Carleton Review of International Affairs

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Editors: Allison Worone & Andrew Vey

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Message from the President

The *Carleton Review of International Affairs* arrives on the world stage in a year when Carleton University welcomed the world to its campus with many international visitors, including the Emperor of Japan. The university hosted several conferences at which scholars from dozens of nations contributed to the exciting dialogue and opportunities for shared learning. Carleton faculty and students shone in their collaborative efforts in Rwanda, working diligently with the nascent school of journalism in the country's National University. The Faculty of Public Affairs' courses for world leaders, funded by the World Bank, are most valued and contribute to the outstanding reputation of the school. The Norman Paterson School of International Affairs has led world thought in its scholarship on United States-Canada relations, presenting a significant report to the leaders of both countries that received excellent reviews. Led by Randy Zadra, efforts to cement relationships with universities around the world have brought new students and visitors to the university. The Sprott School of Business is well known for its highly successful International Business program whose graduates are now leaders around the world.

Carleton University's exceptional programs are truly global in reach. Whether one studies the foundation of world civilizations in the Humanities program, the global environment and health, international policy and law, transnational business and finance, or the geological makeup of the earth, globalization is a constant leitmotif. Students in physics work with the SnoLab in Sudbury but also with the reactor in Lucerne, Switzerland. Students in computer simulations are mapping global problems and students in engineering are bringing their solutions to the real-life problems of peoples in every country. Engineers Without Borders, for instance, is building dams and wells, teaching hygiene and providing solar energy to the homes of indigenous populations in developing nations of the world.

Carleton's faculty and students hail from over 150 countries, offering the fine perspective of their personal experience to our classrooms and to our social, cultural and athletic events. "Go

Ravens" may not literally resound around the world, but it does reverberate in nearly every language and is definitely in the hearts of every alumnus wherever their work takes them.

This journal thus recognizes the excellence of our programs, faculty, staff and students. It is indeed fitting that the *CRIA* be born at Carleton where Nobel Prize winner and former Chancellor, Lester B. Pearson, known for his support of peace, of globalization, of education and of the humanities, led international efforts to bring the world together and to provide, with the League of Nations and subsequently with the United Nations, forums where dialogue and discussion could lead to understanding.

I salute the creators of this publication and congratulate them on this fine, first issue. I applaud the contributors, reviewers and editors who have all lent their expertise to this project and the readers who will benefit from the scholarship resulting from their efforts. I am very proud of these Carleton colleagues and students who have dared to dream boldly and to realize their dreams. They are thereby contributing not only to their personal learning but to the creation of a body of knowledge to be shared internationally. They are true Carletonians in the finest Pearsonian tradition!

Dr. Roseann O'Reilly Runte
President and Vice-Chancellor
Carleton University

Letter from the Editors

The *Carleton Review of International Affairs* (*CRIA*) is intended to showcase the work of undergraduate students studying subjects of global concern. Every year, thousands of essays are written at Carleton University, and in most cases, the audience of these works is limited to those persons involved in the evaluation process. While such practice is certainly central to developing one's academic prowess, it can have the side effect of encouraging students to focus on achieving a desired grade rather than crafting scholarship that pushes the limits of their intellectual capacity. It is our hope that by providing a medium by which authors may see their work published, the *CRIA* will help drive students to unleash their full potential.

Perhaps one of the most unique aspects of the *CRIA* is its modified peer review process. For our inaugural publication, this was based on a four step system. In early March, undergraduate students were invited to submit papers that had originally been composed to fulfill a required component of their coursework. Following an initial appraisal, the second stage saw a collection of the more promising essays forwarded to volunteer graduate students for further assessment. These individuals acted as our peer reviewers. Through a double-blind process, they were matched with submissions on the basis of individual expertise. This experience was intended to not only elicit valuable feedback for undergraduate authors, but also to provide hands-on training for graduate students in an important aspect of academic life. The comments generated from the peer reviewers, along with suggested revisions from the editors, were then returned to the authors, who in turn made the necessary modifications and resubmitted their papers. Finally, the works selected for the first issue were put through one last stage of copy-editing. The standards of the *CRIA* strive to live up to the highest principles of academic rigour, while still allowing the publication process to be accessible enough to help train the next generation of scholars.

We would be remiss if we did not take time to thank the innumerable people who helped us bring the *CRIA* to life. First, we wish to acknowledge Dr. James Milner, whose guidance helped us

develop the peer review mechanism and for whose general advice we cannot be appreciative enough. We would also like to thank our many peer reviewers for both their diligence and commitment to the project. Emily Villeneuve is another person who has earned our gratitude for helping to coordinate the peer reviewer process and providing an impartial judge when the time came to select this year's best essays. For their kind words of introduction that open the *CRIA,* we are indebted to Dr. Roseann O'Reilly Runte and Dr. Randall Germain. Lastly, to the authors of the essays contained within the *CRIA,* we say thank you for your patience, your determinism and your tenacity. Indeed, without you, this project would have been for naught.

Allison Worone and Andrew Vey
Editors
Carleton Review of International Affairs

Forward

Few things trump the kind of satisfaction that university professors receive from seeing their students succeed. Amid the doom and gloom of the global economic crisis and subsequent political uncertainty, an enterprising group of students at Carleton University have launched a new journal to showcase the kind of research and learning that goes on in Faculty of Public Affairs. Certainly, the Faculty and my own Department take great pride in fostering an awareness and sense of responsibility towards how we act in the world. The essays that follow and their student authors demonstrate exactly why we feel this way: they are real-world focused and ask hard questions about the kind of world politics we want to pursue.

The five essays in this inaugural issue tackle a number of important themes that together help to define the current state of international affairs. International law and human rights feature prominently, as do questions associated with international organizations (whether new or established, global or regional) and economic development. This should be unsurprising, since our students are keenly interested in how the world works and the kinds of institutions and principles around which it is structured. Whether it is the perennial question of how self-determination is gained (or denied) or the much newer one of the making an International Criminal Court work effectively, students want to examine the key dynamics that shape our lives. They are also, as these essays demonstrate, very much attuned to how questions of inequality, vulnerability and fairness get played out in the real world. If you want to get a strong sense of what animates the next generation of potential leaders, these essays are a good start.

I share my Department's pride in the accomplishments of these students, some of whom I have taught over the years. This journal exemplifies how much energy and determination they are bringing to the task of understanding and improving their world. Although the present period is one of much uncertainty and enormous stress, we can all at least take some comfort in the degree of enthusiasm that our graduates will bring to the urgent task of renewing international affairs. We only have one world, after all, and we are all

– each one of us – an important part of its make-up. To make it a better place we need to start with a solid and grounded understanding of its component parts and its various dynamics. The *Carleton Review of International Affairs* is a contribution to that endeavour; long may it prosper.

Dr. Randall Germain
Chair of the Department of Political Science
Carleton University

Individual Criminal Responsibility in International Human Rights Law: The Contribution of the International Criminal Court

Justin Mohammed

Abstract: The road to developing an international institutional capacity to prosecute crimes against humanity, war crimes, and genocide has been a long one, and has in many ways concluded with the establishment of the International Criminal Court (ICC). By looking at the Nuremberg and Tokyo Tribunals, the International Criminal Tribunal for Rwanda (ICTR) and International Criminal Tribunal for the Former Yugoslavia (ICTY), as well as the ICC, this paper traces the evolution of the concept of individual criminal responsibility to its present incarnation. It argues that while the ICC presents its own unique 'added value' to the prosecution of international criminals, its application of justice continues to be biased by the influence of powerful states.

The concept of individual criminal responsibility is an old one, which in its initial incarnation was limited to piracy, slavery, and certain violations of the laws of war.[1] Most would trace this concept's current expression in international human rights law to a more recent time when, in 1945, the *Charter of the International Military Tribunal* was agreed upon by the Allied powers at the conclusion of World War II, establishing the Nuremberg Trials.[2] That said,

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[1] Cherif M. Bassiouni, *Crimes Against Humanity in International Law*, 2nd ed. (The Hague: Kluwer Law International, 1999), 514.

[2] Ibid., 1.

individual criminal responsibility has long been a component of customary international law,[3] and municipal courts have possessed the ability to exercise criminal jurisdiction according to the principles of territoriality, active personality, passive personality and protectivity for some time. Unfortunately, even with the emerging consensus about 'universal jurisdiction' over crimes that offend all of humanity in customary international law, there have been few instances in which domestic courts have been able to effectively prosecute international crimes of the gravest nature.[4] The road to developing an international institutional capacity to prosecute crimes against humanity, war crimes, and genocide has been a long one, and has in many ways concluded with the establishment of the International Criminal Court (ICC).

The ICC has been heralded as a grand success by some, and has been dismissed and utterly criticized by others; as with many things, the truth appears to fall somewhere in between. The purpose of this paper will be to trace the evolution of individual criminal responsibility by looking at the Nuremberg and Tokyo Tribunals, the International Criminal Tribunal for Rwanda (ICTR) and International Criminal Tribunal for the Former Yugoslavia (ICTY), and finally the ICC. In doing so, it will be demonstrated that although the ICC has brought positive contributions to the field of individual criminal responsibility, it has ultimately failed to address many of the problems that have plagued prior attempts at prosecuting international criminals, leaving the project largely incomplete.

The Legacies of Nuremberg and Tokyo

The International Military Tribunal at Nuremberg was established by inter-Allied agreements between France, Great Britain, Russia and the United States, with the intent of prosecuting major German war criminals for atrocities committed during World War II, particularly

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[3] See, for example, the Preambles of the 1899 and 1907 Hague Conventions 'Marten's clause,' as well as the Geneva Conventions.

[4] The crimes (such as torture, genocide, etc.) referred to here are those that have achieved the status of *jus cogens*, creating obligations *erga omnes* to either extradite or prosecute (*aut dedere aut judicare).*

focusing on the Holocaust of European Jews. The list of crimes established by its Charter included aggression as a violation of the Kellogg-Briand Pact[5] but also included crimes bearing individual responsibility, namely: crimes against peace, war crimes, and crimes against humanity.[6] Although prohibitions against crimes against humanity had long existed, Nuremberg marked the first time that these crimes were defined in positive international law.[7] The Nuremberg Tribunal further developed the notion of individual criminal responsibility by eliminating two possible defences open to individuals accused of such crimes: the 'act of state' doctrine and the plea of 'superior orders.'[8] The Tribunal eventually delivered twelve death sentences, seven prison terms and three acquittals, and the decisions constituted precedent to be followed in the future.[9] The basic ideas regarding international criminal responsibility that were established by Nuremberg were eventually approved by the International Law Commission, which was asked to prepare a draft code relating to the Nuremberg Principles in 1947.[10]

At the Nuremberg and Tokyo Tribunals, the Germans and Japanese were rightfully held accountable for a series of international crimes. However, because it was a coalition of the Allied forces that established the courts, their own crimes were never prosecuted. Indeed, Article 1 of the Nuremberg Charter clearly proclaims its role to be "the just and prompt trial and punishment of major war criminals of the *European Axis*" (emphasis added).[11]

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[5] Peter Malancuzk, *Akehurst's Modern Introduction to International Law*, 7th ed. (New York: Routeledge, 1997), 354.

[6] United Nations, *Charter of the International Military Tribunal – Annex to the Agreement for the prosecution and punishment of the major war criminals of the European Axis ("London Agreement"), August 8, 1945,* Article 6.

[7] Bassiouni, *Crimes Against Humanity in International Law*, 41.

[8] Richard Wasserstrom, "The Relevance of Nuremberg," *Philosophy and Public Affairs* 1, no. 1 (1971): 24-8.

[9] Bassiouni, *Crimes Against Humanity in International Law*, 529.

[10] Malancuzk, *Akehurst's Modern Introduction to International Law*, 355.

[11] United Nations, *Charter of the International Military Tribunal*, Article 6.

Moreover, the Committee of Chief Counsels at Nuremberg was made up of eight justices, with two coming from each of the major Allied powers.[12] A similar display of victor's justice occurred at the Tokyo Tribunal, where indictments were filed solely by Allied prosecutors against solely Japanese defendants.[13] Neither Tribunal prosecuted Allied war crimes, including the bombing of civilian targets in Europe and Japan.[14] Therefore, while the International Military Tribunal at Nuremberg and the International Military Tribunal for the Far East marked a watershed moment in the establishment of individual accountability for violations of human rights, both involved processes that essentially resulted in the Allies imposing one-sided justice on their enemies.[15] In order to be considered truly just, future courts would need to prosecute victors as well as those defeated. This was attempted by the next major international tribunals, the ICTY and ICTR.

The International Criminal Tribunals for the Former Yugoslavia and Rwanda

It was not until the 1990s that international criminal tribunals would resurface, coming into creation once again in the pursuit of justice following atrocities of a genocidal scale. The ICTY was established under a Chapter VII mandate of the United Nations Security Council by Resolution 827 of May 1993.[16] The Tribunal's mandate was to "prosecut[e] persons responsible for serious violations of international humanitarian law committed in the territory of the

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[12] Bassiouni, *Crimes Against Humanity in International Law*, 528.

[13] Victor Peskin, "Beyond Victor's Justice? The Challenge of Prosecuting the Winners at the International Criminal Tribunals for the Former Yugoslavia and Rwanda," *Journal of Human Rights* 4, no.2 (2005): 214.

[14] Ibid.

[15] Stephen R. Ratner and Jason S. Abrahams, *Accountability for Human Rights Atrocities in International Law: Beyond the Nuremberg Legacy*, 2nd ed. (London: Oxford University Press, 2001), 6.

[16] United Nations, *Security Council Resolution 827*, May 25, 1993.

former Yugoslavia between January 1, 1991, and a date to be determined by the Security Council upon the restoration of peace".[17] As such, it was restricted both territorially (its jurisdiction limited to those crimes taking place in the Former Yugoslavia) and temporally (covering crimes that took place after January 1, 1991).

In November 1994, the Security Council established the ICTR with the passing of Resolution 955, giving the Tribunal the mandate to "prosecute persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994".[18] Similar to the ICTY, the ICTR was restricted by temporal limitations. However, the territorial restriction was omitted so as to give the Tribunal jurisdiction over crimes that took place by or against Rwandese citizens in neighbouring states.[19]

Like the tribunals at Nuremberg and Tokyo, the ICTY and ICTR made significant contributions to the establishment of international criminal accountability. To begin, they were able to present an institutional legitimacy that was lacking under the Allied framework established after World War II. As creations of the United Nations, the ICTY and ICTR could lay claim to a certain degree of legitimacy, as they were supported by a diverse group of states as opposed to an exclusive group of victorious states. For example, in selecting the prosecutors and judges for the ICTY, the Security Council was very careful to ensure broad representation by including many states in the process.[20] Another contribution of the ICTY and ICTR is that both tribunals employed a system of 'concurrent jurisdictions' with the national courts of the territories over which they were

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[17] Ibid., Article 2.

[18] United Nations, *Security Council Resolution 955*, November 8, 1994, Article 1.

[19] Ibid.

[20] John A. Moore and Jerry Pubantz, *The New United Nations: Internaional Organization in the 21st Century* (Upper Saddle River: Pearson Prentice Hall, 2006), 242.

adjudicating,[21] a principle that would be revisited and slightly amended with the creation of the ICC.

Although the new tribunals made important advances to the regime surrounding international criminal responsibility, some of the classic problems that troubled Nuremberg and Tokyo were solved by neither the ICTY nor the ICTR. Perhaps the most problematic and obvious issue is that of victor's justice, although it was different in nature to the type that was experienced during Nuremberg and Tokyo. While the ICTY and ICTR have the statutory ability to prosecute all criminals, substantiated claims of subjectivity have been levelled at these courts as well.[22] For instance, despite the fact that the conflicts in the Former Yugoslavia and Rwanda included crimes on both sides of the conflict, there is an obvious lack of prosecution of Croatians by the ICTY and Tutsis (specifically Rwandan Patriotic Front soldiers) by the ICTR.[23] This is said to have resulted from the tribunals' weak enforcement powers, which has allowed the governments of the Former Yugoslavia and Rwanda too much leverage over those who are prosecuted.[24] To make matters worse, the governments in Zagreb and Kigali have used a number of obstruction techniques to prevent certain prosecutions. These techniques have included hiding government non-compliance, justifying government non-compliance (for example, citing a lack of capacity to comply), presenting legal objections, and generally criticizing tribunals or their prosecutors.[25] In the case of the Former Yugoslavia, it is important to note that the dichotomy of 'winners' and 'losers' does not simply include Croatians and Serbs; the Tribunal has failed to bring charges against the North Atlantic Treaty Organization forces for civilian casualties resulting from aerial

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[21] United Nations, *Security Council Resolution 827*, Article 2; and United Nations, *Security Council Resolution 955*, Article 1.

[22] Peskin, "Beyond Victor's Justice," 214.

[23] Ibid., 228.

[24] Ibid., 214.

[25] Ibid., 217.

bombing campaigns of Serbia, in spite of its possession of the legal mandate to prosecute these crimes as well.[26]

In addition to the problem of victor's justice, the ICTY and ICTR have suffered other critiques. Some have argued that they are "costly, inefficient and ineffective", taking up over ten percent of the UN budget and failing to contribute effectively to broader goals of peace and security.[27] Furthermore, they continue to operate on an ad-hoc basis and, as such, are completely dependent on the political and financial support of the United Nations Security Council. Also, like Nuremberg and Tokyo before them, the ICTY and ICTR were only established at the conclusion of hostilities, after the genocidal atrocities had already taken place. The ICC would mark the first departure from this reactionary approach towards a more active approach.

The International Criminal Court

The ICC was established on July 17, 1998, with the adoption of the Rome Statute following the UN Diplomatic Conference of Plenipotentiaries on the Establishment of the International Criminal Court. Present at the conference were over 160 countries, 134 NGOs, seventeen intergovernmental organizations, and fourteen UN specialized agencies and funds. By April 2002 the sixty ratifications necessary to bring the Court into existence had been obtained.[28] Article 1 of the Rome Statute clearly states the nature of the court:

> [The Court] shall be a permanent institution and shall have the power to exercise its jurisdiction over persons for the most serious crimes of international concern, as referred to in this Statute, and shall be complementary to national criminal jurisdictions. The jurisdiction and functioning of

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[26] Peskin, "Beyond Victor's Justice," 228.

[27] Ralph Zacklin, "The Failings of Ad Hoc International Tribunals," *Journal of International Criminal Justice* 2 (2004): 544-5.

[28] Moore et al., *The New United Nations,* 244-5.

the Court shall be governed by the provisions of this Statute.[29]

There are many benefits that resulted from the establishment of the ICC; as can be discerned from the article quoted above, the ICC differs from other tribunals in the sense that it is permanent. As such, it avoids the dependency and conditionality that was required from the international community, namely the United Nations Security Council, under the ad-hoc tribunal system. Similarly, the ICC is not territorially or temporally restricted, remedying another critique of the ad-hoc tribunals. Yet another feature of the ICC expressed in Article 1 is that of complementary jurisdiction, a slight modification of the system established by the ICTY and ICTR. According to Article 17 of the Rome Statute, the primary responsibility for prosecution remains with the state, but the ICC can adjudicate where domestic courts refuse, are unwilling or are unable to prosecute serious international crimes. This measure is essential to ensuring that states continue to bear primary responsibility (and sovereignty) over international criminals, but presents an alternate avenue of prosecution to theoretically prevent cases of impunity should national instruments fail.

A major achievement of the Rome Statute is the waiver of the 'official capacity' immunity. Article 27 cites the 'Irrelevance of Official Capacity,' reflecting the precedent established in the Pinochet case. This precedent holds that immunity for public officials cannot be conferred for acts that are plainly criminal under customary international law.[30] Furthermore, as per Article 13(b) of the Rome Statute, cases can be referred to the ICC by the Security Council under Chapter VII of the Charter of the United Nations. This is to say that serving government officials and heads of state that are not party to the Rome Statute can face indictment. This was seen in the case of the recent request of ICC Prosecutor Luis Moreno-Ocampo to have an arrest warrant issued against Sudanese President Hassan Ahmad al-Bashir for genocide, crimes against humanity and

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[29] United Nations. *Rome Statute of the International Criminal Court (UN Doc. A/CONF.183/9)*, July 17, 1998, Article 1.

[30] Re Pinochet Ugarte [1999] H.L.J. No. 12, para 198.

war crimes.[31] Although Sudan is not a currently a state party to the ICC, the Prosecutor was referred by the Security Council to investigate crimes in Darfur, giving the court the prerogative to issue an arrest warrant. [32] The case of Sudan's al-Bashir marks the first occasion upon which a serving head of state may face trial by the ICC.

Other advantages of the ICC are less obvious but equally important. The ICC marks the first time that direct participation of alleged victims has been permitted. Victims are allowed to make written submissions, participate at every stage of criminal proceedings and seek compensation for damages.[33] It also marks the first time that an international court has the authority to order an individual to compensate another individual by providing restitution, indemnification, or rehabilitation.[34] Furthermore, the notion of 'command responsibility' was broadened during the Rome negotiations to encompass not only military leaders, but also civilian leaders.[35] Finally, the empowered role of the Office of the Prosecutor to independently conduct investigations is often cited as a significant achievement in the pursuit of justice for international criminals.[36]

There are a number of criticisms that have also been levelled at the ICC, some of them being reincarnations of unresolved issues of past tribunals. The first critique is the unfair application of justice. As was demonstrated above through the discussion of Nuremberg, Tokyo, the ICTY and ICTR, victor's justice has played a role in undermining all four tribunals' claim to fair prosecution of

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[31] International Criminal Court, "ICC Prosecutor presents case against Sudanese President, Hassan Ahmad AL BASHIR, for genocide, crimes against humanity and war crimes in Darfur," July 14, 2008, http://www.icccpi.int/press/pressreleases/406.html.

[32] United Nations, *Security Council Resolution 1593*, March 13, 2005.

[33] Moore and Pubantz, *The New United Nations,* 244-5.

[34] Ibid., 245.

[35] Ruth Wedgewood, "The International Criminal Court: An American View," *European Journal of International Law* 10 (1999): 94.

[36] Jason Ralph, "Between Cosmopolitian and American Democracy: Understanding US Opposition to the International Criminal Court," *International Relations* 17, no. 2 (2003): 197.

international criminals. Unless the Prosecutor takes a more holistic approach to his investigations, a similar critique may be justifiably levelled against the ICC. Take, for instance, the fact that the only 'situations' before the court are for crimes committed by African actors (the Democratic Republic of the Congo, Uganda, Central African Republic, and Sudan).[37] While there is substance to the Prosecutor's allegations against these individuals, just as there was substance to allegations against the Nazis and the Hutu *genocidaires*, other legitimate cases appear to have been ignored. For example, despite having received over 240 complaints about the war in Iraq, Ocampo has summarily refused to investigate allegations against British and American military personnel.[38] Citing a lack of 'widespread' crimes as a justification for turning down calls to investigate Iraq, Ocampo has forfeited the opportunity to prosecute those accused of committing war crimes, regardless of the scope of criminal actions. This suggests that the commission of war crimes will go unaddressed so long as they are not committed on a widespread scale. More importantly, this compromises the image of the ICC as a court that reflects the rule of law by applying its basic principles to all states equally, which is an essential component of achieving crucial political support for the court.[39]

While Ocampo may bear some responsibility for refusing to prosecute citizens bearing certain nationalities, there are structural problems that exist within the ICC as well. For example, the ICC requires a mandate from the United Nations Security Council in order to investigate an allegation against individuals from a non-signatory state. Because the United States, China and Russia carry vetoes on the Security Council and are not parties to the Rome Statute, their military personnel can be easily shielded from prosecution by the ICC. Another structural issue is that of enforcement; like the ICTY and ICTR, the ICC requires state parties to

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[37] International Criminal Court, "Situations and Cases," http://www.icc-cpi.int/Menus/ICC/Situations+and+Cases/.

[38] Louis Moreno-Ocampo, "Letter to Senders re: Iraq," http://www.icc-cpi.int/library/organs/otp/OTP_letter_to_senders_re_Iraq_9_February_2006.

[39] Ralph, "Between Cosmopolitian and American Democracy," 198.

cooperate in arresting and detaining suspects. States party to the Rome Statute do have a legal obligation to cooperate with the ICC, but such cooperation can be difficult to obtain in reality (as was evidenced by the experiences of the ICTY and ICTR).[40] In the case of al-Bashir and others wanted for crimes occurring in Darfur, Sudan is not a state party to the Rome Statute and therefore has no obligation to cooperate with the ICC. Thus, while the ICC does introduce the possibility of prosecuting a serving head of state for serious international crimes, the process for doing so can be very difficult in practice. This has been evidenced most recently by the al-Bashir's unhindered travels to Eritrea, Egypt and Libya,[41] as well as the African Union's near-unanimous decision not to cooperate with the ICC in the arrest of the Sudanese President.[42]

Conclusion: The 'Added Value' of the International Criminal Court

The intent of this paper is to chronicle the evolution of individual criminal responsibility by reviewing some of the major instruments that have contributed to its development. From a concept that was largely unknown in positive international human rights law prior to 1945, individual criminal responsibility has developed into one of the most significant components of international law. Most importantly, it is considered to be an essential component to ending the most serious crimes known to mankind, and it has been improved at each stage of its formation from Nuremberg to the ICC. Although not specifically discussed in this paper, it is important to

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[40] Wedgewood, "The International Criminal Court," 106.

[41] Al Jazeera, "Sudan's al-Bashir visits Libya," March 26, 2009, http://english.aljazeera.net/news/africa/2009/03/200932692534202240.html.

[42] African Union, "Decision on the Meeting of African States Parties to the Rome Statute of the International Criminal Court," July 14, 2009, http://www.africa-union.org/root/au/index/index.htm.

note that there have also been a number of Conventions that have also contributed to this process.[43]

Despite the progress that has been made since Nuremberg, it appears that the unfair application of justice is an issue that continues to haunt international criminal prosecution. As was mentioned above, the ICC will never gain legitimacy if it continues to ignore the crimes of powerful and influential states. The first step in gaining this legitimacy among the international community of nations was separating the ICC from the highly-politicized United Nations Security Council. What remains to be done, as Jason Ralph from the University of Leeds contends, is for states to accept the additional oversight provided by the ICC as "a small price to pay for a Court that would democratize global politics by holding to account those who commit [sic] the most serious abuses of human rights".[44]

With that said, it would be a mistake to outright dismiss the ICC for its imperfections. This new court has clearly brought 'added value' to the international human rights protection regime, including, most significantly, a departure from the ad-hoc approach. The extent to which the ICC serves as a deterrent is impossible to measure, but this is no reason to reject the possibility that the court will serve as a force of compulsion against the commission of serious international crimes. Furthermore, the fact that prosecutions have not yet been justly applied to all alleged criminals does not necessarily mean that current prosecutions are in vain. Certainly, the equal application of justice is an ideal to be vigorously pursued, and its lack of achievement does not qualify a wholehearted rejection of the ICC. As the Chairman of the Drafting Committee at the United Nations Diplomatic Conference on the Establishment of an International Criminal Court remarked at the Rome Ceremony:

> The ICC will not be a panacea for all of the ills of humankind.
> It will not eliminate conflicts, nor return victims to life, nor

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[43] These include, for example, the Convention on the Prevention and Punishment of the Crime of Genocide (1948), the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1975), and the Convention on the Rights of the Child (1990), among others.

[44] Ralph, "Between Cosmopolitian and American Democracy," 198.

restore survivors to their prior conditions of well-being and it will not bring all perpetrators of major crimes to justice. But it can help avoid *some* conflicts, prevent *some* victimization and bring justice to *some* of the perpetrators of these crimes [emphasis added]. In doing so, the ICC will strengthen world order and contribute to world peace and security. [sic] Ultimately, if the ICC saves but one life, as it is said in the *Talmud,* it will be as if it saved the whole of humanity.[45]

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Should we Prosecute the Protectors? Holding Peacekeepers Accountable in Cases of Sexual Exploitation and Abuse

Lauren Hunter

Abstract: United Nations (UN) peace operations have come under increased strain in recent years due to numerous factors, including donor fatigue and the changing nature of international conflict. Serious accusations of crimes of sexual exploitation and abuse being committed by peacekeepers have further jeopardized the sustainability of UN-mandated missions and have raised the question of whether or not peacekeepers should be held accountable for their actions. The paper first explores the scope of the problem by highlighting the type of crimes that have been committed, the actors and stakeholders involved, and a few of the root causes that help to explain why crimes of sexual exploitation and abuse are being committed by UN peacekeepers. Following this is a brief discussion of the strengths and weaknesses of the current measures that have been undertaken by the UN and, more specifically, by the Office of the Secretary-General and the Department of Peacekeeping Operations. The paper culminates in an evaluation of the advantages, disadvantages and consequences of increased accountability, and eventually argues that increased accountability is necessary in order to protect already-vulnerable populations from further harm at the hands of the very people sent to guard over them. In concluding, the author offers a few possible solutions that could be enacted by the UN to ensure that there are adequate measures for prevention and response to such criminal behaviour.

"It is unfortunate that the general public is no longer as shocked as it once was by reports of belligerents engaging in systematic and widespread rape in time of war. But when UN peacekeepers –

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including military, police and civilian personnel – and humanitarian workers, mandated to safeguard local populations in conflict zones, are accused of similar behaviour, we are looking not only at gross violations of human rights but at the perversion of an international system intended to prevent crimes against humanity, including sexual and gender-based violence."

- Senior Researcher and Training Coordinator Vanessa Kent,
Institute for Security Studies

"Dress, think, talk, act and behave in a manner befitting the dignity of a disciplined, caring, considerate, mature, respected and trusted soldier, displaying the highest integrity and impartiality. Have pride in your position as a peace-keeper and do not abuse or misuse your authority."

- Rule #1
Ten Rules Code of Personal Conduct for Blue Helmets

Peacekeeping missions with a mandate to protect civilians caught in the middle of conflict situations have been occurring since the creation of the United Nations Emergency Force in 1956. These missions have often involved unexpected results outside the framework of rights protection and humanitarian intervention. The first reports of incidents such as murder, torture, rape and other sexual violence being committed against local populations emerged out of the peacekeeping operations in Cambodia and Somalia in the early 1990s. More recently, reports from human rights agencies and the United Nations (UN) assert that such abuses have continued in countries like Sierra Leone, Guinea, Liberia, and most notably, in the Democratic Republic of the Congo. The consequences of situations where peacekeepers themselves violate basic principles of human rights go far beyond the border of any individual country.

Having been extremely concerned by allegations of human rights abuse, the United Nations, through the Office of the Secretary-General and within the Department of Peacekeeping Operations (DPKO), has made a concerted effort to create preventative and responsive measures that would discourage criminal behaviour in

their peacekeeping missions.[1] In March 2005, a report commissioned by the Secretary-General entitled "A comprehensive strategy to eliminate future sexual exploitation and abuse in United Nations peacekeeping operations," otherwise known as the Zeid Report, was released. The Report proposed significant changes to the ad hoc measures used in the past and suggested solutions ranging from on-site courts martial to financial sanction and the creation of a permanent investigative body.[2] Albeit a very important step in the process of halting sexual exploitation and abuse by peacekeepers, the Report did little to examine some of the fundamental problems raised by the issue of accountability. A number of critical questions are left untouched by the Report that should be explored in greater depth. For instance, should the criminal actions of peacekeepers on mission fall under the legal authority of the UN and the DPKO, or do they remain under the national jurisdiction of their respective troop- or police-contributing country? Taking into account the wide variety and complex nature of some of the international legal issues brought to the fore by this subject, should peacekeepers be held accountable for their actions? Each of these questions necessitates a closer investigation of the relationship between the UN, its peacekeeping forces, and the legal oversight that has been provided to troop-contributing countries.

In order to properly assess the issue of accountability in the case of human rights abuses committed by peacekeepers, this paper will conduct an analysis of the current situation with regards to specific incidents of criminal activity, the actors involved, and some of the systemic reasons behind the occurrence of abuse. It will then evaluate a few key policies that are currently in place to prevent and respond to abuse. This will be followed by an examination of the fundamental question of whether or not peacekeepers can be held accountable, which will consider both the advantages and

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[1] Vanessa Kent, "Protecting Civilians from UN Peacekeepers and Humanitarian Workers: Sexual Exploitation and Abuse," in *Unintended Consequences of Peacekeeping Operations*, eds. Chiyuki Aoi, Cedric de Coning and Ramesh Thakur (Hong Kong: United Nations University Press, 2007), 45.

[2] United Nations General Assembly, *Comprehensive review of the whole question of peacekeeping operations in all their aspects (A/59/710)*, March 24, 2005, 4-6.

disadvantages of taking legal action against international soldiers. Finally, the paper will be concluded with a brief reflection on the possible solutions to the problem of impunity. With a broader understanding of both sides of the accountability argument and with reference to the grave consequences that could occur if peacekeepers are not held responsible, it will be argued that peacekeepers operating under the auspices of the UN should be held accountable for their actions, specifically if they involve acts that violate the basic principles of human rights, such as sexual exploitation and abuse.

Background

For many, the notion of a UN peacekeeper invokes strong images of altruistic and trustworthy soldiers thrust into conflict situations in order to afford protection to those elements of society that are unable to protect themselves. When reports of extreme violence and torture emerged out of the 1992 UN peace operation in Somalia, the idyllic image of a peacekeeper was cast into doubt. It was further tarnished in other missions that occurred throughout the 1990s, including those in Bosnia-Herzegovina, Mozambique, East Timor and Liberia, when shocking allegations of misconduct were made by media and human rights organizations. Incidents of note include a marked increase in the demand for adult and child prostitutes upon the arrival of a peacekeeping contingent, large numbers of illegitimate children fathered by peacekeepers and then abandoned, and coerced sexual favours in exchange for a small amount of food or goods.[3] The introduction of peacekeepers to new regions has often been accompanied by skyrocketing rates of HIV/AIDS, and accusations of rape, sexual slavery and sexual abuse committed against women and children have been frequent. Not only are these incidents harmful to local populations who have already been traumatized by the misery of war, but they also place the already-beleaguered UN under immense scrutiny from the international community.

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[3] Kent, "Protecting Civilians," 45-6.

Much of the recent outrage over incidents of misconduct has stemmed from the UN Mission in the Democratic Republic of the Congo (MONUC), which is one of the largest and longest UN peacekeeping missions to date. In May 2005, it was reported that 152 peacekeeping personnel and five UN staff members were dismissed from their employment with MONUC after concrete evidence proved that they had committed a variety of human rights violations.[4] Between January 1, 2004, and December 9, 2005, the UN Office of Internal Oversight Services (OIOS) carried out a total of 278 investigations into the behaviour of MONUC peacekeeping personnel. Of these workers, sixteen civilians were dismissed from their employment in addition to the sixteen members of police units and the 122 military personnel that were repatriated to their home countries.[5] The dismissals and repatriations were conducted on disciplinary grounds and yet the incidents in question were most often those of sexual exploitation and abuse. It should be noted that is not only the blue-helmeted military personnel who are involved in human rights abuses; as peace operations continue to take a more multifaceted approach to deal with increasingly complex conflicts, there has been a noticeable rise in the number of civilian police and military observers involved in each mission.[6] The pervasiveness of this problem throughout the various ranks of those involved with peace operations suggests that the reasons why this abuse has been occurring may lie in larger, more systemic factors, rather than just with the individuals who commit abuse.

Causal Elements

There are three key systemic factors that have served to fuel the number of incidents of sexual exploitation and abuse committed by peacekeepers. First, one of the most difficult aspects of any peace operation is gathering the required number of troops from member

[4] Ray Murphy, "An Assessment of UN Efforts to Address Sexual Misconduct by Peacekeeping Personnel," *International Peacekeeping* 13, no. 4 (2006): 532.

[5] Ibid.

[6] Kent, "Protecting Civilians," 50-1.

states of the UN. Many countries, especially those considered to be more developed, are not willing to sacrifice their own soldiers for a conflict that they are not directly involved in or that they do not benefit from. This has meant that most soldiers in peace operations come from lesser developed countries where the level of pre-mission training is frequently inadequate.[7] While the DPKO has recognized that it is essential for peacekeepers to be sensitive to local cultures, this lack of training has meant that adequate awareness about the circumstances that might encourage sexual exploitation and abuse is not present in many of the troops committed to peace operations. Establishing a common standard of behaviour for peacekeepers across different nationalities and cultures is also especially difficult. Since the UN is not in a situation that permits the DPKO to be overly selective about the peacekeepers that are provided for a mission, troops are often sent into a peace operation even though they are not necessarily well-suited for the engagement.[8]

The second factor relates to the cultural and legal differences between troop-contributing countries, which have had a large impact on the process of national prosecution if and when peacekeepers are found to have perpetrated crimes against the local population. As will be examined later in this paper, the current method of holding military peacekeepers accountable has been to afford the responsibility of criminal prosecution to the troop-contributing country in question. However, the legal systems of the wide variety of member states of the UN do not always correspond

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[7] Ibid, 52. In recent years, a general understanding of the complex motivating factors leading developing countries to contribute troops to United Nations peacekeeping operations has emerged, focusing on the potential financial gain for both individual troops and their home countries, and the opportunity to gain significant operational training for otherwise under-funded troops. Studies of the motivations of various troop-contributing countries, such as Ghana, Uruguay, India, Pakistan and Bangladesh, have produced evidence to this effect. For a further discussion of these motivating factors, see Chiyuki Aoi, Cedric de Coning and Ramesh Thakur, "Unintended consequences, complex peace operations and peacebuilding systems," in *Unintended Consequences of Peacekeeping Operations*, eds. Chiyuki Aoi, Cedric de Coning and Ramesh Thakur (Hong Kong: United Nations University Press, 2007), 3.

[8] Sandra Whitworth, "Gender, Race and the Politics of Peacekeeping," in *A Future for Peacekeeping?* ed. Edward Moxon-Brown (Basingstoke: MacMillan Press, 1998), 181.

to international standards.[9] Countries may not have the required legislation that would allow them to prosecute repatriated peacekeepers, and as such, peacekeepers may be disciplined but not prosecuted.[10] For other states that do have the ability to prosecute peacekeepers who commit crimes, many have not have criminalized the act of rape or other sexual offences, especially when marriage is involved.[11] Pam Spees, in her briefing paper on gender and peacekeeping missions, observes that "in light of the fact that 'forced marriages' have been reported in different UN missions, this [legal] gap can result in impunity for serious and severe violations of women's human rights if so-called husbands are allowed to sexually assault their 'wives' with impunity."[12] There is a large disparity between the cultural practices and legal systems of many of the regular troop-contributing countries that has projected a dangerous precedence of ambiguity to peacekeepers themselves as well as the international community.

The final systemic factor that is contributing to incidents of sexual exploitation and abuse involves part of the legal framework that actually creates a peace operation. There has usually been no commitment to respect international human rights within the Status of Force Agreements (SOFAs) conducted between the UN and host countries.[13] The first time there was an explicit mention of human rights was in the SOFA that was negotiated for the UN peace operation in Korea, and this was only due to the advocacy of the

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[9] Kent, "Protecting Civilians", 49; and Max du Plessis and Stephen Pete, "Who Guards the Guards? The ICC and Serious Crimes Committed by United Nations Peacekeepers in Africa," *African Security Review* 13, no. 4 (2004), http://www.iss.co.za/pubs/ASR/13No4/FduPlessis.htm.

[10] Barbara Bedont, "The Renewed Popularity of the Rule of Law: Implications for Women, Impunity and Peacekeeping," in *Gender, Conflict and Peacekeeping*, eds. Dyan Mazurana, Angela Raven-Roberts, and Jame Parpart. (New York: Rowman & Littlefield Publishers, 2005), 90.

[11] Ibid, 91.

[12] Pam Spees, *Gender, Justice and Accountability in Peace Support Operations: Closing the Gaps*, International Alert, 2004, http://www.reliefweb.int.

[13] Murphy, "An Assessment of UN Efforts," 533.

International Committee of the Red Cross. Subsequently, the only mission to explicitly state the principles and spirit of the general conventions that are applicable to military personnel (including the four Geneva Conventions of 1949, as well as the two Additional Protocols of 1977) was the UN Assistance Mission for Rwanda.[14] Although mentioning some of the key international humanitarian legal conventions in this SOFA was a good initial step, the wording was too vague and abstract for there to be any real implementation of this sentiment. As well, the model SOFA that has been created as a reference document for all future agreements does not currently include any mention of the importance of human rights. Without an explicit statement that recognizes human rights and pledges to uphold them to the highest standard, it is impossible to expect that this belief will permeate an entire peacekeeping mission. These three causal factors have served to compound the legal complexities surrounding the debate of the accountability of peacekeepers and have made it very difficult for those measures currently in place to deal effectively with this problem.

Current Measures

As previously mentioned, the UN and the DPKO have recognised that there is a significant problem that exists within the accountability framework of peacekeeping missions. Indeed, there have been a number of measures put in place by the UN in order to prevent and discourage human rights violations within peacekeeping operations. In 1997, the DPKO created and distributed the "Ten Rules Code of Personal Conduct for Blue Helmets," which is a legally binding code on all military personnel involved in UN missions.[15] The rules encompass a large number of important topics, including an express prohibition on "immoral acts of sexual, physical or psychological abuse or exploitation of the local populations...especially women and

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[14] Daphna Shraga, "UN Peacekeeping Operations: Applicability of International Humanitarian Law and Responsibility for Operations-Related Damage," *The American Journal of International Law* 94, no. 2 (2000): 406.

[15] Murphy, "An Assessment of UN Efforts," 535.

children."[16] All troop-contributing states have recognized this code of conduct, and any breach of it renders the perpetrator liable to strict disciplinary action to be taken by the DPKO.

An additional code was introduced in 2003 by the Secretary-General of the UN, which outlines much the same standards found in the Code of Personal Conduct. However, the Bulletin focused specifically on special measures for that would prevent and respond to allegations of sexual exploitation and abuse.[17] While the Bulletin is also binding on all military personnel working for a UN mission, there are three distinct problems with these key policies. Firstly, neither the Code nor the Bulletin is binding on civilian or military observers, who represent a large portion of current and newly-formed peace operations, and are just as likely as military personnel to be involved in human rights abuses. Secondly, as highlighted by the Zeid Report, it is very hard to implement such sweeping codes when they do not include any noteworthy suggestions for possible solutions to the problem. Finally, in the case of the most recent allegations of human rights abuses within the MONUC mission, the investigations conducted by OIOS revealed that "few military or civilian staff seemed aware of the directives, policies, rules and regulations governing sexual contact that they were obligated to follow."[18] These two documents create much of the foundation for the actions of peacekeeping operations but without concrete implementation and distribution, they have largely been unsuccessful at reversing the trend of human rights abuses.

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[16] United Nations Department of Peacekeeping Operations, *Ten Rules: Code of Personal Conduct for Blue Helmets,* http://www.un.org/Depts/dpko/dpko/Conduct/ten_in.pdf.

[17] United Nations Secretariat, *Secretary-General's Bulletin on special measures for the protection from sexual exploitation and sexual abuse (ST/SGB/2003/13)*, October 9, 2003, S2.1.

[18] Murphy, "An Assessment of UN Efforts," 536.

Holding Peacekeepers to Account

The entire discussion of the accountability of peacekeepers is informed by the legal constructs of jurisdiction that have been in place since the creation of the first peacekeeping missions. In order to acknowledge the sovereign right of states to decide what actions will be taken with respect to their own citizens, military troops on peacekeeping missions remain under the jurisdiction of their home state.[19] During this time, peacekeepers enjoy broad immunity from the laws and legal systems of the host state. These circumstances were originally agreed upon for much the same reasons that the UN has been granted immunity from all national legal proceedings. It has been noted by legal scholar Peter Malanczuk that if immunity for the UN did not exist, "a combination of eccentric litigants and biased courts could interfere with the performance of its functions."[20] Peacekeepers must be able to perform a wide variety of activities related to their mandate, and in order to do so, they need to be protected from situations where they could end up being prosecuted for political purposes.

While this immunity is granted to prevent a host state from charging a peacekeeper with a criminal act, the DPKO retains a limited ability to punish military personnel who may violate human rights. The Department can dismiss or repatriate a peacekeeper; however, once they have left the mission, the UN loses any influence it had to ensure that the home state fulfils its obligation to prosecute. The balance of jurisdiction for military peacekeeping personnel rests with the home state of that individual. Although the UN may receive a pledge from a troop-contributing country that it will exercise criminal jurisdiction over its citizens, this promise is not binding.[21] Therefore, the current system of national jurisdiction over peacekeepers has meant that the UN depends on the will of member states to prosecute their own nationals, and in many cases,

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[19] Plessis and Pete, "Who Guards the Guards?" 1.

[20] Peter Malanczuk, *Akehurst's Modern Introduction to International Law,* 7th ed. (New York: Routledge, 2003), 128.

[21] Kent, "Protecting Civilians," 49.

peacekeepers have not been held criminally responsible for their actions.[22]

Unfortunately, there is a general dearth of information regarding specific instances where peacekeepers have been released without punishment for their crimes of sexual exploitation and abuse, although a few stories have emerged throughout periodic reports published by foreign media and human rights organizations. Barbara Bedont lists a number of cases in her study of the relationship between international criminal justice and UN peacekeeping, including one example where:

> In a report regarding the UN mission in Mozambique (ONUMOZ), Redd Barna reports that ONUMOZ personnel were directly involved in establishing and running child prostitution and trafficking rings. Namely, it reports that Italian peacekeepers collected school girls at school premises and recruited them for prostitution; engaged children in sexual activities, prostitution, pornographic activities (such as videos and photographs) and live sex shows; trafficked children by recruiting them for prostitution from different provinces; and intimidated children into making false statements exonerating Italian ONUMOZ personnel. No action was taken against the Italian peacekeepers, and instead, the Italian contingent returned home under other pretences.[23]

Other similar cases exist, albeit the fact that there are typically fewer details available about the nature of the crimes committed and the consequences, if any, peacekeepers faced upon being confronted with such allegations. Bedont points to a "lack of reliable documented information regarding crimes committed by peacekeepers" and argues that "the United Nations does not maintain accurate records regarding the allegations of abuse against

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[22] United Nations General Assembly, *Comprehensive review*, 17 ; and Barbara Bedont, *International Criminal Justice: Implications for Peacekeeping,* Department of Foreign Affairs and International Trade, Canada (2001), http://www.peacewomen.org/un/pkwatch/DFAIT_report.doc.

[23] Bedont, *International Criminal Justice.*

peacekeepers or the actions taken by countries in response to allegations or incidents."[24] Even with such limited information, it has become clear that local populations hosting peacekeeping missions have suffered as a result of a lack of accountability.

With this in mind, and in an effort to stop the occurrence of sexual exploitation and abuse perpetrated by peacekeepers, should UN peacekeepers be held more accountable for their actions? There are significant advantages involved if peacekeepers were to be made more responsible for violations of human rights they may commit while on mission, and the potential consequences if this does not happen are quite grave. Advantages would stem first from the possibility that strong deterrence measures, in combination with effective preventative measures and appropriate punishment, could ensure that the rate of sexual abuse incidents would drop.[25] If real accountability is able to stop the occurrence of human rights violations within peace operations, the entire mission would have a better chance at obtaining stability within the conflict or post-conflict region. By demonstrating to local populations that the UN and its peacekeeping forces take their responsibilities to be of the utmost importance, a stronger sense of trust would develop between the mission and the host community.[26]

Furthermore, grave consequences are likely to emerge for the UN if it is unable to institute a system of real accountability within peacekeeping missions. The standing belief within many host states is that the UN tacitly condones activities that involve human rights violations.[27] While this negative observation will certainly have an impact on individual peace operations, it has a more worrisome influence on the general opinion of the UN. Indeed, as more stories of

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[24] Ibid.

[25] Human Rights Watch, "UN: Tackle Wrongdoing by Peacekeepers," Letter to Secretary-General Ban Ki-Moon, (2008), http://www.hrw.org/en/news/2008/04/30/un-tackle-wrongdoing-peacekeepers-0.

[26] Vanessa Kent, "Peacekeepers as Perpetrators of Abuse: Examining the UN's Plans to Eliminate and Address Cases of Sexual Exploitation and Abuse in Peacekeeping Operations," *African Security Review* 14, no. 2 (2005), http:www.issafrica.org.

[27] Kent, "Peacekeepers as Perpetrators," 1.

sexual exploitation and abuse have emerged from peacekeeping operations, the credibility of the UN to conduct humanitarian interventions and peace operations has been cast into doubt. Finally, these consequences are culminated into creating a lasting negative impact on the UN. Vanessa Kent notes that "the UN and its peacekeepers…compromise their ability to legitimately advise on human rights standards and rule of law issues when their own personnel do not abide by the same standards."[28]

Although these advantages and potentially devastating consequences speak to the need for increased accountability in peacekeeping missions, there are also some major disadvantages to the imposition of stricter measures on peace operations. The most notable issue is that instituting more severe measures may reduce the already small numbers of troops available for peacekeeping missions.[29] Again, the UN is not in a position to be discerning with its choices for troops, and must often use those peacekeepers that may have had less training or experience. Should countries contributing to current peace operations decide to remove their nationals in order to protect them from being held accountable for their actions, the entire peacekeeping system would suffer. As well, if larger countries such as the United States decided to pull their troops from ongoing missions, there might be a further weakening of the already insecure position and reputation of the UN within the international community. While any such action would be mainly symbolic, as the US contributes only 0.01 percent of the troops currently engaged in peacekeeping operations, it is likely to have a devastating impact on international perceptions of the UN.[30]

It is difficult to postulate on whether or not the advantages and potential consequences of a continued lack of accountability completely outweigh the aforementioned disadvantages. Indeed, the consequences of ensuring greater accountability should not be

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[28] Ibid., 3.

[29] Sarah W. Spencer, "Making Peace: Preventing and Responding to Sexual Exploitation by United Nations Peacekeepers," *Journal of Public and International Affairs* 16, (2005): 178.

[30] Ibid.

discredited, as they undermine some of the fundamental requirements for peace operations. Without adequate troop contributions, peacekeeping missions will be under even more stress and may eventually become untenable. However, the damage inflicted on already-weakened populations suffering at the hands of peacekeepers who remain immune from formal criminal justice procedures cannot be understated. In a highly critical editorial marking the sixtieth anniversary of the UN, the *New York Times* argues that:

> The whole purpose of these missions is to help countries ravaged by civil or international conflict restore stability, guarantee public security and instil the rule of law. When United Nations peacekeepers rape the people they were sent to protect and coerce women and girls to trade sex for food, as they were found to have done in Congo last winter, they defeat the purpose of their mission and exploit some of the world's most vulnerable people.[31]

Peacekeeping missions endeavour to leave conflict-ridden and post-conflict states in a better situation than before the operation began. If sexual exploitation and abuse at the hands of peacekeepers is tacitly condoned by the UN and continues to take place unimpeded, the credibility of peace operations and their future sustainability may be irrevocably damaged. Taking into consideration the advantages, disadvantages and consequences of ensuring that peacekeepers are held responsible for their actions, it is imperative that the UN ensures accountability throughout its peacekeeping operations. Although the nature of the system of jurisdiction over peacekeepers has served to remove responsibility from the hands of the UN, the organization must do more to protect its own vital interests, in addition to the well-being of those civilians who are impacted by peacekeeping missions.

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[31] *New York Times,* "The Worst U.N. Scandal," October 24, 2005, sec. A.

Possible Solutions

As it has been determined that the best course of action for the UN is to create a more accountable and responsive system to deal with any violations of human rights abuses, the problem now turns to implementation. It may be easy to say that a policy of stricter accountability should be applied, but there have been significant problems in the past with the actual execution of preventative and reactive measures. It is understandable that making significant changes to each different peacekeeping operation as well as the oversight mechanisms entrusted to the DPKO will necessarily involve a large amount of time and a heavy financial burden. It is perhaps more reasonable to focus separately on short- and long-term solutions to the problem of accountability. Some of the smaller measures could be implemented immediately, while those that will require further research or need to obtain consensus before being executed could be situated in the longer-term goals of the DPKO. As well, it should be noted that the solutions offered here are not an exhaustive list; rather, they are measures that are most directly related to concrete problems mentioned in this paper. It is to be hoped that these solutions would be only one part of a comprehensive approach to eradicating human rights violations.

One of the simplest, yet possibly one of the most effective measures that could be undertaken quite quickly is to include explicit reference to the importance of human rights within each SOFA negotiated between the UN and host states of peacekeeping missions. As well, if the model SOFA was changed at the same time, this would ensure that all future agreements also pledge to uphold human rights.[32] It is not sufficient to only mention human rights in the personal codes of conduct for peacekeepers. By making a concrete commitment to the host state in question, the issue of human rights violations by peacekeepers will be brought to the fore of the discussion over peace operations and not fade in light of more immediately pressing issues.

Another measure that could be undertaken relatively quickly would be to institute standardized in-mission training for all

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[32] Murphy, "An Assessment of UN Efforts," 542.

personnel entering a peacekeeping mission.[33] As pre-deployment training remains the responsibility of individual troop-contributing states, the level of knowledge may vary greatly between peacekeepers on the same mission. Furthermore and as previously mentioned, some troop-contributing countries may not have the economic and human resources to provide enough training to their peacekeepers. The DPKO should develop a standard training program that would educate peacekeepers about certain sensitive issues and would reinforce the repercussions of misconduct. This would certainly contribute to the prevention of human rights violations, which is equally as important as the reactive measures put in place to deal with abuse once it has already occurred. However, training should not be considered to be a 'cure-all' for the variety of problems encountered while on mission; the DPKO must ensure that the codes of conduct that have already been written are absolutely clear and that they are widely disseminated amongst all members of a mission.[34] Prevention must start at the top of the hierarchical chain of military command, and so the message of zero tolerance for human rights abuses must also be wholeheartedly supported by senior leadership.

Finally, the UN should ensure that the 2003 Secretary-General's Bulletin is binding on all categories of personnel involved in peacekeeping missions, including civilian police and military observers. Creating a standard code of behaviour across all levels of personnel will eliminate some of the confusion that is currently pervasive in peacekeeping missions in terms of the roles, responsibilities and obligations of different staff member. If all mission workers are held to the same standards, the Bulletin will become easier to enforce and will outline in very clear, non-negotiable terms the proper behaviour required by all members of a peacekeeping mission.

Beyond these three initial solutions, there are also two key long-term goals that the DPKO and the UN should strive towards implementing. Firstly, there does not seem to be any alternative to

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[33] Kent, "Protecting Civilians," 60.

[34] Ibid.

the current system of prosecution for crimes, whereby the UN must turn over a suspect to their home state for prosecution. Changing this system would require a redesign of the standards of legal rights. Due to the extreme consequences that would befall peacekeeping missions should this be undertaken, the UN should instead focus on ensuring that prosecution actually takes place. By establishing a central monitoring organization that can track peacekeepers who have been dismissed or repatriated on disciplinary grounds, the UN will be able to follow the process and results of national criminal cases that emerge out of peacekeeping missions.[35] This will certainly require participation on behalf of member states, which is why this goal will take longer than others to implement properly. However, the time and financial commitment by the UN would surely result in a better, more accountable system of prosecution.

The final measure that should be implemented is to develop programs of assistance and rehabilitation for the victims of abuse committed by peacekeepers. It is of vital importance that those civilians, especially women and children, who have already been subjected to severe physical, emotional and psychological abuse, receive aid and treatment. In order to finance such programs, the UN could impose strict financial penalties on those peacekeeping personnel who commit large- or small-scale violations of human rights against local populations.[36] The money recovered from these penalties would then go directly into creating a more stable support base for victims of sexual exploitation and abuse. By focusing on short- and long-term solutions, it is possible that the UN can rectify the current problems of the accountability of peacekeepers.

Conclusions

The problem of human rights violations committed by UN military and civilian personnel during missions abroad is one that impacts the very foundation of peacekeeping. The purpose of peacekeeping is to ensure that aggression between states or regional actors is halted

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[35] Murphy, "An Assessment of UN Efforts," 542.

[36] Ibid., 543.

and that civilians are protected from unnecessary harm. However, when peacekeepers themselves become involved in activities that hurt local populations, the presence of a mission becomes an additional burden for already weakened societies to bear. The complex legal landscape that surrounds the accountability of peacekeepers has not helped to ensure that those personnel who commit crimes are ultimately held responsible; however, this is not to say that the UN should not implement stronger instruments that could create real accountability. In order to protect the entire system of multilateral peacekeeping and to make certain that peacekeepers are not causing more harm than good, the UN must ensure that effective preventative and reactive measures exist.

While this paper has provided a general overview of some of the key aspects of this problem, including the actors that are involved, the systemic causes and the current measures in place, it has also attempted to provide a comparison between the advantages and disadvantages of holding peacekeepers accountable. Any measures implemented by the UN to deal with the problems of responsibility should take a wide-raging and multifaceted approach to ensuring that the problem of human rights violations is completely eliminated from peacekeeping missions. If the current situation of real and perceived immunity is allowed to persist, the consequences for host countries and for the international reputation of the UN will be immensely dangerous.

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Independence or Autonomy: The Right to Self-Determination in the Enclave of Cabinda

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Abstract: For decades, armed groups in the Angolan enclave of Cabinda have been attempting to overthrow the Angolan government and establish an independent state. However, since their military struggle has not succeeded, what, if any, basis for secession can Cabinda claim under international law? This article argues that while Cabindan nationalists can draw upon a number of effective legal arguments justifying independence, the enclave ultimately has a better claim not to full independence, but rather to autonomy within Angola. This is demonstrated by considering and refuting three major legal arguments used by proponents of Cabindan independence. After a brief review of the relevant legal concepts and Cabindan history, the first argument to be examined is that Cabinda's distinct historical status voids Angola's *uti possidetis* claim to Cabinda. Following this will be a review of the claim that political abuses and the denial to the Cabindan people of a plebiscite on independence grant Cabinda the right to 'external' self-determination. The final argument to be examined is that the scale of the misappropriation of Cabinda's oil wealth by Angola and foreign companies justifies independence, given the enclave's present lack of economic self-determination. The article ultimately concludes that although Cabinda had a stronger case for secession during the Angolan civil war, recent political and economic changes have weakened Cabinda's claims under international law.

Of all the rights now considered 'universal' under customary

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international law, self-determination is one of the most frequently contested. In Africa in particular, weak states often rely on the right to self-determination to condemn 'imperial' interference, while at the same time delicately avoiding the use of this language when referring to domestic populations. The perpetual confusion over who constitutes a 'people' deserving the right to self-determination, combined with a colonial history that left Africa a patchwork of states drawn for Western administrative ease rather than legitimate ethnic linkages, has spawned separatist and irredentist tensions from Western Sahara to Namibia. When identities become complex and politicized by circumstances, and 'rights' to territory and governance confused, the basic foundations for conflict are created.

Although Africa faces many difficult legal and political questions resulting from the right to self-determination, some conflicts stand to have a greater impact than others. One of the least known African conflicts is the low-level struggle for the enclave of Cabinda. This tiny territory, although home to only 400,000 of Africa's approximately one billion people, happens to be among the most oil-rich territories on the continent, and has thus been hotly contested by separatist rebels, the Angolan government, and often by foreign states with diverse political or economic interests.

In this paper, international laws regarding self-determination and their potential application to Cabinda will be examined in order to determine whether Cabinda's unilateral secession from Angola would be legally justifiable. Three arguments for Cabinda's independence shall be considered. After a brief review of the relevant legal concepts and Cabindan history, the first to be examined is the argument that Cabinda's distinct historical status voids Angola's *uti possidetis* claim to Cabinda. Following this is the argument that political abuses and the denial to the Cabindan people of a plebiscite on independence grant Cabinda the right to 'external' self-determination, that is to say, independence. The final argument will examine whether the scale of the misappropriation of Cabinda's oil wealth by Angola and foreign companies justifies independence, given the lack of economic self-determination. Throughout the paper, it will be argued that while Cabinda may have a claim to full independence, this assertion was much stronger in the past, and

thus, today, the most that Cabinda can reasonably expect to achieve is greater autonomy within Angola.

Argument 1: Historical Differences Justify Cabindan Independence

The right to self-determination has had a controversial history in the twentieth century. Despite having been enunciated by Woodrow Wilson after World War I, codified as a fundamental 'principle' in the United Nations Charter, and later confirmed as a full human right in both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Political Rights (ICESPR), the right to self-determination is often difficult to pin down. The tension between the right of 'peoples' to self-determination and the right of states to territorial integrity has meant that the application of either 'right' has not been universal, as is demonstrated by the United Nations' condemnation of separatist conflict in Katanga (a region of modern Democratic Republic of Congo) and its silence on the war in Biafra (in present-day Nigeria).[1] Both decolonization in the 1960s and the messy civil conflicts of the post-Cold War have also transformed our understanding of how this concept is to be interpreted.

What is clear, however, is that the right to self-determination does not immediately entail a right to independence, but rather a right to autonomy. The three official options for a non-self governing territory are to gain independence, maintain autonomy within an existing state, or integrate fully with an existing state.[2] Secession is not explicitly illegal,[3] but there are conditions that limit how it can be achieved. A region seeking independence must somehow have its populace identified as a 'people,' the new state must conform with

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[1] John Dugard, "A Legal Basis For Secession: Relevant Principles and Rules," in *Secession and International Law*, ed. Julie Dahlitz (The Hague: T.M.C. Asser Press, 2003): 91.

[2] John H. Currie, Craig Forcese, and Valerie Oosterveld, *International Law: Doctrine, Practice and Theory* (Toronto: Irwin Law, 2007), 321.

[3] This has been demonstrated by the number of states that have seceded and become members of the United Nations, like Bangladesh.

previous administrative boundaries (*uti possidetis*), and independence may only be pursued in the most extreme cases where internal self-determination[4] is clearly being denied.[5] Even if these criteria are met, the right to self-determination can still only provide a claim to independence. Ultimately, it is still up to the breakaway region to actually achieve independence, a process that can take decades, if it happens at all. This right is thus inherently political and is deliberately imprecise to avoid a strict application or the creation of undesirable obligations under international law.

A brief review of Cabinda's history is also in order. In 1885, the Portuguese signed the Treaty of Simulambuco, establishing Cabinda as a 'protectorate' with special privileges, whereas Angola was classified as a full colony.[6] In 1956, just as it became apparent that Cabinda had oil, the Portuguese unilaterally broke the Simulambuco treaty and made Cabinda a full province of Angola to solidify their hold on the enclave. When resistance mobilized in the early 1960s and the Front for the Liberation of the Enclave of Cabinda (FLEC) was founded in 1963, it was to oppose the region's incorporation into Angola, not to fight Portuguese colonialism.[7] In 1975, Portugal signed the Alvor treaty with Angola's three main rebel groups – the Popular Movement for the Liberation of Angola (MPLA), The National Liberation Front of Angola (FNLA), and the National Union for the Total Independence of Angola (UNITA) – granting Angola independence under its existing boundaries. However, no representatives from Cabinda were allowed to attend.[8] The three national rebel groups quickly turned on each other, and thus began the longest civil war in modern African history.

Throughout the war, Cabinda's oil made it a strategic target, and UNITA, FLEC, and the MPLA-controlled government fought fiercely for control of the enclave. During the 1990s, despite ceasefires and

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[4] Internal self-determination is considered to be the right to some form of legitimate representation in government and the absence of state abuses.

[5] *Reference re Secession of Quebec* [1998] 2 S.C.R. 217, para. 70.

[6] Daniel Dos Santos, "Cabinda: The Politics of Oil in Angola's Enclave," in *African Islands and Enclaves*, ed. Robin Cohen (Beverly Hills: Sage Publications, 1983), 102.

[7] Ibid., 104.

[8] Ibid.,105.

even elections in 1992, the fighting was as fierce as ever, and over one quarter of Cabinda's population was forced to flee as refugees.[9] By 2002, with the killing of UNITA leader Jonas Savimbi, a ceasefire between the major parties came into effect, but FLEC continued to fight. With resources liberated from the end of the fight with UNITA, the MPLA government dealt FLEC a significant blow in 2003 and forced the group to sign a ceasefire in 2006. However, while this ceasefire has been broken by both sides, FLEC still controls some areas of Cabinda's countryside, and the conflict continues intermittently.

The first major argument that Cabindan separatists make in support of independence is historical. This is based on the concept that the principle of *uti possidetis* does not apply in Cabinda due to Portugal's broken obligations under the 1885 Simulambuco treaty.

To separatists, Cabinda's establishment as a protectorate, as opposed to a full colony, demonstrated that the Cabindan leaders accepting Portuguese protection were to retain a degree of sovereignty and remain distinct from other colonies.[10] The classification as a protectorate was not purely a formality; it entailed a particular legal understanding between Cabinda and Portugal when the treaty was signed. Thus, when Portugal decided to unilaterally bring Cabinda into the rest of Angola to facilitate administration, Cabindans argue that Portugal violated the remaining sovereignty inherent in its protectorate status. Aside from being culturally and politically distinct, Cabinda was a different legal entity that could not simply be merged with Angola. Assuming Cabinda should never have been part of Angola in the first place, Cabindans thus argue that their inclusion in the newly-independent Republic of Angola under the principle of *uti possidetis* was also illegal, and remains so to this day. To draw a comparison, a potential modern example would be the Iraqi invasion of Kuwait. Even when Kuwait ceased to be fully independent, it was still recognised as

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[9] Minorities at Risk, "Chronology for Cabinda in Angola," http://www.cidcm.umd.edu/mar/chronology.asp?groupId=54003.

[10] Dos Santos, "Cabinda," 102.

never having been fully absorbed.[11] Cabinda claims a similar status as a legal backdrop to independence, even though Kuwait was a United Nations member at the time of the Iraqi invasion, which Cabinda has never been.

A related Cabindan argument is that the purpose of *uti possidetis* is to prevent the chaos and anarchy that might arise if a newly-independent country were allowed to fragment into multiple smaller states. However, Angola has proven itself to be one of Africa's most chronically unstable countries, having fought a 27-year civil war. For a country unable to control most of its official territory since independence, to claim Cabinda for reasons of 'stability' is questionable.

However, these arguments alone are not enough to justify independence. For example, although Cabinda claims it never signed away all its sovereignty in the 1885 Simulambuco treaty, this raises questions about just how much sovereignty an entity can sign away and still remain sovereign at all. For 71 years, Cabinda accepted significant Portuguese interference in its affairs and, in practice, was governed little differently than Angola. If conditions on the ground had made Cabinda a *de facto* colony, then was it inappropriate for Portugal to treat Cabinda as one, if all they were doing was changing the name to better suit the reality? Furthermore, although the difference in historical identification and status does distinguish Cabinda from Angola, this argument is irrelevant legally: a legal claim to sovereignty is not legitimate because differences exist between two 'peoples' (even if they can be called that). There must be legitimate grievances as well.[12]

In challenging *uti possedetis*, Cabinda is also historically on the losing side, given past African experiences. In 1964, as decolonization was under way, the Organisation of African Unity (OAU) explicitly made its support for the principle of *uti possidetis* clear, arguing that using existing borders would maintain order and stability. This demonstrated an aversion by African states to secession as a legitimate means to self-determination, since a

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[11] Jeffry L. Dunoff, Steven R. Ratner, and David Wippman, *International Law: Norms, Actors, Processes* (New York: Aspen Law & Business Publishers, 2002), 110.

[12] Currie et al., *International Law*, 331.

successful secession in one state could inspire minorities elsewhere. Since decolonization, there has been only one successful new state created from an existing African state: Eritrea from Ethiopia in 1993, and this case was different given that this was a breakdown of a previous merger of the two.[13] Namibia and the on-going controversy in Western Sahara are also different, as both were classified as 'non-self-governing territories' by the United Nations, unlike Cabinda. The recognition by the international community that both these territories possessed a distinct legal identity helped ensure that Namibia was not swallowed by South Africa and that Western Sahara has not yet been recognized as part of Morocco. Since Cabinda has not received this special recognition of distinct status, however, the region is not in a position to follow Namibia's unique path to independence.

Thus, perhaps the most effective counterargument to the Cabindan historical position is the fact that the international community has recognised Angola and its current borders. Even if the final status of Western Sahara has yet to be resolved, the region is not diplomatically recognized by the international community as being part of Morocco. Cabinda has no such protection. Oil companies from around the world have signed contracts for Cabinda's offshore oil with the Luanda government, and these companies deal with the entity that has power on the ground. As important as the historical record may be, it appears that Cabinda needs more tangible arguments if international actors are to recognise its goals as legitimate.

Although the Angolan argument also has its flaws, Cabinda could at best use its historical argument to earn more provincial autonomy. Even so, Cabinda's position would likely have been much stronger in the past: shortly after independence, given the turmoil, Cabinda's claim would have been bolstered by the chaos within the Angolan state. Since the recent 'peace,' however, Angola has demonstrated that it can indeed govern. Even if the quality of that governance is disputed, it makes Cabinda's case less clear.

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[13] Dugard, "A Legal Basis for Secession," 94.

Argument 2: Political Oppression as Grounds for Independence

Cabindan nationalists also claim that independence is warranted given Angola's denial of internal political self-determination. Since unilateral secession is considered to be a radical move, the judges in the *Quebec Secession Case* found that "the international law right to self-determination only generates... a right to external self-determination in situations of former colonies; where a people is oppressed, as for example under foreign military occupation; or where a definable group is denied meaningful access to government."[14] Essentially, the offending state must be shown to be abusing its responsibilities as legitimate representative of its people if a claim for external self-determination is to be legitimate.

Although the colonialism argument might be possible in conjunction with Cabinda's historic claim to independence, Angola's recent history provides Cabinda with many opportunities to make a strong case for foreign oppression. For much of the war years, Cabinda's riches naturally led to some of the harshest fighting. Throughout the 1990s, UNITA, the MPLA government and FLEC routinely accused each other of human rights abuses in the Cabindan countryside. In particular, the government was allegedly responsible for the illegal detention, torture, rape or murder of thousands of Cabindan civilians with suspected pro-independence sympathies.[15] At the war's peak, entire villages were exterminated as part of a 'scorched earth' policy meant to neutralise FLEC and UNITA.[16] It is remarkable that even at the height of Angola's excesses, little outside media coverage or research into Cabinda was conducted, and thus extensive abuses could be perpetrated in near-complete international obscurity.

Although FLEC's diminished capacity has strengthened the MPLA government and made Cabinda more stable, abuses within the

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[14] Currie et al., *International Law*, 335.

[15] Human Rights Watch, "Angola: In oil rich Cabinda, army abuses civilians," December 22, 2004, http://www.hrw.org/en/news/2004/12/22/angola-oil-rich-cabinda-army-abuses-civilians (accessed November 27, 2008).

[16] Minorities at Risk, "Chronology for Cabinda in Angola."

Cabindan political system remain common. According to Human Rights Watch, in 2004 "the Angolan army arbitrarily detained and tortured civilians with impunity in Cabinda, and continue[d] to restrict their freedom of movement despite an apparent end to the decades-long separatist conflict."[17] After the 2006 ceasefire between FLEC and the government, repression was less overt but still present. Human Rights Watch reported that "police and state security services regularly intimidate and harass journalists and individuals... who have publicly questioned the credibility of the peace agreement [while] the military have continued to detain civilians for alleged 'crimes against the security of the state' for extended periods without bringing them before an independent judicial body to review their detention".[18]

Furthermore, aside from the oppression argument, Cabinda also claims to have been denied meaningful access to government, which is another potential criterion for external self-determination. For example, despite calls by FLEC and by neighbouring countries like the Republic of Congo (Congo-Brazzaville) for the independence question to be decisively resolved by plebiscite, Angola has no plans to allow a democratic vote on independence at any time in the future. A referendum is one of the simplest yet most effective ways of deciding an independence question; it has been used to prompt the creation of numerous new states in recent years, such as East Timor and Montenegro, but has also been used unsuccessfully in cases like Quebec. The United Nations itself often proposes a referendum as an ideal solution to a political impasse, and although African leaders in particular often commit to a plebiscite, in reality few actually hold one.[19]

However, beyond the referendum itself, the underlying principle is that a territory must be governed with some consent of its people under international law. In this respect, the will of the Cabindan

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[17] Human Rights Watch, "Angola: In oil rich Cabinda, army abuses civilians."

[18] Human Rights Watch, "Angola: Doubts over Free and Fair Elections," August 13, 2008, http://www.hrw.org/en/news/2008/08/13/angola-doubts-over-free-and-fair-elections.

[19] Simon Chesterman, Thomas M. Franck, and David Malone. *Law and Practice of the United Nations: Documents and Commentary* (New York: Oxford University Press, 2008), 425.

people remains largely unknown. Truly democratic elections in Cabinda have never taken place, either because elections have either been widely boycotted or the results deliberately skewed once all pro-independence parties were banned.[20] The United Nations General Assembly clearly enunciated a potential customary legal norm in Resolution 1541 (XV), stating that territorial "integration should be the result of the freely expressed wishes of the territory's peoples acting with full knowledge of the change in their status, their wishes having been expressed through informed and democratic processes, impartially conducted and based on universal adult suffrage."[21] Aside from also supporting the historical argument elaborated earlier, Cabindan rebels argue that without a referendum on independence in a territory that has fought the government almost constantly since Portugal's departure, Angola cannot justify itself as the legitimate guardian of Cabindan interests. Thus, military abuses and the restriction of the political expression of Cabinda's people constitutes a denial of Cabinda's right to internal self-determination, legitimizing its claim to external self-determination.

However, it is unclear if these arguments are enough to justify complete unilateral secession. Firstly, the Angolan government was not the only perpetrator of abuses during the war. Both FLEC and UNITA fought ruthlessly, targeting civilians and government officials for assassination.[22] If either of these groups had taken power in Cabinda, it is unclear if their claim to governance would have been any more legitimate than the MPLA's, since all were responsible for abuses against civilians. Furthermore, FLEC is a highly fragmented organisation with various competing wings, each one claiming to be the true representative of the Cabindan 'people.' If FLEC itself has more than one 'President of Cabinda' and clearly remains divided, it is unclear whether its pro-independence message can be considered representative of the wishes of Cabindans. In the absence of a referendum, the default position should not automatically be that

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[20] Human Rights Watch, "Angola: Doubts over Free and Fair Elections."

[21] Currie et al., *Law and Practice of the United Nations*, 321.

[22] Minorities at Risk, "Chronology for Cabinda in Angola."

independence is desired, since FLEC is also accused of intimidating the population to promote its pro-independence message.[23]

Furthermore, the right to external self-determination can only be claimed in 'extreme' cases.[24] The question is whether Cabinda's domestic political situation merits being considered severe in the wider African context. Although the war itself was devastating and clearly extreme simply in the numbers of refugees it produced (over 100,000 by some estimates)[25], the 2006 'ceasefire' has calmed most of Cabinda in recent years. Even if the repression of political parties and silencing of the media clearly do continue, how can this compare, for example, to complete economic collapse in Zimbabwe, genocide in Darfur, anarchy in Somalia, or homicidal chaos in the eastern Democratic Republic of the Congo? Although logically the focus should be on whether abuses in Cabinda violate the rights of Cabindans and not on what is happening elsewhere, the right to self-determination is extraordinarily vague and it is natural, and perhaps essential, to view it in a wider perspective if we are to judge the validity of Cabinda's claim.

Also, as with the historical argument, Cabinda's claim to political self-determination would have been stronger in the past. When the war was raging and government abuses escalated in a frantic attempt to protect the oil revenues that funded the military, Cabindans as a people would have had a far stronger claim to external self-determination than exists today, when government abuses are much less 'extreme.' As it stands, therefore, it is likely that Cabinda could not justify a full claim to independence, but a claim only to greater internal self-determination within Angola.

Argument 3: Cabinda's Right to 'Economic Self-Determination'?

A final argument, but the one that is perhaps the most intriguing, is the idea that the denial of economic self-determination gives rise to a

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[23]Human Rights Watch, "Angola: Doubts over Free and Fair Elections."

[24] Dugard, "A Legal Basis For Secession," 93.

[25] Minorities at Risk, "Chronology for Cabinda in Angola."

claim to independence. Cabinda is easily one of Africa's, and even the world's, most oil-rich territories. Angola is Africa's second-largest oil producer after Nigeria; Cabinda alone has over 60 percent of Angola's oil, represents at least 50 percent of government revenues, and generates almost all of Angola's foreign currency reserves.[26] Cabinda produces an estimated one million barrels of oil a day, which total over two barrels, per inhabitant, per day.[27] This impressive output has led some to dub Cabinda the 'African Kuwait' and, by extension, one might expect Cabinda to be as prosperous as its Middle Eastern counterpart.

The reality is starkly different. Cabinda remains poor, under-educated, and was practically abandoned by government social services during the war. The majority of Cabindans still live in ramshackle huts and slums. By contrast, the Angolan capital, Luanda, sports multi-million dollar luxury neighbourhoods for state officials and improved government services, although the majority of Luandans also live in dire poverty.[28] The Angolan argument for retaining Cabinda as part of Angola has traditionally been that Cabinda's oil wealth is essential to rebuilding and developing the country. However, according to the United Nations, the government spent 34 percent of its total budget from 1995 to 2005 on defence, as compared to 15 percent for education and 6 percent for health.[29] In 2006, Angola had one of the worst child mortality rates in the world: over one fifth of all children died before the age of five.[30] Until 2002, most of Cabinda's oil wealth appears to have been funding the war against UNITA, not developing the socialist economy the MPLA had claimed to support.

To Cabindan separatists, this apparent economic disparity is the greatest outrage of all. Officially, Cabinda was meant to receive 10

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[26] A Semana, "Angola's Cabinda has more onshore than offshore oil," *Afrol News*, Febrary 1, 2005, http://www.afrol.com/articles/15453.

[27] Ibid.

[28] Alex Duval Smith, "It's party time for Luanda's elite as Angola grows rich on oil and gems," *The Guardian*, August 31, 2008, http://www.guardian.co.uk/world/2008/aug/31/angola.elections.

[29] United Nations Children's Fund, "Angola: Statistics," http://www.unicef.org/infobycountry/angola_statistics.html (accessed November 27, 2008).

[30] Ibid.

percent of its oil revenues back from the government during the 1990s, but in practice this figure was far lower and much of that was then stolen through corruption.[31] The dramatic difference between what Cabinda could have been and what it has actually become can clearly be classified as 'extreme,' as any comparison of Cabinda to Kuwait illustrates. Even if Angola's political repression did not justify independence, its economic repression by depriving Cabinda of meaningful access to its own natural resources is so overwhelming that external self-determination becomes legitimate.

This position, though unconventional, is clearly supported by relevant international law. Article 1(2) of both the ICCPR and ICESPR states that "All peoples may... freely dispose of their natural wealth and resources...[and] in no case may a people be deprived of its own means of subsistence".[32] Once again, however, this begs the question of who constitutes a 'people' under international law: does Cabinda alone, or Angola as a whole, possess the right to these resources? The fact that elite Luandans, not Cabindans, benefited from the oil revenues significantly weakens the claim that the entire country is one people under international law.

Therefore, this novel concept of a 'right to economic self-determination' could expand the classic view that political abuses are the primary factors giving rise to external self-determination rights. A gross denial of economic opportunities can also constitute a violation of a people's right to self-determination, thus creating another way by which peoples can claim a legitimate right to independence. This principle could potentially be applied to other hotly contested, resource-rich territories, such as Nigeria's Niger delta.

However, while the principle of economic self-determination is sound and was relevant to Cabinda for most of the 1990s, does it still apply today? After the 2006 'ceasefire,' Angola experienced its most peaceful period in 30 years and new geological results were indicating that Cabinda had even more oil than previously

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[31] *The Oil Drum*, "Cabinda: Prospects for an Oil Insurgency in the Angolan Enclave," http://www.theoildrum.com/node/2535.

[32] Currie et al., *International Law*, 316.

anticipated.[33] Therefore, in 2006 Angola began a new strategy to earn Cabinda's confidence by bridging the economic gap. The government announced plans to spend over $500 million in Cabinda over two years, including $100 million for a state-of-the-art port facility that would turn Cabinda into a regional hub.[34] Schools became free, and the government not only bought every pupil lunches and uniforms, but also invested in a university. Cabinda is currently Angola's second richest urban centre after Luanda[35] and is predicted to grow with the investment in more regional infrastructure.

This strategic change of heart has not reversed Cabinda's fortunes entirely, as poverty remains widespread. However, it does significantly diminish the economic argument for independence. FLEC still protests imbalances and urged Cabindans to boycott the September 2008 parliamentary elections, but it remains to be seen if FLEC can even sustain itself if the government maintains superior resources and gains popular support. Thus, as with the historical and political repression arguments, a much stronger claim to independence existed in the past, leaving today's claim for economic self-determination somewhat diminished and likely applicable only to autonomy within Angola.

Conclusion: Is Independence a Realistic Goal?

Cabinda's legal foundation for independence has been eroding. Although the legal justification for independence did once exist, the arguments for independence today are clearly not what they were during the civil war. This has been demonstrated by examining the historical argument refuting Angola's claim to *uti possidetis*, the argument that internal political self-determination has been violated, and the argument that denial of meaningful access to local natural resources constitute grounds for independence.

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[33] Press Tribune, "Angola's Economic Powerhouse," *International Finance Corporation Reports*, September 8, 2007, http://www.ifcreports.com/pdf/cabinda.pdf.

[34] Ibid.

[35] Ibid.

However, it is also important to recognise that, though international law can have an important impact on diplomatic recognition of new states, many violent nationalist movements tend to be recognised post-facto if they are successful, legitimate claim or no. In Cabinda, FLEC is unlikely to fill that coordinated military role. Internally divided, and faced with an exponentially more powerful adversary funded by Cabinda's own oil wealth, FLEC's claim does not have adequate legal justification, nor do they appear to have the military strength to force independence unilaterally. Their case would be strengthened if the international community, led by the United Nations, would recognise Cabinda as a 'non-self-governing territory', but that possibility remains highly unlikely, particularly given Cabinda's current level of international obscurity and the opposition coming from African states.

To date, Cabinda's oil has been more of a curse than a boon. Cabindans saw little profit most of the time, while their region became an especially hot strategic war-zone. The future is perhaps brighter than before, however, since Angola seems to have come to respect just how crucial Cabinda is to its overall success. Whether high payments to Cabinda will continue now that oil prices have plummeted remains to be seen, as are the effects that such an action might have on the attitudes of Cabindans themselves.

Therefore, in some forgotten parts of the world plagued by war, with populations suffering abuses from both governments and rebel militias theoretically pledged to protect them, some may see the so-called right to self-determination as a beacon of hope for a better future. To others, this inexplicit, radical, and potentially dangerous 'right' threatens to promote violence and anarchy within previously stable societies. Yet regardless of what one thinks of the right to self-determination, it remains one of the most important and ideologically powerful concepts of our times.

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Turkey's Accession to the EU: A Mutually Advantageous Future

Jennifer Guo

Abstract: For the past several decades, the prospect of Turkey's accession to the European Union has been met with no shortage of obstacles. Turkey had formally applied for candidacy in 1987, but was not granted candidacy status approval by the European Commission until 1999. Furthermore, it has been indicated that the process of Turkey's accession to the EU will continue until at least 2014. Despite what some describe as both a "long…and torturous" road still ahead, both the Turkey and the EU have remained on the path towards a Turkish EU membership. What are the driving forces behind the accession and what are the future challenges to be faced? Will the overall benefits overcome the acquired and perceived costs? The following paper takes a look at these questions and provides a cost-benefit analysis of Turkey's accession to the EU from both the perspective of Turkey and the EU member states. It argues that while Turkey and the EU do in fact face many challenges ahead, there are also important advantages that can be expected for both sides from Turkey's accession. This paper concludes that these advantages constitute the driving forces toward a mutually beneficial Turkish EU membership.

The European Union (EU) has, since its inception, taken the lead role towards greater European integration, driven largely by a desire to preserve peace in the region.[1] Over time, in order to effectively

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[1] Mark Webber, *Inclusion, Exclusion and the Governance of European Security.* (New York: Manchester University Press, 2007), 108.

respond to the changing security environment, the EU undertook a process of enlargement. As such, the institution extended its membership from the original six founding members since the establishment of its predecessor, the European Coal and Steel Community on May 9, 1950, to 27 members as of mid-2009.

The relationship between enlargement and security has become increasingly relevant over the past several decades. For instance, membership was extended to Denmark, Ireland, and the United Kingdom in 1973, and subsequently to Greece in 1981 and to Spain and Portugal in 1986. These sets of enlargements reflected the security environment of the 'iron curtain' divide during the Cold War, when Western Europe was pitted against the Soviet Socialist Republics and the Soviet satellite states of the Eastern Bloc.[2]

However, the collapse of the Soviet Union in 1991 and the subsequent political reforms undergone by the post-communist states in Central and Eastern Europe had dramatically changed the security environment for Europe in the post-Cold War era. New security issues began to emerge, such as the regional instability caused by the collapse of Yugoslavia and the Soviet Union.[3] In response, the EU further expanded its membership to include states that were strategically located within the vicinity of these unstable regions as a means of widening Europe's security community and securing Europe's periphery.[4] By 1995, Austria, Finland, and Sweden obtained their membership in the EU, and subsequently by 2002, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, the Slovak Republic, and Slovenia joined the institution as well.[5]

However, the potential integration of some candidate countries into the EU can be more challenging than it is for others. Turkey, for instance, had formally applied for EU membership in 1987, but was rejected by the European Commission until 1999, when it was finally

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[2] Ibid., 109.

[3] Ibid., 108.

[4] Ibid.

[5] Ibid.

granted candidate status approval. Subsequently, it was not until October of 2005 that negotiations on the issue of approving Turkey's accession into the EU formally began.[6]

Despite these developments, the European Commission has indicated that the negotiation process for Turkey's ascension to the EU will be an extensive one, expected to continue until at least 2014. As stated by the EU enlargement commissioner, Olli Rehn, "Turkey will not become a member of the union today or tomorrow…It will be a long, difficult, and tortuous journey."[7]

There are numerous challenges posed by a Turkish membership in the EU. To begin, the EU faces the cultural and religious challenge of integrating Turkey's Islamic and largely perceived 'non-European' society into an institution often characterised as a 'Christian club' and a group of countries that share a common 'European' identity.[8] The EU must also address the challenge of ensuring that a settlement will be reached between Turkey and Greece in their ongoing dispute over Cyprus prior to extending membership to Turkey.[9] Furthermore, Turkey faces strong opposition from the majority of EU member states in terms of its potential membership and it continues to struggle to complete the prerequisites of gaining EU membership, which includes satisfying pre-conditions such as the Copenhagen criteria.[10]

The purpose of this paper is to explore the driving forces behind and the challenges of Turkey's accession to the EU. In addition, it will also provide a cost-benefit analysis of this development for both sides. In light of the aforementioned challenges, it has become widely debated whether the prospect of extending EU membership to Turkey is still in the interest of either Turkey or the institution itself.

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[6] José Casanova, "The Long, Difficult, and Tortuous Journey of Turkey into Europe and the Dilemmas of European Civilization," *Constellations* 13, no. 2 (2006): 235.

[7] Ibid., 234.

[8] Ibid., 236.

[9] Webber, *Inclusion, Exclusion and the Governance of European Security*, 199.

[10] Elizabeth Shakman Hurd, "Negotiating Europe: the Politics of Religion and the Prospects for Turkish Accession," *Review of International Studies* 32 (2006): 404.

However, this paper argues that the overall benefits of Turkey's accession to the EU outweigh the current challenges and, as a result, a Turkish EU membership would be mutually beneficial for both sides.

Cost-Benefit Analysis for the European Union

Turkey's Religious and Cultural Challenge to the EU's 'European' Identity

As a predominately Muslim-populated country, Turkey's accession into the EU directly raises two of the EU's major concerns, one of which is the threat to its 'European' identity and the other is the politics of religion within the institution itself.

First, the fear that Turkey is not only 'non-European,' but that it further threatens the EU's 'European' identity is a viewpoint that is held by both the public as well as the political elites of some EU member states. For instance, in 2002, former French President Valéry Giscard d'Estaing declared that Turkey was "not a European country," and that if it were to gain membership of the EU, the result would ultimately be the "end of Europe."[11]

Similarly, former West German Chancellor Helmut Schmidt has also made statements indicating that Turkey should not be integrated into the EU because of its 'unsuitable civilization' and that its membership may set a precedent for extending EU membership to other Muslim countries.[12] Schmidt's greatest concern was that if EU enlargements were to continue to proceed as it had in the past, then the EU, as one of the most successful examples of regional integration, would eventually become little more than simply a free trade community.[13]

These concerns were reflected in European society in the form of political decision making and political expression by the public. For instance, in 2004, an anti-headscarf law was passed in France, a

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[11] Ibid., 406.

[12] Ibid.

[13] Ibid.

country that has the largest population of Muslims in Western Europe.[14] Additionally, in 2006, several European newspapers published cartoons depicting the Prophet Mohammed, which sparked outrage amongst the Muslim population worldwide.[15] Given these incidents of culture-clash within the EU at present, it is possible that the inclusion of a largely Muslim state may only further aggravate such tensions present within the institution.

What is also peculiar about Turkey is that while it has based its political and economic systems after Western models, it has pursued a modern model of Muslim society. In other words, while modernity has been generally associated with secularization in Europe, the opposite is being observed in Turkey.[16] The more 'modern' Turkey becomes, or the more Turkey adopts the modern democratic values and practices of the West, the more publicly Muslim it becomes, and consequently, Turkish society grows less secular. Ultimately, this contradicts the 'Christian' and 'secular' characterizations of the 'European' identity.[17]

Second, there is also a complicated relationship between Islam and the politics of religion within Europe that largely embodies the issue of immigration in the region. With the exception of the United Kingdom, the immigrant population in most European countries has been largely dominated by Muslims. Immigration and Islam have therefore become virtually synonymous in much of Europe[18] This results in a sense of 'otherness' towards Muslim immigrants in the region, which further exacerbates the feeling that Islam is incompatible with the 'European' identity of the EU.[19]

There are also fears from the EU member states that there would be large waves of Muslim immigration from Turkey once it

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[14] Ibid., 407.

[15] Ibid.

[16] Casanova, "The Long, Difficult, and Tortuous Journey," 237.

[17] Ibid.

[18] Ibid., 242-3.

[19] Ibid.

has obtained EU membership.[20] In particular, the events following the terrorist attacks on September 11, 2001, and the subsequent global war on terror have resulted in a heightened sense of panic, which can be described as 'Islamophobia' in Europe.[21]

However, while Turkey's culture and religion does pose a challenge to the EU's internal identity and politics, it should not be overstated as there are also some ways in which the concern of Turkey's 'non-European' incompatibility can be addressed. For instance, Turkey has in many ways already integrated itself into both Europe and other European institutions. It joined the Council of Europe in 1949, and subsequently became a member of the North Atlantic Treaty Organization (NATO) in 1951. Turkey has also historically oriented its foreign policy to reflect that of the Western world, committing great efforts towards adopting a 'European' way of life in its government and society.[22]

It is important to note that the notion of a 'European' identity is particularly challenging to qualify or define, given that it has been associated with a number of varying characteristics such as being a Protestant, a Catholic, Orthodox, and English-speaking.[23] Interestingly, the EU has also not yet provided an official definition of what qualifies as being 'European,' largely because it may raise the sensitive issue of identifying a racial component of the 'European' identity.[24] In addition, while Islam has become integrated into personal life in Turkey, it has certainly not been given a place in the public life.[25] As a whole, these factors undermine and weaken the argument that Turkey's society is unsuitable for integration because it is 'non-European.'

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[20] Ibid.

[21] Ibid.

[22] Webber, *Inclusion, Exclusion and the Governance of European Security*, 180.

[23] Casanova, "The Long, Difficult, and Tortuous Journey," 237.

[24] John Redmond, "Turkey and the European Union: Troubled European or European Trouble?" *International Affairs* 83, no. 2 (2007): 314.

[25] Casanova, "The Long, Difficult, and Tortuous Journey," 243-4.

Ultimately, the EU that must decide what should comprise its identity. On the one hand, there are those who view it as a 'Christian club,' but on the other hand there are those who view it as institution that represents modernisation. Holding to the latter viewpoint, Turkey has, since the existence of the Ottoman Empire, associated modernization with Westernisation.[26] As such, so long as the EU chooses to identify itself as an institution that reflects modernity, it should not perceive that extending membership to a country where the dominant religion of its population is Islam constitutes as a threat to its identity.[27]

Unresolved: Greco-Turkish Dispute over Cyprus

One of the greatest obstacles to Turkey's accession to the EU has been its hostile bilateral relationship with Greece, which has been a member of the EU since 1981. Tensions between the two countries have historically originated from territorial maritime and airspace claims over the Aegean Sea, a dispute that has even come close to military confrontation on two occasions, once in 1987 and again in 1996.[28] However, since 1999, Greco-Turkish relations have improved dramatically upon Turkey's understanding that its prospect of entering the EU is tied to its commitment to develop good relations with Greece and resolve any remaining bilateral disputes. [29] Despite this cooling of hostilities, Turkey has largely remained unwavering over the issue of Cyprus, and this dispute between the two countries continues to remain unresolved. As a result, it has become one of the greatest stumbling blocks against Turkey's accession to the EU. [30]

The Cyprus issue revolves around a local dispute between the majority Greek-speaking population and the Turkish-speaking

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[26] Ibid., 237.

[27] Ibid.

[28] Webber, *Inclusion, Exclusion and the Governance of European Security*, 199.

[29] Ibid.

[30] Ibid.

minority after the country's independence in 1960.[31] On the basis of defending the discriminatory treatment of Turkish Cypriots, Turkey sent its military forces into northern Cyprus, dividing the island into two administrative zones. Two-thirds of the island in the south consequently came under the authority of the Republic of Cyprus (RoC). Today, with the exception of Turkey, the RoC is universally recognized.[32] Alternatively, the remaining one-third of the island in the north is being governed by the Turkish Republic of Northern Cyprus (TRNC), which is currently recognised only by Turkey.[33]

With Greece and Cyprus as current members of the EU, and Turkey as a candidate member, the EU finds itself in a complicated situation where it can no longer remain neutral between any of these allies. [34] Instead, the EU must ensure that the Cyprus issue is resolved prior to granting Turkey its membership.

Although this issue has raised concerns for the EU, it should be noted that there have been improvements towards resolving this situation. For instance, due to Turkey's acknowledgement that its entry into the EU is directly linked to reaching an agreement with Greece over the Cyprus issue, it has become more actively involved in international cooperation towards an effective and sustainable resolution to this issue.[35] For instance, Turkey participated in developing the Annan Plan, a proposal put forth by the United Nations with the aim of reunifying Cyprus as a bizonal federation. The negotiation process, which also involved the United Kingdom, Greece, and the EU, was a significant step towards the resolution of this issue.[36]

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[31] Ibid., 199-201.

[32] Ibid.

[33] Ibid.

[34] Ali Carkoglu and Barry Rubin, *Turkey and the European Union: Domestic Politics, Economic Integration, and International Dynamics* (Portland: Taylor & Francis, 2003), 55.

[35] Ibid.

[36] Webber, *Inclusion Exclusion and the Governance of European Security*, 200.

It is also important to note that Greece and Turkey are members of NATO, both having gained entry in 1952. Similar to the EU, NATO is a security community based on peaceful relations amongst its members. As a result, NATO also considers the Greco-Turkish dispute over Cyprus an unsettling threat to its institutional basis and the stability of the Eastern Mediterranean, which further pressures Turkey towards finding a resolution.[37]

Turkey as a Geopolitical Strategic Partner

One of the major driving forces of Turkey's EU membership is the geopolitical strategic advantages that Turkey would bring to the European security architecture. In fact, Turkey's relationship with the West has historically been based on geopolitical interests. Since the Cold War, this strategic relationship has continued to grow.[38]

For instance, Turkey has played a significant role in conflict resolution by partaking in the UN peacekeeping missions in the Balkans and making contributions towards resolving the First Gulf War. In addition, it has also contributed a leadership role in regional initiatives taking place in the Black Sea, the Caspian Basin, as well as Central Asia.[39]

These initiatives have allowed Turkey to become an important strategic partner to the West. Furthermore, Turkey has also been effective in acting as a barrier to threats from the Middle East that target regional and international security.[40] Unlike the West, Turkey maintains good neighbourly relations with the Middle East. As such, while Turkey delivers similar messages to the Middle East as their Western allies, it is perceived as being less hostile.[41] Much to the interest of Europe, Turkey is also symbolically significant in the Islamic World in that it represents a successful model that combines

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[37] Ibid.

[38] Ibid., 179-80.

[39] Ibid., 177.

[40] Ibid., 179-80.

[41] Ibid.

both secular and democratic governance in a predominately Muslim society.[42]

Europe's security community is increasingly linked to that of NATO.[43] As such, an analysis of NATO's relationship with Turkey is also important in speculating the importance of Turkey's EU membership to Europe's security community. In the events following September 11, 2001, Turkey supported the United States-led campaign in Afghanistan against the Taliban regime, making strategic contributions with its political, economic, and intelligence ties to regions spanning from the Middle East to Central Asia.[44] In addition, Turkey has been an important strategic asset to NATO's security commitments because it has developed a large and efficient army.[45]

Turkey's membership in NATO has furthermore enabled the country to develop important strategic advantages. For instance, as a member of NATO, Turkey has gained significant expertise in activities such as peacekeeping, counter-proliferation, as well as counterterrorism.[46] In brief, Turkey's importance to security communities in the West is reflected in the following statement made by former NATO Secretary General Lord George Robertson:

> [Turkey, with] strong historical, cultural and economic links to Central Asia and the Middle East...is a vital bridge to project security in these areas. As a secular and democratic country, it is a unique model for the Muslim World. And as a European country integrated into Euro-Atlantic structures all along, it is uniquely placed to play a mentor's role for those countries of Central Asia, the Caucasus and others who want to draw closer to us.[47]

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[42] Redmond, "Turkey and the European Union," 313.

[43] Webber, *Inclusion Exclusion and the Governance of European Security*, 181-2.

[44] Ibid.

[45] Ibid., 182.

[46] Ibid.

[47] Ibid., 183.

Another way to analyse the importance of Turkey's strategic importance to the EU is to recall the events that had occurred during the temporary deterioration of EU-Turkish relations in the late 1990s. This incident, which took place after the union's refusal to grant candidate status to Turkey in 1997, can be used to illustrate the extent of Turkey's significance to EU's security community.

As a result of the violence and human rights violations that had erupted in the southeast of Turkey at the end of the Cold War, the European Council did not include Turkey amongst the list of candidate countries for enlargement in 1997. In response to the EU's actions, Turkey subsequently broke off all political dialogue with the EU.[48]

Additionally, Turkey refused to recognise the EU as a third-party mediator in the Cyprus issue, which further exacerbated tensions with Greece.[49] As a member of NATO, Turkey also began to consistently block the EU's agenda in the organization, such as its proposal of the European Security and Defence Identity.[50] Additionally, during this time, Turkey halted its purchase of military hardware from all EU member states.[51] These incidences suggest that Turkey's strategic importance to the EU should not be underestimated.

Cost-Benefit Analysis for Turkey:

Resistance from within the EU and the Enduring Process of Negotiations

Turkey has had a long and unwavering desire to enter the EU, as it considers accession to be a significant step towards Turkey's self-definition as a 'European' state. Indeed, Turkey continues to consider its EU membership to be one of the most important aspirations in

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[48] Kemal Kirisci and Zeynep Gulah Capan, "Turkey on the Edges of the Convention on the Future of Europe," *South European Society & Politics* 9, no. 1 (2004): 176.

[49] Hurd, "Negotiating Europe," 403.

[50] Ibid.

[51] Ibid., 403-4.

the country's history today.[52] As stated by Turkey's Foreign Minister Ali Babacan, "we will continue on our path. For us the important thing is that negotiation process with Europe remains on track."[53]

However, despite this ambition, Turkey faces two great challenges against its accession to the EU: the widespread opposition by member states of the EU and the negotiation process towards the integration of Turkish society into the institution. First, out of all EU member states, only Britain has been consistently in favour of a Turkish EU membership, largely due to security considerations such as threats of terrorism, regional conflicts, and weapons of mass destruction from rogue states.[54] As discussed earlier, given Turkey's geostrategic position, the country is considered an asset in terms of combating these concerns.

Germany, which is at present home to the largest community of Turkish immigrants compared with the other member states of the EU, had historically supported Turkey's accession to the institution.[55] However, new leadership has since reversed this position and opted instead to be representative to the views expressed by the German public, which is relatively unsupportive of Turkey's potential accession to the EU.[56] In this, Germany has joined the ranks of other EU states, such as France and Austria, where public support for Turkish membership has typically remained low.[57] Indeed, in a report released in 2005, opinion polling conducted through the Eurobarometer found that public support for Turkey's accession to

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[52] Frank Schimmelfenning, Stefan Engert and Heiko Knobel, *International Socialization in Europe* (New York: Palgrave Macmillan, 2006), 100.

[53] Owen Matthews and Sami Kohen, "The True Turkish Believer," *Newsweek*, February 18, 2008, http://www.newsweek.com/id/109544.

[54] Can Buharali. "Is Turkey Still an Asset for European Security?" in *Turkey's Accession to the European Union, an Unusual Candidacy,* eds. Constantine Arvanitopoulos, Nikolaos Tzifakis, and Constatine Arvanitopoulos (Berlin, Heidelberg: Springer Berlin Heidelberg, 2009), 88.

[55] Hurd, "Negotiating Europe," 405.

[56] Ibid.

[57] Redmond, "Turkey and the European Union," 309.

the EU was over 50 percent in only three member states: Slovenia (54 percent), Hungary (51 percent), and Poland (54 percent).[58] Within the past few years, the level of European resistance has only seemed to stiffen. For instance, a Financial Times/Harris poll conducted in 2007 revealed that only 16 percent of French voters were in support of a Turkish EU membership.[59]

In contrast, Greece, which was initially strongly opposed to Turkey's EU membership due to hostile bilateral relations and various territorial disputes, has now reversed this position.[60] Today, it considers Turkey's ambition to obtain an EU membership as an opportunity for both countries to make significant efforts towards resolving their longstanding disputes and ultimately improving their overall relationship.[61]

Several of the smaller EU member states, including the Czech Republic, Slovakia, Hungary, and the Baltic countries, remain divided on this issue. Poland, Romania, Italy, Spain and Portugal are generally supportive on the basis that they believe Turkey's EU membership can help balance the power politics within the EU between the member states in the Mediterranean and those of northern Europe.[62] However, these member states are also concerned with what a Turkish EU membership may entail, largely as a result of the country's human rights standards, the current state of its economy, and the cultural differences between Turkey and the EU member states.[63] In summary, after taking into account the general pulse of European opinion, it appears that Turkey does not have particularly strong support within the EU for its membership bid.

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[58] Eurobarometer, "National Report: Executive Summary; Czech Republic," *Eurobarometer Survey Series* 63, no. 4 (2005): 3.

[59] Katrina Barysch, "What Europeans Think about Turkey and Why," Briefing Note, (London: Centre for European Reform, 2007).

[60] Ibid.

[61] Ibid.

[62] Redmond, "Turkey and the European Union," 309.

[63] Eurobarometer, "National Report: Executive Summary; Greece," *Eurobarometer Survey Series* 66 (2006): 5-7.

For candidate states, the process leading up to their integration into the EU is a very drawn-out experience, and it has certainly been so for Turkey. The country has had to meet a number of conditions under the 'Copenhagen criteria,' which was established in 1993 at the Copenhagen European Council.[64] In brief, there are three general categories under the Copenhagen criteria that Turkey must satisfy. The first is on the political front, requiring Turkey to develop a stable democracy that incorporates Western democratic values and practices such as the rule of law, and respect for human, cultural and minority rights.[65] The second is on the economic front, requiring Turkey to achieve an efficient economy that is able to compete with the market forces within the EU.[66] The third requires Turkey to accept and adopt the *acquis communautaire*, which are the common laws, standards, and policies of the EU.[67]

It is also important to note that the EU functions as an intergovernmental and supranational institution. In other words, members of the EU are required to give up some of their sovereignty and direct it to the EU.[68] Turkey must therefore be certain that the benefits of joining the EU outweigh the costs, especially when Turkey has found itself in an extensive wait for membership approval.[69] In spite of this, public opposition in Turkey for accession to the EU has halted since 2004 and stabilized at around 49 percent, according to a Eurobarometer report released in 2008. More importantly, this report also found that 82 percent of the Turkish public in 2007 perceived that Turkey would benefit from its accession into the EU.[70]

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[64] Redmond, "Turkey and the European Union," 310.

[65] Hurd, "Negotiating Europe," 404.

[66] Ibid.

[67] Ibid.

[68] Carkoglu et al., *Turkey and the European Union*, 10-1.

[69] Casanova, "The Long, Difficult, and Tortuous Journey," *2*39.

[70] Eurobarometer, "National Report: Executive Summary; Turkey," *Eurobarometer Survey Series* 69 (2008): 2.

Meeting the 'Copenhagen criteria' and Transforming Turkey's Society

While "long, difficult, and tortuous," Turkey's journey to gain EU membership has also driven Turkey to become increasingly democratic, economically stable, and modernized. The Copenhagen criteria forced Turkey to undergo a painful process of implementing various political and economic reforms. However, this process has also resulted in many positive developments in Turkey.

In general, the EU has put great emphasis on the candidate countries to meet sufficient human rights and democratization standards, especially after the 1980s and 1990s. As such, the EU has generally been seen to have played a positive role in consolidating the democracies in member states such as Spain, Greece and Portugal.[71] Furthermore, these positive signs of stable democracies have subsequently helped attract a significant amount of foreign direct investments, which in turn contributes to developing stable economies and strong economic growth, as the two are mutually re-enforcing. Upon their entry into the EU, member states such as Hungary, Poland, and the Czech Republic are also generally seen to have undergone this process.[72]

While Turkey has historically been committed to westernization, its politics and laws have at times fallen short of the values and practices of a Western liberal democracy. In particular, under Turkey's former leader Mustafa Kemal Ataturk, Turkey underwent reforms on the basis of the state doctrine of 'Kemalism.'[73] This policy was developed by Kemal as a means of transforming Turkey into a more modern, democratic and secular state. By 1936, thirteen years after becoming an independent republic, Turkey had successfully implemented a multi-party political system. In the subsequent year, it introduced a market-oriented development plan, which was a departure from the state-led economic development of

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[71] Carkoglu et al., *Turkey and the European Union*, 10-1

[72] Ibid.

[73] Mehmet Ugur. *The European Union and Turkey: An Anchor/Credibility Dilemma* (United States: Ashgate Publishing Company, 1999), 1-2.

the 1930s.[74] Yet in spite of this, some of these early reforms had contradicted the EU's notions of democratic practices.[75] One example includes the discrimination of minorities, of which includes the Kurdish population.[76] For instance, under Kemalism, ethnic cultures were set to be eliminated as minorities were forced to become homogenized and assimilated, by force if necessary, into the Turkish culture.[77]

In an effort to meet the preconditions for joining the EU, as outlined by the Copenhagen criteria, Turkey has undergone several additional significant reforms. The country has strived to tackle the myriad of challenges facing its economy, such as corruption and fiscal instability, through implementing effective regulatory policies that should, in turn, facilitate sustained economic growth.[78] Major developments have also been achieved on the political front. These include the abolition of the death penalty; the elimination of laws that had previously placed restrictions on the freedom of speech and association; the creation of broadcasting and education in minority languages; and the extension of additional cultural rights to various minority groups.[79]

Potential EU membership has generally been seen to play a very strong driving force for democratic and economic change. Since Turkey was approved for candidate status in 1999, it has undergone significant transformations towards improving human rights, minority rights, judicial procedure, and economic policies. Certainly, such changes have been for the better.[80]

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[74] Ibid.

[75] Schimmelfenning et al., *International Socialization in Europe*, 97.

[76] Ibid.

[77] Ibid., 98.

[78] Carkoglu et al., *Turkey and the European Union*, 13.

[79] Ibid., 14.

[80] Carkoglu et al., *Turkey and the European Union*, 10-2.

Conclusions

This paper asserts that while negotiations of Turkey's accession to the EU continue, the challenges facing a Turkish EU membership remain unresolved. Although these challenges are crucial and have been a burden to the EU as well as Turkey, the driving forces pushing both sides towards establishing a Turkish EU membership have provided great impetus towards overcoming the present stumbling blocks.

For the EU, having a prosperous and democratic Turkey as part of its security architecture would significantly contribute to its desire to maintain a peaceful and stable Europe. For Turkey, gaining an EU membership would allow Turkey to ultimately achieve its self-definition as a 'European' state and secure its place in the world today with Europe as one of its closest allies.[81]

The future prospect of Turkey's accession to the EU may be perceived to be fraught with a number of challenges, which make the country one of the most unique candidate cases. However, what is clear are the mutual advantages that both Turkey and the EU expect to gain from this development, and this is very evidently reflected from the driving forces that have encouraged both sides to continue to pursue a Turkish EU membership.

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[81] Schimmelfenning et al., *International Socialization in Europe*, 100.

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On the Order of Development: A Case Study of Community-Based Natural Resource Management in Vondrozo, Madagascar

L. Jamila Haider

Abstract: Despite the omnipresence of the term 'sustainable development' in policy arenas, methods of its successful implementation have been less widespread. As a general research inquiry this paper addresses the question of how social and economic development can proceed alongside environmental conservation. Specifically, the paper questions whether community-based natural resource management is an appropriate means to increase the welfare of a population while simultaneously protecting natural resources. A theoretical discussion regarding sustainability, beginning with the Brundtland report, offers a critical view of the poverty-environment nexus, leading into the introduction of community-based natural resource management (CBNRM) as a method of combining development and conservation efforts. This paper draws on a case study of CBNRM in the Fadriana-Vondrozo Forest Corridor (COFAV) in Madagascar, concluding that CBNRM in Madagascar is a positive step in making the system more resilient to systemic change. Among the challenges that exist are the transfer of knowledge and complex roles of governance, which lead to an unpredictable future for CBNRM in Madagascar.

The idea that environmental degradation is linked to poverty is a dominant view held by development theorists and agencies around the world. The World Commission on Environment and Development (WCED) promoted the idea that poverty is a leading

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factor of environmental degradation in the renowned Brundtland Commission in 1987.[1] It is this limiting stance – the notion that poverty must be alleviated before environmental protection can take place – that has prohibited advancement on either front among poor[2] populations living on ecologically marginal lands.

The idea of conventional development, whereby poverty should be reduced by means of economic growth, is increasingly pushing the earth's environmental limits. Many newly industrialized countries have been a success by the strictest standards of economic development, but what will happen if two or three billion more of earth's citizens follow this conventional road to development? As the industrialized world tries to reverse the adverse effects of the industrial revolution, should it aid in leading the world's poorest down the same path? This paper challenges the common notion of a downward spiral in which poverty eradication is necessary before environmental concerns can be properly addressed; the two must be combated in synchrony, if they are to be eradicated at all.

As a general research inquiry this paper addresses the question of how social and economic development can proceed alongside environmental conservation. Community-based natural resource management (CBNRM) will be introduced as a potential model with which to address poverty and environmental protection simultaneously. Hence, the more specific research question of this paper becomes: is CBNRM an appropriate means to increase the welfare of a population while protecting natural resources?

First, the relationship between poverty and the environment will be examined to determine if a link exists. The paper will then explore how the concept of how a downward spiral manifested itself

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[1] World Commission on Environment and Development, "Our Common Future, From One Earth to One World," in *Our Common Future: Report of the World Commission on Environment and Development (A/42/427)*, http://www.un-documents.net/ocf-ov.htm.

[2] Poverty in this paper refers to absolute poverty; as the measure of the number of people living below a certain income threshold or the number of households unable to afford certain basic goods and services. For further discussion, see Martin Ravallion, "The Debate on Globalization, Poverty, and Inequality: Why Measurement Matters," *International Affairs* 79, no. 4 (2003): 740.

and became the primary model of the poverty-environment relationship. The discussion of sustainable development begins with the presentation of the Brundtland report and the consequences of implementing sustainability policies. This paper will then offer a brief history of sustainable development, leading to its establishment as the dominant development paradigm of the past twenty years. A theoretical discussion regarding sustainability will aim to clarify some of the inherent contradictions that exist between development and ecological preservation. A broad discussion of participation will be provided to set up the introduction of CBNRM as a specific mechanism in which development has been combined with conservation efforts. Consequences of a CBNRM approach will be analyzed in a specific case study of CBNRM in Vondrozo, Madagascar. Finally, the governance structures involved in this type of development approach will be briefly analyzed, concluding with possible future paths of community-based development in a globalizing world.

Poverty-Environment Link

Despite the international 'consensus' on sustainable development, the meaning of the term remains contested. On the one hand, corporate leaders and politicians have used the term to further neo-liberal economic growth while paying credence to the 'green agenda.' This perception is rather contrary to understanding sustainability as an equitable society operating within ecological limits.[3] Time and again, the need to foster an ecologically-resilient global system has fallen victim to the perceived immediacy of economic concerns.[4]

Over twenty years ago, the WCED published *Our Common Future*, which is more commonly known as the Brundtland Report. The report identified poverty as a leading factor of environmental degradation and suggests that alleviating poverty and protecting the

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[3] Joy Paton. "What's *left* of sustainable development?" *Journal of Australian Political Economy* 62 (2008): 95.

[4] Ibid., 96.

environment are both critical to long-term economic growth.[5] However, many see the challenges of poverty reduction and environmental protection as antithetical.[6] Jeffrey Leonard, president of the Global Environment Fund, has noted: "As with anything that diverts even incremental energies or resources of subsistence-level people, a pause to protect or repair the environment can literally take food out of the mouths of hungry families."[7]

While poverty is generally seen as both a cause and effect of environment degradation, it is important to consider the effects of the world's affluent minority.[8] The ecological footprint[9] of a rich person is much greater than the ecological footprint of a poor person. Nevertheless, the exponential human growth rate in the developing South takes its own toll on the environment. As the United Nations Environment Program has noted, "the continued poverty of the majority of the planet's inhabitants and excessive consumption by the minority are the two major causes of environmental degradation."[10]

The strength of the poverty-environment relationship is not stable or uniform. Rather, it varies depending on the issues at hand. For example, factors that contribute to global warming on a large scale can be attributed mostly to the industrialized world, while land degradation can be traced back to the rural poor mainly in the developing South. Much of the conventional environmental literature, including the Brundtland Report, enforces this perceived negative correlation between poverty and sustainable development; poor people are seen as short term maximizers who have no

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[5] World Commission on Environment and Development, "Our Common Future."

[6] H. Jeffrey Leonard, overview to *Environment and the poor: Development strategies for a common agenda,* H. Jeffrey Leonard and contributors, (New Brunswick, NJ: Transaction Books, 1989), 4.

[7] Ibid., 4-5.

[8] World Commission on Environment and Development, "Our Common Future."

[9] A measure of ecological footprint allows for the estimation of global overshoot and ecological deficit. Further information can be found in Mathis Wackernagel and William E. Rees, *Our Ecological Footprint: Reducing Human Impact on the Earth,* (The New Catalyst: Bioregional Series, 1998), 55.

[10] Alex Kirby, "UN Urges Rich to Slash Consumption," *BBC News*, September 15, 1999, http://news.bbc.co.uk/2/hi/science/nature/447078.

opportunity to look ahead, since they are only concerned with surviving today.[11] The Brundtland Report states that "poverty reduces people's capacity to use resources in a sustainable manner; it intensifies pressure on the environment."[12]

Although the report was monumental in that it identified the poverty-environment link as a symbiotic crisis and brought it to the attention of the global community, it failed in the fact that it did not propose any mutualistic solutions. Rather, it encouraged the eradication of poverty prior to combating environmental problems.[13] The view that environmental protection depends on the reduction of poverty has led to the conception of a downward spiral.

Downward Spiral

Many parts of the world are caught in a vicious downwards spiral: poor people are forced to overuse environmental resources to survive from day to day, and the impoverishment of their environment further impoverishes them, making their survival ever more difficult and uncertain.[14]

The perception of a downward spiral has created the common belief that only the affluent can enforce environmental policy. Jack Hollander, author of *The Real Environmental Crisis: Why Poverty, Not Affluence is the Environment's Number One Enemy*, makes the extreme case that "poverty is also linked to violence against the environment and that a global transition from poverty to affluence is essential to bringing about an environmentally sustainable world."[15] More specifically, he argues that unorganized political societies are unable to implement environmental policies or standards to control

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[11] Robin Broad. "The Poor and the Environment: Friends or Foes?" *World Development* 22, no. 6 (1994): 812.

[12] World Commission on Environment and Development, "Our Common Future."

[13] Tim Forsyth, Melissa Leach, and Ian Scoones, *Poverty and Environment: Priorities for Research and Policy*, (Falmer: Institute of Development Studies, 1998), 3.

[14] World Commission on Environment and Development, "Our Common Future."

[15] Jack M. Hollander, *The Real Environmental Crisis: Why poverty, not affluence, is the environment's number one enemy* (Berkeley: University of California Press, 2003), 17.

environmental degradation. Hollander refers to countries in the developing south as countries in their "first stage of development," still struggling to overcome the immediate challenges of survival. He goes on to say that "under such conditions, people are not likely to show an interest in the environmental issues of the affluent until they themselves begin to taste the fruits of affluence."[16] In other words, he is suggesting that the world's poor must first escape poverty and begin to industrialize in order to experience affluence similar to that in the Global North; only then can they play a significant role in environmental protection. This argument further links the local with the global, as the end goal of the dominant development by growth paradigm equals industrialized wealth. The logic of attaining a state of affluence through environmentally harmful means, where the end effect is the establishment of a policy to reverse the harm instilled, should therefore be reconsidered.

What is even more disturbing is the fact that although the harmful impact of many modernization schemes are now well-known, similar patterns are being implemented in the developing South. Kate Willis, a developmental theorist, writes of the history of development schemes in the twentieth century: "long-term environmental problems were disregarded in favour of the goals of economic growth and development."[17] We need only look at the newly industrialized countries or large-scale top-down development projects such as the Narmada dam[18] to demonstrate this 'grow now, clean up later' attitude.[19] These top-down projects have not only proven to be environmentally destructive, but they also take power

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[16] Ibid., 23.

[17] Kate Willis, *Theories and Practices of Development* (New York: Routledge, 2005), 149.

[18] A series of dams constructed along the Narmada River, India beginning in the late 1970s displaced hundreds of thousands of people and great expanses of land were lost. The grassroots opposition to the enormous infrastructure project is perhaps one of the most celebrated environmental justice movements in developing countries. For more information, see Subodh Wagle, "The Long March for Livelihoods: Struggle against the Narmada Dam in India," in *Environment Justice: Discourses in International Political Economy Energy and Environmental Policy*, vol. 8, edited by John Byrne, Leigh Glover and Cecilia Martinez (Edison: Transaction Publishers, 1997), 71-3.

[19] Willis, *Theories and Practices of Development,* 150.

out of the hands of the people through centralization. Shiva, in *The Violence of the Green Revolution,* says that large development projects often centralize power, thus creating a new source of conflict and resistance.[20]

Rural populations often resist large-scale development schemes and violate imposed rules, thus undermining conservation efforts. These apparent deficiencies of top-down strategies have led policymakers to seek alternatives, with the challenge being to find a way to conserve the environment while at the same time improving the local economic situation. One resulting alternative is community-based natural resource management (CBNRM).

The movement towards an alternative means of development began in the mid-1980s, when natural resource management agencies in Africa began to realize that they lacked the financial and human resources to effectively prevent resource degradation.[21] At the same time, democracy was becoming increasingly popular in sub-Saharan Africa. Many of the newly elected governments were forced to consider the demands of local communities for greater recognition and improved access to ecosystem services.[22] At the international level, the need for people-centered conservation strategies was established at the United Nations Framework Convention on Climate Change in 1992. The reason for this change in attitude was that policymakers began to accept that top-down decision making in resource management often precipitates a spiral of conflict that places natural resources at risk. CBNRM, as a policy approach, was created to promote better resource management through local-level control, ultimately leading to better environmental stewardship.[23] It was argued that better land-use

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[20] Vandana Shiva, *The Violence of the Green Revolution* (London: Zed Books, 1991), 149.

[21] Christo Fabricius, The Fundamentals of Community-Based Natural Resource Management," in *Rights, Resources & Rural Development: Community-Based Natural Resource Management in Southern Africa*, edited by Cristo Fabricius and Eddie Koch (London, United Kingdom: Earthscan, 2004), 10.

[22] Ibid.

[23] Christian A. Kull, *Isle of Fire: The Political Ecology of Landscape Burning in Madagascar* (Chicago: University of Chicago Press, 2004), 243.

practices, policies and management systems could halt environmental degradation.[24] CBNRM can be defined as:

> The management of natural resources under a detailed plan developed and agreed to by all concerned stakeholders. The approach is community-based in that the communities managing the resources have the legal rights, the local institutions, and the economic incentives to take substantial responsibility for sustained use of these resources. Under the natural resource management plan, communities become the primary implementers, assisted and monitored by technical services.[25]

CBNRM presents a management scheme in which poor people living on the margins of ecologically-fragile land are made responsible for the management of natural resources. Within this new conservation paradigm, rural poverty is considered a major hindrance to the sustainable utilization of natural resources.[26] This nexus between sustainability and development will be further explored in the following section.

Sustainable Development

Approaching conservation and development issues through a common lens is encapsulated in the term 'sustainable development.' The term first appeared in the *World Conservation Strategy* drafted by the International Union for Conservation of Nature and Natural Resources with the help of United Nations Environmental

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[24] Christo Fabricius and Eddie Koch, introduction to *Rights, Resources & Rural Development: Community-Based Natural Resource Management in Southern Africa*, edited by Christo Fabricius and Eddie Koch (London, United Kingdom: Earthscan, 2004), xiii.

[25] CBNRM Networking, *Community-Based Natural Resource Management (CBNRM)*,

http://www.cbnrm.net/resources/terminology/terms_cbnrm.html.

[26] Jorgen Klein et al., "Conservation, Development, and a Heterogeneous Community: The Case of Ambohitantely Special Reserve, Madagascar." *Society and Natural Resources* 20, no. 5 (2007): 452.

Programme and World Wide Fund for Nature (WWF).[27] This document was pivotal in projecting development and conservation under a common lens. The paradigm shift from conservation to sustainability theory was solidified by the Brundtland Report. The terms 'sustainable' and 'development' quickly became the components of a new catch phrase for academics, governments and non-governmental organizations alike. Despite its popular use in these fields, the theoretical basis of 'sustainable development' is at times ambiguous and even contradictory. How can development, which is based on growth, be paired with sustainability, which implies preservation? These two words are practically opposite in meaning, yet the oxymoron resulting from their union has become the predominant socio-economic paradigm of the last twenty years.

The Brundtland Report defines sustainable development as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs."[28] This is a lofty and inspiring definition, but remains problematic. Wolfgang Sachs, researcher and author, questioned: "Are the needs in question those of the global consumer or the enormous number of have-nots?"[29] This is indeed a pressing question, but for the purpose of the topic at hand, this research paper is concerned about how this paradigm meets, or fails to meet, the needs of the so-called 'have-nots.'

The focus on minimalism in the WCED definition of sustainable development is deeply unsatisfying; therefore, this paper draws on resilience theory,[30] which provides a more dynamic and inclusive

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[27] International Union for Conservation of Nature and Natural Resources, United Nations Environment Programme, and the World Wide Fund for Nature. *World Conservation Strategy: Living Resource Conservation for Sustainable Development* (Gland: International Union for Conservation of Nature and Natural Resources, 1980).

[28] World Commission on Environment and Development, "Our Common Future."

[29] Wolfgang Sachs, "The Need for the Home Perspective," in *The Post-Development Reader*, edited by Majid Rahnema (Halifax: Fernwood Publishing, 1997), 194.

[30] Resilience is the magnitude of disturbance that can be tolerated before a social-ecological system moves to a different state controlled by a different set of processes, and is often closely related to sustainability. For a further discussion of this concept, see Stephen Carpenter et al., "From Metapho to Measurement: Resilience of What to What?" *Ecosystems* 4 (2001): 765.

definition. Renowned ecologist, C.S. Holling, not only provides a functional definition of this term, but also defies the seeming contradiction of sustainable development:

> Sustainability is the capacity to create, test and maintain adaptive capability. Development is the process of creating, testing and maintaining opportunity. The phrase that combines the two, "sustainable development," thus refers to the goal of fostering adaptive capabilities and creating opportunities. It is therefore not an oxymoron but a term that describes a logical partnership.[31]

This definition emphasizes the adaptive element of sustainability. Key to developing states is the adaptive capacity of populations to stringent environmental protection schemes while furthering development at the same time. Environmental protection can encompass various issues, but a prominent concern in the developing South and paramount to the Madagascar case study is that of deforestation and the consequent lass of biodiversity. Much of the world's extreme biological diversity is found in areas of extreme poverty. This makes biodiversity not only a local, but also a global good. The WWF works with local communities to protect biodiversity for the well-being of local, as well as global, populations. A major problem with this approach is that the protection of biodiversity is not a marketable resource, making it an inherently difficult objective in a market-driven world. For this reason, CBNRM is theoretically an effective approach, since it speaks to the intrinsic value of biodiversity to the marginalized poor. However, as the Madagascar case study will display, the proper implementation of such a project on the ground encounters various barriers.

Biodiversity

Biodiversity has become a buzzword within the conservation-development field, especially in Madagascar. This is a term that requires further explanation, given that it weighs heavily in the

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[31] C.S. Holling, "Understanding the Complexity of Economic, Ecological, and Social Systems," *Ecosystems* 4 (2001): 390.

discussion of biodiversity protection as an element of CBNRM. Biodiversity can be defined as "the sum total of all living things on Earth, taking into account their great variety in structure, function and genetic make-up."[32] It has been mentioned earlier that biodiversity is a local and global good, but what makes it worthy of preservation while the surrounding population suffers from extreme poverty and malnutrition? Gretchen C. Daily of Stanford University states that unless humanity is suicidal, it should want to preserve, at the minimum, the natural life support systems and processes required to sustain its own existence. Therefore, even for the most technocratic of attitudes, biodiversity provides humanity's lifeline at the local and global level.[33] Many proponents of the free market system, such as Indur Goklany and Merritt Sprague,[34] argue that states could trade biodiversity for greater productivity to just below the minimum threshold necessary for the continuance of natural life support systems. However, due to the dynamic and unpredictable nature of the natural environment, such a management scheme would involve great risk of flipping into an inhospitable steady state.[35]

To achieve this harmony, described between people and nature, one needs an effective machinery to carry and convert the sustainable development model from theory to practice.[36] This machinery is effectuated through multiple scales of good

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[32] Hector Magome and Christo Fabricius, "Reconciling Biodiversity Conservation with Rural Development: The Holy Grail of CBNRM?" in *Rights, Resources & Rural Development: Community-Based Natural Resource Management in Southern Africa*, edited by Christo Fabricius and Eddie Koch (London, United Kingdom: Earthscan, 2004), 94.

[33] Gretchen C. Daily, "Valuing and Safeguarding Earth's Life-Support Systems," in *Nature's Services: Societal Dependence on Natural Ecosystems*, edited by Gretchen C. Daily (Washington, DC: Island Press, 1997), 365.

[34] Indur M. Goklany and Merritt W. Sprague, "Sustaining Development and Biodiversity: Productivity, Efficiency, And Conservation," *CATO Policy Analysis* 175 (1992): http://www.cato.org/pubs/pas/pa-175.html.

[35] See arguments put forth from the resilience literature, such as Carpenter et al., "From Metaphor to Measurement."

[36] Robin Sharp, "Organizing for Change: People-Power and the Role of Institutions," in *Making Development Sustainable: Redefining Institutions, Policy and Economics,* edited by J. Holmberg (Washington, DC: Island Press, 1992), 54.

governance.[37] At the state level, this requires the government to enable their people to exercise the right of participation through the guarantee of civil and political rights, including freedom of association, an independent judiciary and freedom of information.[38] Sound governance depends on social development and a shared conservation vision. Likewise, robust biodiversity conservation requires an integrated, dynamic governance scheme.[39] This approach requires an alternative perspective of development, one that considers more than monetary achievements.

The influential economist Amartya Sen describes development as freedom. Sen states that society is not free so long as future generations are denied a sustainable environment. Frighteningly, rather than scaling back, the rampant capitalist system is in fact increasingly borrowing, in economic and resource terms, from future generations. Sen identifies five distinct sources of variation between "our real incomes and the advantages—the well-being and freedom—we get out of them."[40] One of these sources of variation is environmental diversity:

> Variations in environmental conditions, such as climatic circumstances, can influence what a person gets out of a given level of income. The presence of infectious diseases in a region alters the quality of life that inhabitant of that region may enjoy. So do pollution and other environmental handicaps.[41]

Furthermore, Sen moves away from the conventional theories of economic development and suggests that we must include the freedom of democratic choices. These freedoms allow people to make rational choices about quality-of-life issues, such as the

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[37] Good governance implies that people have the rights and responsibilities to participate in the decisions that affect their lives and those of future generations. For further information, please see Sharp, "Organizing for Change," 54.

[38] Sharp, "Organizing for Change," 61.

[39] Stephanie Reed, "Sustainability and Conservation? A multi-scalar exploration of stakeholder perceptions surrounding the temporary protected area," (master's thesis, London School of Economics and Political Science, 2008), 20.

[40] Amartya Sen, *Development as Freedom* (New York: Alfred Knopf, 1999), 70.

[41] Ibid.

environment. The following case study from Madagascar demonstrates various levels of machinery that converts sustainable development theory into practice using alternative development indicators, including environmental well-being. A rural case study was chosen for two reasons: the potential for fundamental systemic change is greater at the fountainhead of development, in societies where the global economic forces have yet to have significant impact, and the author has conducted field work in the rural region of Vondrozo, Madagascar.

Case Study

Madagascar's unique ecosystems, viewed by many as the hottest of the Earth's biodiversity hotspots, are on the verge of collapse.[42] Having separated from the African continent 165 million years ago, Madagascar hosts a unique evolutionary legacy.[43] This endemism persists in remarkably little habitat; only 10 percent of the islands' original forest-cover remains. The leading factor of habitat loss is deforestation, which is largely attributed to the traditional slash-and-burn farming methods of rural peasants.[44] Approximately 1,500 years of human occupation has dramatically altered the natural heritage of the island. However, it is not only nature that is being adversely affected by this deforestation and degradation. Madagascar is also one of the poorest countries in the world, with per capita GDP of $290 USD in 2005.[45] Approximately 70 percent of the country's population lives below the poverty line.[46]

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[42] Scott Norris, "Madagascar Defiant," *BioScience* 56 (2006): 961.

[43] Anne D. Yoder et al., "Single Origin of Malagasy Carnivora from an African Ancestor," *Nature* 121 (2003): 734.

[44] Marlin Andriamananajaranirina, *Final Technical Report 2007: MG 860; Ecoregion conservation and community forestry development in the Malagasy humid forest* (Madagascar: World Wide Fund for Nature, 2007).

[45] Daniela B. Raik and Daniel J. Decker, "A Multisector Framework for Assessing Community-Based Forest Management: Lessons from Madagascar," *Ecology and Society* 12, no. 1 (2007): http://www.ecologyandsociety.org/vol12/iss1/art14.

[46] Agence Française de Développement, "Fiche Presse: Gestion des aires protégées a Madagascar," 2005, http://www.afd.fr/.

Consequently, Madagascar faces immense external and internal pressure to focus on poverty relief and economic development.

The inherent contradiction between biodiversity and extreme poverty makes Madagascar a particularly interesting country in which to study sustainability. Over two-thirds of Madagascar's population of 17 million is rural, a further two-thirds of which practice subsistence-oriented agriculture. This exerts intense pressure on the land.[47] Rural peasants, who suffer from chronic malnutrition, depend on rice cultivation to survive and their main concern is the soil degradation attributable to the omnipresent landscape burning. Shifting cultivation, including *tavy,* has been ubiquitous since the first Indonesian and African settler's arrival approximately 1500 years ago.[48] *Tavy* is an ancient farming practice, where the forest is cut and burned to grow crops such as manioc and hill rice. After two to three years, the land is abandoned and regenerates into bush and thicket. In ideal conditions, the land can be used again for agricultural crops after a ten-year fallow period.[49] Due to increasing population pressure, however, fallow periods have become shorter. Much of the land has subsequently become degraded to the point where no crops can be planted and it becomes secondary grassland or is invaded by weeds. This cycle has led to lower crop yields and further pressure on the forests.

Madagascar's government took a firm stance against both biodiversity loss and poverty by presenting a plan to combat these problems at the 2003 World Parks Congress in Durban. Within the framework of this congress, popularly known as the 'Durban Vision,' then-president Marc Ravalomanana[50] pledged to triple Madagascar's

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[47] Kull, *Isle of Fire*, 29.

[48] Ibid., 15.

[49] Helen Crowely, "Madagascar lowland forests," *World Wide Fund for Nature Full Report*,

http://www.worldwildlife.org/wildworld/profiles/terrestrial/at/at0117_full.html.

[50] Late in 2008, Ravalomanana's government approved a deal with South Korea's Daewoo Logistics Co., in which Daewoo would lease 1.3 million hectares of land in Madagascar (half of the island's arable land) to grow food crops. This deal led to the ousting of President Ravalomanana on March 17, 2009, by Andry Rajoelina. Rajoelina subsequently ended the agreement with Daewoo. For further analysis, see BBC News, "Madagascar leader axes land deal," March19, 2009, http://news.bbc.co.uk/2/hi/africa/7952628.stm.

protected areas. The Corridor Fadriana-Vondrozo (COFAV) is one such newly protected area with temporary status. Ravalomanana's policy highlights a well-established challenge that exists in promoting both conservation and development in social-ecological systems. Strict conservation is often not an option, especially in the developing world where the rural poor live on the frontiers of vulnerable protected areas. The mutual relationship between sustainable development and conservation has forced a shift from fortress-style conservation[51] to a more people-centered approach, often through integrated conservation and development programs. Inherent to these programs is an emphasis on CBNRM.

With the overarching goal to conserve biodiversity while furthering social and economic development, the government imposed a strict restriction on slash-and-burn agriculture, a regulation to which many peasants had difficulty adjusting. Since *tavy* has been outlawed, new economic, social and ecological conditions have emerged. In the COFAV region, where the majority of the population consists of subsistence farmers, the policy has had particularly severe socio-economic impacts. Due to the failure of top-down conservation regimes in the 1980s and 1990s, a community-based approach was introduced in Madagascar.

CBNRM as a policy approach in Madagascar was created to promote better resource management through local-level control, leading to more responsible environmental stewardship.[52] In this case study, the community-level forest association is called *Association de Communauté de Base* (COBA) and consists of local forest users, in particular local residents who use forests for firewood, timber, medicinal plants, food and cultural practices.

As COFAV is state-owned and has national forest status, in theory, the state is responsible for its management; however, the state does not have either the human, material, or financial means to do so. The government therefore calls on various international,

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[51] Also known as the Yellowstone model, the Fortress conservation model defines conservation as separate from the development of human communities. Under this model, natural areas are protected from exploitation, but "nonconsumptive" uses are allowed. For further information, see Klein, *Conservation, Development, and a Heterogeneous Community,* 452.

[52] Kull, *Isle of* Fire, 244.

national or local bodies to contribute to the management of these forests while complying with the legal framework. The WWF was the first organization in the region to take on this challenge of combining forest conservation with community support. The overarching objective of WWF's project is to contribute to the conservation initiative in the forest corridor by "making local communities responsible for the sustainable management of natural resources and the development of the welfare of the local population."[53]

Fikret Berkes, who holds a Canada Research Chair in Community-Based Resource Management, finds that to a large extent, maintaining patterns of resource use that facilitate the continued renewal of ecosystems (such as traditional systems of forest use) are essential to the maintenance of the world's biodiversity.[54] While development is a priority among the people, they realize that their livelihoods depend on the maintenance of the forest corridor.[55] Therefore, although the COBA is a structure imposed by the WWF, the ideas that govern the association are largely bottom-up. Each COBA is responsible for the land and forest surrounding its community. The farmers manage this land through *dina,* which are laws unique to each community outlining forest-use regulations, and are enforced voluntarily by community members.

In theory, the transfer of management from state to community should occur smoothly and successfully. However, technical barriers prevent successful implementation of CBNRM in the Vondrozo corridor. First, the community finds it difficult to carry out the technical aspects required by external ideas of conservation, such as zoning and forest inventories, due to the comprehensive prioritization and planning required.[56] Second, enforcement of the *dina* suffers from a lack of human resources and unclear delineations of jurisdiction. Third, the competitive nature among the farmers prohibits adequate transfer of knowledge to occur or new

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[53] Andriamananajaranirina. *Final Technical Report 2007*.

[54] Fikret Berkesand Ian Davidson-Hunt, "Biodiversity, Traditional Management Systems, and Cultural Landscapes: Examples from the Boreal Forest of Canada," *International Social Science Journal* 58, no. 187 (2006): 35.

[55] Observation based on personal notes made in the field.

[56] Stephanie Reed, "Sustainability and Conservation," 36.

agricultural techniques taught by the WWF. Few farmers are actually able to attend the trainings, and those who do are reluctant or unwilling to share the knowledge obtained.[57] A final major hurdle in the Madagascar case study is the limited involvement of women within the village organization. As the majority of farmers in poor countries are women, gender and environmental issues are interrelated. Women are also the main gatherers of food, fuel, water, medicinal plants and other resources.[58] Although many of the farmers in Madagascar are women, they are often excluded in training and development initiatives because of local taboo.

A closer look at the governance structure involved in the implementation of CBNRM leaves much to be desired. In addition to Madagascar's looming environmental and economic problems are its fragile democracy and weak governance. Numerous cross-scale influences exist among structures of governance in the focal area. Co-management, guided by subsidiarity and participation, is the dominant governance preference for this protected area.[59] A long chain of command exists, involving a federal government ministry (Department of Water and Forests), a private organization called the National Association for the Management of Protected Areas (ANGAP), a donor (Swedish International Development Agency) and WWF officers who execute the project in COFAV. The COBA is touted as a grassroots association; however, it is in reality a product of a lengthy chain of command.

Clearly, there is much room for improvement. COBAs often suggest development actions such as capacity building, networking, technical training and infrastructure as mechanisms to improve the WWF conservation and development project in the corridor.[60] A tighter governance structure and its corresponding institutional architecture are key elements for the eventual success or failure of

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[57] Observation based on personal notes made in the field.

[58] Matthew R. Auer. "Women, the environment, and development assistance." *International Politics* 36 (1999): 373.

[59] Republic of Madagascar, *Arrête Interministérielle No 16 071-2006-MiniEnvEF/MEM Portant Protection Temporaire de l'Aire Protégée en Création Dénommée «corridor forestier fandriana-vondrozo»*, 2006, http://faolex.fao.org/docs/texts/mad73648.doc.

[60] Reed, "Sustainability and Conservation," 36.

COFAV and CBNRM in general. Community-based natural resource management is clearly a step in the right direction but in many cases it remains dependent on the larger scale national and international political climate.

Combined sustainable development and conservation projects are essential for a sustainable future; however, they require an integration of efforts on the ground. Perhaps most important is a stable government to oversee such transfers of management. Communities in COFAV have taken the protection of the rainforest seriously, as they themselves directly suffer the consequences of a rising water table and eroding soils. Undoubtedly, these communities face incredible challenges and the associations are far from perfect. But with support from the national and local governments, as well as international donors, the protection of the vulnerable rainforest by communities is becoming a common and fairly successful management practice.

In line with a CBNRM approach, the COBA is not only successfully protecting the forest, but is also linking the ability to use environmental goods and services to the overall health of the community.[61] Communities also linked the protection of the forest to the ability of future generation to benefit from local natural resources.[62] In economic terms, it is unclear whether or not COBAs are benefiting directly from the formal CBNRM approach. While the agricultural training and support provided by the WWF is intended to have positive economic effects, the limited markets for agricultural products have resulted in minimal economic growth. Furthermore, the degree of resource protection by communities has been brought into question.[63]

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[61] M. Andriamananjaranirina et al., *L'étude des typologies de ménage basé sur l'agriculture permet-t'elle de déduire les typologies de stratégies d'adaptation aux restrictions sur la culture sur brûlis, dans les terroirs limitrophe au corridor forestier de Vondrozo, Madagascar?* World Wide Fund for Nature, 2008; and Daniela B. Raik and Daniel J. Decker. "A multisector framework for assessing community-based forest management: lessons from Madagascar," *Ecology and Society* 12, no. 1 (2007): http://www.ecologyandsociety.org/vol12/iss1/art14/.

[62] Ibid.

[63] Ibid.

Unfortunately, national political unrest has recently facilitated the illegal exploitation of the remaining rainforest. Foreign businesses are organizing thousands of illegal loggers and animal traders, who in turn are stripping the forests of any remaining rosewood and ebony, smuggling out rare animals, and in so doing, destroying the habitat of endangered wildlife. The current situation has park staff and communities discouraged by the non-existent state support. In fact, it seems that the state-armed militia in Madagascar is supervising the transportation of the wood.[64]

Despite the potential for local peoples' drive to form the basis for a global movement, they cannot focus their energies on nurturing a global social movement from the grassroots as they are struggling to survive.[65] Alcorn and others argue that support for local-indigenous people's survival and social movements could nurture allies for a global social movement to recouple earth's societies to ecological feedback across local, national and international scales.[66] This case demonstrates that no matter how effective a community organization is in managing natural resources, the local level must have the support of state and global actors as well. The discourse that was emerging among local people regarding environmental protection in Madagascar has disappeared. It is the responsibility of national and global actors to reengage with this local discourse and protect not only the vulnerable ecosystem but also the local livelihood to which it is necessarily coupled.

Conclusions

This paper has clarified common misconceptions regarding sustainable development and proposed CBNRM as a viable option for the sustainable development of present and future generations in

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[64] Geoffrey York, "The Gangs of Madagascar: Armed looters invade fabled forests," *The Globe and Mail,* April 18, 2009.

[65] Janice Alcorn et al., "Keeping Ecological Resilience Afloat in Cross-Scale Turbulence: an Indigenous Social movement Navigates Change in Indonesia," in *Navigating Social-Ecological Systems: Building Resilience for Complexity and Change,* edited by Fikret Berkes, Carl Folke, and Johan Colding (Cambridge: Cambridge University Press, 2003), 299.

[66] Alcorn, "Keeping Ecological Resilience Afloat in Cross-Scale Turbulence," 322.

the developing South. Among the challenges that exist are the transfer of knowledge and complex roles of governance. In their book *Beyond the Limits*, Donella Meadows, Dennis Meadows, and Jorgen Randers state:

> To us those conclusions spelled out not doom but challenge—how to bring about a society that is materially sufficient, socially equitable, and ecologically sustainable, and one that is more satisfying in human terms than the growth-obsessed society of today.[67]

The challenge therefore is to move away from development centered strictly on unlimited growth and approach development holistically. This paper has shown that with a focus on social and ecological capital rather than economic growth alone, poverty and environmental degradation can be combated simultaneously. It should be noted that this analysis is unique to Madagascar, and is therefore limited in scope. Nevertheless, the theoretical underpinnings and case study have shown that neither poverty eradication nor environmental degradation can be approached without regard for the other. While CBNRM in Madagascar has generally been a positive step in making the system more resilient to systemic change, it also displays the interplay between local, national and global policy. Whether or not CBNRM contributed to the resilience of the COFAV social-ecological system after the national political turmoil would be a worthwhile future study.

As the case study in Madagascar has demonstrated, complex governance structures with their roots deeply embedded in an ever-globalizing world has impeded the grassroots success of such community organizations. It is for this reason that this paper argues the global system must be receptive to local governance structures and initiatives, such as CBNRM. Global systemic change is dependent on critical thinking and ingenuity, which may take decades to achieve. However, when this change does occur and when the growth-obsessed society of today changes course, local movements

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[67] Donella H. Meadows, Dennis L. Meadows, and Jorgen Randers, *Beyond the Limits* (London: Earthscan Publication, 1992), xiv.

such as CBNRM must be ready to mobilize. It is for this reason that CBNRM is a keystone approach to development, creating a bridge between the local and global scale and between social and environmental systems.

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