PEDRO UGARTE/AFP

EDITORIAL

BY PAUL E. NANTULYA

editorial

This issue of Conflict Trends offers some insights into contemporary constitutional developments in Africa, both from a country specific, to regional and more thematic issues. The pieces have been contributed by a combination of constitutional experts, conflict management specialists and political analysts. This mix, reflects ACCORD's own thinking around constitutional issues in Africa, which generally supports the view that constitutions have always been negotiated, amended reviewed, or overthrown against a specific political context, and with concrete political objectives in mind. They are also inevitably influenced by the prevailing conflict dynamics on the ground, which in turn cannot be separated from the wider socio-economic and political milieu within which the different political, social and other interest groups and formations manoeuvre for power, influence and reform. Focusing on Lesotho for instance, Pontso Mamatlere, an expert from the Independent Electoral Commission, who herself has also been intricately involved in the process of shaping the foundations of that Country's new electoral system offers a practical background against which the latest constitutional and electoral changes in her country have taken place. She looks at the specific amendments, the work of the Interim Political Authority and briefly touches on the new electoral system, which combines a first past the post system with a mixed member proportional representation system, widely seen as a compromise to offset the parliamentary imbalances created by the former system in the 1998 elections. The country is expected to hold its next elections in April 2002.

Following this brief constitutional update on Lesotho, Prof. Severine Rugumamu, from the Conflict Management Centre at the Organisation of African Unity, shares some insights into state sovereignty and intervention in Africa. This particular theme, touching as it does on specific and broader questions of local and global governance, is now filtering into the domain of constitutional discourse. How do the various patterns of intervention impact on the domestic constitution making project and how can constitutions respond to the challenges of institutionalising new norms of intervention, and of global co-operation? What about the question of

election monitoring and its connection to the norms of sovereignty and non- interference? Are election observers playing a passive role, or are they gradually taking on more mediatory functions? Can they serve a broader function which transcends the mere observing of the electoral process, and if so, what kinds of questions does it raise regarding national sovereignty? Responding as it does to most of these questions, the piece does give a good sense of the local and global imperatives for shaping what Rugumamu refers to as a need to ' Utilise local and global instruments to nurture new governance norms'.

Equally as engaging is John G Yoh's piece on the historical roots, and constitutional bases for a settlement of the Sudan civil war. He looks at what he has categorised as the 'unionists' and 'secessionists' and discusses the different constitutional forms which they continue to articulate for a resolution to the conflict. He identifies the important documents and agreements which have provided character to the constitutional bases upon which the conflict could be settled, and probes into the difficulties associated with the issue of separation of religion and state, which seems to have created a hurdle between the dominant opposition forces in the South and the Government of Sudan. Yoh moves on to critically examine the different mechanisms for conflict resolution in Sudan, particularly as they connect to the constitutional bases he identifies, while providing an in-depth insight into the current state of play, and recommendations for a future settlement. The piece will no doubt be of immense interest and invaluable assistance to policy makers, legal experts and analysts interested in Sudanese politics. Dr. Clive Napier, no doubt one of Africa's leading constitutional experts offers some short comments on constitutionalism, human security and conflict in Africa, which stems from a constitutional roundtable which ACCORD hosted in September. Napier provides us with some theoretical and conceptual questions underpinning the development of constitutionalism globally, and then looks at the human security interface as it relates to Africa. He looks at the nature of the African state, the increased interest in constitutional development in the last ten years, the inherent challenges, and the need to reconstitute and re-configure the African state in order to promote human security.

Moving over to Burundi, two pieces, each offering different perspectives are included. In the first piece, Sagaren Naidoo, an expert from the Institute for Global Dialogue in South Africa takes a cautionary apporach towards the transitional government. He expresses concern over the problem of a lack of a ceasefire, internal factionalism within the key political parties, and dangers associated with some of the more extremist groups, which continue to resist the transition. Sagaren argues that a transition could have been easier in the context of a ceasefire, and argues that the 'political wings' of the armed groups do not have enough influence to persuade the armed elements to lay their weapons. He also sees the South African National Defence Force (SANDF), deployment into Burundi as potentially risky affair, given that not all the groups have accepted it. Theo Neetling's piece focusses on the actual SANDF deployment into Burundi. He takes us through the specifics of some of the legal, constitutional and international themes underlying this deployment, and. While he also points to some potential risks, he expresses optimism about the deployment itself. He draws our attention to the complete involvement of the South African Parliament in sanctioning the entire operation, the representativity of the force, the fact that it is composed of a broad range of skills and the swiftness at which it was executed. Neetling also expresses the view that it was a correct decision and that it signals a willingness on the part of African states to take charge of handling their own problems. His optimism is further underscored by his belief that this particular experience will contribute to South Africa's collective peacekeeping experience, which although modest, has been growing, since the involvement of the SANDF in neighbouring DRC. In the final piece, Nantulya draws our attention to the socio-legal, historical and constitutional bases around which traditional justice in Rwanda (known as Gacaca), is evolving.

At the present historical juncture, Africa is still struggling to find acceptable organising principles around which to develop lasting political systems that are broadly accommodative of the diverse nationalities, cultures, identities and competing socio-political peculiarities which characterize the nation state. This collection of pieces is a first step to discussing some of these challenges, but specifically as they connect to constitutionalism and constitution making. They reflect the diversity of the Continent, offer a multiplicity of views, and draw from a wide range of perspectives. It is our fervent hope that they stimulate debate, discussion and interaction, and make a small and humble contribution to the struggle for dignity, peace and reconciliation in Africa.

The founder and executive director of ACCORD calls for a Global Framework for Cooperation, which would define the roles and responsibilities of all actors

FEATURE

BY VASU GOUNDEN

call for the establishment of a global framework for cooperation

Two recent experiences have made me realise that I made the right decision 10 years ago, when I decided to abandon my career in law for a career in finding solutions to world conflicts.

The first experience relates to the Bush-Putin summit. Courtesy of CNN, and in the comfort of my own home, I was able to experience the reshaping of history. I was moved by the current rapprochement between the United States of America and Russia. It signifies the beginning of a new era in international relations, and an end to the proliferation of weapons of mass destruction by these two nations. It also signifies the final hour of a global ideological conflict that has dominated world politics for several decades.

It should be a time for celebration. Our fears of Armageddon should be replaced by hope for a more stable world. We should be witnessing massive decreases in military spending and the reprioritisation of these resources into social spending, in order to create a more humane and equitable world. Advances in information and bio-technology should be exploited to combat Aids; to provide clean water to the worldís poor; to develop techniques to increase food productivity, while at the same time, protecting and preserving our natural environment; and to develop better instruments that would predict natural phenomena, such as earthquakes, cyclones and storms, which devastate the lives of millions of people throughout the world.

Unfortunately, the historic significance and the potential opportunities of the Bush-Putin summit have been overshadowed by the events of 11

September, which relate directly to my second experience. When news of the events in New York came over the radio, I was in a taxi in Bonn, Germany, on my way to the Auswartiges Amt, Aus-und Fortbildungsstatte (Federal Foreign Office) to, ironically, deliver a lecture on conflict management to German foreign service officers. Within a few minutes I was inside the federal building and once again, courtesy of CNN, I was allowed to experience the reshaping of history.

These events have changed the world forever, and yet nothing has changed. Instead of evolving from conflict to peace, we have evolved from conflict to conflict. An ideological conflict has been replaced by an identity conflict. Instead of reprioritising our resources to combat Aids, we are fighting anthrax; instead of providing clean water to the poor, we are spending money protecting the water of the more fortunate; instead of developing techniques for food production and environmental protection, we are developing techniques to prevent terrorism; and instead of developing innovative instruments in order predict earthquakes and cyclones, we are developing advanced weapons and smart bombs with the aim of annihilating each other.

Are we at the end of Fukuyama's history, or at the beginning of Huntington's Clash of Civilizations? However we choose to characterise the world, what is certain is that we will be witnessing a world that will be shaped by new alliances, new hatreds, new enemies and new causes. How will we respond to these new challenges? Are they, in fact, new challenges?

In this last decade, hope and fear consumed the world. We saw hope in South Africa and fear in Rwanda; we saw hope (although only briefly) in Northern Ireland and fear in Bosnia; we saw hope in Palestine and fear in Iraq; and then once again, we saw fear in Palestine. It was a time when we felt hopeful, yet hopeless.

This was also a time when conflict management took centre stage in the work of the United Nations (UN), NGOs, donors, regional organisations and heads of state. There was a scramble to understand the sudden proliferation of conflicts, which led to a proliferation of institutions, mechanisms and instruments aimed at preventing, managing and resolving these conflicts. Academics also made a contribution by publishing a dearth of literature on conflict management.

The world put so much effort into trying to understand and manage conflict. Many will question the wisdom of this investment. I invested 10 years of my life in pursuit of a conflict-free world and, on 11 September, I questioned the wisdom of my investment. My conclusion has only strengthened both my resolve and determination to continue to contribute towards shaping a better world for our children.

It is incumbent on all of us in the field of conflict management to question our efforts during the last decade. We have to understand why all our efforts have failed to reconcile the disparate interests in the world. The world will continue to be characterised by a complex matrix of interests - ranging from individual to institutional - which will result in the continuous shifting of alliances. This is a normal state of human existence.

The challenge we face is to manage these disparate interests so that they coexist within an environment of stability and peace. One can relegate this responsibility to the UN on the basis that this was the reason for its establishment. It is within this context that we need to see the benefits of our efforts during the last 10 years. Over the last decade, the one lesson that we have repeatedly learnt is that no single entity is able to reconcile all the interests that characterise contemporary conflicts. The resolution of conflict requires the efforts of several players, who can compliment each other and act in concert. Cooperation, on the basis of comparative advantage, is vital.

The last decade has helped us understand our comparative advantages; it has also helped us develop quality working relationships. In our 10 years of existence, we have witnessed and experienced this development. In the early 1990s, NGOs, academics and governments met in their exclusive forums. By the end of the last decade, almost every conference, workshop and forum concerned with conflict management included participants from all these groups. Today, the private sector is also showing an increasing interest to get involved in this vital area.

We have to move our efforts one step further. We have to evolve a Global Framework for Cooperation, which would define the roles and responsibilities of all the actors, and which would guide our collective modus operandi in situations of conflict. This framework should take into account our experiences during the last decade. It should also be based on comparative advantage and mutual respect. The defining parameters have already been established. All we need now is the will to execute our intent!

TRENDS in constitutional and political developments

SOUTHERN AFRICA

During the last quarter, Lesotho has undergone significant constitutional and political reforms aimed at paving the way for elections, which are expected to take place in January 2002. The Interim Political Authority (IPA) - a structure which was formed following negotiations between all of the country's political role players - has remained the central organ for political, electoral and constitutional reform. It works in conjunction with the executive and legislative spheres of government, as well as the independent electoral commission and civil society. The areas of electoral reform which have been addressed include the establishment of an electoral model; the establishment of an independent electoral commission; the establishment of a set of specific electoral rules; and the establishment of a new electoral code of conduct. The IPA has also drawn up arrangements to guarantee access of public facilities and resources to all political parties. With regard to the electoral model, the constitution has been amended to cater for a mixed member proportional system, with a mixed ratio of 80:40 first-past-the-post and proportional representation seats, respectively. This compromise is in response to the instability which was created by the first-past-the-post system used during the 1998 elections, where smaller parties were unable to secure a meaningful parliamentary presence. The new Independent Electoral Commission (IEC) has been functioning for more than a year now. It has reviewed the 1998 electoral code of conduct and together with other stakeholders, has established a new one with enforcement machinery, which (at the time of writing) had been sent to parliament for assent.

The objective of the new code is to promote conditions conducive to free, fair and transparent elections. Every registered political party is required to promote the purpose of the code while conducting campaigns. They are also required to adhere to certain procedures, which include instructing it's representatives and supporters to comply with the code and other electoral laws. It also contains sections on intimidation and unfair electoral practices; violence and discrimination; and the plagiarism of party symbols. It spells out the duties of the ruling party; guarantees equal access to public facilities and resources for all political parties; and contains a section on inter party collaboration. Finally, the new code contains sections on the role of women within the electoral process; the functions and duties of the media in promoting an atmosphere conducive to peaceful elections; and the establishment of communication channels between political parties and the electoral commission.

At the time of writing, the voter lists had been displayed and the IEC was already working on draft legislation for the establishment of a tribunal to handle electoral conflicts. It was also busy establishing enforcement machinery for the new code of conduct. According to the IPA, the outstanding challenges are outlined as follows:

- The nature and composition of the upper house has not yet been addressed;
- There may not be enough time to work on legislation aimed at instituting parliamentary committees, the roles of which would be to enhance the efficiency of parliament;
- There is no agreement on the representation of women, as well as other special interest groups.

EASTERN, CENTRAL AND THE HORN OF AFRICA

In Eastern Africa, Uganda's movement system has produced a new parliament, with a substantial number of new members. The 26 June vote saw at least 10 ministers and more than 40 other elected members face defeat, as Ugandans voted for 214 directly elected parliamentarians. Under the country's electoral system, political parties are not permitted to support candidates or publish platforms, as candidates are supposed to stand for election based on their individual merits. In addition to the directly elected members, parliament is composed of 53 district women's representatives, 10 defence force representatives and five representatives from the youth, disabled and workers groups, respectively - polling for these seats was held separately. When parliament met for the first time on 5 July, members elected the former deputy speaker, Edward Ssekandi, as speaker. Parliament then set up a committee of 67 members to vet President Museveni's ministerial appointments, including that of former speaker, Francis Ayume, who became attorney-general. A constitutional review commission has also been appointed to make recommendations on constitutional reform, based on information gathered from the various political role players.

In Kenya, the appointment to the cabinet of three opposition politicians by President Daniel Arap Moi, has created a new political balance in the country's constitutional review exercise. Leader of the National Development Party (NDP), Raila Odinga, was named energy minister, while three other party members were also offered ministerial positions. Mr Odinga has been leading the Inter Parliamentary Party Initiative on constitutional reform, which continues to clash with the civil society-led constitutional reform initiative. Although Mr Odinga and President Moi have had their differences in the past, the NDP has become closer to the president's KANU party since sign-

ACCORD have trained over 16,000 people from numerous African countries over the past decade. This includes some 4,000 South African election monitors trained in 1994 and over 2000 Nigerian election monitors trained in 1999

TRAINING

ing a cooperation agreement with it in 1998. It has even been speculated that the parties might merge before the 2002 general election, at which point many expect President Moi to step down under the constitution's term limits. Both parties have been collaborating in parliament, as well as on minimum constitutional reforms, which is seen by some observers as a tactic by President Moi to counter the opposition Democratic Party's threats to block the government's legislative agenda. However, Mr Odinga is thought to have presidential ambitions, and this might complicate negotiations between the two parties. As one of the main actors in the efforts to amend the Kenyan constitution, he is believed to favour a new distribution of power between a non-executive president and a prime minister.

In Burundi, a transitional constitution has been established to guide the work of the transitional government, which was inaugurated on 1 November. Of the 336 amendments lodged at the national assembly's bureau, only a few clauses in the text sent by the government were modified in form or content. With regard to the content, all authorised political parties or movements can take part in the administration of government institutions, in return for a commitment to work towards peace, national reconciliation and democracy.

The challenges facing the transitional government include the following:

- Facilitating the functioning of transitional political institutions as defined under the Burundi Peace Agreement. These include a transitional executive, legislature and judiciary;
- Establishing conditions for the creation of new political institutions and legal instruments, including an independent electoral commission; electoral laws; a constitutional court; and codes of conduct for political parties and other role players;
- The setting up of a National Truth and Reconciliation Commission, as well as facilitating a process of constitution drafting;
- Organising elections at the commune and national level during the period of the transition;

Some 2,000 opposition demonstrators from the Basotho Congress Party (BCP), Basotho National Party (BNP) and royalist Marematlou Freedom Party (MFP) march through central Maseru following the 1998 general elections. The marchers demanded a re-run of the elections after the landslide victory of the ruling Lesotho Congress for Democracy (LCD), claiming the poll was rigged and accusing the electoral commission of bias.

WALTER DHLADHLA/AFP

PEDRO UGARTE/AFP

Kenyan soldiers parade 10 October 2001 in Nairobi to celebrate President Daniel arap Moi's 23 years at the helm of the country.

- Establishing codes of conduct for political parties and the media.

In Somaliland, final results from a June referendum showed 97% of voters supported a new constitution, which would assert the region's independence from the rest of Somalia. The final results were endorsed by the parliament of Somaliland, which split from Somalia 10 years ago, but has not been recognised internationally as a separate state. There have, however, been signs of opposition in the Southwestern Sool district, where some sections of the population owe their allegiance to Puntland - another semi-autonomous region of Somalia. The constitutional referendum also met opposition from the Mogadishu-based, Transitional National Government (TNG) and the Government of Djibouti. Meanwhile, the TNG, which is also in the process of drawing up it's own options for a future constitutional and institutional framework, has since expressed an interest in initiating a dialogue with the Republic of Somaliland, as well as the self-declared autonomous region of Puntland in the North East. This is seen as a vital move, which could potentially contribute towards integrating the various institutional and constitution-making initiatives within the region. Reaction to the appointment of the new TNG prime minister has been positively received in Puntland, which is also in the process of electing a new administration through a general constituent conference. The conference, which was convened by traditional elders in the regional capital of Garowe, is aimed at resolving leadership questions. It is also aimed at reaching an agreement on the continued functioning of the regional administrations.

TRENDS in peacekeeping

EAST AFRICA

The United Nations (UN) mission in Ethiopia and Eritrea has reported positive progress regarding the implementation of the peace agreements in connection with the border dispute between the two East African neighbours. The progress of the mission became threatened following accusations that the Temporary Security Zone (which separates the two armies) had been compromised by Eritrea military activity. However, the accusation was found to be untrue - a finding that was supported by the United Nations Security Council (UNSC). The support given to the peace effort from all quarters represents renewed commitment to finding an amicable solution to end the conflict - a number of European countries have announced measures aimed at providing debt relief for these countries. According to reports, the African Development Bank is currently lending the Ethiopian government funds in support of a number of projects aimed at rebuilding infrastructure.

CENTRAL AFRICA

On 1 November, President Pierre Buyoya was sworn in as the head of a three-year, power-sharing government in Burundi. He will hold office for the first 18 months, at which time the current vice-president, Domitien Ndayizeye, will replace him for the second half of the administration. Despite the fact that violence from extremist factions continues to threaten the fledgling government, it is hoped that it will be able to restore peace to Burundi, which has been torn apart by an eight-year civil war.

Former president, Nelson Mandela - who brokered the peace deal - has worked tirelessly to convince leaders from the Republics of Ghana, Nigeria, Senegal and South Africa to provide military assistance to the new power-sharing government. The overall operational objective of the deployment would be to assist in the creation of an environment conducive to confidence-building. The deployment - referred to as the 'international protection detachment' - will consist of military units from the aforementioned countries. The units will have two objectives: to provide security to returning exiled politicians; and to train the Burundi defence force. At the time of writing, only the South African government had deployed troops. However, there are positive indications that the other countries will soon follow suit.

This deployment posed some questions regarding the specific operations adopted, as well as the legality of the deployment. It might suffice to say that a memorandum of understanding is in place between the South African and Burundian governments, which should render some legality to the deployment. The presence and deployment of the force is strengthened by the support of the UNSC - support that is one level short of a mandate resolu-

tion. From a doctrinal point of view, the efforts to resolve the Burundian conflict, and the deployment of defence forces within the region, is revolutionary. The norm adhered to by the UN is that any deployment must be facilitated by a ceasefire agreement - this condition does not exist in Burundi. The presence of external militaries could be summarised as preventive deployment, while at the same time, confidence is being built within the different sectors of Burundian society. It is too early to measure the success of this deployment. However, it is expected that the lessons learnt from this exercise will shape future conflict resolution efforts in ways previously unimagined.

SOUTHERN AFRICA

The Democratic Republic of Congo (DRC) peace talks, which were held in Addis Ababa during October, were relatively unsuccessful. Only 80 of the expected 330 delegates arrived for the talks. The poor turnout was largely due to a reduction of funding. The government delegation also left earlier than expected. Despite this setback, the peace process is poised to continue. While no finalisation has been reached regarding a date or venue, key parties to the conflict have agreed to continue the dialogue in South Africa. There is very little to report regarding the operational sphere of the UN mission, as the main focus has been on the dialogue. In response to some of the problems facing the mission, it is worth noting the critical role that a full deployment of the mission would have on the successful execution of its observer status. While the different parties - particularly the government - could become impatient, they must understand that the UN still requires visible commitment from all conflicting parties, both on the security front, as well as during the dialogue.

NORTH AFRICA

Western Sahara continues to defy an amicable conclusion due to the UN's failed efforts to convince the conflicting parties to commit to an agreement. The mandate for the UN mission for a Referendum in Western Sahara expired, and the

A Burundian police officer chases away a crowd of people trying to catch a glimpse at a camp set up by South African soldiers in Bujumbura. A second contingent of 240 South African troops arrived to protect exiled politicians returning to take part in a transitional government

PEDRO UGARTE/AFP

ISSOUF SANOGO/AFP

A Pakistani United Nations soldier from the UN Mission in Sierra Leone (MINUSIL) shows the entrance to a free-treatment hospital to a group of women in Kailahun. After deployment, Pakistani UN soldiers have set up a free-treatment hospital in Kailahun as the National Commission for Disarmement, Demobilization and Reinstatement (NCDDR), started the preparations for the disarmement of the Kailahun district.

UN secretary-general has requested a two- month extension. According to reports, the aim of this extension would be to give the conflicting parties a last chance to find common ground. The UN must rise to the challenge and reconcile the different views of the parties regarding the resolution of the conflict. However, the fact of the matter is that the organisation has limited room to manoeuvre if the conflicting parties are not willing to seek and uphold an agreement. The efforts of the UN would be strengthened by the appointment of William Swing as special representative to the secretary-general in Western Sahara.

WEST AFRICA

The UN mission in Sierra Leone is enjoying some success, particularly since it reached its full authorised capacity of 17.500 troops. During the last quarter, the mission started destroying the weapons that had been recovered by UN peacekeepers as part of the first step of the disarmament, demobilisation and reintegration programme. The second step began on 13 November, when weapons collected from ex-combatants were destroyed - the materials were then used to make constructive tools such as hoes, axes and shovels. These tools will be distributed to the beneficiaries of the reintegration programme. There has also been progress on the humanitarian front - the UN High Commissioner for Refugees and other agencies reported positive progress regarding food distribution and the settlement of displaced people. The UNHCR even signed a Memorandum of Understanding with the Economic Community of West African States, in an effort to consolidate refugee protection; efforts to address the needs of vulnerable groups in West Africa were also included in the memorandum. The focus of the peace process has now been extended to include the presidential and parliamentary elections, which are planned for May 2002.

Efforts to set up a special international court were boosted by reports that Japan will provide financial support to the value of US$500 000. The court is considered to be a step in the right direction to addressing the legacy of impunity. It will also provide a sound basis for future reconciliatory efforts.

TRENDS in preventive action

The vision of an African Renaissance - defined as the total reawakening and rebirth of Africa - is being transformed into reality thanks to the efforts of many of our African leaders. This is quite evident, particularly when one considers the various efforts being made by Africa's leadership to end conflict on the continent.

WEST AFRICA

Sierra Leone, Liberia and Guinea have agreed to tackle the problems being posed by armed groups, which have destabilised the region. The three foreign ministers met in Freetown and concluded that the armed groups should be apprehended and returned to their countries of origin. Secondly, the ministers agreed that a joint border security and confidence unit should be deployed along the border, and that the non-aggressive and cooperative treaty - which was signed by the three countries 15 years ago - should be implemented. They also discussed a possible summit between their presidents, all of whom make up the Mano River Union - a body aimed at promoting sub-regional cooperation.

A meeting was organised by United Nations (UN) officials - between the government in Freetown and the rebel leaders of the Revolutionary United Front (RUF) - and was aimed at bringing peace to war ravaged Sierra Leone. The meeting resulted in a ceasefire agreement. The government promised to release rebels who had been arrested, while the RUF committed itself to disarming its forces - a process that was due to end in November 2001. The government of Sierra Leone has earmarked 14 March 2002 as the day for presidential and parliamentary elections.
In an effort to curb terrorism on the continent, more than 10 heads of state, together with more than 20 delegates from other African countries, met in Senegal. Following the meeting, it was decided that the Organisation of African Unity (OAU) - which is currently being transformed into the African Union - should monitor the implementation of the existing African convention against terrorism, which was put into action in Algiers two years ago.

CENTRAL AFRICA

The South African government has taken the lead in assuring a transitional government for Burundi. This became particularly clear when the government sent a contingent of SANDF troops to protect the return of exiled politicians. The country was preparing for its new transitional government, which was meant to come into effect on 1 November 2001. This new development came immediately after President Pierre Buyoya agreed to have foreign troops deployed in Burundi to protect the transitional government process, as well as returning political exiles. President Buyoya committed to taking this action despite criticism from some politicians. Nigeria, Ghana and Senegal have also offered to contribute troops to a peacekeeping force, as provided for under the Arusha Accord.

Although it is viewed as the most difficult conflict on the continent, the Democratic Republic of Congo (DRC) situation is slowly showing signs of a possible solution - hope resurfaced when a joint

ISSOUF SANOGO/AFP

Pakistani United Nations troops in Kailahun, eastern Sierra Leone, 14 November 2001 as the National Commission for Disarmement, Demobilization and Reinstatement (NCDDR), started the preparations for the disarmement of the Kailahun district, the stronghold of the Revolutionary United Front (RUF) .

commission was established to review the mutual demand for demilitarisation, made by both Rwanda and the Kinshasa government. This came about after a meeting was held between Paul Kagame and Joseph Kabila to discuss the issue of advancing peace in the DRC. Kinshasa wants Rwandan troops to withdraw from the eastern part of the country, while Kigali is demanding that Kinshasa disarm and demobilise the Rwandan Hutu rebel force, which is operating within that region.

NORTH AFRICA

The conflict in Algeria - between the Berber community and the Algerian government, which has contributed to a significant loss of life - seems to have ended. The turning point came when President Abdelaziz Bouteflika invited leaders of the Berber community to openly express their demands to the government. Based on those demands, the government was able to grant the Berber community the following concession: firstly, the official recognition of the Berber language; secondly, a judicial trial of the paramilitary policeman involved in killing unarmed Berber civilians during April and May of this year; and thirdly, an emergency economic plan to deal with the social deprivation of their region.

SOUTHERN AFRICA

This quarter has seen both the South African Development Community (SADC) and the Commonwealth work together in an effort to bring about stability to the Zimbabwean land crises. Some of these efforts included the formation of a task force to monitor Zimbabwe's commitment to stop the violence and intimidation of white farmers. Land ministers also recommended that the governments within the region should take a more active role in buying land for redistribution among the landless. However, a stern warning came from the chairman of the SADC, Bakili Maluzi, who stated that if the land problem in Zimbabwe was not

peacefully solved, the political and economic fallout in Zimbabwe could easily affect the entire region. The increasing level of instability would, in turn, force foreign investors to turn their backs on SADC states.

On the other hand, the Catholic Church in Angola has launched a new joint campaign with the Open Society Foundation to assist in ending the war in that country. They aim to achieve peace by encouraging civil society to put pressure on warring parties to seek a negotiated peace deal.

EAST AFRICA

President Benjamin Mkapa, and his Zanzibar counterpart, Amani Karume, together with the chairman of the Civic United Front (CUF), signed a deal to end years of hostilities regarding the electoral systems on both the island and mainland Tanzania. According to the agreement, a permanent voter register will be established, electoral laws and policies will be reformed, and the state-owned Zanzibar media will be urged to give coverage to all parties.

In a strategic effort to breach the ongoing political impasse between Somalia's interim president (Abdiqassim Salad Hassan) and faction leaders who are opposed to his administration, Kenyan president, Arap Moi, managed to convene a meeting in Nairobi, where the leaders met and discussed their differences. The United Nations Security Council (UNSC) has made a recommendation that a UN mission be sent to Somalia to carry out a comprehensive assessment of the security situation in that country. It would also prepare proposals as to how the UN could assist the transitional national government.

CONCLUSION

Africa still faces many challenges. However, these should be viewed in the light of the efforts and achievements of Africa's leadership to end the various conflicts. In this quarter, we have witnessed the commitment shown not only by the UN, but also by some African leaders, to bring about peace - particularly in Burundi and the DRC. One should also commend the firm stance taken by the SADC in relation to Zimbabwe.

PEDRO UGARTE/AFP

Burundian traditional drummers look at soldiers on duty, at Bujumbura internatinal airport moments before of Malawi's president Bakili Muluzi arrival, in Burundi 31 October 2001. A transitional, power-sharing government took charge in Burundi in early november, in a bid to steer the country out of eight years of war between ethnic Tutsis and Hutus.

Lesotho gears up for elections in 2002

WALTER DHLADHLA/AFP

BY ADV. PONTSO MATETE MAMATLERE

LESOTHO

constitutional & political reforms in Lesotho

Lesotho's path to democracy has often been difficult and uncertain. The country gained independence from Great Britain in 1966, and adopted a constitutional monarchy with a First-Past-The Post (FPTP) electoral system. The first democratic election was held in 1965.

Although the general administration of the electoral process did not encounter serious hiccups, the election outcome delivered a minority government in favour of the Basotho National Party (BNP), which won only 42% of the total valid votes. The Basutoland Congress Party (BCP), the Marematlou Freedom Party (MFP) and other independent candidates secured 58% of the votes. Like other electoral processes on the African continent, the BCP felt cheated by the electoral system. Consequently, the opposition parties contested the election outcome, alleging the BNP had rigged the process through tacit collaboration with the British colonial administration. This was followed by violent conflicts - not only was human life lost, but the image of the monarchy was also tarnished.

Democratic rule ended in 1970, when the prime minister and BNP leader, Chief Leabua Jonathan, in agreement with the BNP leader, Mr Ntsu Mokhehle, nullified the first post-independence election results. Chief Jonathan subsequently retained power for 16 years, until he was toppled in a military coup in 1986.

During the 1990s, a new attempt to introduce constitutional rule was undertaken. However, unresolved constitutional tensions - which included the perceived imbalances created by a FPTP electoral system, as well as the lack of a code of conduct to

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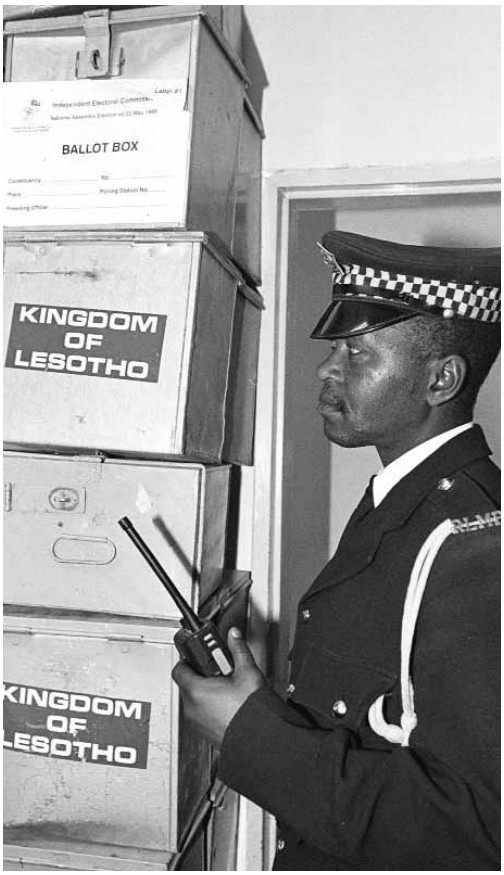

Lesotho police officer inspects ballot boxes in Maseru, at the Independent Electoral Commission (IEC) stores on the eve of the 1998 general elections.

successfully manage inter-party parliamentary democracy - resulted in yet another coup during 1991. This time, however, the ban on political activity was lifted, a new constitution was adopted and elections were held in 1993.

The outcome of these elections resulted in a landslide victory for the BCP, which the BNP challenged by alleging numerous instances of electoral fraud. Tensions were further heightened due to difficulties which the BCP government encountered trying to maintain its authority over the army and police. Partly in response to this problem (but also as a result of an imminent constitutional impasse), a national dialogue was held during September 1995. The conference aimed to facilitate some dialogue with those groups which had been excluded from the parliamentary process. It also included those groups which were instrumental in managing the affairs of Lesotho as a pluralist society.

Among the recommendations passed by the conference was the establishment of an Independent Electoral Commission (IEC) to manage future electoral processes. Consequently, the constitution of Lesotho was amended (second amendment to the Constitution Act 1997) in order to provide for the abolition of the office of Chief Electoral Officer, as well as the Constituency Delimitation Commission. The amendment also made it possible to establish the IEC, which was supposed to assume the functions of the two aforementioned offices.

The birth of the IEC came with heavy amendments to both the Lesotho constitution and the National Assembly Election Order of 1992. The most important amendment was the enfranchisement of the 18 to 20-year old age group. Until that amendment, the voting age was only 21. The reduction of the voting age meant an increase in the number of citizens qualified to vote. Another amendment to the constitution stipulated that Lesotho was to be divided into 80 constituencies, which meant an increase of 15 constituencies compared to the number of constituencies in the 1993 general election.

In 1995, the BCP was split internally between two rival factions, resulting in a constitutional crisis. The BCP leader, Dr. Ntsu Mokhehle, left the party, and through support from most of the members of parliament, formed the Lesotho Congress for Democracy (LCD). This shift in the balance of parliamentary power suggested a constitutional flaw, which the constitution was not able to address at that time. Furthermore, the shifting of political allegiance did not translate into accountability to the electorate, which these parliamentarians were supposedly representing in parliament. This scenario is not peculiar to constitutional development in Lesotho - it is a feature of African politics throughout the continent.

Many BCP members and opposition parties questioned the constitutionality of the move, and attempted to disrupt parliamentary proceedings. The legislature continued to meet until February 1998, when the government called for its dissolution in preparation for the May elections.

The LCD won the 1998 elections with 79 of the 80 seats. Although international observers concluded that the May elections had met international standards, some opposition parties challenged the election result - at first through the courts, and then later, through marches and demonstrations in which they called upon the king and the Southern African Development Community (SADC) to dissolve the elected government in favour of a government of national unity. Supporters of opposition parties camped outside the king's palace, awaiting a response to their demands from the king.

In August, a delegation from South Africa negotiated an agreement between the government and opposition parties - it was decided that a commission, led by South African Justice Pius Langa, would investigate the alleged irregularities during the elections.

Protests against the results of the elections continued and became even more violent after the publication of the Langa Report in September 1998. The LCD government requested military assistance from neighbouring countries in its efforts to restore law and order. In the process, property was damaged and many lives were lost.

As a temporary solution to Lesotho's problems

in the aftermath of the 1998 elections, a political compromise was reached between the government and opposition parties. An Interim Political Authority (IPA), consisting of two members from each of the 12 parties that contested the 1998 election, was established to review Lesotho's electoral system. The idea was to make it more democratic and representative of the people of Lesotho. The IPA would approach the relevant public institutions and recommend changes to existing laws (including the constitution), in order to attain its objectives.

The IPA was also mandated to prepare for general elections - they would be held within 18 months from the date of the commencement of the Act which established it.

In pursuing one of its objectives (and by learning from previous political tensions which confronted Lesotho in 1998), the IPA unanimously decided to adopt a Mixed Member Proportional (MMP) system. The system uses the proportional representation (PR) mechanism as a basis for allocating political party seats, despite the fact that parties are entitled to retain the constituencies they have won. The system is currently being used in New Zealand, Wales, Scotland and Germany.

However, the IPA did not manage to prepare for elections within 18 months, due to problems concerning the ratio of the 130 seats in the National Assembly.

The parties had all agreed on a Mixed Member Parliament consisting of FPTP and PR seats. They had all agreed on the size of the National Assembly (a total of 130 seats). One source of disagreement concerned the mix ratio of the 130 National Assembly seats - there were parties which advocated a 65/65 parliament, and there were other parties which advocated 80 constituency and 50 PR seats in the National Assembly. To resolve the conflict, the Arbitration Tribunal delivered a ruling on 15 October 1999, which provided for a ratio of 80/50 constituency to proportional seats, respectively. It also ruled that in terms of the mix ratio, the FPTP and PR seats should each form 50% of the National Assembly seats.

After the ruling was delivered, the IPA and the government agreed that the number of seats in the National Assembly should stand at 120, 80 of which should be constituency seats, and 40 party seats.

As a result, the constitution of Lesotho (fourth amendment to the Constitution Act 2001) was amended to cater for the MMP system, with a mix ratio of 80/40 FPTP and PR seats.

In preparation for the forthcoming elections - likely to be held in April/May 2002 - the IPA has drafted a bill and presented it to parliament for consideration.

The bill can be summarised as covering three broad areas:-

- Giving effect of the fourth amendment to the Constitution Act 2001.
- Establishment of clear and transparent procedures for the casting of votes, the counting votes and the announcement of elections result.
- Revision of the code of conduct - particularly its enforcement mechanism - by creating a special tribunal.

Under the revised code of conduct and its enforcement mechanism, the amendment bill seeks to:-

- Introduce a user-friendly code of conduct which could be easily changed into a booklet for voter education purposes.
- Prevent the ruling party and its members from abusing public property (as well as their privileges) during elections.
- Prohibit political parties from harassing members of the media. Unfortunately, the political parties and politicians are not protected from harassment by the media.
- Establish a tribunal appointed by the IEC to enforce the code of conduct.

After the official launching of the registration of voters on 11 August 2001, chairman of the IEC indicated that 'Lesotho belongs to the family of nations. For her to be accepted, she has to prove that she cherishes freedom and fairness for the people, especially in the elections process'.

Endnote

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ISSOUF SANOGO/AFP

Redefining and broadening the norms of sovereignty and non-intervention in order to respond to the exigencies of the post-cold war period.

INTERVENTION

BY PROF SEVERINE M. RUGUMAMU

state sovereignty & intervention in Africa

With the end of the Cold War, the universal foundations and pillars of global governance seem to be slowly, but inexorably, taking shape. The emerging quest for fundamental human rights, democratic freedoms and a respect for unity in diversity, is no longer an incontrovertible proposition. The ability of authoritarian states to strip citizens of their right to security of life, often shrouded under a thin veneer of non-interference in internal affairs of the state, is increasingly challenged on a global scale. Repressive and predatory regimes, as well as other human rights violators, are increasingly being exposed and made accountable for their actions. In fact, the traditional norms of sovereignty, consent and non-interference in internal affairs are no longer defined in absolute terms. In addition, the charters of the United Nations (UN) and the Organisation of African Unity (OAU) are no longer invoked as an excuse for inaction against gross crimes against humanity. Arguably, protecting and assisting the masses of people affected by internecine intra-state conflicts entails reconciling the norm of international intervention with the traditional norm of national sovereignty. As would be expected, the norm of sovereignty has been deliberately redefined and broadened, in order to respond to the new and emerging principles of 'good governance'. Some states in Africa still struggle to perform the minimum tasks of maintaining domestic political order, and are finding it immensely difficult to uphold their citizens' basic

MARTIN BUREAU/AFP

The President of the MDC (Movement for Democratic Change) in Zimbabwe Morgan Tsvangirai gives a press conference 01 July 2001 at the European Parliament in Strasbourg, western France.

human rights. They continue to resort to brute force, rather than negotiation and persuasion, in order to pursue the objectives of state-making, state consolidation, or simply, regime survival.

The current policy thrust being promoted and supported by the UN Security Council (UNSC) and the OAU is that massive violation of human rights and displacement within a country's borders constitute an international security threat. In the same vein, international election observation and monitoring, as well as the IMF/World Bank intervention within the economic realm, are perceived as legitimate duties on the part of the international community to promote and protect peace, democracy and economic stability. They deserve international action. However, many countries in the developing world view such interventions - particularly a disposition, in some instances, to act without the consent of states involved - as a potential threat to their juridical sovereignty and political legitimacy. Undoubtedly, the resulting misapprehensions have presented the international community with severe dilemmas, for both positions represent legitimate concerns.

The objectives of this paper are three-fold. It will discuss how the norms of sovereignty and non-intervention are being redefined and broadened in order to respond to the exigencies of the post-Cold War period. Further, it will attempt to explain different patterns of intervention within Africa during the last two decades. Finally, it will suggest how some of the new norms of intervention could be

institutionalised into instruments of international development and cooperation.

Changing Perceptions of Sovereignty

The UN Charter Article 2 (7) and the OAU Charter Article 3 (2) respectively stipulate that they will not intervene in matters that are essentially within the domestic jurisdiction of any state. For, in its pure form, sovereignty means the power to make decisions of the last resort, which cannot be overridden or reversed by any other decision-maker or agency. However, under Chapter VII of the UN Charter, the UNSC has the power to determine what constitutes a 'threat to the peace, breach of the peace, and act of aggression; and shall make recommendations, or decide what measures shall be taken...to maintain or restore international peace and security'. Such measures, according to Article 42 of the same charter, may include '...such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security'. Ideally, the UNSC decisions are binding for all states under international customary law, regardless of whether they agree or not. In light of this, the UNSC has broadened its security mandate to include intra-state issues. The decision for intervention was driven by humanitarian considerations, particularly those pertaining to refugees and internally displaced persons - these people are seen not only as civilian victims of war deserving protection, but are also thought of as people who could potentially destabilise neighbouring countries and regions.

Viewed retrospectively, the current UNSC's willingness to intervene in inter-communal and civil conflicts, has called into question the absolute nature of sovereignty. While almost all states highly value their sovereignty, many others (as well as multilateral agencies) are beginning to adopt a more qualified position to the sovereignty of others, particularly those states that behave poorly toward their own citizens or neighbouring communities. The horrendous tragedies emanating from intra-state conflicts have irretrievably eroded the intrinsic meanings of national sovereignty and non-interference in internal affairs, in order to ensure international access to the affected communities within state borders. This argument becomes even more compelling in situations where states have collapsed, or where the government is unwilling to permit international involvement, despite the fact that the level of human suffering dictates otherwise. It is the need to fill the vacuum created by such cleavages that makes international intervention a moral imperative. As Richard Falk observed:

> 'There is a clear trend away from the idea of unconditional sovereignty and toward a concept of responsible sovereignty. Governmental legitimacy that validates the exercise of sovereignty involves adherence to minimum humanitarian norms and a capacity to act effectively to protect citizens from acute threats to their security and well-being that derive from adverse conditions within a country.'

The concept of sovereignty is better understood in terms of conferring responsibilities on governments to assist and protect all persons residing in their territories - if governments fail to meet their obligations, they then risk international scrutiny, admonition, and possibly even condemnation and reprisals. According to Francis Deng, instead of being perceived as a means of insulating the state against external involvement or scrutiny, sovereignty is increasingly being postulated as a 'normative concept of responsibility'. Consequently, national sovereignty now requires a system of governance that is based on democratic popular citizen participation; the constructive management of social diversities; a respect for fundamental human rights; and the equitable distribution of national wealth and opportunities for development. For a state to claim sovereignty, it must establish legitimacy by meeting minimum standards of good governance or responsibility for the security and general welfare of its citizens and, indeed, all those under its jurisdiction. The former UN secretary-general, Javier de Cuellar, underscored the balance that ought to be struck between sovereignty and the protection of human rights. He wrote:

> 'It is now increasingly felt that the principle of non-interference with the essential domestic jurisdiction of states cannot be regarded as a protective barrier behind which human rights could be massively or systematically violated with impunity...The case for not impinging on the sovereignty, territorial integrity and political independence of states is by itself indubitably strong. But it would be only weakened if it were to carry the implication that sovereignty, even in this day and age, includes the right of mass slaughter or of launching systematic campaigns of decimation or forced exodus of civilian populations in the name of controlling civil strife or insurrection. With the

heightened international interest in universalising a regime of human rights, there is a marked and most welcome shift in public attitudes. To try to resist it would be politically as unwise as it is morally indefensible.'

A year later, in his 1992 report, *An Agenda for Peace*, the next UN secretary-general, Boutros-Boutros Ghali, provided far-reaching recommendations regarding the UN's intervention in internal conflicts, as well as its programmes for humanitarian assistance. In fact, in 1991, the UN intervened in Iraq to protect the Kurds from President Saddam Hussein's genocidal attacks. It was the first time since the Congo crisis that the UN had taken sides and defined a country's domestic problem as both an international security issue, as well as an international responsibility. Subsequently, the UNSC created two international tribunals - one in the former Yugoslavia and another in Rwanda - to prosecute those accused of war crimes, or crimes against humanity and genocide. In 1999, it also authorised virtual trusteeships or protectorates in Kosovo and East Timor, who were given the responsibility of protecting and providing for the local populations. In the words of David Scheffer '...governments could best avoid intervention by meeting their obligations not only to other states, but also to their own citizens'.

Economic Insecurity and Sovereignty in Africa

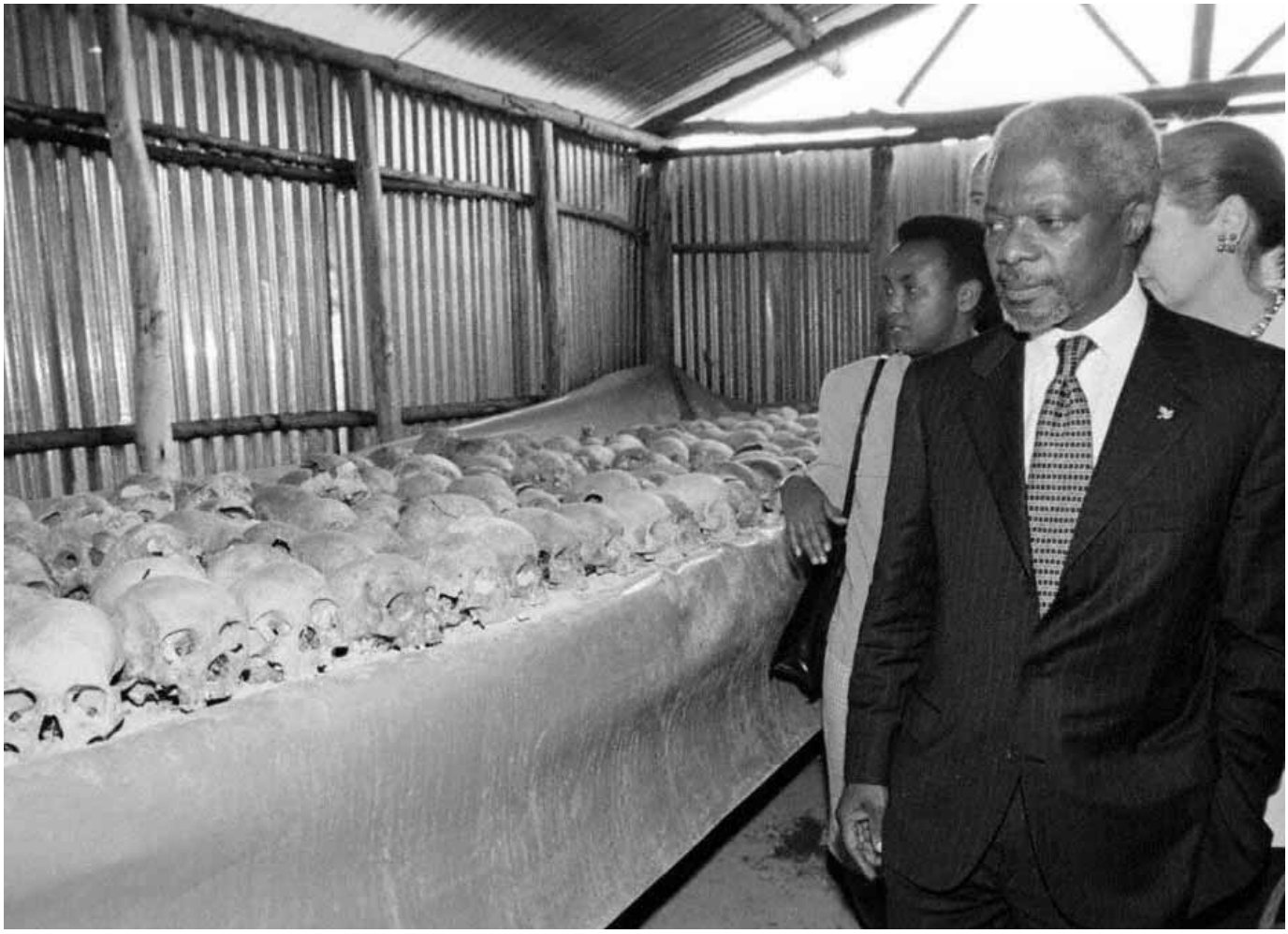
The erosion of African state sovereignty has come about gradually, albeit with expected political reverberations. From the early 1980s, most African governments reluctantly agreed to implement the International Monetary Fund/World Bank economic structural adjustment policies (SAP), and accepted direct interference in politically sensitive economic policy management in exchange for desperately needed international assistance. This development caused a change in the role of the state, relative to both local governance on the one side, and multilateral institutions and non-governmental organisations (NGOs) on the other. From then onwards, international financial institutions effectively took control of a significant portion of the continent's economy, and imposed comprehensive programmes of currency devaluation, privation, market pricing, and macroeconomic stabilisation. Furthermore, SAP policies and programmes challenged the political and economic sovereignty of African states by limiting the resources available to leaders for the provision of basic social services, public security and political patronage. In due course, bilateral donor agencies added political accountability to the economic conditionalities already imposed by SAP. Thus, the disbursement of foreign aid resulted in greater institutional transparency, broader political representation, government accountability, and broadly defined democracy. As if that was not enough domestic affairs interference, the 1989 World Bank Report advised African governments of the need to attack corruption and mismanagement, promote the autonomy of the judiciary, and create an enabling environment for resource mobilisation, democracy and participatory politics. Viewed retrospectively once again, the traditional fixation on the concept of absolute and exclusive sovereignty in Africa began to flag in the face of national economic crisis and the attendant, yet unavoidable, external intervention and control.

Moreover, the ongoing processes of globalisation, regionalisation and liberalisation are posing entirely new challenges to the politically unstable, debt-ridden, aid dependent and technologically backward African economies. An individual country's capacity to function effectively and sustainably is becoming increasingly compromised. Reflecting on this gloomy scenario, the 1997 Human Development Report concluded '...in a global economy of US$25 trillion, this is a scandal – reflecting shameful inequalities and inexcusable failures of national and international policies'. The essential governance question is what rules and institutions should be put in place to preserve the advantages of global markets and competition, while ensuring that globalisation works for people, and not just for profits.

Africa's Security and National Sovereignty

Another major defining feature of the post-Cold War era is the attempt to redefine national security, away from its traditional narrow 'Realist paradigm' preoccupation with state security, to human security in all its multifaceted dimensions. In fact, there has been a steady, yet discernible shift away from 'statist approaches' to security, to what is frequently referred to as a 'new critical security paradigm'. It is critical in the sense that it interrogates where power lies, how it is exercised and in whose interests it functions. The primary referents and agents of the new security paradigm are the people themselves - whether individuals, groups represented by political parties or organs of civil society.

ALEXANDER JOE/AFP



UN Secretary General Kofi Annan walks by skulls at the Mulire Genocide memorial.

Moreover, it is considered new because it is holistic. In its broad policy and analytical agenda, the emerging security paradigm also encapsulates non-military threats to national security, such as poverty, disease, environmental degradation and democratic governance. Acknowledgment of the primacy of human security over state or regime security, tends to auger well for multinational interventions conducted to arrest anarchy, restore order and protect innocent civilians. The defining characteristic of these interventions is that they are often conducted without explicit consent of any domestic authority.

Major efforts that have been made to redefine security include the African Leadership Forum's 1991 Conference on Security, Stability, Development and Cooperation (CSSDCA); the OAU Mechanism for Conflict Prevention, Management, and Resolution, which was adopted at the Summit of African Heads of State in June 1993; and the Constitutive Act of the African Union. More specifically, the CSSDCA has highlighted the need to build a new African security framework. This framework would include a definition of security that would go beyond military consideration to include economic, social and political dimensions of the individual, family, community, local and national life. The framework would be underpinned by mediation, conciliation and arbitration mechanisms, including (but not limited to) the building of a continental peacekeeping machine; development of non-aggression pacts; the establishment of an African Elders' Council of Peace; utilisation of confidence-building measures; and the lowering of military expenditures. Efforts are underway to institutionalise the CSSDCA within the OAU peace-building process.

Within the OAU, there has been a gradual redefinition and broadening of the concept of sovereignty. There is a growing consensus among member states that the OAU should increasingly concern itself not only with interstate conflicts, but

also with internal ones. In July 1990, African leaders met for their 26th Ordinary Session in Addis Ababa, where the OAU's involvement in intra-state conflict management was initially endorsed. They observed that '...we realise at the same time that the possibilities of achieving the objectives we have set will be constrained as long as an atmosphere of lasting peace and stability does not prevail in Africa. We therefore renew our determination to work together towards a peaceful and speedy resolution of all the conflicts on our continent'. Two years later, the OAU secretary-general, Salim A. Salim, was even more categorical regarding the question of nation sovereignty and intervention. He argued that '...given that every African is his brother's keeper, and that our borders are at best artificial, we in Africa, need to use our own cultural and social relationships to interpret the principle of non-interference in such a way that we are enabled to apply it to our advantage in conflict prevention and resolution'. Along similar lines to the UN's reinterpretation of sovereignty, the OAU's redefinition of intervention was qualified by two principal caveats. Firstly, it was argued that the basis for intervention within member states would be justified if there was a total breakdown of law and order (as was the case in Liberia), if there was the attendant human suffering, and if a spill-over effect could be experienced within neighbouring countries. In such a situation, intervention may be justified on humanitarian grounds, as well as on the need to restore law and order. Secondly, it was further argued that pre-emptive involvement should be permitted, even in situations where tensions reach such a pitch that it becomes apparent that a conflict is in the making.

From then onwards, external interventions in domestic affairs were no longer viewed with such suspicion and disdain, as was the case in the past. In this regard, various sub-regional economic communities in Africa have increasingly become involved in security cooperation and conflict management, thanks largely to the changing perceptions of sovereignty and non-intervention.

Complex Humanitarian Emergencies and Sovereignty in Africa

One of the defining features of the post-Cold War era in Africa, is the increased number, scope and intensity of domestic conflicts that have spilled (or have the potential to spill) over national borders. Beyond their direct toll on life, violent conflicts in Africa have periodically assumed horrendous proportions, spawning population displacements, refugees and migrations. As pointed out earlier, such crises occur when beleaguered states loose control over substantial parts of their territories, and no one has the monopoly over the means of violence. In such tragic and traumatic circumstances, civilians become the principal targets of violence. Some statistics are nothing short of staggering. The office of the UN High Commissioner for Refugees reported that in 1997, it was responsible for the welfare of about 22 million people throughout the world - about 13 million of whom were refugees in the conventional sense of the word. In other words, people who had been uprooted by war, violence and the violation of human rights. Sub-Saharan Africa accounted for about 35%, or 7.8 million refugees and displaced persons. The practical response of the international community to this mounting toll of tragedies has generally been intervention without consent, in order to ensure international access to affected communities within state borders.

Observers unanimously agree that conflicts and insecurity in Africa have consistently hampered economic development, and have delayed the emergence of democratic and pluralistic regimes. Thus, the enjoyment of human rights and freedoms has been restricted. Prior to the end of the Cold War, the traditional peacekeeping principle of consent served as the essential principle of action or inaction. The UNSC and the OAU authorised multilateral interventions in humanitarian crises, where the consent of the major parties to the conflict was obtained. However, as earlier pointed out, in some complex humanitarian crises in Africa, it has been profoundly difficult to depend on the principle of consent as a prerequisite for intervention. In several cases - for example, Sierra Leone, Somalia and the Democratic Republic of Congo (DRC) - it has been almost impossible to obtain consent because the authority has collapsed, or a proliferation of groups have claimed authority. Understandably, in such circumstances, the consent is either non-existent or worthless, and all aspects of international law and convention are openly flouted. As a result, since the early 1990s, the UNSC and the OAU have often addressed internal crises in Haiti, Cambodia, El Salvador, Georgia, Liberia, Mozambique, Rwanda, Somalia, Sierra Leone, Angola and the DRC without prior consent. The question that is on everyone's mind is under what circumstances is the international com-

munity justified in overriding sovereignty in order to protect a dispossessed population within a state's borders. The common assumption in international law is that such action is justified when there is a threat to international peace and security, as currently construed by the UNSC.

Election Monitoring and Sovereignty in Africa

Until the late 1980s, international election observation was resented by incumbent regimes, which tended to see it as an encroachment on their national sovereignty. It was admissible only in cases of decolonisation, as was the case in Zimbabwe in 1980, and Namibia in 1989. However, this stance has gradually given way to the view that international election observation is a legitimate pursuit - indeed, a duty - of the international community in the interest of democratisation worldwide. However, it is viewed as legitimate only if two basic preconditions are met: firstly, that election observation missions must take place on the basis of a formal invitation by the government concerned; and secondly, that election observation must take place only in countries that have acceded to the various international human rights instruments, all of which (except the African Charter on Human and Peoples' Rights) refer explicitly to the holding of free and fair elections.

The last two decades have witnessed a dramatic revival of interest in democracy and democratic politics throughout the African continent. The wave of popular demand and international pressure for political reform witnessed numerous authoritarian regimes, single-party dictators and military elites being overthrown through the ballot box mechanism. Equally remarkable has been the speed with which multi-party forms of political mobilisation and competition were established as the new context for political contestation. Moreover, most poor African governments tend to seek technical, logistical and financial assistance from the international community, as well as the presence of international observers at the time of elections. The need for international election monitoring arose out of the obvious need for impartial judgment regarding the various electoral processes. At the same time, the international community felt a responsibility to assist in overseeing the proper conduct of elections, in accordance with emerging international standards.

In theory, the role of international election observers is a relatively passive one. They have no legal authority to intervene and correct imperfections. In practice, their ability to publicise shortcomings often make them important actors in their own right. Notwithstanding their circumscribed juridical role, international observers sometimes become mediators between ruling and opposition parties, or between election authorities and domestic monitoring groups. Its not surprising that the practice of international election monitoring has raised delicate and sensitive questions regarding national sovereignty.

Election monitoring exercises have served different functions in different countries. Particularly in African countries, they have been employed to bolster public confidence and promote participation; to detect and deter electoral fraud and irregularities where the ruling party controls the government apparatus; to avert the outbreak of armed conflict; to provide international legitimisation of an otherwise controverted process; to enhance the meaningful nature of the electoral process itself; and to encourage the political contestants to accept the results of a legitimate electoral process. The presence of international observers has strengthened the institutional climate for elections by emboldening government and electoral officials, judges, military personnel, police and journalists to muster the necessary courage to assert their independence.

As would be expected, some African leaders still consider international election monitoring as tantamount to meddling in their internal affairs – a principle that obviously favours incumbent governments. Worse still, election monitoring by international observers invokes (in some politicians) echoes of north-south colonial relationships from the not-too-distant past. As Jennifer McCoy (et al.) poignantly observed, '...no principle has been more frustrating to an expansive power, and more sacred to a weak nation, than sovereignty'. Not surprisingly, most governments in Africa have grudgingly accepted such interventions - under considerable external pressure. Moreover, the new geopolitical situation after the Cold War allows the international donor community to include explicit political requirements in terms of their foreign assistance policies. Explicitly or implicitly, they impose conditionalities related to the protection and promotion of human rights, democracy and aspects of 'good governance'. This also encompasses the rights of political participation and competition for state power, through regular and fair elections, that serve to legitimise governmental authority.

Notwithstanding the concerns about sovereignty and national security, the practice of observing and monitoring elections is gaining increased acceptance and legitimacy throughout the world. For example, the Conference on Security and Cooperation in Europe (CSCE) issued a declaration in June 1990, requiring all member states to accept the presence of international observers for national elections. The UNGA adopted a resolution in December 1991, which endorsed the practice of election observing, including monitoring by NGOs. All these pronouncements tend to emphasise the view that international election monitoring is no longer considered to be an infringement of the national sovereignty of a particular state, or as interference in a country's internal affairs. By December 2000, the OAU had observed more than 90 elections in 39 member states. In most cases, potential conflicts were diffused - as was the case in Lesotho, Togo, Congo and Gabon. In others - namely Namibia, South Africa, Mozambique and the Comoros - actual conflicts were resolved. The critical role of international election monitors can hardly be overemphasised. To this end, Chris Bakwesegha has graphically concluded that '...Africans have been spared such absurdities as the incumbent winning an election by 99.99%'. In the same vein, cases of legitimate losers contesting election results are much fewer than before.

Conclusion

Although nostalgia about exclusive sovereignty still lingers in Africa, the global consensus towards a broad redefinition of sovereignty seems to be crystallising rapidly. Substantively and institutionally, new ground has been broken. The African continent is under tremendous pressure to perform the task of state and nation building in a human, civilized and consensual fashion, and to fulfil all these functions in a participatory fashion. However, it was noted that the norms of civilised state behavior seem to contradict the imperatives of nascent state building that not only sanction, but also frequently require the use of violent means against otherwise recalcitrant domestic groups and individual citizens. To be sure, the enormity of the challenge of state building in Africa can hardly be overemphasised. In this regard, the continent needs to marshal every international support in order to facilitate the building and nurturing of politically responsive and administratively effective states. The norms of democratic governance, human rights and nation building should be integrated in all development cooperation arrangements, and be provided with the requisite political and material support. Finally, it should be understood that these social processes are not only closely inter-related and mutually reinforcing. More importantly, they are riddled with a multiplicity of contradictions. Simplistic quick fixes should always be avoided.

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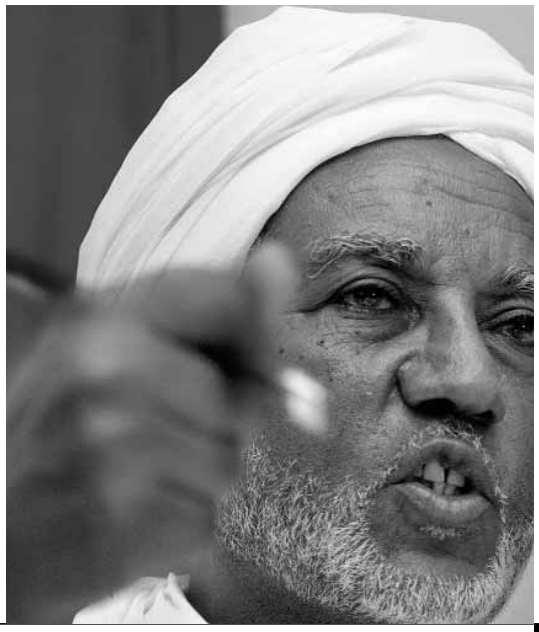


MARWAN NAAMANI/AFP

The best approach to resolving the Sudanese conflict would be to address its root causes.

SUDAN

BY JOHN G. NYUOT YOH

the dynamics of war and peace in Sudan

Although it would seem that countries are more interested in Sudan's oil rather than its peace process, the best approach to resolving the Sudanese conflict would be to address its root causes. Throughout its three phases - 1955-1972; 1975-1982; and 1983 to date - the main causes of the conflict could be summed up as follows:

1. Cultural, religious, historical, ethnic and political diversity between the North and the South. The South sees itself as African, mainly Christian, and a historically separate entity from the North, which sees itself as an Arabicised Muslim entity, where the majority of the population (although black and thus African) is affiliated to Arab culture and Muslim religion.
2. The colonial history of the two regions reveals that they were administratively developed as separate entities. The Egyptian and British colonial authorities treated the two regions of the country differently, and did very little to forge any meaningful political integration of the two regions. The South was politically administered as a separate entity from the North. The North was treated as part of the Middle Eastern world, whereas the South was administered as part of the British East Africa territories.
3. For various historical reasons, the South is economically underdeveloped as compared to the North, where the colonial administration concentrated the country's main economic projects. However, oil was discovered in the South in the early 1980s. The region also has good

Sudan People's Liberation Army (SPLA) soldiers guard the front lines in the 'liberated zone' of East Sudan 10 November 1999. The 'liberated area' is an inhospitable desert with scattered populations and very little in the way of natural resources. The rebel movement has been fighting the Islamic government in Khartoum since 1989.

STEVE FORREST/AFP

water reserves and fertile agricultural lands. With these resources becoming increasingly important factors in Sudanese politics, there is no doubt that they will continue to be key contentious issues in North-South relations.

The modern civil wars in the Sudan can be traced back to August 1955, when the first military rebellion - historically referred to as 'Torit Mutiny' - erupted, sparking the first civil war in the country. That war only came to an end in February 1972, when the Addis Ababa Agreement was signed between the central government and the Southern Sudanese Liberation Movement (SSLM), or Anya Nya One. Indeed, it was hoped that the Addis Ababa Agreement would erase the 'Torit Mutiny' legacy from the minds of the southern Sudanese. A few years later, it became apparent that the legacy was destined to stay on - a group of soldiers rebelled in the town of Akobo in March 1975. They were protesting against the government's policy of transferring to the North, some former AnyaNya units which consisted of the bulk of pre-Addis Ababa Agreement SSLM forces, who had been integrated into the Sudan army in 1972. Those who mutinied in Akobo organised themselves into a guerrilla force called AnyaNya Two. Their leader was Commander Vincent Kwany Latjor. Eight years later, another mutiny took place in May 1983. It was led by former senior AnyaNya officers, Kerubino Kwanyin Bol and William Nyuon Bany, in the towns of Bor and Ayod. They were protesting against the central government's violation of the Addis Ababa Agreement, and joined the 1975 Akobo mutineers, who were already waging war against General Jaafar Numeiri's government from their bases along the Ethiopian/Sudanese border. In 1983, these southern groups organised themselves under the umbrella of the Sudan People's Liberation Army/Movement (SPLA/SPLM). John Garang de Mabior became leader of the SPLA/SPLM, but his leadership was challenged in August 1991. The challenge was mainly due to ideological differences within the movement, particularly between the unionists, who were led by Colonel Garang, and the secessionists, who were led by Riek Machar and Lam Akol. The outcome was a bitter power struggle between the two groups, which resulted in the disintegration of the SPLA. Several organisations were formed following the SPLA split. Sadly, hundreds of innocent lives were lost during this time, and the differences and disputes dragged on into an ongoing and complex stalemate.

President Jaafar Mohamed Numeiri, who came to power via a military coup in May 1969, committed three deadly political mistakes which eventually led to his overthrow and the eruption of a third civil war. Firstly, in 1981, he attempted to redraw the North-South boundaries as they stood in January 1956. His aim was to ensure the North would obtain the oil rich southern province of Bentiu (in the western Upper Nile) and the agricultural rich province of Renk (in the northern Upper Nile). Secondly, he redivided the South in May 1983. Three small regions were formed, with capitals in Juba, Malakal and Wau. In taking this action, he violated the essence of Addis Ababa Agreement of 1972. Thirdly, General Numeiri declared the application of Islamic laws throughout the country - including the Christian South - on 25 September 1983.

Numeiri was overthrown by a popular uprising in April 1985. A joint military-civil government, under General Abdel Rahman Sawar al-Dahab, took power. In May 1986, an elected civilian government took over the administration of the country, under the premiership of Sadig al-Mahdi. Al-Mahdi tried, along with allies in the North, to achieve peace with Colonel Garang's SPLA. In November 1988, Al-Mahdi's ally and leader of the Democratic Unionist Party (DUP), Muhammed Osman al-Miraghani, signed an agreement with Colonel Garang. The agreement called for a general conference to be held in 1989, between the SPLM and other Sudanese parties. Before that conference could take place, an Islamist coup, led by General Omar Ahmed Al-Bashir and Dr. Hassan Abdalla al-Turabi, toppled Al Mahdi's government. What followed was a confused situation that led to an ongoing, chaotic situation. The government declared 'Jihad' (holy war) on the southern liberation movements. Uncoordinated covert and overt peace talks were launched between the SPLA factions and the governments of Nigeria, Kenya and Ethiopia. Peace talks were also held in some European and American cities. Other peace initiatives were initiated by some Sudanese groups, by non-Sudanese organisations and by the OAU (through IGAD). The quarrel between al-Turabi and his students (mainly his deputy, Ali Osman Taha) over power - and over what some claim as the uneven distribution of oil revenues (being extracted from the war-torn South) among ruling National Congress members, as well as the clash among the Sudanese Islamists - led to al-Turabi's imprisonment. The oil industry's role in the coun-

try's politics; the split within the National Democratic Alliance (NDA) - the umbrella grouping of the northern Sudanese opposition parties, which are allied with Colonel Garang's SPLA faction; as well as a host of other developments during the last 12 years, including the controversial issue of the abduction of southerners by northern militia in the western Bhar El-Ghazal region (an exercise referred to by some as slavery) - all these incidents and events have contributed to Sudan's volatile, and often violent, history.

Since 1992, different mediators and Sudanese church leaders have tried to reconcile Dr. Machar and Colonel Garang. Unfortunately, all their efforts have failed.

Constitutional basis for a Sudanese settlement

The constitutional bases upon which the Sudanese civil war could be resolved are enshrined in four important documents: The IGAD Declaration of Principles in May 1994; the Asmara Declaration in June 1995; the Khartoum (Sudan) Peace Agreement in April 1998; and the Constitution of Sudan, promulgated on 1 July 1998. These documents deal with contentious constitutional issues, which are at the core of the Sudanese conflict. These issues include the question of national unity; the distribution of natural resources; the sources of legislation within the country (religion and state); the judiciary system in the country; the federal system; and the issue of self-determination for the people of southern Sudan. In addition to the above, other important working documents and agreements were concluded between the southern Sudanese and central governments in Khartoum - these documents and agreements should be incorporated in order to achieve a comprehensive and lasting peace in Sudan. They include the March 1965 Khartoum Round Table Conference, which brought together the government of Sudan and southern Sudanese political forces, both from within and without the country; the documents of the February 1972 Addis Ababa Agreement between General Jaafar Numeiri's government and the Southern Sudan Liberation Movement (SSLM); and the documents of the Koka Dam Declaration of March 1986, between the SPLM and the Sudanese National Salvation Democratic Alliance (SNSDA). These agreements and documents thoroughly addressed some important aspects of the interim period, as well as post-war arrangements, which would regulate the North-South relationship.

For example, on the issue of national unity, Article 6 of the Constitution of July 1998, states that:

> 'Sudan is united by the spirit of loyalty and compromise among citizens, cooperation in fair and just distribution of authority and national resources. The state and society shall work together to foster the spirit of reconciliation and national unity among all the Sudanese people, to guard against religious parties, political sectarianism and to eliminate ethnic prejudice.'

The spirit of this article, which falls under the 'Guiding Principles of the State', suggests that the Sudanese people have agreed to work for (and maintain) national unity based on the promises contained within the constitution. Consequently, it is important to emphasise that should the warring parties agree to redraft this constitution, an emphasis should be placed on the distribution of authority and mechanisms for reconciliation. The truth of the matter is that there is still no consensus regarding a foundation upon which this national unity could be achieved or maintained. Essentially, if such consensus exists as Article 6 (as it seems to suggest), the war that is currently raging should never have erupted in the first place. Moreover, unless the dynamics of power politics are well defined at a national level, it would be difficult to guard against religious parties or ethnic prejudices. Moreover, the issue of national unity is associated with the overall outcome of negotiations between the warring parties. In fact, it depends on whether or not the parties agree to work for unity during the interim period.

Regarding the question of religion and state, Article 65 of Sudan's current Constitution gives the sources of legislation as follows:

> 'The Islamic Sharia and the national consent through voting, the constitution and custom are the source of law and no law shall be enacted contrary to these sources, or without taking into account the nation's public opinion, scientists, intellectuals and leaders.'

This article numerates the sources of legislation in such a way that even though custom is recognised as a source of legislation - which seems to suggest it is the source of legislation for non-Muslims in the country - in practical terms, it has less impact compared to the other sources of legislation. The nation's public opinion would definitely express the opinion of the majority who espouse Islam -

most of the scientists, intellectuals and leaders are derived from this group, which would definitely enjoy the majority vote. Consequently, the warring parties should try to handle this issue in such a way that would prevent diverse interpretations being made of the article by the two parties.

The same question was raised in the Khartoum (Sudan) Peace Agreement and the Asmara Declaration, where the conflicting parties dealt with the relationship between religion and state. On the issue of a secular state, the NDA adopted citizenship as the basis for rights and obligations. It accepted the incorporation of international and regional human rights covenants and instruments within the constitution of Sudan. In the Asamra Declaration, the state was given the duty of safeguarding and guaranteeing religious freedoms. It was also given the responsibility of criminalising any religious intolerance and punishes.

On the other hand, Article 24 of the Constitution of July 1998, states that:

> 'Everyone has the right to freedom of conscience and religion, and the right to manifest and disseminate his religion or belief in teaching, practice or observance. No one shall be coerced to profess a faith in which he does not believe or perform rituals or worship that he does not voluntarily accept. This right shall be exercised in a manner that does not harm public order or feelings of others, and in accordance with [the] law.'

If we compare the above with another article in the constitution, it is clear that the state religious policy is presented to the Sudanese public as a duty required to be fulfilled by all Muslims. Article 9 of the Constitution, entitled 'Religion' states that:

> 'Those working for the state and those in public life should worship God in their daily lives, for Muslims this is through observing the Holy Quran and the ways of the Prophet, and all people shall preserve the principles of religion and reflect this in their planning, laws, policies and official work or duties in the fields of politics, economics, and social and cultural activities; with the end of striving towards the societal aim of justice and righteousness, and towards achieving the salvation of the kingdom of God.'

Sections in the 1988 constitution that deal with the relationship between state and religion, tend to give Islam more weight as the state philosophy and programme, as compared, for example, to the Asmara Declaration. It is true that in the Asmara Declaration, religion and state are only nominally separated - and while the declaration tries to avoid the use of the word 'secularism' - it uses a formula that does not establish Sudan as a theocratic state, as Article 9 of the constitution seems to suggest.

Apparently, the Khartoum (Sudan) Peace Agreement of April 1997, is more explicit with regard to the relationship between the state and religion during the interim period, as compared to other agreements that deal with the same issue. Chapter Three, Article 2 (A) 1 of the Khartoum Agreement, states that:

> 'Sudan is a Multi-racial, Multi-ethnic, Multi-cultural and Multi-religious society. Islam is the religion of the majority of the population, and Christianity and the African Creeds are followed by a considerable number of citizens. Nevertheless, the basis of rights and duties in the Sudan shall be citizenship and all Sudanese shall equally share in all aspects of life and political responsibilities on the basis of citizenship.'

Concerning the sources of legislation within the country, Chapter Three, Article 2 (A) 6 of the same agreement, states that:

> '(a) Sharia and Custom shall be the sources of legislation (b) On the issues of Sharia, the parties agreed on a formula under which Laws of general nature, that are based on general principles common to the States, shall apply at the national level, provided that the States have the right to enact any complementary legislation to Federal legislation on matters that are peculiar to them. This power shall be exercised in addition to the powers that States exercise on matters designated as falling within their jurisdiction, including the development of customary law.'

This article is clearer on the question of legislation than Article 65. It is also very close to the Asmara Declaration's interpretation of the sources of legislation during the interim arrangements.

On the question of a secular versus religious state, the 1994 IGAD Declaration of Principles (DoP) provides a way out for the warring parties. Article 3.4 of the declaration deals with interim arrangements which would be applicable if a secular system were installed in the country. The main assumption in this article is as follows: should all

the Sudanese parties agree to a secular system, the clauses that guarantee self-administration for the Nuba Mountains and the Blue Nile Province, as well as self-determination for the people of southern Sudan, would naturally fall in line with the spirit of the DoP, which gives priority to the unity of the country during the interim period.

It should be emphasised that almost all the agreements signed by the southern Sudanese political forces and their northern counterparts between 1992 and 2000, have endorsed self-determination for the people of southern Sudan as a viable option, which must be considered during the interim period arrangements. For example, Chapter Four, Article 6 (ii) of the Khartoum (Sudan) Peace Agreement clearly explains that after the expiration of the four-year interim period, a referendum must be conducted in southern Sudan (its borders as they stood on 1 January 1956). Chapter Five of the same agreement deals, in some detail, with how the South should be governed during the interim period.

On the other hand, Article 2 of the DoP clearly states that should the interim arrangements reveal that the relationship between the central government and the southern region is not conducive to a peaceful coexistence, then the right to self-determination should be granted to the people of southern Sudan.

Libyan leader Muamar Kadhafi (L), is escorted by his Sudanese counterpart Omar al-Beshir upon arriving in Khartoum 10 May 2001. Kadhafi is on a two-day visit for talks on bilateral relations and on an Egyptian-Libyan bid for finding peace in Sudan.

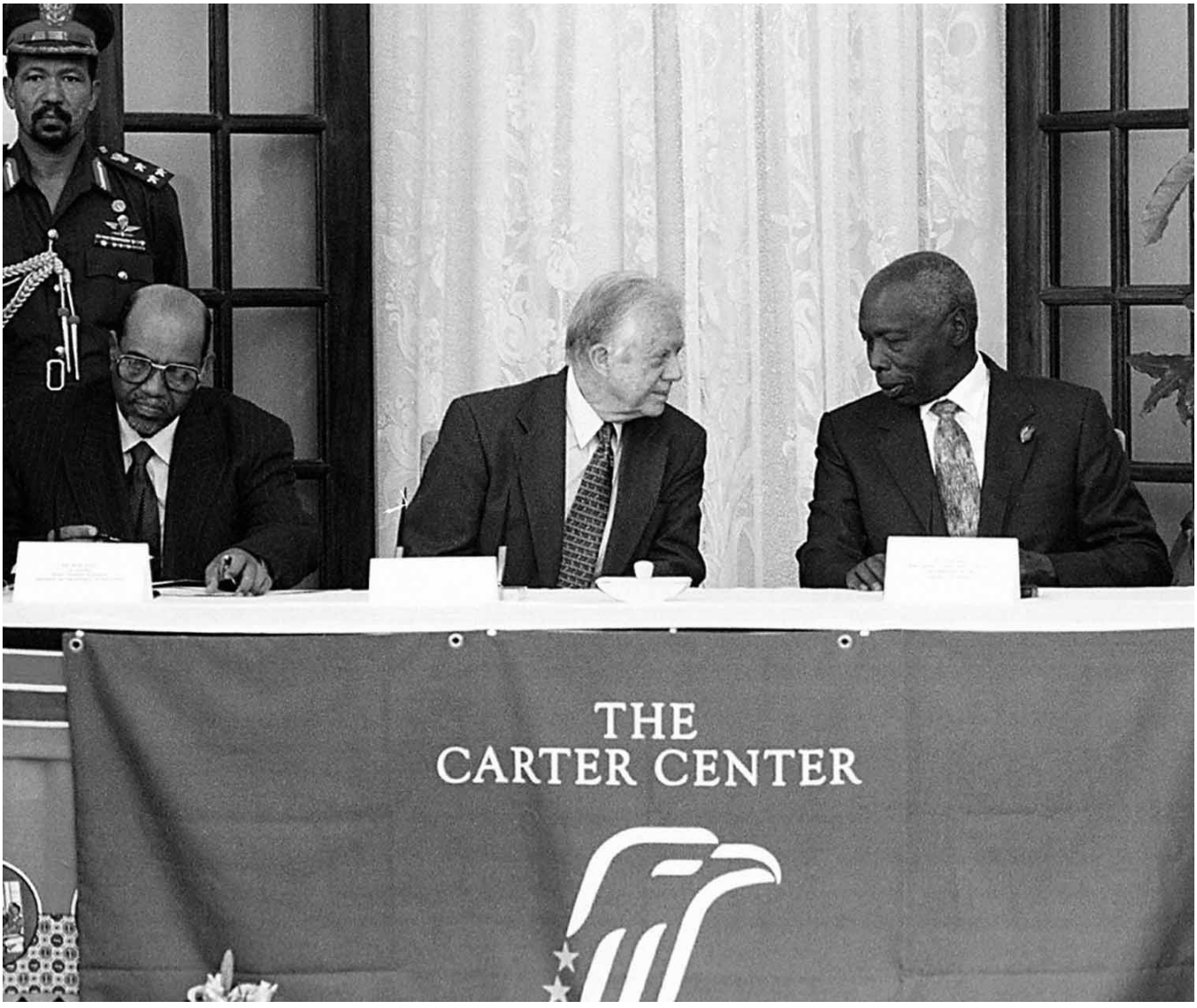
SALAH OMAR/AFP

Without specifically naming them, Article 3.2 of IGAD's DoP refers to the status of the people from the Blue Nile and Nuba Mountains, who are allied to the SPLA:

> '...Extensive rights of self-administration on the basis of federation, autonomy, etc., to the various people of Sudan must be affirmed.'

The implication in this article is that the people from the Nuba Mountains and Angassana Hills of the Blue Nile - who are fighting along side the SPLA - will have their problem resolved within a united Sudan formula, preferably a federal system that would address their grievances. The Sudan government and the northern Sudanese political parties who are members of the NDA, are vehemently against providing these people, who are from 'marginalised areas', with the same rights to self-determination as the people of southern Sudan. This view is in direct opposition to the SPLA's position, which insists that if the government of Sudan refuses to accept the secular state formula, then the marginalised people (who are its allies) would have the same right to self-determination as the people of the South. The northern Sudanese political parties aligned to the NDA, and the Sudan government, will only go as far as granting these marginalised people the right to self-administration.

It should be mentioned that in all the negotiations between the SPLA and the government of Sudan, the secular democratic state formula has always contradicted the philosophy and beliefs of the National Congress ruling party. For the SPLA, the secular state is the best option, since it



SIMON MAINA/AFP

Kenyan President Daniel arap Moi (R) talks to former US President Jimmy Carter (2D L) as Sudanese President Omar el-Beshir (L) and his Ugandan President Yoweri Museveni sign an agreement in Nairobi 08 December 1999. Uganda and Sudan took a cheerful step to ending half a decade of chilly relations today, when the two states' presidents agreed to stop backing the others' rebels and signed a 11-points agreement

includes a choice between an Islamic state or a secular democratic Sudan. As understood by the SPLA and other southern Sudanese forces, an Islamic state formula would mean that the Khartoum government would be continuously at war with those who opposed its philosophy. In other words, the separation of religion from state politics, as understood by the SPLA, is the precondition for a united Sudan. Consequently, it is the Sudan government's insistence on selling the formula of an Islamic state that has made such concepts as self-administration and self-determination acceptable options for those who do not espouse to the philosophy of an Islamic state in Sudan.

Another option presented by the SPLA as a possible solution to the dilemma of a secular democratic state versus an Islamic state, is the concept of confederation. This option suggests a confederal arrangement between the North and South, allowing the country to remain a single international legal personality. It would entail the South taking full control of its security. However, the oil revenue would be shared equitably. The advocates of this suggestion argue that the confederal arrangement would confine the majority of Christians to the South - this would minimise the common territories, providing a way out from the impasse over the issue of state and religion. The problem with this suggestion - which the SPLA leadership has presented several times as a viable option for the resolution of the southern Sudan problem - is the territorial claims that the SPLA has been forwarding, suggesting the southern Sudan borders should also include the Nuba Mountains and some parts of the Blue Nile. Looking at it from the secularists' point of view, the confederal option is a remedy to the Sudanese government's unwillingness to accept the separation of state and religion.

Another contentious issue that must be discussed (and resolved) is the question of how the national wealth should be distributed. Article 9 of the July 1998 Constitution of Sudan states that:

> 'All natural resources under ground, on its surface or within the territorial waters of the Sudan are public property and shall be governed by law. The state shall prepare plans and prompt the appropriate conditions for procuring the financial and human resources necessary to exploit these resources.'

This article gives the state (the central or federal government) the sole monopoly on natural resources, and defines this right in unequivocal terms. The states or regions have no right to claim any resources that fall within the above definition. Therefore, it is important for the Sudanese warring parties to work out a formula which would give the southern regions some transitional or special privileges, particularly when it comes to the distribution of natural resources such as oil and gold reserves.

Another constitutional arrangement that would have to be thoroughly deliberated by the conflicting parties - particularly the SPLA and other southern forces - is the federal arrangement formula that the government of Sudan has presented as the best option to govern post-war Sudan. After the settlement of the southern Sudan problem, and assuming the country remains united, will Sudan be ruled through a federal system as it stands today (in other words, 26 states) or will the South opt to merge its 10 states into three, or perhaps even into one state? There is also the question of provincial and state boundaries between the North and South. According to Article 109 in Sudan's Constitution of July 1998:

> 'The boundaries of the state shall be those existing on the day the constitution comes to force; boundaries between states may be amended by law passed by the National Assembly and signed by the President of the Republic after hearing the views of the respective Governor or State Assembly.'

This article gives the National Assembly and president the right to amend any boundary between two states, should they feel it was in the interest of the central government to do so. A similar article in the 1973 constitution of Sudan gave General Jaafar Numeiri the right to attempt to readjust the boundaries between the Blue Nile and the Upper Nile provinces, with the aim of annexing the agricultural rich province of Renk - this attempt was made in 1981. In the same year, Numeiri tried to annex Bentiu - the oil rich province in the western Upper Nile - to Southern Kordufan province.

Conditions to attain peace in Sudan

There are three important factors that could make the attainment of a comprehensive and inclusive peace agreement between the North and the South rather remote:

1. The ongoing factional fighting and ideological differences among southern Sudanese politicians and rebel leaders makes it difficult for the South to be taken seriously by the North. A

fragmented South would make it difficult to convince the North that it was an entity ready to do peace business.

2. The multiplicity of peace initiatives, as well as the competition among mediators, is another factor that has complicated the peace efforts in the Sudan. Individual politicians - both from the North and South - have tried to bring peace to the country for quite some time. The IGAD peace initiative; Egypt and Libya; Nigeria, South Africa and Qatar; Eritrean and Ugandan leaders; the European IGAD Friends' Forum; former US president, Jimmy Carter; Lady Caroline Cox of Britain -all these stakeholders have tried (and some are still trying) to persuade the warring parties in Sudan to come to the table and negotiate in good faith. Sadly, all their efforts have failed.
3. The current position of some northern Sudanese groups and some Middle Eastern countries, which are against the principle of inclusion, of separation or the secession of southern Sudan from the North as part of an overall solution to the conflict, is an obstacle that ought to be addressed. The demand of the southern Sudanese people for the right to self-determination has been nominally accepted by both the government of Sudan and the northern Sudanese opposition groups that are members of the NDA. However, in practical terms, the NDA's acceptance of self-determination is conditional, in a sense that the parties - the SPLA and the NDA - pledged to give priority to the unity of the country during the interim period. Most southern Sudanese people support the idea of the North's unconditional acceptance of the South's right to exercise self-determination in a free and fair internationally-supervised referendum.

Sudanese peace process mechanisms:

1. The most important prerequisite to any peace initiative would be the unity of all the southern rebel groups, the SPLA, the SPDF and other forces. This unity must clearly state what the people of the South are fighting for. In so doing, factional warfare between southern rebel groups would cease, and an acceptable peace agenda for the southern liberation movements could then be tabled at any peace forum with the North.
2. The NDA should start serious talks with the Sudan government in order to settle their differences regarding issues that relate to governance; human rights; constitutional reforms; party politics; the role of religion in the state; economic reforms; and so on. On the other hand, the current alliance between the SPLA and the NDA ought to be re-evaluated, because it seems that the NDA leadership is favouring the Egyptian-Libyan peace initiative, which does not address the issue of self-determination for the people of the South. The SPLA is apparently favouring the IGAD peace initiative, which deals specifically with the southern Sudan problem, and which accommodates the right of southern Sudanese people to self-determination. The SPLA also seems to accept the idea of merging the two peace initiatives.
3. The question of power-sharing, and the distribution of oil and other natural resource revenues, ought to be discussed as part of the interim period arrangements between the South and the central government.

Conclusions

1. The Egyptian-Libyan peace initiative is dealing with the issue of governance; the role of religion in politics; human rights; and the reconciliation of the government and the NDA. This initiative should be encouraged, because it would help bring northern Sudanese opposition groups closer to the government. Such a reconciliation among northerners would return the Sudanese conflict to its original place: north versus south. Once the North is reconciled, the South would be forced to put its house in order. Its rebel movements, the SPLA, the SPDF and other forces, would have to come to the peace process with one agenda.
2. The problem of the Nuba Mountains and the Blue Nile - whose inhabitants are part of the SPLA forces - should initially be addressed and resolved at a SPLA level before a comprehensive peace agreement is signed between the North and South. The SPLA's insistence that the southern Sudan borders should include the two aforementioned regions, which are traditionally part of the North, is one of the contentious issues that the SPLA and the Sudan government delegates have been unwilling to compromise on. It should be mentioned that the map which the SPLA has presented to IGAD mediators since May 1993, is the same

map that was based on the 1920 ordinance, which outlined the British policy of close districts. At that time, a map was issued which consisted of the three southern provinces, some parts of the Blue Nile province and the Nuba Mountains. However, the British government reversed that policy in 1930, when it decided that the country was to be administered as one entity. Until the reasons that underlie the SPLA's territorial claims are addressed and settled, they will continue to complicate the Sudanese peace process. Perhaps the best way out would be for the mediators to ask SPLA leaders, both from the Nuba Mountains and the Blue Nile, to spell out what their position is on the issue. As for the question of Abei, there seems to be a general consensus that it could be discussed and resolved through direct North-South negotiation. In any event, all the documents and agreements mentioned above have directly addressed the Abei issue, and the disputants could refer to them should disagreements arise.

3. The factional politics within the South have created animosity between the region's two major tribes: the Dinka and the Nuer. Moreover, some smaller tribes - especially those in Equatoria and the Upper Nile - feel the SPLA, as a movement, has discriminated against and mistreated them. Consequently, fierce inter-factional fighting ensued within the SPLA between 1995 and 1999. Reconciling the SPLA factions is, therefore, a vital prerequisite to any serious South-South peace process.
4. The Nigerian peace initiative of April 2001 - which aims to bring together the southern Sudanese military and political forces, both from within and without the country - will remain the workable initiative in terms of long-term positive outcomes. The unity of all southern Sudanese political organisations could have three long-term positive results. Firstly, it could pave the way for the main southern Sudanese military organisations - the SPLA and the SPDF - to work towards a genuine unity of purpose or military coordination. Secondly, although attempts have been made by the Sudan government and some northern Sudanese opposition parties to derail it, the Nigerian initiative could consolidate the South-South peace initiatives that the New Sudan Council of Churches (NSCC) has been carrying out among the southern Sudanese tribes since 1999. The Kisumu Declaration of June 2001 - a document that was issued as a result of a meeting hosted by the NSCC in Kenya, which brought together most of southern Sudan's exiled military and political leaders (with the exception of the SPLA) - urged the main military organisations in the South, the SPLA and the SPDF, to speed up unity negotiations. The Nigerian initiative is complementary to the Kisumu Declaration. Finally, once southern Sudanese political forces unanimously agree on common objectives, any peace initiative - whether under IGAD, or any other regional or international forum - could bring a united South to the negotiation table with a united North.
5. The indigenous peace process among the southern tribes should be encouraged in order to avoid post-war southern Sudan instability. The agreement between Dinka and Nuer was concluded in March 1999 at Wunlit village in Bhar el Ghazal, and it has already successfully brought about relative peace to the border areas of the western Upper Nile and Bhar el Ghazal.
6. There is no doubt that southern Sudanese people in Diaspora could become a source of conflict, should they decide to take sides. On the other hand, they could facilitate reconciliation among southerners, if they were included in the peace process. They ought to be more involved in the peace process, particularly because most of southern Sudan's educated individuals live abroad. In fact, it was the southern Sudanese people of Diaspora who encouraged the NSCC to convene the Kisumu Conference in June 2001.
7. Southern Sudanese militia groups, who are currently cooperating with the government of Sudan, should be encouraged to become part of, and if possible, should be incorporated into any peace process as part of southern Sudan's political agenda - otherwise, if marginalised, they could cause havoc in post-war southern Sudan.

Endnote

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JEAN-PHILIPPE KSIAZEK/AFP

There is much that needs to be done in most parts of Africa to promote the idea of a constitution, constitutionalism and human security

INTERVENTION

BY CLIVE J NAPIER

the case of international intervention and private security

The notion of a constitution and constitutionalism goes back to the time of Aristotle (384-322 BC). The different dimensions of security are increasingly being referred to in the contemporary literature on social, economic and political issues concerning the continent of Africa, as well as elsewhere. One hears references to military security; private security; food security; water security; economic security; financial security; job security; land security; property security; and so on. Security, in terms of the individual, refers to a condition where the individual is untroubled by danger and fear, or feels protected against attack. Threats to the individual can (and do) come from a variety of sources and they can take many forms - they can originate from a totalitarian or autocratic government; antagonistic or conflicting groups within society; economic decline; scarce resources; cross-border threats; and many others. People in society strive for the good life, and one of its many dimensions is that of human security.

How is the objective of a good life and human security achieved? There are many mechanisms - both formal and informal - which can be employed in order to achieve this goal. Degrees of increased human security and a fairly good life may be achieved. However, as far as I am concerned, utopia has not been realised any where on this earth. Achievement of the good life is most likely to be attained through formal structures, such the state and its institutions, which mediate between con-

flicting interests, and which also protect such interests. Perhaps the most pre-eminent formal institution to mediate between conflicting interests within respective societies - sometimes successfully and sometimes not so successfully - is that of the constitution and its associated institutions, such as the courts of law, and security and military forces.

Constitutions and constitutionalism

Before discussing human security and its link to constitutions and constitutionalism within the African context and elsewhere, it is necessary to get back to basics and remind ourselves of what a constitution is, as well as the nature of constitutionalism.

Broadly speaking, a constitution is a set of rules - written and unwritten - that seek to establish the duties, powers and functions of the various institutions of government. It regulates the relationship between them, and defines the relationship between the state and the individual. Constitutions are usually written and the main provisions of constitutional law are contained in a single document, although there are often additional statutory provisions and conventions which develop over a period of time. Consequently, constitutionalism can be referred to in a narrow and a broad sense. In the narrow sense, constitutionalism refers to the practice of limited government, where government institutions and processes are effectively constrained by constitutional rules. In a broad sense, constitutionalism refers to a set of political values and aspirations that reflect the desire to protect liberty through the establishment of internal and external checks on government power. Constitutionalism, in this sense, is a kind of political liberalism that supports constitutional principles, including a bill of rights; the separation of powers; bicameralism; federation; and decentralisation.

The question which then arises is what is the purpose of a constitution? Also, do constitutions really contribute to human security? To attempt to answer the first question, one should perhaps look at a few text book purposes (See Heywood 1997:chapter 14), although these are not necessarily congruent with what happens in the real world:

1. Constitutions empower states. They lay the framework for governments and empower them to exercise authority over a particular territory. Whether they are able to do so effectively is another matter, which is discussed below.
2. Constitutions establish values and goals. The drafters of constitutions seek to imbue them with a set of unifying values and an ideological purpose. For example, the preamble to the South African Constitution seeks to heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights.
3. Constitutions provide government stability. Constitutions act as organisational charts or institutional blueprints. They regulate the relationship between political bodies, and attempt to establish a measure of order and predictability between the institutions of government. They establish the rules for the governing game.
4. Constitutions protect freedom. Constitutions may have, as their central purpose, the constraining of government powers, and the marking out of a government's power and an individual's power. They may provide for personal freedoms through a bill of rights which then, because they become embedded in law, are termed civil liberties. These rights may be termed as negative or positive - negative rights constrain the actions of government and positive rights make additional demands upon government, such as the demand for housing, education and human security (protection or security services).
5. Finally, constitutions may legitimise regimes. The possession of a constitution is often a prerequisite for becoming a member of the international community, and constitutions are also used to promote respect and compliance within a state.
6. Constitutions provide governments with a cloak of legality and give countries a purpose and identity.

To attempt to answer the second question - do constitutions really contribute to human security?

Let us look at recent events in the United States of America and the issue of human security - the freedom from violence as defined above. The United States has had a written constitution since 1789. It is the oldest, modern-day, written constitution in existence and has stood the test of time in terms of achieving all the goals as described above. However, it is not the complete ticket to utopia or the good life, and it has not ensured complete human security in that country. On 11 September 2001, four aircraft were hijacked and subsequently crashed into three buildings and an open area, leading to a great loss of life or, in other words, human insecurity, where many lost their lives through violence. In this instance, the constitution

SALAH OMAR/AFP

Eritrean men and women line up separately at the Qulsa refugee camp near the eastern Sudanese town of Kassala.

did not ensure human security to the many thousands of people resident in America. What then is the use of the American Constitution? In this instance, where there was a great loss of life, one could see the constitution at work in determining the responses of the various divisions within the American government, as provided for by the constitution. In terms of the constitution, the American president was constrained in how he could respond to the attack. Congress, for example, had to approve the president's plan to pursue those responsible. Moreover, it had to approve the funding for any military operations organised in pursuit of the perpetrators. In other words, the constitution imposed various constraints on the president, as well as the executive arm of government, in the way they could respond to the attacks. In this way, the constitution assisted in ensuring that no unwarranted reprisals took place, which could have unnecessarily jeopardised human security.

Constitutions, constitutionalism and human security in the African context

In the African context, constitutions have many origins - it is suggested that all communities, stretching as far back as pre-colonial society, had constitutions. The constitutions in pre-colonial society consisted of a set of accepted norms and values, which were seldom written down, but which enabled those societies to organise themselves and provide human security for their members. In African colonial and post-colonial society, constitutions took on more of a formal format. They were contained in several written documents which took the form of orders in council, single legislative acts or single documents passed by the decision-making bodies located in independent states.

In his book, *States and Power in Africa*, Herbst argues that in order to understand the nature of the contemporary African state - and, I would argue, the constitutional shortcomings - the creation of that state needs to be understood. In pre-colonial Africa, leaders were constrained in their ability to broadcast power. Likewise, during the colonial period, leaders were constrained in their ability to broadcast power beyond the cities and valuable economic assets due to the prohibitive costs involved.

Similarly, at the time of independence, African leaders accepted colonial boundaries and often colonially designed constitutions, which were simply ineffective in ensuring human security.

Another factor which needs to be considered at the time of independence was the nature of the state. What occurred at that time was that 'empirical statehood' was eclipsed and a 'new form of juridical statehood based on a rights-model of international relations' became the dominant form of statehood in Africa. African leaders have been constrained in expanding their authority due to the high costs involved, as well as the relative poverty of many African states. Herbst concludes that African leaders were able to arrange a system that reinforced their own biases, which enabled them to retain state systems that the colonial powers had demarcated. As a corollary to this lack of authority throughout the geographic region of the state, and despite having constitutional orders, the provisions of those constitutions were not enforceable throughout the state. The abrogation of human security was often a casualty of this state of affairs. Moreover, many African states have become 'soft' and, in some instances, have collapsed.

Since the late 1980s, the process by which constitutions have been drafted has increasingly come under the attention of scholars (for example, Ihonvbere) and practitioners in the field. The general thrust of their argument is that constitutions must be drafted through a bottom-up process. In other words, civil society must be involved in the process. Constitutions should evolve through the participation of civil society in order to ensure that the final product enjoys legitimacy in the eyes of the residents of that country - as Mbaku argues, it should become a self-enforcing document which, although seldom spelled out, should provide for human security. It is argued that the mere existence of a constitution within a state will do little to create a stable environment for democracy and development. People need to know and understand its provisions, have faith in their respective governments that they will not overrule it, and believe that their rights, as promulgated within it, will be upheld.

Since the 1990s, the process of constitution drafting has been the focus of international organisations and the British Commonwealth. In 1995, the heads of government adopted a Commonwealth Plan of Action in Millbrook, New Zealand. The plan will promote fundamental commonwealth political values and sustainable development. It will also facilitate consensus-building. In addition, the Commonwealth heads of government promised to assist in constitutional and legal matters, including the selection of models and the initiation of programmes aimed at democratisation. The Centre for Democracy and Development is attempting to further this process through its vigorous publishing process and conference organisation, in order to promote the idea of constitutionalism in Africa. It is also addressing the role of regional organisations in drafting constitutions.

However, within the African context, constitutions seldom function optimally. There are a number of reasons for their shortcomings. Some of them were inherited or simply exported from Europe - they did not enjoy legitimacy in the eyes of the citizens of their respective countries.

There are many tasks, processes and constitutional designs which need to be considered in reconstituting and reconfiguring the African state in order to achieve human security.

Conclusion

There is much that needs to be done in most parts of Africa to promote the idea of a constitution, constitutionalism and human security. Besides the process and the role of local and regional organisations in constitution drafting, it is perhaps opportune to look afresh at the constitutional models currently at the disposal of constitution drafters.

There are two main constitutional forms available - a unitary model or a federal model. Virtually all the states in Africa have adopted the unitary model, with the notable exception being Nigeria, which is federal. Others, like South Africa and Namibia, do have federal characteristics written into their constitutions. In order to address the problem of an authority's reach and influence, decentralised unitary constitutional forms and federal constitutional forms should be re-examined. The delegation of power to lower tiers of government could bring power closer to people who may exercise it in the interests of human security. In addition, the nature of the electoral system designed could have a profound effect on the workings of the political system, as well as the nature of conflict within a society. Proportional representation systems can assist in promoting human security by giving minorities a voice in legislatures, as opposed to the winner takes all, first-past-the-post electoral system.

Perhaps within the African context, the time has come to consider supra-national federal constitutional arrangements to cover regions of the continent and address international issues. Constitutions and constitutionalism are important devices in promoting human security. However, as seen elsewhere in the world, they are not sufficient to ensure human security. Be that as it may, they are vitally important in attempting to assure human security for all.

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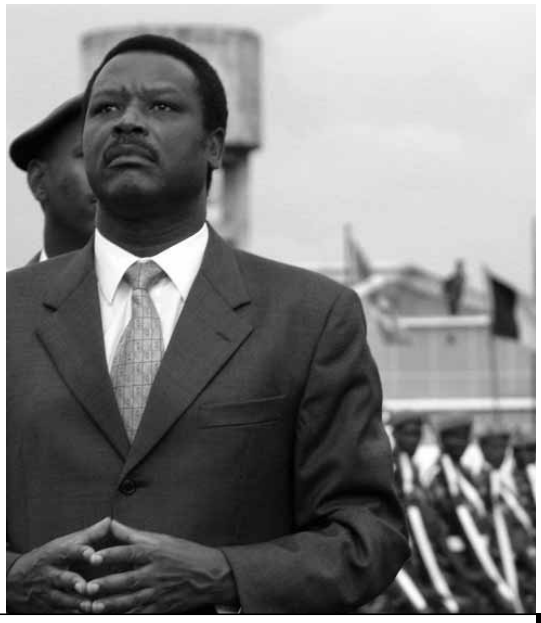

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To ensure success, a series of reforms within the administration, judiciary and military spheres of government will need to be undertaken

BURUNDI

BY SAGREN NAIDOO

challenges for burundi's transitional government

The Burundian transitional government which was sworn in on 1 November 2001, marks a turning point in the country's troubled history, and serves as the best opportunity to end the conflict between the Hutu majority and Tutsi minority. The new administration is essentially a three-year, power-sharing mechanism that is designed to bring peace to Burundi, following an eight-year civil war that has claimed more than 200,000 lives.

The transitional government was set up in terms of the Arusha Accord, which was signed in August 2000. It makes provision for cabinet posts to be split between Hutus and Tutsis; for the establishment of an ethnically-balanced defence force; and for a general election to be held after the three-year transition period. Accordingly, the transitional administration - which will be led by President Pierre Buyoya for the first 18 months - will have a cabinet comprising 26 portfolios, 14 of which will be allocated to Hutu political parties and the remaining 12 to Tutsis. In addition, communal and council-level elections are expected to be held by the end of the first half of the transition, with senatorial elections envisaged to take place during the second half. Immediately thereafter, the national assembly and senate are expected to convene to elect the first president for the post-transitional phase of the government.

Challenges ahead

However, for the transitional government to achieve the full confidence and support of all Burundians, a series of reforms within the administration, judiciary and military spheres of government will need to be undertaken. Moreover, mechanisms to root out and solve the problems that led to the conflict, would also have to be put in place.

For this to happen, the transitional government intends to seek the United Nations Security Council's (UNSC) assistance in creating an international judicial commission of inquiry into genocide, war crimes and crimes against humanity, as well as a national truth and reconciliation commission. For its part, the former military government of Buyoya will have to ensure that allegations of human rights violations by its own armed forces, are investigated impartially and independently. Prior to this action being taken, the transitional government and state institutions need to rehabilitate the victims of war; they need to reintegrate returning refugees and internally displaced persons into society; and they need to rebuild the country's infrastructure which was destroyed during the eight-year civil war.

However, even with the establishment of a power-sharing transitional government, several obstacles still stand in the way of achieving peace. These include the continued armed activities of the Hutu rebels, who refuse to support the deal; the opposition of some radical Tutsi groups to the power-sharing arrangement; and the resistance of some parts of the Tutsi dominated army to undergo an integration process.

At the top of the list of priorities for Burundi's transitional government is the need to protect its citizens and secure a permanent ceasefire. Just four days after the inauguration of the new administration, an ambush - reportedly by Hutu rebels - claimed the lives of four soldiers from the Burundian armed forces. The two main Hutu rebel groups - the Forces for the Defence of Democracy (FDD) and the National Liberation Forces (FNL) - are not party to the Arusha Accord. Hence, they are not bound by the transitional arrangements. Simply put, there is no ceasefire to help build and keep the badly needed peace. Indeed, it is unprecedented that the installation of a transitional government has taken place while the war continues. Given the militarisation of the ethnic extremism that Burundi experiences, perhaps the implementation of the transitional government would serve as a confidence-building measure in order for the rebels to participate in political negotiations.

Confronting factionalism and ethnic extremism

Moreover, the speedy achievement of a ceasefire is also being frustrated by factionalism within the FDD. The recent replacement of Jean-Bosco Ndayikengurukiye as leader of the FDD has exposed long-running divisions within the rebels and has split the movement into two camps: those that favour the retention of Ndayikengurukiye, and those that are opposed to his leadership. The latter group, led by Pierre Nkurunziza, claim that Ndayikengurukiye's sacking will speed up the peace process. Ndayikengurukiye has rejected ceasefire negotiations with the Burundi government. Meanwhile, Nkurunziza's faction supports such talks, under the auspices of Gabon's president, Omar Bongo, and the South African deputy-president, Jacob Zuma. However, Nkurunziza's faction wants an immediate end to abuses and gross human rights violations by the Burundian army; an end to the activity of army death squads; an assurance of the freedom of speech; and the empowerment of the poorest of the population by, for example, paying peasant coffee farmers market prices for their crops. These demands have been largely supported by the Burundi League of Human Rights (ITEKA). In the meantime, the transitional government has no clear FDD leader or representative with whom it could negotiate a ceasefire.

The FDD and FNL were essentially military wings of the National Council for the Defence of Democracy (CNDD) and the Party for the Liberation of Hutu People (PALIPEHUTU), respectively. However, relations became strained amongst them. Given that the CNDD and PALIPEHUTU are political parties which are signatories to the Arusha Accord, as well as members of the transitional cabinet, it is interesting to note that they have been unable to influence the rebels to implement a ceasefire. There are two reasons for this. Firstly, the political organs - the CNDD and PALIPEHUTU - viewed the military wings as rivals, and insisted on their exclusion from the negotiations. The initial mediator, former Tanzanian president, Julius Nyerere, excluded these groups from the talks. However, with increased insurgencies, the current mediator, former president Nelson Mandela, insisted on their inclusion. Hence, the political wings do not have the required influence to persuade the FDD and FNL to put down their guns.

Secondly, even if the CNDD and PALIPEHUTU could influence the rebels, they are unlikely to do so. Burundi's first democratically elected Hutu president, Melchior Ndadaye, was from the Front for the Democracy of Burundi (FRODEBU) party. Many Hutu politicians see the assassination of Ndadaye as the result of FRODEBU not having a military wing of its own.

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Malawi's president Bakili Muluzi talks to the press under heavy security as he arrives to Bujumbura, Burundi 31 October 2001 to participate in the inauguration of the transitional goverment.

Consequently, it was unable to control the safety and security of the then government of Burundi. Therefore, current Hutu parties in Bujumbura feel it is better to have some kind of military support if things also had to go wrong this time.

The other problem that the transitional government faces is to convince the radical Tutsis groups which are rejecting the transitional government, to rethink their position in the interests of peace and development for all Burundians. Uprona's recent protest against the protection of returning Hutu exiles, signals their rejection of any dialogue and negotiation for a peaceful political settlement during the country's transition, as well as the eventual sharing of power. Recently the group of five (G5) Tutsi-dominated political parties threatened to boycott the transitional government, unless President Buyoya altered the allocation of ministerial posts to the opposition umbrella of pro-Hutu parties known as the G7. At the same time, the extremist Tutsi group, Parena, has been excluded from any cabinet positions. The consequences of them being outside the process are clearly stark. Given that the minority Tutsis have dominated Burundi's politics, military and economy for most of the country's 39 years of independence from Belgium colonialism, the transitional government - and ultimately President Buyoya - would have to convince G5 and radical Tutsis in the army that the present dispensation is not a threat to them.

A 'delicate' mission

In the meantime, South African troops have been deployed to Bujumbura in line with a UNSC resolution that was formulated to protect Hutu politicians who were returning from exile to participate in the transitional government. The challenges facing sustainable peace in Burundi warrant attention. The South African National Defence Force (SANDF) deployment in the Democratic Republic of Congo (DRC) - as part of the UN Observer Mission (MONUC) - returned to South Africa without any major incident. In the past three years, the DRC - Africa's third largest country, which consists of predominantly impenetrable terrain - has been the battlefield for a war of unprecedented proportions and complexity. It is, however, the deployment of the protection force in Burundi that faces the greatest challenge.

Burundi, which is arguably 50 times smaller than the DRC (and with easily accessible terrain), has been engulfed by a conflict that has raged mainly between two groups: the Tutsi minority and the Hutu majority ñ unlike the multitude of belligerents involved in the DRC conflict. This does not suggest that the two conflicts should be looked

at in isolation. Burundi is very much part of the DRC conflict, as well as the crisis affecting the Great Lakes region. So why would keeping peace in Burundi be a greater effort - if not a battle - for the South African troops, as compared with the DRC conflict?

Firstly, the situation on the ground is still very precarious. As South African troops landed in this tiny central African country, clashes between Hutu rebel movements and troops of the Tutsi government continued. Secondly, extremist groups on both sides of the conflict have publicly rejected the deployment of South African troops. The call by the extremist Tutsi group, Uprona, to fight South African troops, was indeed very worrisome, particularly given that Uprona is Buyoya's party. At the same time there is a perception that the majority of the FDD and FNL do not see South Africa as being neutral.

Thirdly, in spite of assurances from the facilitator of the peace process, former president Nelson Mandela, that the Burundian army is committed to the transitional process, the army remains a concern for peace and security. An army constituted with a proportionate number of Tutsi and Hutu soldiers is expected to answer to a civilian leadership. However, given that there have been two coup attempts during this year alone, one is compelled to question the standing of the army. Regardless of the intentions under a new order, if a coup-induced battle was to unfold, the consequences could be disastrous not only for all Burundians, but also for the South African troops. Given that an exit strategy for the SANDF is based on the full implementation of a transitional government during the next three years, the South African deployment would be forced to remain in Burundi until peace was secured.

Nevertheless, the deployment of South African troops to Burundi signalled Pretoria's determination to pursue a vigorous leadership role in conflict resolution on the continent. It is also a recognition that war and conflict are detrimental to the success of the New Africa Partnership for Development (Nepad), previously known as The New Africa Initiative (NAI).

Regional dynamics

However, a resolution of the Burundi conflict also needs to take place within the context of a peace process for the entire Great Lakes region. Africa's Great Lakes constitute a conflict zone that is central to an 'arc of crisis', which stretches from Angola to the Sudan. In a vortex of inter-linked conflicts, where linkages are based on strategic alliances, conflict resolution options need to be systematically pursued. Burundi might not find peace, if other countries in the Great Lakes region which are engulfed with conflict, do not find peace themselves.

Key decisions affecting Burundi are likely to be made in the DRC, Zimbabwe and, to some extent, Angola, due to the alliance between these countries and the main Burundi Hutu rebels. However, Rwanda also has a major role to play in Burundi's transition. Rwanda will not accept a peace process in Burundi which could ultimately threatens its own security. The peace processes in Burundi and the DRC, while having specific objectives, are also processes that provide suitable prescriptions for other neighbouring states which are pursuing a resolution to conflict. Rwanda, despite its tribunal for the genocidaire, is lagging behind in fostering a peace process that is built on dialogue and negotiations, and which is aimed at the political resolution of conflict. Just as there is the Lusaka Agreement for the DRC, and the Arusha Accord for Burundi, Rwanda also needs to put in place similar transparent mechanisms that would help create a more inclusive and durable political system. Perhaps a reviving of the Arusha Agreement, which was signed before the 1994 genocide, needs to be seriously considered.

In the meantime, South Africa should seek - together with the international community - to create incentives and sanctions in order to encourage all warring parties within the Great Lakes region to participate in dialogue aimed at the political settlement of disputes. This could lead to a new and sustainable regional security compact. Given the limited resources, as well as the need to prioritise, the temptation may arise for South Africa to focus on just one crisis, while ignoring the rest. This strategy could prove counter-productive, given that the conflicts are intertwined. Pretoria must use the Rwanda-South Africa Joint Cooperation Commission to be more assertive with regard to the need for dialogue in Rwanda. If conflict explodes in Rwanda, South Africa may find great difficulty in reacting, thereby paying a significant price to assert its regional leadership.

Endnote

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QUALITY IN
AIR TRANSPORT

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The SANDF contingent has been mandated to protect about 150 Burundian political leaders, who have returned from exile to participate in the country's power-sharing transitional government

BY THEO NEETHLING

deployment of sandf to Burundi

On 26 October 2001, the South African and Burundian governments signed a Memorandum of Understanding in Pretoria, which paved the way for the Department of Defence to deploy SA National Defence Force (SANDF) troops to Burundi. On the morning of Sunday, 28 October 2001, the first group of about 234 troops left the Waterkloof Air Force Base under the command of Brigadier-General Steven Kobe, general commanding officer of the 43rd South African Brigade. Later the same day they arrived in Burundi's lakeside capital, Bujumbura.

A second group of 236 troops left from the same base on 30 October 2001, and a third group of about 231 troops left four days later. The troops (all armed and dressed in South African uniform) were drawn from a number of SANDF units, and included paratroopers from the 44th Parachute Brigade; medical orderlies from the SA Military Health Service; VIP protection units from the SA Air Force; and signalers from Wonderboom Military Base. Headquarters personnel was made up of troops from the 43rd SA Brigade.

The SANDF contingent has been mandated to protect about 150 Burundian political leaders, who have returned from exile to participate in the country's power-sharing transitional government, which was instated on 1 November 2001. How long the SA contingent will provide its services to Burundi is said to be subject to negotiation and discussion with the transitional government. However, it is expected to remain there for a period of six months, with a rotation of troops thereafter, if required. The possi-

South African soldiers disembark 30 October 2001 at Bujumbura airport to protect exiled politicians returning to take part in a transitional government

PEDRO UGARTE/AFP

ble involvement of other troops (specifically troops from Nigeria, Ghana and Senegal) could also affect this time frame. Earlier, the chief of the SANDF, General Siphiwe Nyanda, stated that troops would remain in Burundi until the transitional government felt secure and the training of 'ethnically balanced Burundian troops' (in other words, a new Burundian multi-ethnic army) was completed.

UN endorsement and international involvement

Earlier, opposition spokepersons in South Africa were quick to state that they supported the deployment to Burundi, but were concerned by the 'uncertain legal basis of the SANDF mission'. Concern was also expressed about the fact that the deployment was instructed prior to securing parliament's approval. Many commentators specifically questioned the international mandate of the mission. In view of this, it should be noted that the president of the United Nations Security Council (UNSC) issued the following statement on 26 September 2001:

> 'The Security Council calls on the Burundian parties to reach agreement swiftly on the establishment of a special protection unit entrusted solely with the police function of providing personal security for politicians returning from exile. ...[The UN] urges the international community to provide, on an urgent basis, support for the training and deployment of this special protection unit.'

On Monday, 29 October 2001, the UNSC unanimously adopted a resolution to back the creation of a temporary international security force for Burundi. It also endorsed the efforts of South Africa, and other countries, to implement the Arusha peace agreement, which was signed by Burundi's warring factions in August 2000. The UNSC reaffirmed its strong support for the establishment of a transitional government, and urged international donors to honour the pledges they made at a Paris conference in December 2000.

Against this background, it is clear that the UN did endorse the deployment of a 'protection force' to Burundi in order to protect the leaders of belligerent groups, who were returning from exile to establish a transitional government facilitated by Nelson Mandela. At the same time, it should be remembered that the UN did not mandate the deployment of a typical international force under the command of a UN-appointed officer. Nor did the UN issue any rules of engagement or parameters for peacekeeping, as it usually does in such cases.

To this end, it could be argued that the SANDF presence in Burundi should not be perceived as, or mistaken for, an international peacekeeping force operating under the auspices of the UN in accordance with the White Paper on South African Participation in International Peace Missions. Unlike typical UN peacekeeping practice - where soldiers from various contributory nations wear the distinctive blue berets of the UN - the SANDF contingent does not appear to be part of a 'blue helmet' operation. In this context, the SANDF contingent - clad in their green and brown uniforms with a South African flag shoulder patch - is the only force deployed in Bujumbura which is supported by its own armoured vehicles and unarmed Oryx helicopters.

Thus, it must be made clear that this is (at the time of writing) a South African 'protection force', which has a specific responsibility pertaining to the start of a three-year peace plan aimed at ending Burundi's lengthly civil war. Moreover, funding has not been provided by the UN. Apparently, it is supposed to be provided by the European Union (EU) and Belgium. This should be taken into consideration when criticism is raised in connection with international sanction for the mission. However, as far as domestic (parliamentary) approval is concerned, it may be argued that parliament's involvement in and sanction of operations of this kind is always desirable and expedient.

South Africa's decision to enter Burundi on a unilateral basis could be regarded as somewhat risky, and even precarious. It should be made clear that coalition operations are now the usual form of military activity throughout the world: almost every major conflict and peacekeeping operation during the last decade has involved combined forces. By the same token, in today's world the unilateral use of force by any state generally verges on the unthinkable. In this regard, the security of the emergent multilateral international state systems is reliant on general concepts of legitimacy, which are increasingly preserved and applied by coalition operations. Operations, such as the one in Burundi, are fraught with risks, where peacekeeping troops come under violent attack or face armed resistance. Severe problems may arise where third-party intervention is not underpinned by multinational or UN involvement.

Be that as it may, at the time of writing, it appeared that the South African government made

the right decision, and that it was under some degree of pressure to respond positively to Nelson Mandela's request to deploy a protection force to war-torn Burundi. Considering the difficulties normally associated with rapid deployment during peacekeeping operations of this nature, the SANDF should be commended for its swift response.

Building a foundation of peacekeeping experience

Until recently, some observers have argued that South Africa's contribution to the African debate on peacekeeping has been fairly limited, due to the fact that the country was still relatively inexperienced in the field of peacekeeping. In addition, there was a perceived reluctance to deploy troops in conflict situations. Also, the country's involvement in peacekeeping since the end of 2000, has been so unobtrusive that some foreign observers described the SANDF's deployment to Burundi as 'the country's first post-apartheid peacekeeping military operation outside its borders'. However, it should be made clear that the SANDF is currently contributing to peacekeeping efforts in no less than three African conflicts. Consequently, the SANDF is now actually building on the foundation of its experience in two African conflicts during the last year.

Towards the end of the year 2000, an announcement was made that South African officers would be deployed as military liaison officers in order to facilitate the peace process between Ethiopia and Eritrea. Consequently, a number of SANDF officers have since been deployed to the UN Mission in Ethiopia and Eritrea (UNMEE), as well as the Organisation of African Unity Liaison Mission in Ethiopia/Eritrea (OLMEE).

In a more significant announcement on 23 March 2001, the South African Minister of

Burundian soldiers escort the motorcade of Malawi's president Bakili Mulizi in Bujumbura, Burundi 31 October 2001

PEDRO UGARTE/AFP

Defence, Mr Mosiuoa Lekota, stated that in compliance with international obligations to the UN, South Africa would contribute elements of specialised units to the UN Organisation Mission in the Democratic Republic of Congo (MONUC). This announcement represents a historical development, in the sense that it paved the way for the SANDF's first substantial contribution ñ of a specifically human resources nature ñ to an international peace mission. Shortly after the announcement of South Africa's involvement in MONUC, 96 members of the SANDF were deployed to the DRC as staff officers in various specialised roles, such as air cargo handling; air disaster rescue; medical evacuation; and command and support tasks.

It should be said that South Africa's contributions to the above-mentioned missions could, by no means, be considered as substantial. Furthermore, it has been decided that South Africa will only contribute a number of (unarmed) military observers to UNMEE, as well as a few military liaison officers to OLMEE. Also, at the time of writing, no officers had been deployed in combat or peace enforcement roles as far as MONUC was concerned. Therefore, it is fairly significant that the South African force in Burundi has been armed, and that South Africa has now entered a phase where its armed forces are playing more than just a supportive role in the efforts to broker a peace in one of Africa's most intractable conflicts.

Conclusion

To embark on third-party intervention generally involves risks and uncertainty. Moreover, many current conflicts involve civilian and identity disputes, which are characterised by several features and challenges that make negotiated settlements extremely difficult to achieve. In a recent study on conflict management, it was contended that only 15% of civil and identity conflicts ended in negotiated settlements - only one-third of them last for more than five years. This points to the immense difficulties of consolidating peace and ensuring compliance in such cases.

Burundi's post-independence history is scarred by a series of horrific massacres. Its bitter ethnic divide mirrors that of neighbouring Rwanda, where UN peacekeepers found themselves caught in the 1994 genocide, after a peace deal dismally collapsed. Also, the South Africans in Burundi have seen little of the war that has killed an estimated 200,000 people since 1993 ñ a war that ignited a humanitarian crisis largely ignored by the international community. One can even say that the relaxed start to the SANDF deployment masked some of the risks to the soldiers involved - nestling in a ring of green hills by the gleaming waters of Lake Tanganyika, sleepy Bujumbura did not show any signs of a capital crippled by a bitter conflict between the majority ethnic Hutus and the minority Tutsis.

Nonetheless, the installation of a broad-based, legitimate government in Burundi should be seen as imperative in order for peace to prevail in the Great Lakes region. In addition, the SANDF's involvement may well prove to be an important catalyst in finding the way to a negotiated settlement. The ideal scenario would be for the SANDF involvement to lead to the deployment of a strong and competent multinational peacekeeping force after a ceasefire is negotiated. In fact, if there was any realistic possibility that the SANDF's operation could pave the way for broader African involvement - as well as the deployment of a peacekeeping force under the auspices of the UN - this would certainly be worth the risk. Many people (mostly civilians) have died during the civil war. If this operation could help police the transition to a new dispensation, it would certainly be to the credit of the SANDF and South Africa's political-military ability. It would also be a testament to South Africa's willingness to join in the cause for peace, democracy and a better future for all in Africa.

Endnote

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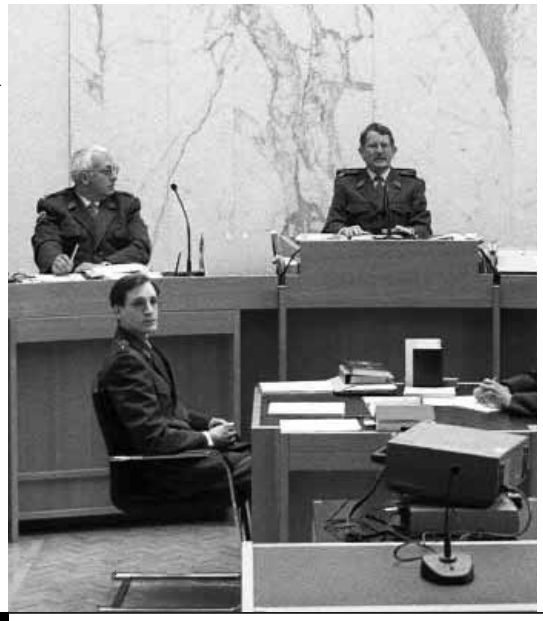
The practical reasons which have created a need to re-establish the Gacaca jurisdictions in Rwanda



FABRICE COFFRINI/AFP

BY PAUL E. NANTULYA

the gacaca system in Rwanda

The 1994 genocide in Rwanda was the culmination of earlier genocides and massacres, which occurred in 1959, 1963, 1964, 1973, 1990, 1992 and 1993. The organised killings which took place in Rwanda during the abovementioned periods, were the result of numerous factors, including the following:

- Harsh colonial policies which sought to divide Rwandans along ethnic and racial lines;
- Discriminatory and sectarian policies pursued by immediate post-independence governments, which reinforced the divisions created during the colonial period;
- A culture of impunity and violence, which had been created by successive governments that had actively and publicly promoted the killings of Tutsi individuals, as well as anyone else who resisted this call;
- Community disintegration and suspicion between the Hutu, Tutsi and Twa communities, due to divisive policies and a state ideology which sought to categorise these communities as ethnically and racially distinct, despite the fact that they all share one ethnicity, one language and a common heritage as *Banyarwanda*.

These factors (among others) have created an atmosphere of disunity, revenge and mistrust. Following a series of reflective meetings held between 1998 and 1999, Rwandans now feel a need to eradicate these negative feelings in order to prevent this destructive cycle from ever repeating itself[1]. The complexity of the situation has also had

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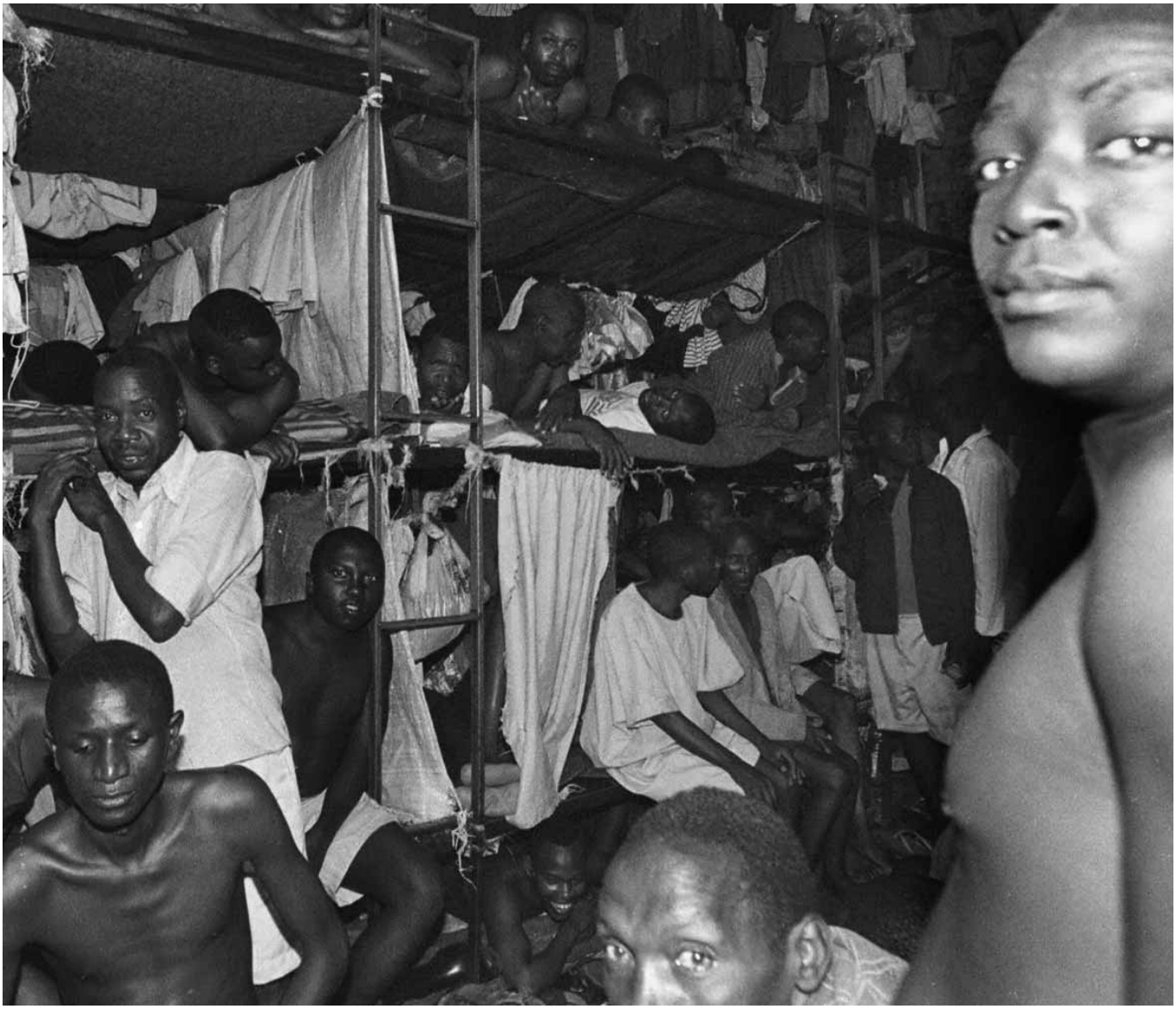

A 15 year-old Rwandan (R), stands with other prisoners at the Kigali prison. the boy, like most of the 80 000 prisoners held at the jail of the capital, is accused of taking part in the 1994 genocide which left at least 500 000 dead

a direct impact on the administration of classical justice in Rwanda. Some of the practical problems in this regard are identified as follows:

- A weak judicial sector, resulting from widespread destruction, both before and during the genocide;
- The administrative strain created by the presence of more than 135,000 inmates who have not yet been tried, and the presence of several other suspects who have not yet been brought to justice;
- The weaknesses of the classical justice system in addressing the psychological aspects of the genocide, which has a lot to do with negative mass mobilisation and ideological manipulation, both of which have been systematically cultivated for several years;
- The legal complexities surrounding classical justice, which makes it difficult for ordinary people to participate, and for community healing to occur;
- The non-reconciliatory nature of the classical justice system, which does not holistically or organically address the rehabilitation of convicts or the fundamental causes of the genocide. Consequently, the securing of convictions does not automatically translate into the eradication of a culture of impunity - something which was at the source of the 1994 genocide, as well as others in Rwanda.

Reflections on the Gacaca system of justice, and its incorporation into the draft constitution, are based on the need to address these practical limitations. The central unifying concern is that beyond the classical justice system there is a need to facilitate a process of community reconciliation and healing, which could form the basis for long-term social harmony and stability within Rwanda. Furthermore, ordinary Rwandan people must be involved in bringing about this unity through a system of customary laws, principles and procedures, which is part of their ancient heritage, and which continued to be practised in different ways even after the colonial and post-independence phase.

The Unity of Rwandans as a Basis for Gacaca Jurisdictions

Before a discussion on the Gacaca system can be attempted, there is a need to briefly discuss the ingredients which shaped the unity of the Rwandan people before and after colonial penetration into the Great Lakes region. Prior to colonisation, Rwandan society was cemented together through a complex system of clans, language, culture, religion, kinship, governmental organisation and housing.

All Rwandans, Hutu, Tutsi and Twa shared 18 clans: the Abasinga; Abasindi; Abazigaba; Abagesera; Ababanda; Abanyiginya; Abega; Abacyaba; Abungura; Abashambo; Abatsobe; Abakono (meaning hands); Abaha; Abashingo; Abanyakarama; Abasita; Abongera; and the Abenengwe. These 18 clans brought all Rwandans together, and were not based on any distinctions. The fact that Hutu, Tutsi and Twa belonged to the same clans created a sense of national identity, irrespective of one's occupational status.

It ought to be stressed that being a Hutu, Tutsi and Twa did not involve an ethnic connotation; rather, it reflected an occupational identity. While a Tutsi made a living from pastoralism, a Hutu lived on agriculture. The Twa survived through pottery, and hunting and gathering. Historical accounts suggest that a Tutsi who lost his cattle due to disease (or any other reason) was counted among the Hutu, while a Hutu who gained cattle for any reason was counted as a Tutsi. Consequently, there was a system of social mobility between these occupational strata. Historical accounts also suggest that Rwandans identified more with their clans than with their occupational status.

In addition to sharing clans, all Rwandans shared common rites, crafts, dances, taboos, divinations and medicines. They worshipped the same ancestors, consulted the same spirit mediums and were drawn into the mysteries of *Ryangombe* (loosely translated as God) together, without distinction. In matters of politics, the king (known as *Sebantu* or *the father of all people*) symbolised a sense of unity and belonging, and symbolically held all of Rwanda's offerings on behalf of all people (known in Kinyarwanda as *Nyamugirubutangwa*). Beneath him, existed three main tiers of governmental organisation: the chieftaincy of war, which oversaw defence affairs; the chieftaincy of pasture, which handled pastoral, grazing and cattle breeding activities; and the chieftaincy of land, which oversaw matters concerning farmers and their land. True to their occupational nature, the chiefs of pasture and land were predominantly Tutsi and Hutu, respectively. However, historical accounts show that in northern Rwanda, 80% of the chiefs were Hutu. In terms of housing, Rwandans lived together in all regions of the country, and intermarriages took place without discrimination. A girl, irrespective of her clan, was known as *Gahuzamiryango* (one who brings families closer), and also participated in the Gacaca system even after marriage. There were no zones specifically reserved for any community. In fact, in Kinyarwanda, there is a saying that '*neighbours give birth to children who look like each other*'. As in other African societies, the Rwandans practised blood vows, which also cut across their occupational status. A blood vow was taken when two people drank each other's blood to demonstrate their commitment as friends. This act committed them to a lifetime bond as family members, irrespective of whether or not they were related. The acts of friendship and solidarity which, expressed themselves through rites, are known in Kinyarwanda as *Ubuse*.

The emergence of Gacaca jurisdictions in Rwanda was facilitated by a sense of unity, which had prevailed among Rwandans during this period. It constituted the basic customary code which was applied throughout the territory via a system of chiefs and chieftaincies. It was composed of courts which settled conflicts arising between families or communities, and which may have been based on domestic concerns such as violence, theft, destruction of property and separation between a man and his wife, as well as other smaller matters.

The community participated in the courts and punishments were collectively imposed on persons found guilty of any offence. In addition to collective punishments, the community also performed welcoming rites for persons who had completed

their punishments. This was done to create a sense of belonging within the community. Serious offences were brought before the chief of the village, and the most serious ones were brought before the king. During the colonial period, Gacaca constituted the basic code for customary law in Rwanda. Classical justice was later established by the colonisers. However, in several cases, modern courts reverted to the Gacaca system when investigating certain offences.

The legal and constitutional basis for Gacaca in the current framework

As we have already briefly discussed, the practical need to introduce Gacaca jurisdictions is based on the following factors:

- The need for community involvement in the justice process;
- The need to capitalise on the unity of Rwandans;
- The need to respond to the psychological aspects of the genocide, which the classical justice system is not structured to address;
- The need to create a basis for future reconciliation;
- The need to ease administrative strains on the classical judicial system.

The reintroduction of Gacaca in Rwanda has been supported by modifications to the following legal instruments:

- Organic Law No8 of 30/08/1996, which provides for prosecutions for the crime of genocide, as well as other crimes against humanity;
- The Fundamental Law of the Republic: the Arusha Peace Agreement of 1993;
- Law Decree No09/90 of 07/07/1980, which refers to the organisation and jurisdictional competence of the courts;
- Law Decree No21/77 of 18/08/1977, which relates to the establishment of the penal code.

A new organic law governing Gacaca jurisdictions, as well as the law that established the supreme court, also supports it. In brief, Gacaca does not seek to replace the existing judicial system. Rather, it aims to support it in order to compensate for its weaknesses. For the moment, the legal instruments which provide for the functioning of Gacaca jurisdictions limit themselves to instituting the system at different administrative levels within the country. Their relationship to other organs which support democracy - such as the human rights commission; the unity and reconciliation commission; and the constitutional commission - will be outlined once the system starts to operate. However, it goes without saying that a natural relationship already exists between these institutions. For one, they have all participated in discussions on the Gacaca system, and secondly, it is likely that the Gacaca jurisdictions would draw from the capacity of these institutions from time to time. Thirdly, human rights training is also likely to be conducted for the various jurisdictions.

Functioning of the Gacaca Jurisdictions

The organic law identifies the following categories of offenders:

Category 1:

Offenders in this category are tried according to the organic law. Any confessions within this category do not reduce their penalty. This category mainly deals with organisers of the genocide.

Category 2:

This category mainly deals with those who may not have been involved in the planning of the genocide, but who participated in it. Confessions in this category reduce the sentence from life imprisonment to between 12 and 15 years, eight of which are spent in prison. The remaining years are then spent among the general population, where involvement in community service is a requirement.

Category 3:

Under this category, offenders serve a sentence provided for under the organic law. However, they complete one half of the sentence in prison, and the other half among the general population, performing community service.

Category 4:

Category four mainly deals with crimes such as banditry, theft, looting and pillaging which were committed during the genocide, but which do not fall within the definition of crimes against humanity, as spelt out in the organic law. Offenders are fined and integrated back into the community.

The Gacaca system will operate from the cell to prefecture levels, and will be functional throughout the country. At each tier, the Gacaca jurisdictions will be composed of a general assembly, which will be made up of 50 inhabitants; a Gacaca jurisdiction, which will be made up of 20 people elected by the general assembly; and the coordinating commit-

tee, which will be made up of five people elected by the members of the Gacaca jurisdictions. The coordinating committee will, in turn, elect a chairman and a secretary for a one-year renewable mandate.

The general assembly will supervise the activities of the Gacaca jurisdictions, which will be convened at least twice a week. The three core institutions - the general assembly, the Gacaca jurisdiction and the coordinating committee - will replicate themselves at the four levels of administration throughout Rwanda - namely the cell, sector, commune and prefecture levels.

The duties of the responsible Gacaca jurisdiction are briefly outlined as follows:

Cell Jurisdictions:

- Drawing up lists of victims and perpetrators of violations at the cell level;
- Receiving accusations and testimonies;
- Carrying out investigations;
- The carrying out of trials and sentencing for persons accused of offences in the fourth category;
- Forwarding case files to the sector jurisdiction for those accused of offences in the first, second and third categories.

Sector Jurisdictions:

- Receiving case files from the cell level;
- Placing the accused persons into categories;
- Forwarding case files to the cell level for persons accused in the fourth category;
- The carrying out of trials and sentencing for persons accused of offences in the third category.

Commune Jurisdictions:

- The carrying out of trials and sentencing for persons accused of offences in the second category;
- Forwarding case files to the Office of the Public Prosecutor for persons accused of offences in the first category;
- Forwarding cases of appeal to the prefecture level.

Prefecture Jurisdictions:

- Receiving appeals from the commune level;
- The controlling and coordinating of commune jurisdiction activities.

Conclusions

This short essay has attempted to identify the practical reasons which have created a need to re-establish the Gacaca jurisdictions in Rwanda. It also briefly mentioned some of the legal instruments and modifications which have given it a legal, as well as a constitutional, character. It has given a summary of the factors around which the unity of Rwandans was based prior to colonial penetration, and has also attempted to demonstrate that it was on the basis of this unity, that the traditional Gacaca system was developed. It has looked at the different categories of offences, as defined under the organic law on genocide, and has shown how the different levels of Gacaca jurisdictions will handle them.

As is the case with institutions of this nature, the Gacaca system is still evolving according to the practical needs and limitations facing the country. It is bound to have its difficulties. Resource constraints, coupled with the enormous challenge of training a national cadre capable of manning these jurisdictions at a national level, are, at best, unprecedented in Africa's constitutional and judicial history. This momentous national task exists against the background of a judicial strain, in which more than 135,000 people have still not been tried. In addition, hundreds - if not thousands - of others have not yet been brought to justice.

To add to these challenges, Rwanda also has to respond to other demands, including those of education, poverty eradication and HIV/Aids, as well as the social disruptions which have been caused by years of negative policies.

From the outset, we have argued that the Gacaca system is one of the instruments which Rwanda has chosen to use in order to respond to immediate capacity needs, as well as the more long-term psychosocial need for reconciliation and unity. It would reinforce the classical justice system; it would not replace it. Gacaca is a system rooted in Rwanda's traditions. It takes advantage of Rwandan culture and it capitalises on the unity of Rwandans. It also gives the Rwandan people the opportunity to take part in shaping their country. Indeed, the Gacaca system is restorative, in the sense that it seeks to facilitate a process of community reintegration - something which is seen as key to addressing the fundamental causes of the genocide. While remaining aware of the merits and demerits, and pros and cons, this unique judicial experiment certainly deserves to be mentioned as an important contribution to the African Renaissance.

Endnote

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1 Report on Reflection Meetings organised by the Government of Rwanda, from May 1998 to March.

BOOK REVIEW

BY MOTSE RAMATHE

For the sake of Peace: Seven Paths to Global Harmony, a Buddhist Perspective

By Daisaku Ikeda, Published by - Middleway, 2001. Santa Monica

As a Buddhist leader, educator and philosopher, Daisaku Ikeda has written extensively on the subject of world peace. In his latest book, For the sake of Peace, Daisaku Ikeda confirms the individual's responsibility in bringing peace to the world. He argues that world peace can be achieved through self-control, dialogue and the creation of a culture of peace.

The author claims that the twentieth century brought shame to the human race. Millions died due to unnecessary wars, the global environment has been grievously damaged, and the gap between the rich and the poor seems to be ever widening. In the first chapter, the author cites the following as the main reasons for conflict in the world: isolationism; greed; poverty; environmental irresponsibility; nuclear negativity; and the illusion of efficiency. In chapter two, the author highlights the responsibility that we, as humans, have in normalising the situation in order to bring about world peace. This, he believes, can be done by being renewed internally. Such a renewal means being able to transcend the differences between good and evil, love and hate, and so on. However, the big question is what will bring about such a change in character?

In chapter three, the author maintains that the seed for peace does not lie in ideas, but in human understanding and empathy between ordinary people - this can only be achieved through constructive dialogue. It is only in an open space created by dialogue - whether conducted with our neighbours or between states - that attitudes are changed. Hate changes to love; ugliness changes to beauty; and stereotypes and prejudice change to tolerance and acceptance. Chapter four highlights the impact that certain people (particularly those who are devoted to dialogue and self-mastery) have on the values underlying current systems of politics, economics, education, religion and culture. This automatically changes the way people view competition. The whole notion of ëdoing to others as you would have them do unto you' is established.

Chapter five provides some useful insights on how transformation in the new millennium could be achieved. Key to this is the promotion of a culture of peace, which would focus on balancing and redressing the arrogant imperialist assumption that has insinuated itself into the Western cultural outlook. It denies any attempt to judge one culture by the values of another, or rank them according to some hierarchical scheme. Chapter six stresses the fact that there is little the UN could do in terms of building peace within the world. Establishing world peace depends on how eager and willing we are as individuals, as members of civil society and as members of religious organisations (and so on) to engage and listen to those who are different from us. In chapter seven, the author proposes the concept of a new cosmology to help solve some of the world's challenges (poverty, population growth and environmental destruction). Such a cosmology would destroy our false inorganic connections - especially those related to money - and re-establish our organic connection with the cosmos and the sun, as well as earth's connection with mankind, nations and basic family units.

In the last chapter, the author looks at how much our basic right to life has been threatened by the existence of nuclear weapons (and other armaments), and most importantly, by the unwillingness of nations to stop the production of such weapons. He goes on to argue that the exchange of ideas between top leaders is the best way to eliminate the deep-rooted distrust that exists among nations. In the long-term, removing this distrust could indirectly lead to disarmament, thereby serving as a key to achieving global peace.

Dialogue between conflicting parties is starting to bear more positive results, particularly when one studies the conflicts where this technique has been used. We are more optimistic than ever before about the outcome of both the DRC and Burundi conflicts. This is because people have chosen to sit down and educate each other about the effects that such conflicts have on different nations. Any person who has wondered whether he or she could make a difference, should read this book - it is inspiring