abuse by remaining armed groups. Herein lays another conundrum for the would-be stabiliser: the international architecture of peace building has only NATO, the UN, EU, AU or other such multinational entities at its disposal, when a state is so weak it struggles to discharge state responsibilities. But these entities are not by nature endowed with the implementing capacity without which success will be elusive. Indeed, the very commitment of the troops of one nation to risk their lives in the service of another is problematic. Beyond the question of troops is that of practical reconstruction capacity. If, as in the DRC, the private sector is small and perhaps corrupt, then the UN is obliged to use its own contracting arms, which are likely to be slower and more expensive than the private sector. The alternative of the international private sector is problematic also: which companies are willing and able to take on contracts for the road, rail and communications networks of a country like the DRC ?

A partial answer lies perhaps in the growing willingness of countries such as China, India and Malaysia to tackle such work, but regulatory uncertainty, insecurity, indebtedness and financial crisis have meant that the DRC has so far benefited little from this option. While it is conceivable that the original UN stabilisation plan

could have been implemented through UN agencies and contractors, slow progress has reduced confidence. And adoption by the DRC government of the notion of stabilisation for the East – through STAREC - will require a mobilisation of skills and resources larger than anything attempted to date in the DRC. Some of the necessary mechanisms have been put in place: a joint donor/MONUC board, a governmental board and a clear list of what is needed, but the total bill will probably exceed \$1 billion, ten times that of the original UN plan.

## The way forward

The DRC sometimes seems to function at a number of levels to which the outsider inevitably has limited access. At an international level, the regional realignment and efforts to end the pernicious activities of armed groups are welcome. At the level of national and provincial politics, two elections cannot make up for decades of autocracy. At the next level, of economic interests, it is clear that older patterns of private exploitation of national wealth are still driving elite politics and regional politics too. At an ethnic level, decades of mistrust and hurt require years of peace and progress to heal – and feed off any failures in these areas.

MONUC's ten years of peacekeeping, protection and, more recently, stabilisation have been controversial. It is an imperfect instrument reflecting the wavering will of an international community organised along lines which can only supply so many coalitions of the willing or regional alliances to repair war-torn societies. The United Nations is still expected to try to pick up the pieces, alongside governments of, for the most part, limited capacity, but the international community has not so far adopted a co-ordinated approach to the problem of fragile state repair<sup>8</sup>. The lesson of development elsewhere has surely been that only when governments themselves exhibit some degree of vision, give direction and allocate sufficient resources can they stabilise the fragile constructs of an earlier era and protect populations at risk. The outside world can supply support, with some expertise and resources, but vision and direction are a matter for the Congolese and their leaders.

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8 For a discussion of the problem, see by Clare Lockhart and Ashraf Ghani. 2009. *Fixing failed states*. Oxford: Oxford University Press.

## Glossary of acronyms

AU	–	African Union
CNDP	–	<i>Conseil nationale pour la Defense du Peuple</i>
DDRRR	–	Disarmament, Demobilisation, Repatriation, Resettlement and Reintegration
DPKO	–	UN Department of Peacekeeping Operations
DRC	–	Democratic Republic of the Congo, once Zaire
EU	–	European Union
FARDC	–	<i>Forces armees de la Republique democratique du Congo</i>
FDLR	–	<i>Front democratique pour la Liberation du Rwanda</i>
FRPI	–	<i>Force de Resistance patriotique d'Ituri</i>
IMF	–	International Monetary Fund
LRA	–	Lord's Resistance Army
MLC	–	<i>Mouvement pur la Liberation du Congo</i>
MONUC	–	<i>Mission de l'Organisation des Nations unies au Congo</i>
NATO	–	North Atlantic Treaty Organization
OCHA	–	UN Office for the Coordination of Humanitarian Affairs
RCD	–	<i>Rassemblement congolais pour la Democratie</i>
RDF	–	Rwandan Defence Force
SADC	–	Southern African Development Community
UNHCR	–	United Nations High Commissioner for Refugees
UNSC	–	United Nations Security Council
UNSSSS	–	United Nations Support Strategy for Security and Stabilisation
UPDF	–	Uganda People's Defence Force

# RUMBLE IN THE JUNGLE

Private Sources of  
Security, Order and  
Disorder in the DRC

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## Abstract

*The weakness of the Congolese state led to the 'satellisation' of vast areas of the Democratic Republic of the Congo (DRC), where non-governmental sources are responsible for providing (in-)security in the absence or partial absence of effective state institutions. This fragmentation has opened up space for foreign and domestic armed groups in coalition with (often 'criminal') economic interests. But who and what is criminal and in the eyes of whom? What is satellisation, and is this a new phenomenon in the DRC? Related to this is the question of to what extent has it ever been relevant to talk about 'a public space' in the DRC? Another question that this chapter scrutinises is whether the chain of logic that argues that the apparent weakness of the Congolese state, in a Weberian sense of the term, has led to this aforementioned satellisation. The argument presented is that it is questionable if there has ever been a strong Congolese state, which constitutes the basic thinking behind the term both conceptually and in actual terms. The process witnessed is an example of a reverse process, where the central authority, with the help of the international community, is attempting to challenge this satellisation and, maybe once again, to exercise governmental control over the territory.*

## Introduction

*... the extreme weakness of the Congolese state has led to the 'satellisation' of large parts of its territory. This has in turn led to the privatisation and criminalisation of public space, to the advantage of both neighbouring countries and local, regional and international 'entrepreneurs of insecurity'. (Reyntjens 2005:587)*

Since independence, Congolese society has been characterised by a conflict between the centre and the periphery – a conflict focused on the level of control that the central government employs in its relations with the provinces, that is, how much and what level of autonomy the provincial level shall exercise. The post-colonial state and the slow disintegration of the Congo in 1971 – especially after the ‘Zairisation’ (the nationalisation and ‘indigenisation’ process initiated by late President Mobutu Sese Seko) – led to the collapse of the state institutions that the Congolese inherited after independence. As argued by Turner, one of the differences between the exploitive nature of the colonial state versus that of the Mobutuist state was that where the colonial state reinvested some of its exploits into society as a means to protect its investment, the Mobutuist state just exploited and extracted resources, without protecting its investment by reinvestment. This accelerated the disintegration of the existing structures culminating in the Mobutuist state facing the forces led by Laurent Kabila in 1997. The weakness of the Congolese state led to the ‘satellisation’ of vast areas of the DRC, where non-governmental sources are responsible for the provision of (in-)security in the absence or partial absence of effective state institutions. This fragmentation has opened up space for foreign and domestic armed groups in coalition with (often ‘criminal’) economic interests.

But who and what is criminal and in the eyes of whom? This leaves a number of unanswered questions. For example, what is meant by satellisation, and is this a new phenomenon in the DRC? Related to this is the question of to what extent has it ever been possible/relevant to talk about ‘a public space’ in the DRC? Another question that needs to be answered is whether the chain of logic that argues that the apparent weakness of the Congolese state, in a Weberian sense of the term, has led to this aforementioned satellisation? If not, this means that other forms of state organisation exist instead of state. A relevant question is to what extent has there ever been a strong Congolese state? Is the process we are witnessing an example of a reverse process in which the central authority, with the help of the international community, is attempting to challenge this satellisation and, maybe once again, to exercise governmental control over the territory? The chapter will argue that the formal Congolese state has always been fragmented with decentralised satellites of power, where local rulers and sources of power were the main providers of (in-)security. The chapter therefore refuses the conceptual outset of the satellisation, which presupposes the existence of a formal state that has then disintegrated. The main purpose of the chapter is to show that in the apparent anarchy that followed the collapse of the formal Congolese state, some kind of order exists. The chapter will investigate some of these non-state actors, their roles and level of formalisation in the eastern part of the DRC. However, here some initial conceptual debates.

### **Order or/and disorder?**

In the general debate on the concept of anarchy we have to distinguish between the state of international anarchy as claimed, for instance, by Kenneth Waltz (Waltz 1979), and the internal anarchy within a territory, for example, a judicial state. This paper claims that order exists in disorder, and is the result of the social

interaction between individuals and groups of individuals. Furthermore, it is this interaction that creates a norm for social conduct. This is in opposition to the argument put forward by scholars like Kaplan (1994) and Huntington (1996), who argue that what was witnessed in, for instance, Sierra Leone and other places in the 1990s is the result of a state of anarchy and a lack of respect for what the 'civilised' world defines as civil behaviour. A central element of the concept of a failed state is when it fails to comply with the basic human rights obligations tied to the concept of the judicial state, namely, to prevent violations, to investigate alleged violations, to take action against perpetrators and to provide remedies to victims. John Rawls has moved this notion a bit further and argues that within an orderly society:

... everyone accepts, and knows that everyone else accepts, the very same principles of justice; and ... its basic structure ... is publicly known to satisfy these principles. (Rawls 1993:35)

Elaborating on this claim, it is argued that order should be understood as constituting the 'rules of the game' under which people live, sometimes survive or die, however rudimentary these rules might be. These rules have both explicit and implicit nature/formal and informal expressions, while they are of course not static and are constantly changed and challenged by the actors in a conflict. It is, therefore, also a rejection of the behaviourist argument of total interest and the argument that self-interest is always limited by the existence and presence of social norms.

This paper aims to scrutinise the distinction between public and private/non-state users of violence in the DRC in order to better understand the role played by the private users in the concept of a state in the DRC. This is closely related to Charles Tilly's question of what distinguishes the violence produced by states from the violence delivered by anyone else (Tilly 1985:172). Who controls what in the name of whom? This paper sets out to depict and scrutinise the social power structures in the eastern DRC and the kind of formal/informal role they play in providing security.

The brutal conflicts in the DRC have, directly or indirectly, resulted in the deaths of millions of people. The situation has often been depicted as being a state of anarchy and chaos (Turner 2008) and as one of total disorder, where individuals are driven by narrow self-interests without any kind of order, often exemplified by the so-called Chapter 15 rule during the Mobutu era.<sup>1</sup> But of what notion is the conflict in the DRC an expression? One issue that comes to mind is the (partial) absence of an effective state and especially of state control, which has opened up the space for other actors. Another element is the alliances between a myriad of different actors on different levels, leading to the following question: who co-operates with whom, when and on what terms? A third element is the distinction and perception of what belongs to and are categorised as public and private, or non-state, sources of security, which of course is closely related to what we understand in traditional state theory as the distinction between being legitimate and illegitimate sources of and

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1 This was known in the Mobutu era as the unofficial chapter 15 of the constitution, arguing that the citizens of then Zaire should only count on themselves and never rely on the government.

users of violence, and who uses it? Violence should be seen here, as argued by Elias, as an intrinsic part of human life that continues as a means to solve conflict, despite individuals and states becoming more interdependent (Elias 1994).

The distinction between legitimacy and illegitimacy is a key issue, because legitimacy is traditionally tied to the ‘formal’ state and its monopoly on violence, while illegitimacy is tied to the forces fighting the ‘formal’ government (Bauman 2002:4). Here also a distinction needs to be made between privatisation and civilianisation (Bénil-Gbaffou 2008:95). The first refers to the privatisation and sub-contracting, both willingly and unwillingly, and/or (in-)formally, by state to private organisations. The latter focuses on the attempt to increase civilian participation and an enhancement of public participation, which is traditionally believed to be a positive element and a sign of a stronger state. It could be argued that the first element is part of the neo-liberal doctrine and its new public management approach that in recent years has dominated the international context – leaving the state to steer the boat, while sub-contracting the rowing, including in the area of security, to private actors. Civilian participation is part of another, maybe even a counter neo-liberal tendency, where civil society and/or individuals are requested to play an increased and more visible role based on moral value issues, such as nationalism and protection of society against threats. However, the counterargument presented by, for instance, Garland is that the neo-liberal strategies must be understood as part of a process of ‘responsibilisation’, seen, for example, in the concept of community policing.<sup>2</sup>

All this comes down to how we understand the concept of ‘State’. The privatisation of security means that analytically it is necessary, as argued by Michael C. Williams, to look beyond the state in an attempt to comprehend and encompass the privatisation phenomenon that has a global impact and nature, and that cannot be understood exclusively at the state level. The basic argument in this paper, inspired by the work of, for instance, Lars Bo Kaspersen, is that despite an apparent state of anarchy and disorder, some kind of order can always be detected. This is seen in the existence of state forms other than the territorial state (Kaspersen 2003:19f). Groups of people always organise themselves, even under the most anarchic circumstances. In social relations between individual human beings a certain type of order can always be detected. This is not to say that this order is just; it is solely an argument stating that some kind of political organisation will always take place. Two interesting questions are related to this: first, what characterises this kind of order in the absence of a state (which provides security or at least elements of security); and second, are the providers of security (also the formal state sources) not often also the sources of insecurity? This paper, therefore, also places itself within the historical sociology history and argues in line with Kaspersen and others that it is too narrow to see the state as a result of society, the so-called fusion thinking (Kaspersen 2003:5). The fusion concept implies that society precedes the state “as a result of a group of individuals or classes merging or fusing into a single entity” (Kaspersen 2003:5). The state is then established as a means of institutionalising the political and administrative needs in an attempt to maintain law and order. In an African context,

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2 I would like to thank one of the reviewers for making this point.

it could be argued that this fusion process has never taken place in the sense that states were created before societies, and that several of the conflicts dwell around this issue, which is an attempt to constitute themselves as societies in competition with the state. The states are therefore not shaped by society, but by the external demands and traditions of state. This also correlates well with Robert Jackson's notion of quasi states, and that of positive and negative sovereignty (Jackson 1993). To a certain degree it can be argued that this paper attempts to deconstruct society and state in Africa, more specifically the DRC.

This paper, therefore, also concurs with other historical sociologists like Tilly, who argue that the state-making process and warfare have to be analysed and seen as integrated processes. It attempts to understand warfare as a means of creating and understanding social change. Coercion is a central element in war in that it forces the less powerful into compliance and gives the powerful an advantage and thereby access to resources (Kaspersen 2003:21). This is a key question in the analysis of the DRC because of the consequences of the many years of warfare on the country's social fabric, structures and societies. However, as Max Weber once argued, all political structures use force, but they differ in the way they threaten and actually use force against other structures (Weber 1978:910). This has a significant effect on the form and destiny of political communities. In relation to this paper, it would be relevant to investigate how different political actors actually use and threaten to use violence as a means to interact with other, often competing, political actors. As argued by Elias, a defining element of the modern state is its monopoly on violence and taxation (Elias 1994:104).

### The 'modern'<sup>3</sup> conflict in the DRC

*The conflict in the DRC resulted in a process of severe militarisation of Congolese society with the increased presence of the foreign armed groups, the massive recruitment of young people and children, and the creation of self defence militias, along with an increase in the illicit traffic of light weapons. (MONUC 2009)*

June 2003 officially marked the end of the modern part of the Congolese war and the beginning of the transitional period that ended with the national elections in 2006. However, the conflict, and especially the threat of its reappearance has constantly been an important element in the DRC, especially in the eastern parts of the country. One of the criticisms of the peace agreement was that it disregarded the actual situation on the ground, which meant that several actors felt excluded from the transitional institutions (Vlassenroot *et al.* 2005:3). This highlights one of the central problems when dealing with the Congolese state and especially the conflict: Should this conflict be seen from a state point of view, or should it be seen as constituting a whole range of actors within a territory called the DRC, namely, from a bottom-up perspective? It could of course be argued that there have been

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3 'Modern' in this context means that the primary focus in the article is going to be on the period that followed the 2002 peace agreement.



attempts to split the peace process into two: first by the signing of the Lusaka accord in 1999 focusing on the external actors, and later by the Global and All-Inclusive Peace Agreement (GAIA) in 2002, dealing with the national Congolese issues. It can be argued that both agreements, despite the attempted inclusive nature of the 2002 agreement, have a top-down focus, working from the central government level and down. For obvious political reasons there was never any attempt to have a process that did not incorporate the central government as the judicial state's representative as the point of departure. The problem was that this process recognised the government in Kinshasa as a legitimate juridical sovereign power in the DRC, and thus as having a higher degree of legitimacy than the various rebel movements. However, it should be added that the mediators attempted to include as many of the local actors as possible in the peace process, which, of course, was made extremely difficult by the sheer numbers that wanted to be included without having a clear position that could legitimise such a claim.

This leads to another central issue, because one of the key questions when dealing with the DRC is the complexity of the conflict, which is illustrated, for example, by shifting alliances. So, who is aligned with whom? Should the Rwandan Hutu rebel movement, the FDLR (*Forces démocratiques de Liberation du Rwanda*), be understood both as an independent rebel movement with an ideological objective (such as evidenced by the defeat of the Kagame-led government in Rwanda) and as an ally of the Kinshasa government, serving its interests and representing it *de facto* in specific areas, especially the North and South Kivu provinces. The situation on the ground shows that the FDLR is managing the bulk of the extraction of resources in the territories, which, amongst other things, it uses to finance its continued war effort. The FDLR is therefore both a legitimate and an illegitimate force. It is internationally infamous because of its relations to the genocide in Rwanda, and is seen as one of the major sources of the continued instability in the eastern Congo. However, it has until recently also had a level of informal acceptance from the government, playing a role similar to that of the 16th century privateers. The fighting in the North Kivu province in the fall of 2008, where the national army, the FARDC (*Forces armées de la République démocratique du Congo*), made an alliance with several non-state groups, including the FDLR, against the CNDP (*Conseil nationale pour la Defense du Peuple*) – the National Congress for Defence of the People – is a case in point. The danger for the FDLR is, of course, that when they stop being useful, their status, in the eyes of the present government in Kinshasa, changes from legitimate to illegitimate, which happened with the arrest of former CNDP leader Laurent Nkunda, the agreement and the fast tracking of CNDP integration into the FARDC and the alliance created against the FDLR in early 2009.<sup>4</sup>

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4 It is necessary to acknowledge that the status of the FDLR changes depending on who is looking at it. For instance, the Kagame government considers it to be illegitimate and criminal, while the international representatives in the DRC hope to repatriate its members to Rwanda. Both have a political interest in considering the FDLR as a Rwandan, and thereby a foreign, element to the conflict.

When dealing with the DRC, a relevant question to ask should be: has the state ever been in control and, therefore, had a monopoly on the use of violence? The immediate response would be no, at least not in direct control. When some kind of order has existed in this vast territory, it has been through patronage, where the responsibility of providing security and acting as the state's local image and expression has been sub-contracted to other actors. This system has functioned periodically and finally broke down in the early 1990s. Since then the Congolese state has not been in any form of control in large sections of the country. Since the signing of the 2002 GAIA, serious attempts have been made to secure control by deploying a large UN force consisting of more than 17 000 soldiers, getting the foreign forces from Uganda, Rwanda, Namibia, Zimbabwe and Angola to withdraw, and trying to deploy the new integrated army to the eastern parts of the country plagued by war. However, the FARDC lacks the capacity to provide security.

### **The formation of a Centre of Profit, Power and Protection<sup>5</sup>**

It might be that war is an integrated part of state making, and, when it is less successful, it becomes organised crime. However, as Vlassenroot *et al.* rightly point out, civil war often leads to the collapse of state control within territories and populations. The state is then often replaced by new non-state centres of authority that introduce new ways of exercising political, social and economic control (Vlassenroot *et al.* 2005:1f). This means that what is often described as anarchy, frequently has a large element of order built into it, such as when one kind of order collapses and another kind of order emerges and replaces it and creates 'new rules of the game'. Apparent disorder is an important part of this new order, which often takes an extremely violent form and has large elements of extreme extraction and exploitation as an inherent element.

The fragmentation of the DRC has taken place over many years. However, since the beginning of the war in 1996, a number of the actors have used the conflict as a means of securing influence for themselves and their groups, often as a response to many years of marginalisation. The war became an efficient means of obtaining this. The dynamics of conflict change over time and this has also been the case in the eastern DRC where the causes of the war are not the same as the reasons for the continued fighting today (Vlassenroot *et al.* 2005:5). However, the original causes tend to survive and continue to constitute threats that could emerge at any time, and be an issue that could be used instrumentally by the actors. But war tends to radicalise local politics, which means that minor differences can develop into major conflict issues. However, it is much too simple to see the conflict in the DRC as resulting in "an economy of plunder based on rebel predation" (Vlassenroot *et al.* 2005:14), because the plunder goes much further than merely the rebel element. The conflict has resulted in the (partial) dissolution of the existing system of governance and the establishment of private informal localised governance structures, often accommodating traditional local elites and using the

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5 The heading is borrowed from a paper written by Vlassenroot and Raeymaekers (2005).

state apparatus (Reyntjens 2005:596). As pointed out by Bayart, there tends to be a recycling of elites in the African states in general, which, to a large extent, is also the case in the DRC (Bayart 1999:193ff). As Mbembe maintains, it seems as if new state-like structures developed within the defunct judicial state, with all the state-like features (Mbembe 2001, as cited in Reyntjens 2005:596). For instance, individuals crossing the different zones had to pay tolls and export taxes and the ‘authorities’ in these state-like zones collected taxes. This underlines Tilly’s argument that there is a close link between state making and war, and when not very successful, as was the case in the DRC, with crime. International actors are heavily involved in the extraction of resources and selling illegal arms to parties in the country. In addition, it seems that the stronger neighbouring states have used what Dietrich in another article has called “semi-parastatal privatisation of war”, or “military commercialism”, and deployed forces to the DRC for profit and in support of one of the parties to the conflict (Dietrich 2001). Several reports have established that Rwanda has benefited directly from resource extraction in the eastern DRC, amounting to 6.1% of the Rwandan GDP or 146% of its official military expenditure (Reyntjens 2005:599). Since the official withdrawal in 2002, Rwanda has used local agents and allies to secure a continued income for Rwanda. The conflict in North Kivu in late 2008 involving renegade General Laurent Nkunda should also be understood in this context, though his arrest in January 2009 illustrates that the relationship is more complex.

### *The militia groups*

In 2009, it was estimated that there were at least 22 active militia-groupings<sup>6</sup> in the eastern parts of the DRC, each having individual characteristics, composition, level of formalisation, etc. In addition to these militia groupings, the structures of a formal state play a role in both the formal and informal power structures in eastern DRC. The distinction between liberation movement and rebel movement, legitimate and illegitimate, mercenaries and militia, and public and private is a fine one in the DRC, especially in the eastern part of the country. As Michael C. Williams argues, these agents often have to be understood as a fusion between public/private status (quasi private and quasi public) (Williams 2009). The lack of effective state capacity means that a major part of the DRC is controlled by different types of militias and semi-autonomous army commanders. As Chrétien correctly points out, the individual militia members willingly and unwillingly tend to change their allegiance, thereby functioning as *de facto* mercenaries (Chrétien *et al.* 2008). To what extent this actually happens on the ground is of course questionable, because – as shown in the case of Liberia – this perception was a limited reflection of the *de facto* reality (Bøås *et al.* 2008:44). This could have clear implications for the DRC, because it raises a question as to what extent this is merely a perception and whether this is also the case in the DRC. This means that the portrait normally used to depict these

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6 The most visible and powerful in recent years has been the Coalition of Congolese Patriotic Resistance (PARECO), the *Front Populaire pour la Justice au Congo* (FPJC); *Forces démocratiques de Liberation du Rwanda* (FDLR) and the *Conceil nationale pour la Défense du Peuple* (CNDP).

militias tends to be too static, whereas the composition of the militias tends to be much more fluid. One example could be the CNDP militia, previously headed by Laurent Nkunda, which is Tutsi-dominated, but not entirely so. The ethnic element is used as a mobilisation tool and as an effective political fig leaf, which covers a whole range of other reasons for the activities of the militia. Another more extreme case could be the Coalition of Congolese Patriotic Resistance (PARECO) which was initially created by several ethnic Nande Mayi-Mayi groups, but later included other elements, such as the Hutu.

An illustration of this fluidity amongst the militias is the establishment of the RCD (*Rassemblement congolais pour la Democratie*) rebel movement. In 1999, the movement split into two, and later into four groups. These divisions were largely ethnically based having different entities, with the Rwandan-supported RCD-Goma being the strongest military outfit. The creation of the RCD started another military response that emanated in the local Mayi-Mayi militias, which were created by local communities in the North Kivu area as a shield against the threat posed by the RCD. Later, when the RCD split, it started a new response which amounted to a *de facto* carving up of the eastern DRC into four distinct military territories, where the ethnic dimension became instrumental in the process. The disintegration of the rebel movements opened the space for new actors in eastern DRC, and especially for new coalitions (Vlassenroot *et al.* 2005:6). Anti-Rwandan sentiment has been increasingly used as an instrument in the creation of alliances since 1998. This was part of the Congolese tendency to explain everything bad or negative as coming from outside the DRC. The Banyarwandas in North Kivu are a case in point (Turner 2008). The author often met this kind of reasoning while being in the eastern DRC. This sentiment led to new alliances where the predominantly rural Mayi-Mayi found a common cause with the disenfranchised youth in the cities. Later in the war, the Mayi-Mayi, which started out as militia closely tied to its local community, was transformed into pro-government and government armed militias with close contacts to local business and, therefore, local power structures (Vlassenroot *et al.* 2005:7).

Two parallel processes were in play. Firstly, in its attempt to create some kind monopoly on the use of violence, the Kinshasa government co-opted these militias in order to fight its rivals in the eastern parts of the DRC. This can be seen as a continuation of the Mobutist system, which managed to survive for so long, among other reasons, because of its ability to co-opt its rivals (Lemarchand 1992:185). Secondly, the local business elite used, or attempted to use, the militias as an effective tool for securing control over local resources and thereby sources of extraction. Their direct competitors were the Rwandan and Ugandan armies, or individuals within these armed forces, who had clear economic interests in the eastern DRC and used their proxy militia – primarily the RCD-Goma (Rwanda)

and the RCD-ML (Uganda) – in competition with the local power structures.<sup>7</sup> These dynamics meant that informal alliances between rebel enclaves, regional elites and international actors were created. These informal alliances led to the creation of some kind of order and security within these enclaves. The informal alliance, for instance, between the Mayi-Mayi militias and the Kinshasa government, through its local agents, also provided these militias with some kind of legitimacy. However, these alliances had an extremely dynamic nature and circumstantial alliances evolved more or less on an *ad hoc* basis. An example of this was the 2004 anti-Mutebusi/Nkunda alliance, which consisted of FARDC and its Mayi-Mayi groups, the FNL (Forces for National Liberation) from Burundi, FDLR from Rwanda and the Tutsi-dominated Banyamulenge (Reyntjens 2005:594). Another was the alliance between the PARECO, Mayi-Mayi, FARDC and FDLR against the Kinyarwanda-speaking communities in North Kivu.

### *The new integrated army*

These competing enclaves over time, or at least for long periods, found a common interest in avoiding confrontation, because everybody benefited from the *status quo*. An interesting dynamic was, of course, the consequences of the 2002/3 peace agreement, which meant that the local militias should be integrated into a new national army as part of the dual strategy, *tronc commun*, of an integrated Disarmament, Demobilisation and Reintegration (DDR) and Security Sector Reform (SSR) process in the DRC. At first, these militia units were allowed to stay in their local areas, which turned out to be a bad idea because of their split loyalties and interests. An example of this was the 2005 struggle around Walikale in North Kivu between different elements of the FARDC, namely, former RCD-Goma and Mayi-Mayi rebels, who fought amongst themselves for control over the local cassiterite mining facility. The Mayi-Mayi made an alliance with the Hutu extremists in the FDLR, while both elements were in opposition to the local FARDC military commander, who in turn was in opposition to the government in Kinshasa<sup>8</sup> (Reyntjens 2005:600). It turned out that it was difficult to rely on the former militias to deal effectively with challenges to security in their home territory which was why the FARDC altered its strategy and started to deploy the individual units away from their home region. This created other problems, because the soldiers were often separated from their dependants. However, the FARDC must, to a large extent, also be considered to be a local militia-type organisation, because the soldiers and especially the officers serve several masters. The salary in the FARDC, if it is ever received, is not enough to survive on, which is why the FARDC creates alliances with local power structures as a way to extract resources.

7 The former allies, Rwanda and Uganda, even went to war against each other in 1999 in the eastern DRC. Uganda was, and indirectly still is, very active in the Ituri province, while Rwanda's main area of influence is to the south in Northern Kivu. The focus of this article is Northern Kivu. In this regard, it is interesting to note an estimated 20-25% of Ugandan president Museveni's resistance movement in 1986 were Banyawandas (Reyntjens 2005:588).

8 From an interview with DCOS Ops, MONUC, Colonel Bryan Bailey, Canadian Army, on 7 February 2009 at MONUK HQ.

This happens through the taxation of the local population, but also through the sale of army equipment and services to the local militias and elites (UNSC 2008).

It is also important to recognise that despite the provision in the new DRC Constitution on government control over the military, the real control is to be found in the Katangan elite that surrounds President Joseph Kabila, and that the real control of the army is to be found in the so-called *Maison Militaire*, and not so much at the level of the Chief of Staff. In addition, Kabila's private force, the *Garde Républicain* (GR) consisting of approximately 10-12 000 soldiers is still under his personal command and should be seen as a state within the state.<sup>9</sup> This means that the informal structures of power in Kinshasa are of significant importance for the continued instability in the eastern DRC and, in particular in the Kivus and Ituri. At the local level, according to Vlassenroot *et al.*, the war in the eastern DRC resulted in a dramatic change in the social organisation, where the real power moved away from the traditional chiefs to the local militias, while struggles between ethnic groups over resources, such as access to land, became both an effective mobilising tool and a *de facto* source of conflict (Vlassenroot 2005:10f). This was also seen in the area of customary law, where the traditional chief and leaders have, to some extent, been replaced by the new source of power that has replaced the existing system by establishing new mechanisms of social control.

### Order and control in the eastern DRC – an orderly society?

As argued previously by Rawls, orderly societies are defined by the fact that “everyone accepts, and knows that everyone else accepts same principles of justice; and ... its basic structure”. The eastern DRC is characterised by weak structures and several distinct ‘societies’ where the knowledge of the formal and especially the informal rules differs depending on the level of formalisation and control. The degree of formalisation varies tremendously, which makes it difficult for the local population to navigate in this plethora of localised fiefdoms, where some are relatively orderly and others are not. In this context, the use of violence as a means of creating control is an important element in establishing monopolies in, for example, the extraction of resources in competition with other actors. The use and threat of violence has a determining effect on the form and destiny of political communities. However, the use of violence as a means of control also relates to some extent to the degree of formalisation (or state making, as Tilly terms it) of the level of the area in the state-making process. For instance, in Northern Kivu it is possible to distinguish between different kinds/types of order, depending on who is in control.

*Formal Congolese state presence, characterised by the presence of formal state institutions, though often very weak, but an attempt to exercise state control*

The regular army (FARDC) is infamous for its actions in the DRC, where rape and pillaging seem to be elements in its everyday operations. Confronted

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9 From an interview with the Chief of MONUC HR Division, T. Howland, on 28 January 2009 at MONUC HQ.

with these allegations the individual soldiers argue, according to the work of Baaz *et al.*, that the atrocities are caused by the anger that results from poverty, widespread substance abuse, and because the leaders of the country are unable and/or unwilling to live up to their responsibilities towards the soldiers and their families (Baaz *et al.* 2008:77ff). This means that the FARDC is a serious source of instability, and that the soldiers serve both a public function, representing the state, and a private function as perpetrators of crimes against the local population and as a private source of (in-)security. To a certain extent it resembles Percy's description of the historic role of the paramilitary forces in Europe (Percy 2007). It is difficult to separate the two roles, which often play out simultaneously. It may even be argued that the government in Kinshasa accepts both roles as it does not have any other choice – it does not have the capacity to enforce discipline upon the troops, and high-ranking figures in the force steal the financial means supposed to cover, for example, soldiers' salaries. Consequently, there seems a widespread acceptance of this type of conduct. The result is that the FARDC is considered to be an extremely undisciplined force that tends to fall apart during battle. The force is feared by the local population, which has to turn to other non-state sources for security. One of the problems is the SSR programme that has not worked properly and has created a "patchwork army" without any nucleus of a national army.<sup>10</sup>

*Areas with constant rivalry between groups and government for control that leads to more violence*

Formalised zones are controlled by rebel groups where information on the rules of the game is accessible. For instance, ten dollars should be paid for a specific service or a certain percentage of the harvest. In less formalised circumstances no information is available to the public who dare not risk planting the fields.<sup>11</sup> Amongst other things the difference seems to be that the formalised rebel areas consist of territories where the rules of the game are known, while the less formalised areas are often confined to village level. This depends largely on the ambitions of the individual movement. Two of the most formalised and strongest movements during the last couple of years have been the CNDP and the FDLR.

## The CNDP

The CNDP considers itself a political movement with a military wing, namely the Congolese National Army (ANC). What is remarkable about this movement is the level of organisation and control that it has exercised (and to a certain extent still does). It has established state-like institutions and administrative systems and a tax collection system, replacing the formal Congolese state authorities. (UNSC 2008:5) However, it is clear that despite the creation of institutions, the CNDP leadership has been unwilling to invest too much in this institutional building. It seems that the CNDP leadership has provided the population with a minimum of administrative

10 From an interview with J. Peleman, Chief JMAC, NONUC HQ, on 28 January in Kinshasa.

11 From an interview with Lavan d'Homme, Head of OCHA Office, on 3 February 2009 in Goma North Kivu.

services to offer some hope for a better future in an attempt to secure a constant flow of income to the movement.

Despite its local state-like nature, the CNDP is a truly worldwide phenomenon with international political and financial networks that stretch around the globe. An important mobilising factor has been the stated concerns for the safety and security of the local Tutsi minority, which creates support amongst the Tutsi expat community. This was one of the areas where the former leader of the CNDP, Laurent Nkunda, made a misjudgement. During the fighting in late 2008, he started to proceed beyond the narrowly-stated Tutsi focus and argued for a national political ambition. This estranged some of his primary backers, especially in Rwanda, and transformed him from a useful asset to a problem.

During the last couple of years, the CNDP has secured a large stockpile of weapons and ammunition from the FARDC, both through military victories, and through the corrupt practices of local FARDC commanders. There have been several examples of high-ranking FARDC officers apparently being complicit or even helping to instigate the CNDP taking possession of FARDC arms (UNSC 2008:7). This underlines the point that the distinction between public and private, and between legitimate and illegitimate is a blurred one. The FARDC, or groups or individuals within the force, in its relation with the CNDP, has functioned at times as a hybrid and has served as the representative of the formal and internationally-recognised state (in fighting the government force) while at the same time serving private interests. In contrast, the CNDP functions with a high degree of formalisation and as a *de facto* state-like entity in the areas that are under its control. Seen from Tilly's approach, it is clear that the central authority has so far been unable to extend its control with military means and challenge the local hegemony's control. The relatively high degree of formalisation in the CNDP also means that the rule of law and a certain degree of order have been apparent in these areas. This also means that the CNDP has limited its use of violence in the areas of control, as long as the civilian population have been willing to pay their taxes. However, the size of the tax base and taxable commodities depend on the state's ability to deliver security and trust in the future amongst the local population, something that was somewhat absent in the CNDP controlled areas.<sup>12</sup>

## The FDLR

The FDLR movement is too narrowly-based to consider the conflict in the DRC as a national conflict. The movement represents the last elements of the Hutu extremists responsible for the genocide in Rwanda and has been active in the eastern DRC since 1994 in different forms. Only a small percentage of the present day FDLR was actively involved in and responsible for the Rwandan genocide and Rwanda has reduced the list of wanted *genocidaires* from approximately 8 000 to

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12 Much of the information in this paragraph is from an interview with Lavan d'Homme, Head of OCHA Office, on 3 February 2009 in Goma North Kivu.



fewer than 30<sup>13</sup> (Lancaster 2009). The FDLR has settled itself and controlled large areas in both North and South Kivu until the Rwandan offensive in January 2009. Most of the combatants in the FDLR are recruited from male Hutu refugees and the organisation still has a strong Hutu nationalist agenda. At the same time, it represents a strong anti-RPF and Paul Kagame rhetoric, whom they accuse of being the culprits of the 1994 genocide (see, for instance, FDLR 2009a; FDLR 2009b). It has, for a long time, constituted an alliance with the DRC government against the Rwandan interests in the area. Because the FDLR has been present in large areas for a relatively long period, it has a settled and established relationship with the local population in many of these areas. The degree of formal control seems, however, to differ from one area to another. In some areas the FDLR has established state-like administrative systems and is a visible factor in the everyday lives of people, for instance by patrolling markets and taxing miners and traders. In other areas, such as in the northern part of South Kivu, the FDLR is not in direct control, but is present along the trading routes, establishing temporary roadblocks and then withdrawing when confronted by MONUC.<sup>14</sup> The level of formalisation in FDLR controlled areas thus differs greatly and clearly indicates the ambitions of the FDLR leadership. A high degree of formalisation and reinvestment of resources into society, which may, for instance, be found in the southern parts of South Kivu, indicate that the leadership intends to remain in that area.<sup>15</sup> By contrast, despite a large income from taxation at road blocks, the FDLR has not reinvested in the local community in the area around Walikale in North Kivu.<sup>16</sup> The threat of violence against the local population – the use of fear as a tool in obtaining support – is a tool commonly used by the FDLR. And, under pressure (for example, as a consequence of the joint FARDC-Rwandan offence initiated in early 2009), the FDLR tends to use terror tactics against the local population as a part of its campaign strategy.<sup>17</sup> The author experienced how the FDLR in South Kivu, through a letter to the local army commander and MONUC, indirectly threatened to kill the local population between Kanyola and Walungu south-west of Bukavu if the military offensive was extended to South Kivu. The fighting and widespread attacks against the civilian population in North Kivu in the first half of 2009 illustrate that these threats are not merely empty statements. The findings of the UN expert group from late 2008 pointed out that the FDLR runs a regime of terror in some of its mining areas (UNSC 2008:24). Human rights organisations have expressed concern that the military offensives invariably have severe consequences for the civilian populations, because organisations like the FDLR tend to use a retaliation strategy as a response

13 From an interview with Colonel Bryan Bailey, Canadian Army, DCOS Ops MONUC, on 7 February 2009 at MUNUK HQ.

14 From an interview with the Force Commander, Brigadier General, Pakistan Army, on 30 January 2009 at Bikuva, South Kivu.

15 From an interview with the DDRRR in 2008 at Bakavu.

16 From an interview with Lavan d'Homme, Head of OCHA Office, on 3 February 2009 in Goma North Kivu.

17 This pattern can also be found amongst the Ugandan rebel group, the LRA (Lord's Resistance Army) in northern DRC.

to military pressure.<sup>18</sup> It was, however, interesting to notice how few direct combats actually took place during the Rwandan-led offensive in 2009, because FDLR often chose to withdraw instead of confronting the Rwandan army.<sup>19</sup>

In military terms the FDLR is considered a relatively well-equipped and disciplined force, especially compared to the FARDC. The organisation has a steady income from the tax collected in the areas under its control and has, until recently, received large sums of money from the Congolese government as payment for its alliance with that government (UNSC 2008). The FDLR is, nevertheless, split into several military and political factions, characterised by a high level of internal discipline, limiting the number of desertions. Many of the combatants want to demobilise, but this is not possible because of fear of reprisals from the commanders against themselves or their dependents.<sup>20</sup> According to some of the MONUC DDRRR (Disarmament, Demobilisation, Repatriation, Resettlement and Reintegration) operatives in South Kivu, many FDLR commanders are tired of living in the bush for fourteen years, and although the economic networks controlled by the FDLR make them relatively well off, they seem to try to find a way out.<sup>21</sup> However, this depends on an individual commander's situation, for instance, whether there is an international warrant for his arrest or not. According to the local FARDC battalion commander in Walungu, the FDLR should be seen as being divided between those who want to return to Rwanda, those who would accept relocation to another site in the DRC, and a final group who wishes to stay and fight to the end. This group has already sent their families away.<sup>22</sup> It is difficult to distinguish between the political rhetoric and its role for the organisation, and the economic interest, controlled and administered by the FDLR and its allies. These are not necessarily separable, but could, for instance, have severe consequences for the ability to negotiate a peace agreement with the FDLR. If the economic incentive is the primary determining factor for the FDLR, it is unlikely that the movement would be willing to give up its control over a given territory.

## Extraction and taxation

For many years, the economic networks in the DRC and their international connection have been a source of bewilderment and astonishment for academics, practitioners and especially the local population. The corruption during the Mobutu era is well described and was a system where a local class of capitalists, known in the DRC as the 'the green vegetables', was created, and became the main actors during

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18 From an interview with T. Howland, Chief of MONUC HR Division, on 28 January 2009 at MONUC HQ.

19 From an interview with J. Peleman, Chief JMAC, MONUC HQ, on 28 January in Kinshasa.

20 From an interview with the FARDC Battalion Commander for the Walunga District at the Pakistani Battalion Regional HQ in Walunga in 2009.

21 This is from a personal interview in the DDRRR Office in Bakuva on 30 January 2009.

22 From an interview with the FARDC Battalion Commander for the Walunga District at the Pakistani Battalion Regional HQ in Walunga in 2009.

the rule of Mobutu. These networks covered the whole of the DRC where Mobutu extended favours and partial autonomy to local 'lords' in exchange for their loyalty. This whole class of national capitalists was very active during Mobutu's attempts to initiate reform in the early part of the 1990s. A large number of them escaped when Laurent Kabila came to power in 1997. He inherited a state that had institutionally collapsed and had a large international debt.

An important part of state making is the ability to extract resources and to create a monopoly on tax collection. Using Tilly's terminology, it could be argued that this ability is a key indicator of the strength of a state. This section will focus on the extraction and taxation in the eastern DRC and its consequences for the local system and networks of power.

The FDLR has developed an extremely efficient illegal trade network for its mined resources, estimated by the UN group of expert to be worth millions of dollars each year (UNSC 2008:19). It is difficult to distinguish between what are considered legal and what are considered illegal networks because illegally mined minerals end up on the international markets as legal products, despite the big mining exporters, the *comptoirs*, being aware of the source of the minerals (UNSC 2008:20). Another confusing matter, mentioned previously, is that the FDLR has been co-operating with the formal state, which of course raises questions concerning the status of the FDLR, for example, is it legitimate or illegitimate (UNSC 2008:25). By accepting co-operation with groups like the FDLR and PARECO, the formal states thereby also provide these movements with some levels of credibility.<sup>23</sup> The co-operation between the militias and the FARDC played an important role during the fall 2008 offensive in attempting to halt the CNDP. At the time, the attitude amongst the FARDC leadership seemed to be that it had more pressing issues to deal with (UNSC 2008:26). Another element to this debate is the level of control exercised by these groups, for instance, the FARDC, CNDP and FDLR. Often they do not control the actual mining sites, but tax the miners and traders (the *négociants*) operating in the mine (UNSC 2008:20). As illustrated by the UN group of experts' report, the legality issue is complicated by the government-licensed *comptoirs* that knowingly export the minerals mined in the non-government controlled areas (UNSC 2008:21). This illustrates an important point, namely, the close co-operation between business interests (both national and international), formal and informal institutions and what by some would be termed criminal groups and networks. In this complex system the state, willingly or unwillingly, and in its capacity as judicial sovereign state, provides legitimacy for the non-state military network that directly or indirectly challenges the state itself. The FDLR and its network of economic partners are spread out in, for instance, Uganda, Rwanda and Burundi.

Another level of co-operation exists between individual soldiers, where the FARDC soldiers are often willing to sell their equipment, ammunition and uniforms to the militias. This stresses one of the other issues concerning the distinction between

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23 The obvious political explanation is that it is sometimes necessary to support the 'enemy of your enemy' which has especially been the case in the DRC and its weak government.

public and private, and between legal and criminal: where the individual soldier is both a formal state representative and individual criminal at the same time. However, the co-operation runs deeper than just the level of the individual soldier. It is widely known that the FARDC elements, as illustrated previously in the Walikale example, are involved in private taxation and extraction of resources in the areas they control, often in co-operation with militia elements. The first thing the FARDC does when it moves into a new area is to secure the means to survive, because it lacks the needed logistical support and it needs to “live on the land”<sup>24</sup>

## Conclusion

When Joseph Kabila became president in the DRC, he inherited an internationally-recognised state that empirically was an empty shell. Changing Kinshasa governments had both willingly and unwillingly sub-contracted the *de facto* control with vast areas of the Congolese state establishing functioning autonomous state-like formations. One could liken Kabila’s situation to what Lemarchand sees as an example of how a sovereign national leader may lose most of his sovereignty because he is dependent on foreign military assistance for his control over the government of his country. However, the counter argument could be that Kabila’s sovereignty and legitimacy as president has always been awarded and guaranteed by foreign recognition, despite the 2006 elections.

Since the questioning of the DRC’s external and internal recognition as a state because of its lack of ability to function as one, the country has been in crisis. Non-state actors control large sections of the territory and FARDC largely represents these private interests.

The alliances and the status of the different movements in the eastern DRC change rapidly. An example is the CNDP, which was in late 2008 seen as the cause of conflict and, because it was fighting the Kinshasa government and consequently the international community represented by MONUC, was considered a rebel group and an illegitimate organisation undermining the peace efforts and future of the Congolese state. Six months later, the CNDP was considered an integrated part of the FARDC, fighting officially to secure and extend the control of the central government of the DRC – the legitimate government of the DRC. Considering the private dealings and alliances of the patchwork army, it becomes difficult to distinguish meaningfully between formal and informal, and between legitimate and illegitimate, because the status varies and changes. This means that it is possible to be both at the same time. These paramilitary types of forces have a dual role in their relation with the state because they act as its defender, while at the same time they undermine the state’s attempt to constitute itself. The consequence is the satellisation of control and the provision of order, which is so visible in large sections of especially the eastern DRC.

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24 The phrase is from an interview with Lavan d’Homme, Head of OCHA Office, on 3 February 2009 in Goma North Kivu.

There were further main consequences of the conflict, namely, the collapse of the traditional order and social structure in society. However, it is important to understand that the conflict and the new structures of power are responses from excluded communities to the threat of and actual violence conducted by a broad range of state and non-state actors. This stresses an important fact: disorder and order go hand in hand; from apparent anarchy it is possible to find some kind of order. This does not mean, however, that an orderly society exists, because the local population is often kept unaware of the rules of the game and the group or groups who exercise control change frequently. The militia movements only rarely reinvest parts of their income in the local community and seem more focused on securing taxable incomes now than investing in future, and thus potentially more valuable, incomes. The level of reinvestment in the local community constitutes an important indicator of the ambitions of the militia leadership and shows the extent to which it sees a future for itself in that territory. The situation in the eastern DRC shows that apart for some areas controlled by the CNDP and the FDLR, none of the non-state actors see themselves staying indefinitely in the areas they control, and there seems to be no alternative to the formal judicial state. For the international community, the consequence of the above situation is that the formal state in the DRC is part of the problem in finding a lasting solution, because it lacks capacity and legitimacy, and especially because its agents – for instance, its security sector – lack the capacity, capability and will to extend the role of the state. Simultaneously, in the present post-Westphalian state system, there does not seem to be any alternative to the state. The consequence is that the international community, MONUC and others, support and co-operate with a judicial state that both willingly and unwillingly sub-contract its responsibility for the state to both national and foreign non-state actors. In describing the conflict, the AU force in Somalia operates with a term, VUCA – volatile, unpredictable, complex and ambiguous – which is also very much the case with the conflict in the DRC.

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# COMPLIANCE WITH INTERNATIONAL HUMANITARIAN LAW IN AFRICA

A Study

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## Abstract

*Despite an increasing shift away from traditional inter-state conflicts between states toward intra-state conflicts dominated by non-state parties or armed groups, international law remains a product of state practice. International Human Rights Law in general and International Humanitarian Law in particular raises the question of what is being done to accommodate the ever growing number of non-state groups. In view of the problems that this can cause for the development of human rights in Africa, we focus on the rules of humanitarian law applicable to non-state groups and the methods that can be employed to promote their adherence to International Humanitarian Law. Taking international application of International Humanitarian Law as a norm, the question is how does Africa reflect? Because of its colonial history, Africa faces unique challenges. Ironically, however, these challenges have meant that Africa may be at the forefront of the development of International Humanitarian Law applicable to non-state groups and organisations. The African Union, for example, has shown vision in its development of institutions and rules, such as the African Human and People's Rights Court. These developments indicate a fair amount of progress in humanitarian law in Africa and portend a brighter future for Africa.*

## Introduction

It is important to distinguish between International Humanitarian Law (IHL) and Human Rights Law (HRL). While some of their rules are similar, these two systems



developed separately and are reflected in different treaties.<sup>1</sup> IHL (also known as the Law of Armed Conflict) is the system of legal rules that comes into operation once a conflict has begun. HRL is applied in peacetime, and many of its provisions may be suspended during an armed conflict (Canadian Red Cross 2009).

IHL distinguishes between two types of conflict: international armed conflict and non-international armed conflict between states and armed groups or among armed groups. International armed conflict is subject to a wide range of rules, including the four Geneva Conventions of 12 August 1949,<sup>2</sup> and Additional Protocol I to the Geneva Conventions adopted on 8 June 1977<sup>3</sup>. Non-international armed conflict is subject to a more limited range of rules, including Common Article 3 of the four Geneva Conventions and Additional Protocol II to the Geneva Conventions adopted on 8 June 1977.<sup>4</sup>

Since the start of the period of wars of liberation in 1955, Africa has seen an increasing shift away from the traditional inter-state or international armed conflicts to intra-state or non-international armed conflicts.<sup>5</sup> In the period between 1955 and 2005, more than 200 armed groups were involved in about 40 armed conflicts on the African continent alone (Ewumbue-Monono 2006:905).

The purpose of this study is to analyse the IHL rules applicable to non-international armed conflict, to look at methods that can be used to promote its application and to establish how Africa reflects.

## Treaty law applicable to non-international armed conflicts

IHL originated from clashes on the battlefield between states with equal status under the law (Bugnion 2004). This resulted in states making rules for states and despite the shift in the nature of conflict, treaty-law provisions applicable to non-international armed conflicts remain quite meagre (Foster 2006:1). At best they include Common Article 3 of the Geneva Conventions, Additional Protocol II and a small number of other treaties including the 1980 Convention on the Use of Certain Conventional Weapons.

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1 With regard to the difference between IHL and HRL and the increasing overlap between the two systems, see Droege (1977:310).

2 First Convention for the amelioration of the condition of the wounded and sick in armed forces in the field (Geneva Convention 1949a). Second Convention for the amelioration of the condition of wounded, sick and shipwrecked members of armed forces at sea (Geneva Convention 1949b). Third Convention relative to the treatment of prisoners of war (Geneva Convention 1949c). Fourth Convention relative to the protection of civilian persons in the time of war (Geneva Convention 1949d).

3 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts.

4 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts.

5 Ewumbue-Monono (2006:906) identifies four periods of conflict on the African continent.

### *Common Article 3*

The four Geneva Conventions, which have as their main focus the protection of victims of armed conflict, predominantly apply to international conflicts. The only exception is Article 3 common to the four Geneva Conventions which describes the minimal protections that must be adhered to by all individuals within a signatory's territory during an "armed conflict not of an international character". For the first time IHL has moved away from its exclusive concern for international armed conflicts to include internal non-international conflicts (Brett 1998:531). Article 3, which has been called a "convention in miniature" by one of the delegates, is also considered one of the most important articles of the Geneva Conventions (ICRC).

Although Article 3 does not define the term 'armed conflict not of an international character', it has generally been accepted to exclude "situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature" (ICRC 2008:3).<sup>6</sup> Normally two criteria are used: the parties to the conflict must be identifiable, that is, there must be some level of organisational structure (a hierarchical command chain), and the conflict must have a minimum level of intensity. Various factors may be used to indicate this, none of which is to be considered as exclusive, for example, the use of violence specifically for political purposes, a minimum degree of independence from state control, some degree of territorial control, as well as the duration of the conflict (Geneva Call 2007:1). The government's use of military forces instead of regular police forces against insurgents also provides a good indicator (ICRC 2008:3).

This is in line with Protocol II which requires armed groups to have a responsible command structure and to exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations.<sup>7</sup>

The fundamental principle underlying the Geneva Conventions is humane treatment. It is not required that the state be a party to the conflict. Article 3 applies to conflicts between two or more non-state groups fighting each other and refers to persons, constituting the minimum treatment to which the individual is entitled. It is not necessary for a whole group or even a substantial part of an armed force to surrender in order to be entitled to the treatment prescribed by Article 3.

Article 3(2) formalises the role of humanitarian organisations. In the past, humanitarian organisations found that while they were able to render assistance in some countries, others regarded it as interference in their internal affairs. Article 3(2) now provides that an impartial humanitarian body is legally entitled to offer its services to parties to the conflict as long as these services are "humanitarian" in nature and rendered "impartially". The International Committee of the Red Cross (ICRC) is specifically mentioned as an example of an organisation that

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6 Also see Article 1(2) of Additional Protocol II to the Geneva Conventions.

7 Article 1(1) of the Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977.

meets both provisos. The rendering of services is not restricted to states, but may include non-state groups. However, the mere fact that humanitarian organisations are now legally entitled to offer their services does not compel conflicting parties to accept the offer. Parties may still reject the offer in the limited circumstances where they consider that they can do without it. But they can no longer resent the fact that the organisation impartially tried to come to the aid of the victims of the conflict (ICRC).

Although Article 3(2) acknowledges that parties to non-international conflicts are legally only bound to observe Article 3, and by implication may ignore all the other articles, it calls on parties to endeavour to bring into force part if not all of the rest of the Conventions. The suggestion is that this should be done by way of special agreements. To allay the fear of states that the conclusion of such agreements may constitute recognition of any kind by the *de jure* government or may increase the power of an armed group, Article 3(2) provides expressly that the application of any part of Article 3 shall not affect the legal status of any the parties to the conflict. From the outset it is made clear that the object of the clause is purely humanitarian in nature. It does not intend to limit the government's right to suppress a rebellion in any way provided for by its own laws, nor does it affect the right of the government to prosecute, try and sentence perpetrators according to its own laws.

While states are bound to Common Article 3 by virtue of their ratification of the Geneva Conventions, non-signatory armed groups will be bound by virtue of being within the signatory state's territory.

### *Additional Protocol II*

Protocol II additional to the Geneva Conventions relates to the protection of victims of non-international armed conflicts. The scope of Additional Protocol II is more limited than Common Article 3. Unlike Common Article 3, the Protocol does not apply to conflicts exclusively between non-state armed groups. The state must be a party to the conflict. Secondly, the Protocol introduces the requirement of territorial control. The conflict must have reached a stage where the armed group is not only in control of part of state territory, but is also able to carry out sustained military operations to such an extent that they can implement the protocol.

Like Common Article 3, Additional Protocol II also provides for the humane treatment of persons that do not participate directly or who have ceased to participate in hostilities. In addition to the acts prohibited by Common Article 3, Additional Protocol II also prohibits collective punishment; acts of terrorism, rape, enforced prostitution, indecent assault, slavery and pillage.<sup>8</sup>

Additional Protocol II only applies if the state that is party to the armed conflict has ratified it. Many although not all of the provisions in Protocol II form part of customary international law.

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8 Article 4 of Protocol (II) (1977).

*Other treaties*

Given the reality that armed groups are not co-signatories to international treaties, the number of treaties applicable to non-international conflicts is limited. They include:

- the Second Protocol on Prohibitions or Restrictions on the use of Mines, Booby-Traps and Other Devices to the 1980 Conventions on Prohibitions or Restrictions on the Use of Certain Conventional Weapons (CCW) as amended on 3 May 1996;<sup>9</sup>
- the Convention for the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954;<sup>10</sup> and
- the Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, adopted on 26 March 1999.<sup>11</sup>

In view of the fact that most landmines are used in internal conflicts, Protocol II on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices was amended on 3 May 1996 to extend its scope of application to cover both international and internal armed conflicts. In addition to its general humanitarian restrictions, the Protocol requires greater discrimination between civilian and military objects, aimed at the protection of the civilian population.

### **Customary international law applicable to non-international armed conflicts**

Due to the application of customary law, states and armed groups may often find that they are bound to the rules contained in treaties to which they never consented. To qualify as rule of customary international law, it must be reflected in the settled practice of states and there must be a sense of obligation on the part of states that they are bound (Dugard 2005:29). Unlike treaty law, customary international law is not written, making it more difficult to find and apply. However, its relevance should not be overlooked. Historically speaking, customary law often precedes treaty law.

Accordingly, the International Court of Justice in the Nicaragua case (ICJ Reports 1986:218-220) found the rules contained in Common Article 3 to be a reflection of customary international law constituting a minimum yardstick of the rules applicable to both international and non-international conflicts. The same applies to Additional Protocol II with many of its provisions forming part of customary international law.<sup>12</sup>

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9 Article 1 of the Protocol.

10 Article 19 of the Convention.

11 Article 3 of the Protocol.

12 A total of 194 states ratified the four Geneva Conventions as opposed to 164 states that ratified Additional Protocol II.

In 2006, Prof. Jacques Forster, vice-president of the ICRC, pointed out that “customary rules are often the main source of law in today’s conflicts, most of which are non-international”, necessitating that the content of these rules must be made very clear (Foster 2006:1). The ICRC subsequently conducted a study to codify these customary rules. The study documented no less than 161 such rules, the majority of which apply to both international and non-international armed conflicts (Henckaerts 2005:175). These rules were created by the practice of states and not by the practice of armed groups. It is also debatable whether it is realistic to expect armed groups to respect these often very detailed and far-reaching obligations (Sassoli 2008:1).

### **Ways to enforce IHL against armed groups**

According to Sassoli, IHL can be enforced against armed groups in three ways: indirectly against the harbouring or supporting state, directly against the responsible individual, or possibly directly against the armed group itself (Sassoli 2003:2-3).

At interstate level, international law can be enforced by attributing the armed group’s behaviour to a state and by employing the traditional enforcement mechanisms against the responsible state. This may be the case where a state harbours, protects or controls an armed group or fails to act against such group.

The development of international criminal law also enables the direct enforcement of international law against individual offenders. International crimes, such as war crimes, crimes against humanity and genocide, may be committed by offenders belonging to state forces and armed groups alike. At domestic level, the law of all states prohibits behaviour that amounts to rebellion by reserving the most severe penalties for these offences (Bugnion 2004:4).

A further emerging possibility is to enforce international law directly against the armed group. This can be done by persuading armed groups to buy in or assume ownership.<sup>13</sup>

### **Promotion of IHL among armed groups**

A number of methods can be employed in engaging armed groups to assume ownership of IHL.

#### *Dissemination of knowledge*

The obvious way to engage belligerent parties is by equipping them with knowledge. Considering the nature of intra-state conflicts, training should start in peacetime and not be limited to members of the regular armed forces but extended to the whole population. Sassoli suggests that the ICRC be used to provide armed groups with advisory services, since it already established a specific unit within its

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13 For a detailed discussion of the methods to involve armed groups with IHL, see Sassoli (2003:1).

legal division which advises states on the implementation of IHL at national level (Sassoli 2008:1).

Over the years, the ICRC were responsible for numerous publications promoting the principles of IHL. For example, in the Congo crisis of 1960-64, the ICRC translated and published Common Article 3 in nine languages (Ewumbue-Monono 2006:918). Nowadays, we also have the Internet which offers considerable opportunities to enhance the available knowledge base.

### *Formal declarations*

Armed groups may be persuaded to make formal commitments to comply with IHL by way of a unilateral declaration, declaring their intention to respect the rules of IHL to which they are already subject by virtue of customary law. They may also declare adherence to additional treaty provisions to which they are not subjected by virtue of customary law.

In Africa there are numerous examples of universal declarations by armed groups on a variety of subjects. In Zimbabwe, unilateral declarations to apply the Geneva Conventions and the Additional Protocols were made by the African National Congress and the Zimbabwean African People's Union (ANC-ZAPU) on 16 June 1977, by the African National Congress (ANC, Zimbabwe) on 8 September 1977, as well as the United African National Council (UANC) on 23 September 1977. The same declaration was made by the African National Congress (ANC, South Africa) on 28 November 1980 and the South West Africa People's Organisation (SWAPO) on 15 July 1981. Other declarations include recognition of the ICRC and its activities, co-operation with the ICRC to deliver humanitarian assistance, allowing the ICRC to visit captured and detained persons, the exchange of prisoners of war, and general declarations to apply IHL (Ewumbue-Monono 2006:907-908).

These declarations are not without risk. Armed groups should be aware that their declarations do not imply that their enemies necessarily consider themselves equally bound, nor should one exclude the possibility that such declarations are often motivated by the need to gain respectability or to enhance the group's international status. Despite this, it remains a powerful means of raising awareness of the rules of IHL among belligerent groups.

A recent example originating from the 1997 Ottawa Convention on Anti-Personnel Mines is the invitation by Geneva Call<sup>14</sup> to armed groups to sign a Deed of Commitment for "Adherence to a total ban on anti-personnel mines and for

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14 Geneva Call is an international humanitarian organisation dedicated to engaging armed non-state actors to respect and to adhere to humanitarian norms, starting with the ban on anti-personnel mines. In 2009, Geneva Call is expanding its operations to include the issues of women and children in armed conflict, with the aim of engaging non-state actors on issues such as child recruitment and sexual violence.

cooperation in mine action” (Clapham 2006:291-292).<sup>15</sup> Up to November 2007, a total of 34 armed groups from Burma/Myanmar, Burundi, India, Iraq, the Philippines, Somalia, Sudan, Turkey and Western Sahara have signed the Deed of Commitment (Geneva Call 2007). According to a 2007 progress report from Geneva Call, “... signatory groups have, by and large, complied with their obligations, refraining from using anti-personnel mines and cooperating in mine action with specialized organizations”.

These declarations should be registered in order to enhance their effectiveness in a process similar to that currently used for the ratification of treaties by states (Bugnion 2004:35).

### *Statements of commitments to respect IHL*

Sometimes armed groups declare their intentions by way of statements of commitment or pledges. This was the case in 1975 among the Ethiopian liberation movements when the Eritrean Liberation Front (ELF), Eritrean People’s Liberation Front (EPLF) and the Popular Front for the Liberation of Sauga el Hamra and Rio de Oro in Western Sahara (POLISARIO) stated their commitment to respect IHL. In 1976, the representatives of nationalist movements in southern Africa, amongst others the Zimbabwe People’s Union (ZAPU), the ANC and SWAPO, stated their commitment to co-operate with the ICRC in promoting IHL. In January 1976 during the OAU Extra-ordinary summit on Angola, the various armed groups in the country pledged to respect their IHL commitments (Ewumbue-Monono 2006:909). Although less formal than unilateral declarations, these statements reflect the good intentions of armed groups.

### *Introduction of IHL in military doctrines*

Although its effectiveness may be questioned, awareness of IHL is also heightened by its introduction into the military doctrines of armed groups. Examples are the National Resistance Movement (NRM 1980-6) in Uganda and the Rwandan Patriotic Front (RPF 1990-4) who as non-state actors formulated a set of directives governing the conduct of hostilities. These directives centred on a declaration to respect IHL, containing specific rules to attack only military objectives and combatants, to take captives prisoner rather than executing them and to punish violations of IHL in fair and regular trials (Ewumbue-Monono 2006:920).

### *Codes of conduct*

Codes of conduct may serve as an effective mechanism to ensure respect for IHL. Since the code is created by the group for the group, it may be more beneficial than an undertaking to obey a number of treaties with numerous articles. The existence of codes of conduct is well known among state armed forces. There are also instances

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15 The Convention itself does not explicitly bind non-state parties or make any specific reference to the possibilities of declarations by armed groups.

of armed groups that developed their own codes of conduct or have agreed to distribute a code of conduct provided by the ICRC or another humanitarian organisation (Mack & Pejic 2008:22). However, one should be mindful that the mere existence of a code of conduct does not necessarily imply the inclusion of international humanitarian principles.<sup>16</sup>

### *Ceasefire and peace agreements*

The inclusion of the principles of IHL in ceasefire and peace agreements is also an effective strategy to ensure compliance with the law. Typical examples include undertakings to respect IHL, the fair treatment of prisoners and co-operation with humanitarian organisations. In the period since 1962, over 30 such agreements were concluded with armed groups in Africa (Ewumbue-Monono 2006:915).

### *Special agreements*

Common Article 3 also encourages the conclusion of special agreements between the parties to a conflict. According to Bugnion, special agreements “are a particular effective means of defining and developing the law applicable to the conflict in question, since they establish an identical legal regime for all parties ... on the basis of their free consent” (Bugnion 2004:33).

Examples are the agreements concluded under the auspices of the ICRC during the conflict in the former Yugoslavia. Similar less formal agreements were concluded under the auspices of the UN, in Sudan, Congo and Sierra Leone (Sassoli 2003:10).

Two types of special agreements can be distinguished: constitutive agreements that create new legal obligations by going beyond the provisions of the IHL applicable in the circumstances and declaratory agreements that simply restate the law already binding on the parties. The benefits of these agreements go further than the confirmation or extension of IHL. Since identifiable leaders sign agreements it provides a basis for future presentations and if necessary an intervention point to address violations of IHL. Normally these agreements are made public which may also result in the international community playing its role in keeping parties to their undertakings (Mack & Pejic 2008:16).

Despite these benefits and the assurance provided by Common Article 3(2) that special agreements will not affect the legal status of the parties to the conflict, states may remain wary of concluding such agreements, unwilling to lend political recognition or respectability to the enemy.

### *Reward respect for the law*

It is difficult to convince armed groups to obey the rules of IHL without an incentive (Bugnion 2004:1, 35-38; Sassoli 2008:1). Interstate combatants who comply with

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16 The Code of conduct of Umkhonto we Sizwe, the military wing of the ANC in South Africa is such an example. See <http://www.anc.org.za/ancdocs/history/mkcode.html>.



IHL and only kill enemy soldiers on the battlefield are rewarded with prisoner of war status if they are captured. They cannot be punished for killing enemy soldiers, except where they committed war crimes, and they are returned home at the end of the conflict. If captured, a citizen involved in an intra-state conflict against the government will be prosecuted for murder and treason, both offences carrying the most severe penalties. Bugnion provides two examples where special treatment was meted out to non-state combatants. In 1958, the Commander-in-Chief of the French forces in Algeria ordered that special camps be set up for NLA (National Liberation Army) combatants captured carrying weapons openly. Although the French government stated that they were not considered to be prisoners of war, the order not only stated that the prisoners were to be treated as liberal as possible and it should be made known, but also that bringing captives before the courts should be avoided except in the case of those who committed atrocities (Bugnion 2004:36). A similar agreement was reached in 1992 between the three parties involved in the conflict in Bosnia and Herzegovina that provided for treatment of captured combatants in accordance with the Third Geneva Convention (Bugnion 2004:37).

Such treatment may not only lead to a speedier resolution of conflict, thereby reducing hardship to the civilian population, but may also enhance compliance with the rules of IHL.

### *Monitoring*

Respect for IHL should be monitored. Common Article 3 allows impartial humanitarian bodies such as the ICRC to offer its services to armed groups. An example is Geneva Call, which periodically requests armed groups that signed a Deed of Commitment to report on their compliance and the measures taken to implement the deed.

Finally, armed groups should be encouraged and assisted in giving proper instructions to their members to conduct conflict in accordance with the rules of IHL. Once again this need can be addressed with the assistance of the various non-governmental organisations (NGOs).

## **The situation in Africa**

Taking the international application of IHL as a norm, the question is how does Africa reflect? Is there any hope or progress amidst the picture of the serious mass violations displayed by recent conflicts in Burundi, Rwanda, the DRC, Liberia, Sierra Leone, Somalia, Sudan, etc.?

### *Pre-colonial era*

The history of pre-colonial Africa contains evidence of rules governing the conduct of hostilities and the protection of the victims of war very similar to the principle rules of contemporary IHL (Mubiala 2002:37).

Studies on the Peul society of West-Africa reveal the existence of discernible types of rules governing the conduct of hostilities and the protection of victims of war. In the first instance there were rules governing personal conduct during armed conflict. Honour and dignity played a great role. Troops confronted each other face to face. Night fighting was prohibited. Woman, children and the elderly were not allowed to participate in combat. Perfidy, including surprise attacks, was prohibited because it contradicted the values of courage and honour. Attacking of combatants who surrendered without resistance was not allowed. Secondly, there were rules regarding protected individuals and objects. It was forbidden in the event of conflict to attack a woman, a child or an old man. Combatants had to respect certain holy places, such as places of prayer, cemeteries and sacred woods, and were not allowed to enter there in the pursuit of persons taking refuge there. Thirdly, there were rules governing the prisoners of war and other captives. A distinction was drawn between nobles of the *toroodbe* cast who embraced the Muslim religion and members of lower castes who were not treated as prisoners of war but as slaves who were nevertheless treated humanely and often became part of the household of the victor. The rules of conflict resolution provided for two distinguishable procedures: conciliation which consisted of negotiations, discussions, participation by the elders, and a system of messengers, carrying a distinctive emblem, who conveyed messages between the two groups and, if that failed, arbitration by third parties (Diallo 1976:57-63; also see Djibril 1998:643-653).

The era of colonialism unavoidably introduced the western way of warfare aimed at maximum destruction of the enemy consequently resulting in African law and the code of honour falling into disuse. However, the traditional rules survived in the narratives of storytellers and once independent African states had the opportunity to reintroduce the values embedded in the code (Mubiala 2002:39).

Colonialism and the resultant marginalisation of African Law have had far-reaching consequences, even decades later. It has been seen as part of the reason for the poor internalisation of IHL in Africa (Mubiala 2002:55). Colonialisation was also a driving force towards effective self-government in Africa. This has resulted in the development of the Organisation of African Unity (OAU), the African Union (AU) and the development of an African Court for Human and Peoples' Rights.

### *The OAU: A brief history*

The OAU came into existence on 25 May 1963 in Addis Ababa (Department of Foreign Affairs 2002) at a time when African states were determined to end colonialism, resulting in a strict non-interventionist policy despite human rights violations (Mubiala 2002:39; see also Baimu & Sturman 2003:2). Unfortunately, due to the opposing views prevalent at its establishment, the OAU were in effect unable to influence the behaviour of member states and prevent human rights abuses (Mubiala 2002:39; see also Baimu & Sturman 2003:2).

The OAU adopted certain human rights instruments and this can be seen as the beginning of a more contemporary human rights system tailor-made for

Africa. However, in order for Africa to accept IHL and change the attitudes of the population, it must be accepted by the community (Mubiala 2002:47; see in this regard also Zhandire 2005). It can only be accepted if it is understood and 'packaged' in a way that is not threatening to the African community's sense of self-determination.

The human rights system in Africa was based on the African Charter on Human and Peoples' Rights which came into force on 21 October 1986 after being ratified by a majority of member states (Mutua 2000:1; see also Kaba 2004:16).

### *The African Commission on Human and Peoples' Rights*

The implementation of African human rights was left to the African Commission on Human and Peoples' Rights (Mutua 2000:12), which at the time was the only body explicitly tasked with the promotion and protection of human rights. The Commission's tasks included research and the dissemination of information on human rights, the encouragement of international and national human rights institutions, as well as co-operation with the various human rights institutions. The Commission also had to protect human and people's rights (Kaba 2004:17; Mubiala 2002:44) and consider complaints filed by various individuals and NGOs.

Unfortunately, decisions taken by the Commission were not seen as jurisprudence, and therefore not legally binding, since the Commission was at most a quasi-judicial body. Decisions could not be published without the authority of the OAU Assembly of Heads of State and Government. The African Charter did not provide any enforceable remedies to track compliance by states with decisions. Member states were obliged to report bi-annually on the state of human rights within their country, but few states complied and the Commission had no authority to enforce this (Mutua 2000:18-21; see also Kaba 2004:20; Pityana 2003).

The African Commission has amended and updated its rules of procedure and is currently awaiting a meeting with the African Court on Human and Peoples' Rights (ACHPR) before finalising its rules of procedure in order to align the rules of procedures of these two bodies.

## **Failure of the OAU: Towards better governance and the African Union**

During 1999, the OAU finally achieved its aim of liberating Africa from colonialism (Murithi 2008:2). Unfortunately, the general perception of the OAU was a negative one. This was partly due to its policy of non-intervention. The fact that many leaders of African countries were dictators who oppressed their citizens without OAU intervention did not help this perception (Murithi 2008:2).

Another reason for the difficulty faced by the OAU was the lack of co-operation among member states as well as non-state actors to the various conflicts. The OAU was dependent on permission from belligerent parties before it could become involved. This was not an easy task. Many states involved in conflicts indicated that

they had the conflict under control, effectively barring the OAU from intervening (Kioko 2003:813-814). At the same time, the OAU lacked the capacity to effectively intervene. The challenges faced by the OAU and its lack of any real 'power' came to the fore with the atrocities committed in Rwanda. The OAU was powerless to stop the mass human rights abuses. During the same decade, other human rights atrocities were committed in Somalia, Sierra Leone and Liberia with fighting erupting in the Democratic Republic of the Congo (Kioko 2003:813-814). As a consequence of these conflicts, the OAU established the Mechanism for Conflict Prevention, Management and Resolution in 1993 (Baimu & Sturman 2003:3).<sup>17</sup> Due to the various reasons discussed, this was not successful in addressing the conflicts in Africa. The OAU saw its role as a political one. Furthermore, many OAU heads of state refused to criticise each other (Kioko 2003:814; see also Baimu & Sturman 2003:6).

It became clear that something should be done to address this lack of power over member states. In 1999, the OAU met in Sirte, Libya, to review its own Charter (Department of Foreign Affairs 2002).<sup>18</sup> A shift in focus was necessary to adapt to the new international environment and address the changing needs of Africa. The Constitutive Act of the African Union was subsequently adopted at the OAU/AEC<sup>19</sup> Assembly of Heads of State and Government in Togo (Department of Foreign Affairs 2002; see also Kioko 2003:810).

### *Mandate of the AU*

The AU objectives allow a more interventionist approach than the OAU. The Constitutive Act of the AU allows intervention in member states after a decision by the Assembly in grave circumstances<sup>20</sup> or when requested by members.<sup>21</sup>

Apart from this right to intervention the AU is influenced by the UN doctrine of the Responsibility to Protect, which allows the international community to intervene where states fail in their responsibility to protect their citizens. The UN's emphasis is on the responsibility to protect and not the right to intervene. The AU Constitutive Act goes further. The right to protect is triggered when a country

17 This body was later replaced by the Peace and Security Council of the AU.

18 The theme of the summit was 'Strengthening OAU capacity to enable it to meet the challenges of the new millennium'.

19 African Economic Community.

20 See Kioko (2003:812-813) for a discussion on Uganda and Eritrea as examples. See also Ekiyor (2007:2) and African Union (2000). Grave circumstances in terms of this article are war crimes, genocide and crimes against humanity. Also see Kuwali (2008:2).

21 Article 4(j) of the Constitutive Act. According to Kioko (2003:817), the reference to "member States" instead of a "member State", as with the OAU, allows any member state and not just the states with the right to intervention.

is guilty of crimes amounting to genocide. The AU Act also allows for intervention in cases of war crimes and crimes against humanity.<sup>22</sup>

The AU created a number of bodies to comply with international law and the duty to protect. This duty can be divided into three responsibilities: prevention, reaction and rebuilding (Ekiyor 2007:3).

Prevention is a focus area of the AU. To assist with the prevention of conflicts, the New Partnership for Africa's Development (NEPAD) has implemented an African Peer Review Mechanism (APRM) The APRM is a system to help countries improve their principles of good governance, the underlying principle being that it would limit the possibility of conflicts arising.<sup>23</sup> The challenge is that it is completely voluntary and Ekiyor (2007:4) argues that oppressive states will likely not accede to this system.

A further development is the use of the Continental Early Warning System (CEWS) by the Peace and Security Council (PSC) This is not a new concept. It was started by the OAU,<sup>24</sup> but due to a lack of infrastructure and funding it never came off the ground. The aim of the CEWS is to gather timely and reliable information to enable the AU Commission to act preventatively in conflict situations (African Union 2002; Cilliers 2005:4). Currently, the situation room and staff complement do not allow for proper early warning, since the AU remains hampered by lack of funding and infrastructure.

The PSC also provides for a Panel of the Wise, which comprises five highly respected African personalities with established reputations in the field of peace and security as well as development. The panel will advise the PSC and the Chairman of the AU Commission regarding issues of peace and security (African Union 2002; Ekiyor 2007:4). Although members of the Panel were appointed in January 2007 for a period of three years, it does not seem as if the Panel is fully operational yet.

Where preventative measures fail, states will be able to react, but only once all political, social and judicial measures have failed will military intervention be justified (Ekiyor 2007:5). Should the situation so require, provision is made for the development of an African Standby Force (ASF) to deploy on short notice to

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22 An amendment to article 4(h) of the Constitutive Act was proposed and accepted although it has not come into operation. This amendment allows for a widening of the grounds for intervention to those instances where the Peace and Security Council recommends intervention due to a serious threat to legitimate order on order to allow for the restoration of peace and stability in the particular member state. For a discussion on the possible negative impact that this broadening may have on the application of humanitarian law, see Baimu and Sturman (2003:4). Not all academics, however, share this pessimistic view. For a more positive view, see Kioko (2003:815-816).

23 For a discussion on the stages in the APRM system, see APRM South Africa's website at <http://www.aprm.org.za>. See also Kanbur (2004:157-166) for a discussion on how the system can be improved to ensure success.

24 For a discussion on its historic development, see Cilliers (2005).

keep the peace (Ekiyor 2007:5).<sup>25</sup> According to Ekiyor, the aim is to have the ASF operational by 2010, but this seems unrealistic.

Even though the ASF is not yet in operation, the OAU and the AU have used their forces on occasion. They deviated from the UN by military intervention in conflicts in which the UN did not become involved. Since the UN is the only international organisation that can authorise enforcement action under Chapter VII of the UN Charter, some might suggest the AU by intervening actually acted contrary to the UN prescripts. The Protocol provides that the PSC must co-operate with the UN Security Council when deciding on intervention. This is important since it is clear that the AU have insufficient funding and logistics to conduct independent peacekeeping missions (Kioko 2003:822).

Due to the UN's inability to intervene, the OAU disregarded the UN Security Council when the Economic Community of West African States (ECOWAS) organised peacekeeping forces to intervene in Sierra Leone and Liberia. In 1996, trade and economic sanctions were also imposed against Burundi by the Eastern Africa Region. The UN Security Council later condoned these actions (Kioko 2003:821).

Funding and capacity play a vital role in the final and arguably most important responsibility, that of rebuilding. Liberia and the DRC are examples proving that where no attempt towards reconstruction is made after military intervention, the state will soon revert to a state of conflict. Here an ACHPR may play an integral part in bringing human rights abusers to justice, thereby legitimising the AU's attempts to rid the continent of conflicts.

### *Is there any justice without the Courts?*

Currently, the International Criminal Court is the only international court of general jurisdiction that may prosecute individuals for actions contrary to IHL (Sceats 2009:9). It has criminal jurisdiction over those who committed war crimes, genocide and crimes against humanity. The ICC, however, is not a human rights court. To date, 30 African States have ratified the Rome Statute creating the impression that the ICC enjoys some support on the Continent. However, there have been various authors and heads of state criticising the ICC. Some see it as a European attempt to return to imperialism, demonising and targeting Africa (Du Plessis 2008).<sup>26</sup> Negative feelings towards the ICC came to the fore with the Chief Prosecutor's arrest warrant for President Omar al-Bashir of Sudan regarding

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25 It is envisaged that each of the five African regions will contribute a brigade to the ASF. See also Kioko (2003:823).

26 All four cases presently before the ICC are from Africa. Three of them derived from state referrals from the DRC, Uganda and Central African Republic. This is clearly not a case of Europe targeting Africa. This is a case of African states asking for intervention. The fourth case involves a request by the UN Security Council for the Court to investigate the serious crimes being committed in Sudan. Although Sudan has not ratified the Rome Statute, it falls within the mandate of the Security Council to bring such a request to the ICC.

his alleged involvement in crimes against humanity and genocide. It would seem that a number of African leaders are rallying behind him and are defiant in their refusal to support the ICC in this regard.

An African Court with jurisdiction over international crimes might be a solution. Africa needs to bring the perpetrators of serious human rights crimes to justice. This has been manifested in the request of Rwanda, resulting in the UN Security Council establishing the Criminal Tribunal for Rwanda. Sierra Leone's request resulted in the Special Court for Sierra Leone (Du Plessis 2008:1). These courts, however, were created for a specific reason and will terminate. The widespread human rights abuse in Africa necessitates a permanent court to address these issues.

The use of human rights courts is a fairly new idea in Africa. From the outset African leaders have shown reluctance to subject themselves to a Pan-African judicial body. In 1963, the founding conference of the OAU rejected the draft Charter that provided for a Court of Mediation, Conciliation and Arbitration (Udombana 2003:819). African leaders seem to rather favour the use of quasi-judicial bodies than courts with enforceable jurisdiction.<sup>27</sup>

A further opportunity for establishing a court presented itself in the 1980s with the establishment of the African Charter, but once again, the OAU declined. They refused to establish an African Human Rights Court to enforce the rights set out in the African Charter. Instead, they opted for the creation of the African Commission on Human Rights in 1987. This was another quasi-judicial body with no mandate to implement the rights set out in the African Charter (Udombana 2003:820).

The need for a body with the authority to enforce recommendations and compliance with human rights led to a protocol to the African Charter establishing an African Court.<sup>28</sup> There was still some reluctance by African states to accept the jurisdiction of the Court. The Protocol was adopted in 1998 and came into operation in 2004 after 15 States ratified it. The first set of judges has been appointed.<sup>29</sup> The rules and procedures of the Court were developed in June 2008 and it is predicted that the first case will be heard later in 2009 (Sceats 2009:4).

This is not the only court provided for in the Pan-African framework. The Constitutive Act of the AU also provided for an African Court of Justice, the main judicial body of the AU (Udombana 2003:816),<sup>30</sup> which never came off the ground.

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27 Udombana (2003:818) postulates that African dispute settlement favours "consensus and amicable dispute settlement, frowning upon the adversarial and adjudicative procedures common to Western legal systems".

28 The Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights was adopted in June 1998.

29 The Court consists of 11 judges, all nationals from the member states of the AU. See Udombana (2003:827). Appointments must provide a balanced representation of the five main African regions and its principal legal traditions, being customary law, Islamic law, common law and civil law.

30 The Constitutive Act did not elaborate on the composition of the Court, its mandate or functioning.

Just as the development of the ACHPR were gaining momentum, the chairperson of the AU Assembly, President Obasanjo, revived an earlier idea that this court should be merged with the African Court of Justice (Sceats 2009:4). The suggestion was accepted in July 2004. The new court will be known as the African Court of Justice and Human Rights (Sceats 2009:5).<sup>31</sup> Its Protocol replaced the Protocols for the previous two courts and the new court will now be the main judicial organ of the AU. The ACHPR will remain operational pending the creation of the new permanent court. Once the new Protocol comes into force, all pending cases will be transferred to the human rights section of the court (African Union 2008:Article 5; Sceats 2009:5).<sup>32</sup>

The court will have two sections: a general section that will decide issues regarding the powers of the AU and the breach of treaty obligations by states and a human rights section that will decide issues regarding state violations of human rights (Sceats 2009:5).<sup>33</sup>

When violations of human rights are found, the court may issue binding judgments and order compensation for victims. The court is also able to issue advisory opinions on general questions of human rights law (Sceats 2009:6).

Unlike its European and inter-American counterparts, the African Court of Justice and Human Rights are not restricted to interpreting just one treaty. All other treaties signed by member states fall within the jurisdiction of the Court.<sup>34</sup> One drawback is that the Court does not have jurisdiction to hear international crimes. The fact that the ICC is not a human rights court emphasises the need and importance of the regional human rights courts (Sceats 2009:12).

Complaints can only be brought against a state and not against an individual. It will be extremely difficult for those most in need of assistance to bring a matter before the Court. The Court allows direct access to member states and a limited number of African NGOs. All other NGOs, as well as individuals, will only be able to gain access if the state against whom the action is based signs a special declaration acceding to the Court's jurisdiction to hear the case (Sceats 2009:2).<sup>35</sup>

No appeal is possible and the decision of the Court is final, although the procedure allows for a later revision in those instances where new facts come to light afterwards. All decisions are binding (Sceats 2009:11).<sup>36</sup> The Court has the authority to monitor

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31 The Protocol establishing the court was adopted in July 2008 at the 11th AU Summit. It is open for ratification, but to date only two States have signed the Protocol, but none have ratified it yet.

32 This state of affairs were due to lobbying from various NGOs who feared that human rights would have no judicial protection in the interim waiting for the new court to come into existence which foreseeably will take a number of years.

33 For a discussion of the advantages and disadvantages to this, see Sceats (2009:5).

34 Article 28 of the Statute of the African Court of Justice and Human Rights.

35 The logical deduction from this requirement is that very few, if any, States will allow this to happen.

36 By signing the Protocol, states guarantee that they will abide by the Court's decision. In the end, compliance will be a political decision and not a judicial one. See also Udombana (2003:834).



compliance to its decisions by states and, in those instances where a state does not comply, the matter will be referred to the AU Assembly who will then determine how to proceed.

The success of the Court will be determined by member states' level of compliance. Sceats (2009:13) suggests the outcome does not look positive if one looks at the history of compliance with the Commission's recommendations and decisions.

## Conclusion

The creation of the AU, various bodies and treaties, as well as the ACHPR, created a potential human rights-friendly environment in Africa. Without compliance with human rights and human security, we will continue to see humanitarian atrocities. That is why it is not possible to look at IHL without focusing on HRL. Due to the nature of modern conflicts in Africa, it is sometimes difficult to separate the two.

The literature indicates that definite progress has been made. Botswana, Ghana, Liberia and Zambia have been praised by Human Rights Watch for their support in human rights initiatives (Sceats 2009:3). The DRC, Uganda and Central African Republic requested investigations by the ICC. The African Union Mission in Burundi stabilising the situation and enabling the UN Peacekeeping mission (Tadesse 2009),<sup>37</sup> and assistance in Sudan, are noteworthy examples. Unfortunately, the sheer number of human rights abuses in other parts of Africa tends to overshadow the good progress being made.

Civilians are probably the most vulnerable. In those instances where the conflict is not severe enough to trigger IHL, the only way to protect them will be by means of HRL. Regional human rights courts may be of some assistance. However, as it stands, individuals and NGOs do not have direct access to these courts, unless the state involved agrees. In those instances where non-state actors are the perpetrators, the civilian would have no recourse.

The challenge of IHL is that it does not prevent suffering. At most it may limit the suffering and bring a speedier end to the conflict. One should therefore attempt to internalise human rights because an acceptance of HRL principles may lead to an acceptance of the principles of IHL. Compliance with human rights will in fact remove many of the reasons for conflict. However, without the political will to comply with treaties and other instruments, human rights documents will not be worth the paper they are written on.

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37 For a further discussion on African Union involvement, see Murithi (2008).

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# SUMMARY AND CONCLUSIONS

FRANCOIS VREÏ

This publication is a humble attempt to contribute to a better understanding of strategic theory and African armed conflicts by publishing the contributions of a diverse group of international academics working in the fields of politics, security studies, international law and strategy. The foreword and introductory chapter allude to some of the intricacies that one faces when working in the realm of strategic theory in particular. It is important to note, as Colin Gray does (by quoting Clausewitz), that theory educates; it does not provide operational and tactical answers when in battle. Both theorists and practitioners must understand this educational imperative to temper or avoid undue expectations. It remains, however, a challenge to create the general explanatory theory or theories rightly envisaged by Clausewitz.

Although the foreword quite lucidly points out how theory and expectations of theory to inform institutional decision making are often eroded or converted by the bureaucracies of government institutions, the process of theory development continues. Even though dramatic advancements in strategic theory are rare, one must assume that its incremental progress remains important to assist and guide those that care to turn to the intellectual pursuit of matters of strategy, however selective or comprehensive the profile of this interaction. The one condition that must be avoided is that of “*In the absence of strategic theory ...*”. In all probability it is perhaps not wrong to argue that political and military decision makers in fact draw upon strategic theory – whether consciously or not, and whether they acknowledge or deny this. Even if the theoretical underpinnings for decisions that deal with

matters of war in the regular or irregular modes, on land, at sea or in the aerospace or cyber domains are often not as prevalent as one would prefer, strategic theory remains a pathway to analyse, explore, describe and explain events in the realms of war, strategy and other forms of armed conflict. Strategic theory remains relevant and contributes to understanding complex and often dangerous phenomena, although it is to be expected that groups or decision makers so often employ it to serve their own goals.

The contributions of the authors view matters of strategy from several angles. The study of strategy and the role of strategic theory is one matter, but when institutions and bureaucracies formulate a strategy in competition with different parties and to the satisfaction of experts, it does not always appear to be logical and rational. Formulating theoretical departures and frameworks on the nature and operation of strategy are visible in the literature and reflect much research, pondering and conceptualisation of phenomena. The process of theory building raises the matter of committed and experienced academics building systematic theories and understanding, and the practical world of policy and strategy formulation by bureaucrats involved in compromises, alliances and interest groups that often ignore, or twist and mangle what theories envisage. This is not a simple interface or relationship and Shrikant Paranjpe of Pune University depicts some of the complexities from an Indian perspective as he attempts to shed some light on Indian strategic thought. The dominant locus of Indian thought is political decisions about how to maintain peace in the international system at a time when India is rising as a dominant power in the Indian Ocean and South Asia with its simultaneous continental and maritime demands. Paranjpe also alludes to the cultural influence from Indian history – a matter that few nations manage to escape – and, in particular, the influence of a Ghandi. From a geostrategic approach, Bjorn Møller and Nicolai Møller attempt an explanation of AFRICOM with its renewed focus upon Africa in US security policy and the endeavour to formulate a strategy that sheds the perceived (and perhaps real) intrusive tag from US military involvement in Africa. Both contributions reflect how eventual compromises impact upon and often distort the envisaged strategies of governments.

Formulating strategy and the intricacies of strategic theory on the use or threat of coercion, so it appears, do not always show a neat interface. In the case of Africa, this interface between formulating strategy and the theoretical and more normative worlds appear fuzzy, but this is so often ascribed to the irregular nature or absence of rational strategy processes in many of the conflict-ridden states. The difficulty of getting a conceptual hold upon strategic theory and the idea that strategic theory offers a general explanation in some prudent way seem to further complicate the link between understanding and making strategy. The contributions by Annette Seegers and Bjørn Møller, for example, illustrate some of these difficulties as the relationship between the military and civil authorities are often hostile or merely civil, with the latter often insecure with or unsure about their own armed forces. If the threat profile becomes a multi-headed hydra as shown by Møller, it only serves to complicate matters for authorities, and so much more than the need for strategic

theory to order the threat complexity besieged governments and their decision makers have to face.

The expectation of strategic theory being a general theory, and efforts to force more and more armed phenomena into the realm of war, challenge the explanatory power of strategic theory. Attempts to expand the domain of what constitutes war, allow for polemics as those who hold a Clausewitzian view of strategy and others who attempt to disregard Clausewitz or stretch his contributions increasingly confronting each other. This clash of views and the ensuing debates allude to competing paradigms as they represent different frameworks for viewing the fields of strategy and war. This debate is growing in a Kuhnian way with each contingent defending their views and drawing its own body of adherents. In a way, the African domain of armed conflict depicts much of the regular-irregular competition in thought with its prevalence of irregular warfare over that of regular interstate warfare as fought between Ethiopia and Eritrea at the turn of the twentieth century. Two developments have gradually evolved in response to the often lawless, destructive and seemingly unending irregular warfare and complex emergencies that face armed forces in Africa: A growing legal-moral regime and that of conducting extensive peace missions.

Incumbent African authorities that face irregular threats to their reign and subjects have to contend with a growing legal ambit embedded in the rising influence of the International Criminal Court (ICC), the Law of Armed Conflict (LOAC) and the influential moral principles embodied by the responsibility to protect. Salim Nakjavani, Michelle Nel and Pieter Brits opened some windows on these legal and moral imperatives that are fast assuming salience in the realms of armed conflict and Africa in particular. Chad, Rwanda, Somalia, Sudan and Darfur represent cases where the legal impact of the ICC and LOAC, as well as moral dictates of the responsibility to protect are making their influence felt. The harsh reality appears to be that the legal and moral regimes take effect rather slowly. These regimes also add another layer to the realm of strategy that so many governments already have difficulty coping with as the turn to democracy brings them face to face with an array of legal and moral values upheld by important actors in the international system. The freedom to employ armed coercion is thus under renewed scrutiny and some African governments, leaders and non-state groups appear to attract the attention. For now, it appears that African governments are in favour of, but rather selective or careful to accept and abide by the new legal and moral rules for state and leadership conduct when employing the coercive powers of their security forces.

The single migration that perhaps shows the most significant shift in dealing with armed conflict in the late twentieth and early twenty-first centuries is the way decision makers embraced the concept of peace operations in its many forms. As opposed to direct coercion or the threat thereof, the swing towards peacekeeping caused armed forces to become very busy policy tools and in particular by engaging in an extended role-spectrum that adds to and challenges their traditional warfighting cultures. Irrespective of institutional opposition, peace missions in their different manifestations became the dominant operational activity of so many military institutions. Theo Neethling exposes this shift to peacekeeping. He reflects



upon the collective enormity of this migration in terms of costs and force levels in the face of a seemingly continuous growth in demand as new conflicts unfold or ongoing ones refuse to yield to peacekeeping missions. The latest development in Africa involves hybrid operations where several regional entities (even non-African) pool their human and material peacekeeping resources in an attempt to temper difficult armed conflicts such as those in Chad and Sudan. In spite of the theoretical underpinnings that accompanied the shift and growth in contemporary peacekeeping, it appears that success is mixed and peacekeeping remains in need of fresh intellectual stimulation (such as hybrid peacekeeping) to expand its perceived and operational utility.

Philip Winter's report from the field does not offer much hope of peacekeeping bringing complex internal armed conflicts to some amicable end. Winter argues that peacekeeping does contribute, but avers that peacekeeping forces cannot compensate for extended periods of marginal governance. The huge peace mission in the DR Congo appears to have rendered mediocre outcomes – a further rationale to revisit the foundations of peacekeeping in its entirety. The government of the DR Congo must play a more righteous role to deal with the complex conflict realm, but Thomas Mandrup questions whether this is in fact possible as the theoretical departure of Congolese government control over territory and instruments of violence remains absent or questionable. The cultures of plunder and despotic rule are perhaps already too deeply entrenched and using armed forces to win back control over territory and people contribute little to normalise matters. This state of affairs also raises a different dilemma – that of the military becoming the primary policy instrument to deal with threats and to defend government against internal armed opposition to the detriment of the weak and vulnerable who need protection.

The shift to irregular or low-intensity conflict suggests that regular armed forces must adjust to remain in step. How armed forces adjust to changing strategic challenges is not a sole political matter, although some theorists argue strongly that political forces for change must be the main drivers. The strategy employed by the opponent often compels decision makers to respond and meet unfamiliar or difficult military challenges and asymmetry is one such an example. The iterations of peacekeeping and peace enforcement depict some attempts to deal with opponents operating in the indirect mode with the aim to offset the power that conventional militaries embody. Currently, the terrorism-insurgency threats of the twenty-first century best portray asymmetry, although the concept embodies much more than the latter two examples. Joeli Pretorius uncovers the tension between asymmetry and war proper and the relevance of asymmetry for African strategic thinking. Asymmetry holds the real potential to benefit how some African armed forces operate as they reflect an earlier familiarity with or even a culture of low-tech irregular warfare to achieve political goals. It appears that an insurgency culture (for example) lingers on and as opposed to typifying asymmetry as some indecent way to strategise for war, it is now an uncomfortable reality for some and in need of understanding and scholarly attention. Asymmetry threatens those military institutions that train and fight in the high-tech conventional mode, and for them to change this mode is a major challenge.

In conclusion, strategic theory serves to explain phenomena in the realm of strategy as far as the use or threat of armed coercion for the ends of policy is concerned. It is not a mature general theory with a predictive utility and should rather be understood as one that explains much of what transpires in the use or threat of armed coercion by state and non-state actors. Strategic theory takes time to adjust to and create theoretical foundations for shifts in the strategic environment and how armed forces react to these changes. Colin Gray is rather explicit about this evolving or changing grammar of strategy as the techniques of warfare are constantly changing and quite drastically at times. Although strategy seems to be easy, the ways in which political institutions in particular struggle to formulate and execute strategy by preparing and employing their armed forces, attest to its difficulty. African armed conflicts portray many of the dilemmas experienced by governments getting it wrong, as well as how external actors struggle through interventions to employ armed forces to deal with a changing strategic landscape. Although some theoretical developments underpin the changes through the debates on the ICC, LOAC, peacekeeping, asymmetry and weak governance, governments and strategic theory both appear to slowly come to grips with the complexities they need to explain and deal with. Unfortunately, strategic theory does not develop in explanatory leaps, and governments appear selective about embracing the contributions of strategic theorists.



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