



Aceh's Struggle for Independence: Considering the Role of Islam in a Separatist

Robert Shaw, MALD 2008

INTRODUCTION

Tension and conflict marred the relationship between the Indonesian government in Jakarta and Indonesia's northernmost province of Aceh for most of the last half century. At the core of the center-periphery rift between Jakarta and Aceh was the Acehnese desire for political autonomy, although that desire has enjoyed varying degrees of support in Aceh since the region was incorporated into an independent Indonesian state in 1953.¹ Shortly after the formation of the Indonesian state, Acehnese joined with the national resistance movement, Darul Islam, to launch the first post-colonial armed struggle in Aceh. Two decades later, the issue of political autonomy still had not been resolved. The Free Aceh Movement (Gerakan Aceh Merdeka; GAM) formed in response and maintained a 29-year armed struggle against the government of Indonesia to a political system in Aceh free from the authority of the Indonesian state.

The character of the Darul Islam movement and the Free Aceh movement differ in a critical respect. Darul Islam primarily aimed to establish an Islamic Government over all of Indonesia; political autonomy for Aceh was only a secondary aim. The *ulama*, religious clerics, led the struggles reflecting the centrality of religion to the movement's ideology. In contrast, the Free Aceh

movement (GAM) was not associated with the *ulama* and, although the Islamic character of GAM is inseparable from its identity, its objectives maintained a clear political focus.

Part I of this article will examine the major aspects of Acehnese identity. Part II will examine the changing role of the *ulama* in Aceh after Indonesia gained its independence. It will argue that marginalization of the *ulama* by the Suharto government and repression against the Acehnese helped create a movement with a distinct political character whose religious attributes were ambiguous at best. Part III will describe the evolution of The Free Aceh Movement and the conditions that finally led to successful peace talks between the Indonesian government and the Free Aceh Movement in 2005. Part IV will consider the erroneous portrayal of GAM in the Western media as an Islamic movement and argue that both rhetoric from the Indonesian government and shallow analysis led to this portrayal. This article argues that Islam forms a critical subcurrent in the ideology of GAM because it is a reflection of the Acehnese culture and identity, but not because the group maintains Islamic political aspirations.

PART I: AN ANALYSIS OF ACEHNESE IDENTITY

Aceh's location on the island of Sumatra is of strategic importance, both economically and militarily. The island lies at the mouth of the Malacca Strait, which is the busiest international sea-lane in the world today.² While it would be an exaggeration to argue Aceh holds the same strategic character as the Suez or Panama Canal, its geography is of strategic importance to other states in the international system. Moreover, vast natural gas and oil reserves were discovered in Aceh in the last 30 years, eclipsing the importance of Aceh's agricultural and timber industries. The Aceh province is a strategic asset to the Indonesian government in Jakarta.

The Indonesian national census estimated Aceh's population to be 1.7 million people in 2000. Matthew Davies' compilation of several more recent surveys suggests that the population is likely closer to 4.5 million people.³ Far from a homogeneous society, Aceh is home to several distinct ethnic groups. Although the largest group is said to represent 75 to 90 percent of the population, it is subdivided by seven distinct dialects and maintains no identifiable racial commonality.⁴ Despite the many differences separating the people of Aceh, they have developed a strong regional and ethnic character.

The Acehnese identity is derived from a combination of historical pride associated with the Acehnese Sultanate, a collective memory of struggle against the Dutch colonizers, and a common and regionally specific form of Islam. The shared Acehnese sense of a unique and glorious past has several roots. The Sultanate of Aceh was the first Muslim Kingdom established in Southeast Asia. Arab and Indian traders, through outposts established from the eleventh century, brought Islam and political organization to a long line of Aceh Kingdoms. By the sixteenth and seventeenth centuries, the Acehnese Sultanate had expanded territorially, developed an extensive trade network, and developed into the center of a flourishing Islamic culture containing rich scholarly debates.⁵

As The Netherlands and other European colonial powers expanded their global colonial

assets in the region, they gradually conquered the area surrounding the Aceh Kingdom. By the nineteenth century, Aceh was the sole remaining independent entity, although it had long ago lost its status as a regional power.⁶ The Acehnese were eventually defeated militarily and subjugated by the Dutch, but sporadic guerilla attacks continued and the Acehnese remained extremely independent in their behavior.⁷ In a 1948 speech, the first president of Indonesia acknowledged the pivotal role Aceh played in Indonesia's independence movement, when he stated, "The people of Aceh carried this struggle to the very end; they attacked, staved off and held back Dutch imperialism from entering the province of Aceh."⁸

Important as the shared history of glory and resistance is to the notion of the Acehnese identity, Islam is truly the common denominator of unification in the region. James Siegel argues in *The Rope of God* that only Islam was able to supersede village-level identification and loyalty among the Acehnese. Siegel writes that, in the nineteenth century, "the basis of effective ties between people from different sectors of society was not common dependence and mutual need for each other as villager, lord, sultan, and *uleebelang*⁹, but common identity as Muslims, which superseded all other distinctions."¹⁰ Jacqueline Siapno, in her extensive ethnographic study of Aceh, argues that Acehnese Islam is perceived by those in the region as distinctive from the practice of Islam in the rest of Indonesia. Because Islam first arrived in Aceh, the Acehnese see their territory as a center for religious thought and devotion in relation to the rest of Indonesia.¹¹

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When Indonesian nationalism emerged as a force in the twentieth century, it was not seen as incompatible with Aceh's identity. The Acehese lent significant support, both financially and militarily, for the war of independence against the Dutch colonialists. There were no demands among Aceh's political and religious leadership for a separate Acehese state.¹² Edward Aspinall analyzes Acehese society and the Indonesian state following independence and concludes there was an inverse relationship between the economic and administrative integration of Aceh into the national state and the level of popular support for the integration.¹³

The weakness of the Indonesian government in its early years permitted Aceh to become an autonomous province of Indonesia with Daud Beureueh, a prominent *ulama*, as its governor.¹⁴ As Aceh's regional power was eroded and it was incorporated into the Indonesian state, discontent grew, ultimately resulting in armed conflict. Aceh joined the Darul Islam movement under the leadership of Daud Beureueh and Aceh's *ulama*. The changing power structure in Aceh and the *ulama*'s rise as the principle leaders in Aceh's society helps to explain the character of the 1950s armed conflict.

PART II: THE EVOLVING ROLE OF THE *ULAMA* IN ACEH

When Aceh joined the Darul Islam rebellion, the *ulama* had long established supremacy as the leaders of Aceh. This movement began in West Java in an attempt to establish a federal Islamic state of Indonesia.¹⁵ The early resistance to colonization in the 1800s was marked by cooperation between the *uleebalang* (the regional chiefs) and the *ulama*, both serving as legitimate leaders of society. When the *uleebalang* were defeated, the *ulama* continued the resistance against the Dutch. John Martinkus argues that, over the 40-year period of colonization, the Dutch separated the two leaderships by employing

uleebalang as regional administrators and marginalizing the *ulama*.¹⁶ Radicalization of the *ulama* began as leaders such as Cik Di Tiro appealed to the religious legitimacy of the resistance to the point that Martinkus and other scholars have called it a holy war.¹⁷ The Dutch were expelled shortly before the Japanese gained control of Aceh in WWII, from 1942 to 1945. Under Japanese occupation the *ulama* continued to direct a guerrilla struggle; at the same time, the Japanese, in an attempt to gain the *ulama*'s support, created religious courts and recognized Islamic law on certain issues, which also worked to strengthen the *ulama*'s formal authority.¹⁸

Following the Japanese withdrawal the *ulama* established their supremacy as the principle leaders of Aceh. From 1947 to 1948 the Dutch returned to reestablish a colonial regime, and a battle for independence ensued between the Dutch and the newly established Republic of Indonesia. Recognizing the transformation in power structure and the strength of

the *ulama*, the Republic of Indonesia named Daud Beureueh as governor.¹⁹ During this period the *ulama* removed the *uleebalang* as players in Aceh's society by killing their most prominent leaders and seizing *uleebalang* property, conducted through attacks by the All Aceh Religious Scholars Association (PUSA).²⁰ The *uleebalang* lost their legitimacy as they were viewed as a left over institution from the colonial period, a group no longer representing the general interest. This loss of legitimacy allowed the *ulama* to become the supreme leaders in Aceh.

During the revolution the *ulama* and Acehese were able to think in terms of Acehese, Islamic and Indonesian with no conflict between the three. However, shortly after Indonesia gained independence, the interests of the Acehese *ulama* began to diverge from the central government in Jakarta.²¹ The *ulama* resented the rejection of the Islamic State for a secular government. In consolidating their control over the outer

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provinces, the Republic removed Aceh's special independence status, sent non-Acehnese civil servants to the region and refused to recognize the Islamic courts run by the *ulama*.²² Rising tensions in Aceh reached an explosive point in 1953 during an election year, which saw an ideological battle between defenders of secularism and advocates of an Islamic State.²³ In 1953 Daud Beureueh began a rebellion in Aceh and declared

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The rebellion ended in 1959 after the central government promised to grant special autonomy status to Aceh, granting significant concessions. Aceh was granted autonomy in the fields of religion, customary law and education.²⁴ The agreements allowed for the reestablishment of Islamic courts and permitted the *ulama* to combine the state educational system with the *madrassas* (religious

schools), increasing the role of Islam in education. The concessions show the Darul Islam struggle was as much about political autonomy for Aceh as it was about the desire to increase the role of religion and the power of the *ulama*. The central focus Islam played in this struggle is markedly different from the purely political focus of the later Free Aceh Movement. As the proceeding paragraphs will describe, several factors precipitated the shift away from religion between the earlier Darul Islam and later Free Aceh Movement.

The change in focus between the Darul Islam and Free Aceh movements owed much to the political change in Jakarta with the displacement of President Sukarno. In 1965, the Indonesian government was overthrown and a staunch anti-communist regime, dominated by the military and led by Mohammad Suharto, took power. This regime effectively revoked Aceh's special region status, leading to a new conflict based on the

tension between central government control and Aceh's desire for autonomy.²⁵

The Suharto regime, referred to as The New Order, marginalized the Acehnese *ulama* and sponsored a new group of government elites to fill the leadership void in Aceh. These mechanisms were used as part of a larger scheme to bring all power groups under the control of the central government—a policy that led to the loss of Aceh's regional autonomy and the centralization of government and political power.²⁶ During this period the *ulama* saw a significant decrease in their power as the government removed the group from political positions, prohibited them from promoting Islam in the political realm, and restricted their control over the Islamic educational system. By manipulating elections, and through intimidation and incentives, the government replaced the *ulama* with a new group of technocratic elites.²⁷ Although many technocrats descended from *ulama* families, the government supported their rise to leadership because they possessed overseas educational experience and desired to support the government's modernization plans.²⁸

In an attempt to counter autonomous Islamic organizations and political movements that could cause instability and threaten the state, The New Order established a nation-wide council of *ulama*, bringing the group under the regime's institutional umbrella.²⁹ Some *ulama* in Aceh sought to take advantage of the new opportunities for access to the government patronage network and joined the government sponsored Indonesian Council of Ulama (MUI) when it was finally established in 1975. The group became an officially sanctioned religious authority passing *fatwas* that tended to support government policy measures, leading independent *ulama* and intellectuals to accusations that the MUI was nothing more than a government mouthpiece.³⁰

Thus, under The New Order Regime the leadership role of the *ulama* in Aceh suffered in several ways. The *ulama*, as a whole, was denied political access. The establishment of the MUI fractured the group, by dividing the independent *ulama* from those who participated in the government sanctioned organization. Finally, under The New Order Regime, the *ulama* suffered

from a lack of leadership. No leader emerged to the prominence of the sort achieved by Daud Beureueh in the 1950s, a fact that likely contributed to the divisions that emerged as some joined the MUI and others remained independent. Daud Beureueh himself switched his allegiance to the government party of technocrats in an election in the 1980s, indicating the extent to which the *ulama* had lost their position as an independent, cohesive and powerful social and political group.³¹

In the absence of The New Order, the Acehnese would have looked to the *ulama* for leadership during the 1980s, when they once again found themselves alienated by the central government. However, by then the option was no longer available to them because the *ulama* were no longer capable of countering state power as a cohesive unit and were seen simply as agents of a foreign power.³² Lacking other channels for political expression, the Acehnese were presented with a new means of addressing their grievances. The Free Aceh Movement began to command significant support in the 1980s, when regional grievances led to widespread guerilla warfare.³³ In sidelining the *ulama* while continuing to promote a highly centralized political structure that did little for the economic improvement of the majority of Acehnese, The New Order created an opportunity for a politically-based movement to command widespread Acehnese support for political independence from Jakarta.

PART III: THE FREE ACEH MOVEMENT (GAM)

In 1976 Hasan Di Tiro formed GAM, a separatist organization formally called the Aceh-Sumatra National Liberation Front (ASNLF). Throughout its 29-year struggle, three distinct phases of operation can be discerned. GAM incorporated many different elements of Acehnese society and became an organization through which all Acehnese grievances could be channeled. Originally, GAM attracted little support from the Acehnese; however, Acehnese involvement in the movement increased from each phase of operations to the next as the Acehnese identity became increasingly alienated from Indonesian Society. The details of GAM's plan for Acehnese independence also evolved

over this period, most notably when it shifted its demands from a return to the Sultanate to support for a democratic election to determine Aceh's fate. Nonetheless, the overarching goal driving GAM's struggle remained constant: independence from the Indonesian government in Jakarta.

The first phase of GAM's operation lasted from 1976 to 1979. Although GAM attracted little support during this period, the period created the foundation for what would be a very powerful secessionist movement. In GAM's 1976 *Declaration of Independence of Aceh* the organization lays out the central aim of the struggle:

We the people of Aceh, Sumatra... do hereby declare ourselves free and independent from all political control of the foreign regime of Jakarta and the alien people of the island of Java... From now on, we intend to be the masters in our own house: the only way life is worth living; to make our own laws: as we see fit; to become the guarantor of our own freedom and independence: for which we are capable; to become equal with all the peoples of the world: as our forefathers had always been. In short, to become sovereign in our one fatherland!³⁴

Significantly, the declaration maintains a political and legal rather than a religious or theological focus.

The deliberate effort to focus the declaration on Aceh's legal right to independence is explained by Hasan Di Tiro's international experience. Di Tiro is a descendant of a prominent *ulama* and the grandson of Teuk Di Tiro who received the approval of the last sultanate of Aceh to succeed him. (Despite having received this approval, Di Tiro's surrender and exile by the Dutch prevented him from succeeding the last sultanate.) During the fight for independence, Di Tiro was a supporter of the Indonesian Nation. While studying in the United States, he was working part time at the United Nations mission until he lost favor with the Indonesian government by publicly supporting the Darul Islam rebellion in 1953. After Indonesia withdrew his diplomatic passport, Di Tiro obtained U.S. citizenship and

proceeded to establish a Darul Islam mission at the UN.³⁵ Di Tiro brought his UN experience to bear in 1976 when he authored Aceh's declaration of independence.

Di Tiro attempted to earn international legitimacy and garner support for The Free Aceh Movement by characterizing the struggle as a fight for self-determination. He argued that Indonesia's presence in Aceh was illegal and artificial product of Dutch colonization.³⁶ In the wake of WWII, the right to self-determination among the formerly colonized regions of the world began to work its way into the international system as a legal principle. The United Nations established the Special Political and Decolonization Committee. Article 1(2) of the UN Charter embodies the principle of self-determination, as do two International Covenants on Human Rights. Di Tiro recognized the opportunity to gain international support and to this end, Di Tiro ignored the Acehese *ulama's* early support to deemphasize any focus on separatist issues.

To initiate the independence movement, Di Tiro returned to Aceh and formed a small group of loyal followers. His tightly-knit, ideologically-driven organization of 70 men consisted of mostly peasants led by a well-educated elite.³⁷ The small number of followers was indicative of the limited support for GAM's goals in these early years of its struggle. For one, the absence of an Islamic agenda kept the *ulama* from supporting the movement and led some to denounce it.³⁸ Although marginalized and divided, the *ulama* would still have served as an effective vehicle for spreading a message and rallying support, particularly in the first year of GAM's conflict, prior to the formation of the MUI.

GAM also lacked an effective rallying cry in its first phase. By the mid-1970s, Aceh's rich natural resources had only just been discovered; it would take time before the feeling that outsiders were exploiting their region developed among the Acehese. There was also no clear vision for a

post-independence Aceh.³⁹ GAM originally called for a return to the Acehese Sultanate, with Di Tiro as its heir apparent. Although not necessarily incompatible with democratic principles—the Sultanate would likely have established itself as an independent entity with authority over customary law, while leaving the administrative duties to an elected government—these details were far from clear.⁴⁰ Finally, the movement failed to secure any major victories in its early years. The Indonesian military suppressed the GAM with relative ease; most of their fighters were killed and Di Tiro left Indonesia for exile in Sweden.⁴¹

In 1989, GAM resumed its military operations in Aceh with an improved organizational structure and a genuine support base. The increased organizational strength partly resulted from foreign assistance from Libya, where hundreds of GAM guerrillas were trained beginning in 1986.⁴² Increased popular support derived from widespread economic

frustrations. By the 1980s Aceh supplied 30 percent of Indonesia's oil and gas exports, which served as the main source of the Jakarta government's revenues. However, budgeted spending for Aceh both the provincial and national governments represented only a fraction of the total wealth generated from the province.⁴³ As development and economic progress failed to reach most sectors in Aceh, the Acehese sense of alienation from Indonesia increased and the goal of an independent Aceh gained popularity. Widespread violence took hold from 1989 but subsided in 1992 as the Indonesian Army defeated GAM for a second time. However, the military's tactics and the harsh period of repression that followed had the direct effect of increasing Aceh's alienation from Indonesia and desire for independence.

In the ten years from 1989 to 1998 the Indonesian military committed gross human rights violations against the Acehese population as it sought to eliminate the GAM using increasingly repressive measures. Amnesty International, Human Rights Watch, and other

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international NGOs documented the violence during this period. Two thousand Acehnese were killed, 3,429 tortured, and 500-1,000 disappeared; in addition, 625 cases of rape and at least 12 mass graves were investigated.⁴⁴ With the change in the government in Jakarta in 1998, the Acehnese demanded justice for the atrocities committed.⁴⁵ When GAM resumed its military operations in its third and final struggle against the Indonesian

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military, its list of grievances still focused on the end goal of independence for Aceh, but participation and support was now fueled by anger at the national armed forces, a sense of shared suffering and feelings of fear, distrust and hatred toward the Indonesian state.

As a new generation of GAM fighters replaced those that had fought in the Darul Islam rebellion, GAM's political agenda evolved. The new generation saw Islam as integral to Acehnese culture and identity, but

not politics.⁴⁶ In 2002, GAM officially changed its vision for Aceh's government post-independence from a return to the Sultanate in favor of a democratic process.⁴⁷

GAM's leadership was also acutely aware of developments in the East Timorese struggle for independence, a fact that contributed to its decision to modify its goals for post-independence. East Timor began a 24-year armed struggle for secession in 1975 when Indonesia invaded and annexed from Portugal it as a province. When Suharto fell from power in 1999, the incoming President, B.J. Habibie, broke with previous policy and offered East Timor a choice between independence and autonomy within Indonesia. The referendum was held in August 1999 and the East Timorese overwhelmingly voted for independence. Anti-independence militia groups—supported by the military and

police—committed extreme violence and gross human rights violations in an attempt to reverse the process. Overwhelming international support followed the referendum in defense of a democratic process and will of the people.⁴⁸ The support was critical in implementing the referendum. The leadership of GAM, mindful of East Timor's experience, began to clearly emphasize democratic aspirations for Aceh.

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The role of Islam was in fact the most ambiguous of the shared foundations of GAM's struggle. The original Sultanate of Aceh allowed the practice of *shari'a* Law as a part of the official legal system, and the issue of whether it would be incorporated into a new sultanate was never clarified. Unlike the Darul Islam struggle, the relation between Islam and the state was not a focus of the organization. In addition to the absence of Islam in the international rhetoric of GAM, Eric Morris states that pamphlets issued in Aceh in the 1970s "made a straightforward ethnic appeal to rise up against Javanese colonialism. Attention was focused on Aceh's natural wealth." However, "Islamic appeals were noticeable by their absence."⁵¹ Rachel Schiller stated that her interviews with the GAM leadership revealed that, in the 1980s, as GAM searched for outside training and support, Iran extended an offer, conditioned on GAM assuming an Islamic character.⁵² That GAM accepted support from Libya instead, allowing the organization to maintain a political focus and simultaneously build organizational strength. Despite the ambiguity, however, GAM, as a popular movement in Aceh, had to reflect the religion's integration in every aspect of Acehnese life. Acts such as the use of the mosque network in 1999 to spread GAM's independence message were essential to gain the broadest possible support for the movement; GAM's goals would have been fatally undermined if it had declared itself a secular organization.⁵³

GAM's position on *sharia* law was clarified in the same year that it came out in clear support of democracy, 2002. An official spokesman noted, "We encourage people to be good Muslims, but we don't think it's something for the state to decide."⁵⁴ It reiterated this stance in 2006: "If those elected by the people would be an Islamic party, and they want to create an Islamic government according to how they see it, then by all means, why not?"⁵⁵ Prior to this, GAM had strongly objected to the imposition of *shari'a* Law by the government of Indonesia.⁵⁶ In not taking a direct stand on the issue of *shari'a*, and the extent to which Islam drives GAM's struggle, the GAM leadership likely avoided internal divisions and maintained a unified focus of opposition to the Indonesian military and government.

It is important to see that any role religion may have played in the early demands for a return to the Acehnesse Sultanate has been completely eclipsed by the desire for self-rule due to economic inequality and human rights atrocities. GAM is not a militant Islamic organization and to label it as such ignores the dominant role that the Acehnesse grievances, developed in the 1980s and 1990s, played in defining their reasons for armed struggle against the government of Indonesia.

The Peace Initiatives and GAM's Political Orientation

Critics may argue that GAM's articulated grievances could mask a hidden agenda focused on installing conservative Islamic rule, in an attempt to garner important international support for their cause. However, when GAM entered into the negotiations at various times during the struggle, including the final peace settlement in August 2005, their objectives remained consistent with the grievances they had articulated during their armed conflict and were non-religious in nature. The final effort establishing peace in Aceh reveals the most about the concessions GAM sought and the grievances that drove the struggle.

The first dialogue between GAM and the Indonesian government began during the presidency of Abdurrahman Wahid. At the beginning of his term, Wahid stated publicly, "I support a referendum as their right. If we do it in

East Timor, why not in Aceh?"⁵⁷ Wahid proceeded with negotiations, although large parts of Aceh were under GAM's control and violence was escalating because of a military crackdown.

Official talks began in 2000, facilitated by a Swiss NGO. Despite a deteriorating situation in Aceh the negotiators agreed to a break in the violence aimed at reaching a

political solution to the conflict. Rizal Sukma argues that although some of the Indonesian military may have supported the cease-fire, the decision was clearly opposed by many officers; as a result, the agreement had little effect on the violence in Aceh.⁵⁸

Prior to the 2000 peace talks, Jakarta passed a series of special autonomy laws, in an attempt to bring the conflict to a halt and erode support for secessionist movements in other provinces. However, as the reforms were made without consultation with the GAM leadership and did not go far enough to address GAM's core grievances, they had little effect in Aceh.⁵⁹ As a result, the 2000 peace talks ultimately did not realize expectations. In a shift from the previous administration's conciliatory approach, upon assuming the presidency in 2001, Megawati Sukarnoputri declared there would be no future referendums in Aceh or other provinces. Nonetheless, in February 2002, a new round of talks began. Sukma calls this a "calculated act meant to suggest a military solution was indeed the last resort" and argues that the starting demands of the Indonesian government were so unpalatable to GAM that no peace deal had a chance.⁶⁰ After the failure of the 2002 peace talks, the national government declared martial law in Aceh and increased military operations forcing GAM on the defensive.

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Several factors allowed for a new round of peace talks. The impact of military operations in Aceh left GAM weakened and willing to explore an exit from the protracted conflict, the tsunami in January 2005 changed the dynamic in Aceh and left most parties with a desire to eliminate future suffering in the region, and most importantly the political will of a new administration allowed for meaningful discussions between GAM and the Indonesian government. After Jakarta declared martial law in Aceh, GAM's main concern became the protection of its military forces and top leadership, moving away from a concentration on offensive attacks on military and police posts.⁶¹ The Government reached out to GAM's field commanders prior to the 2005 tsunami and preparations for talks were making progress, arguably because of the GAM's weakened position.⁶²

Although the destruction and suffering caused by the tsunami added an additional sense of urgency and will to reach a solution, it was nonetheless not the sole impetus for peace as common knowledge would have it. Rather, the most important turn of events was the election of Susilo Yudhoyono and Yusif Kalla as President and Vice President. During their campaign, Yudhoyono and Kalla made peace in Aceh an important issue, stressing their desire to work toward a lasting solution.⁶³ The vice president had a long-standing interest in ending the conflict and had been a participant in the East Timorese negotiations. The President was a former general and commanded the critical support of the military, which provided an opportunity for a political solution to be accepted by the forces on the ground.⁶⁴ Upon entering office, Yudhoyono and Kalla brought with them the political will to end the conflict.

The success of the negotiations ultimately depended on good facilitation, will to negotiate and some creative solutions, preventing past

mistakes. The Memorandum of Understanding (MoU) was signed in August 2005 in Helsinki, and represented the first peace agreement reached during the three-decade struggle. During the negotiation, the Finnish President, who served as mediator, employed innovative techniques such as laying down a ground rule that anything could be discussed and negotiated, but that nothing was agreed until everything was agreed.⁶⁵ This proved an important tool, as it gave the parties the ability to open a dialogue and come to an understanding over critical issues without constantly worrying about the end result. Other important factors contributed to the success in implementing the agreement, such as the introduction of European observers immediately following the implementation of the MoU. It was also rumored

that the Indonesian government made significant transfer payments to the military in order to gain their support for the peace process.⁶⁶

The final solution, contained in the Memorandum of Understanding, reveals much about the concessions GAM sought and the grievances that drove the struggle. The MoU called for a more equitable distribution of Aceh's resources; greater autonomy in Aceh relating to the rule of law; amnesty and reintegration of GAM soldiers accompanied by disarmament; a human rights tribunal mechanisms for monitoring the peace; and a

process for dispute settlement. The section of the agreement addressing Aceh's governing structure provides significant autonomy for the province, including required consultation with the Acehese legislature before the Indonesian government may enter into treaties with other governments that impact Aceh. The Indonesian government, however, maintains some prerogatives, most importantly in the fields of justice and freedom of religion. The concessions that were accepted by GAM were political in nature and not religious and Islam is not

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mentioned in the agreement. GAM's priorities during negotiations were thus in line with their articulated grievances and the political focus of the organization.⁶⁷

PART IV: MISCHARACTERIZATION OF GAM IN THE INTERNATIONAL MEDIA

A survey of journalistic accounts from 1998 to 2000 indicates that some articles covering events in Aceh created the perception that religion played a much larger role in GAM's fight for independence than it actually did. Some media accounts of the Aceh movement characterized the group as militant Islamic. The flawed characterizations reflected the lack of media access to Aceh; the variety of opinion and ambiguity within GAM's organization; the Indonesian government's efforts to emphasize the Islamic character of Aceh; and finally, a shallow analysis of the Aceh movement.

As hostilities resumed in Aceh in 1998, in the beginning of GAM's third phase of violent resistance, articles from around the world emphasized the Islamic character of the organization. An article from the Associated Press appearing in *The Boston Globe* on December 31, 1998, stated, "Resentment against the military runs deep in Aceh, where the army has been accused of widespread atrocities against civilians in its campaign against *Islamic separatists*."⁶⁸ An Associated Press article from the same period also labeled the group "*Islamic separatist rebels*."⁶⁹ In what proved to be a more typical characterization of GAM during the period, the *Financial Times*, while writing about foreign support for the territorial integrity of Indonesia, termed GAM's guerillas as "*Aceh's Islamic Militants*."⁷⁰ These articles portray GAM in a way that does not reflect the grievances or objectives of the organization and thus represent a shallow analysis of the conflict.

The Indonesian government sought to emphasize GAM's Islamic elements and distract from other grievances, also contributing to the distortion in the western press. In 2002, Indonesia implemented *shari'a* law. Jakarta portrayed the measure as a solution for ending the conflict in Aceh, though it was immediately rejected by GAM.⁷¹ The move was likely an attempt to

distract international attention from human rights abuses in Aceh and increase fears of the rise of Islamic fundamentalism in the province.⁷² The government may have further attempted to discredit GAM through three convictions in the Indonesian Christmas Eve Bombings in 2000. Jemaah Islamiyah (JI), a terrorist organization that holds Islam at the center of its ideology, claimed responsibility for bombings that targeted Christian churches across Indonesia in 2000. Nonetheless, three members of GAM were prosecuted for operational support. The International Crisis group wrote, "It is hard to avoid the suspicion that someone in the armed forces... saw the possibility that it could be blamed on GAM, despite the illogic of GAM's taking part in an attack on Churches."⁷³ GAM was blamed in August 2000 for a grenade attack on the Malaysian embassy and a bombing of the Jakarta Stock Exchange. The truth behind these accusations remains unclear; again, there may have been an attempt by the military to discredit GAM.

Considering the military's vested interest in maintaining the Aceh conflict, it is plausible the military sought to discredit GAM. Beyond a desire to fulfill their role as defenders of the state, there was an economic component that could have led to a desire to continue operations in Aceh. The central government provides only 20 to 25 percent of the operational costs of the military, making it extremely dependent on other sources of revenue—much of which is generated in the Aceh region. These sources include corruption, arms sales by the military, and exploitation of Aceh's logging industry.⁷⁴ The military thus had a strong interest in maintaining its presence in Aceh; peace initiatives proceeded only with the election of a former General who commanded enough control over the military establishment.

A survey of journalistic accounts from 1998 to 2000 indicates that some articles covering events in Aceh created the perception that religion played a much larger role in GAM's fight for independence than it actually did.

CONCLUSION

The solution to the Aceh conflict teaches the importance of leaders and political will, but another important lesson should be drawn from the several decades of struggle. There is a need for careful nuanced analysis in order to establish the root causes of the violence. There may have very well been a different outcome in Aceh had the international press as a whole characterized the group as a militant Islamic organization.

Islam formed a subcurrent in the ideology of the Free Aceh Movement as a reflection of Acehnese identity and character. But in the three phases of GAM's struggle, the organization remained committed to the political goal of independence for Aceh and was not a religiously

focused organization. The motivations behind the conflict evolved over three decades to include at the center a desire of justice for the human rights violations committed by the army and a demand for access to the wealth generated from Aceh's natural resources. The peace settlement reached in August 2005 is holding and was recently implemented by the Indonesian legislature.

The views and opinions expressed in articles are strictly the author's own, and do not necessarily represent those of al Nakhlah, its Advisory and Editorial Boards, or the Program for Southwest Asia and Islamic Civilization (SWAIC) at The Fletcher School.

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Like Father, Like Son – Personalized Succession: Bashar Asad and the New Challenges to the Ba’thist State

David Ethan Corbin, MALD 2007

Historically, Syria has had a unique position in the Arab world. Today is no different. Though overwhelmingly Sunni Muslim, Syria is run by a nominally Shi’a Islam, Alawi minority.¹ Its population is a virtual ethnic and religious mosaic, comprised of Arabs, Alawis, Druze, Kurds and Armenians each belonging to various Muslim and Christian denominations and speaks Arabic, Kurdish, Armenian, Circassian and Aramaic. To complicate matters further, Syria’s main ally in the region is Iran—the decidedly non-Arab, Shi’a Persian state and, in the aftermath of the U.S. invasion in Iraq, burgeoning regional hegemon. Damascus also plays host to many non-state armed groups that pose a persistent threat along Israel’s borders.

If there is a common denominator to the analysis about Syria today it is simply that there is no real consensus about the motivations behind the state’s actions.

To the southwest, the Golan Heights, the fertile high ground that Syria lost to Israel in the 1973 war, remain mostly in the hands of the

Israelis with only a small UN force governing a neutral, no-man’s land between the two sides around al-Quneitra. To the east, Syria is beset with the challenges of a continuous flow of refugees from the Iraq war—the total population residing in Syria hovering around 1.7 to 1.9 million. Political instability along Syria’s western border in Lebanon is often blamed on Syrian interference and is one of the prime drivers behind U.S. bilateral sanctions against the country.

With regards to the on-going Arab-Israeli conflict, Syria has made rather interesting news recently. The conspiracy of silence that continues to surround the incident of September 6, 2007—when Israeli jets penetrated Syrian airspace and destroyed what they claimed to have been a nascent nuclear facility in northern Syria—is baffling to say the least. Some believe that the Syrian government is loath to admit being caught red handed in an attempt to establish a nuclear program with North Korean assistance. Others believe that the action was merely an attempt to warn Iran about the potential hazards of its nuclear ambitions as well as its continued support of organizations operating along Israel’s borders such as Hezbollah.² The Arab League’s indifference, the scant recognition of the Bush Administration and the enigmatic reply by Syrian President Bashar al-Asad seem to envelope the event in still more mystery.

David Ethan Corbin is a former Editor-in-Chief of al-Nakhlah and currently pursuing a doctoral degree at the Fletcher School.

If there is a common denominator to the analysis about Syria today it is simply that there is no real consensus about the motivations behind the state's actions. Many scholars continue to write of the impending demise of the highly-centralized, diplomatically isolated and somewhat eccentric state. These predictions, however, fail to sufficiently incorporate the highly unpredictable nature of the region or the brutally rational decision making process of the Syrian state when faced with existential crises. Decades into its grip on power, the Alawi family that took control of the state in 1970 is showing no real signs of an imminent end to its rein. While it is true that the decade started off difficultly for Bashar Asad, the seemingly unique ebb and flow of fortune in Syria decidedly switched back in favor of not only regime survival but also long-term sustainability as Bahsar moves into his second term.

Though it has lived in virtual political isolation for decades, Syria remains a vital player in the Middle East. This is particularly true when it comes to any attempts to create a lasting settlement to the Arab-Israeli conflict. Though more indirect than direct, Syrian influence stretches across the region. It is evident in Lebanon's continuing instability, along Israel's borders, in the four corners of Iraq and in the rise of Iranian power in the region.

This article will attempt to briefly describe the history of Syrian state formation in the run up to the Asad family's seizure of power. It will then examine the means by which Hafez Asad was able to secure power in Syria as well as bolster the Syrian position vis-à-vis the rest of the Middle East. An inquiry into the mechanisms behind the power transfer from Hafez Asad to his son Bashar upon the death of Asad *père* in 2000 will provide a basis for understanding the position of the country today.

As Bashar moves into his eighth year in power, the continuing Asad legacy will be examined in light of two critical policy tracks: foreign and economic. As the principle drivers behind the present difficulties for Syria at the domestic, regional and global levels, there is no easy fix for the present Syrian quandary that has positioned it as an international pariah. The

legacy of ties to Teheran and support of non-state armed groups have led to diplomatic isolation and economic stasis as the western states and their regional allies have largely shunned Syria. Yet, it is precisely this state of affairs that reinforces Syrian-Iranian ties. Iran has become one of the few remaining release valves for an economy slow to meet the challenges of the 21st century and under the pressures of a looming fiscal collapse. Yet, despite this virtual catch-22, there are signs that Syria may be slowly working its way toward economic liberalization as well as moving back into a position of prominence in the regional diplomatic chess match.

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A MIDDLE EASTERN DILEMMA

One quality that Syria shares with many neighbors in the region is the longevity of its head of state. Like Egypt, Jordan, Saudi Arabia, Tunisia, and, until recently, Iraq, Syria has not really suffered from too much political instability at the top, but rather from too much stability.³ Part of the reason for this seemingly counterfactual statement can be found in the externally orchestrated delineation of nation states in the region in the early twentieth century.

To varying degrees, most of these states are very similar to one another in terms of historical trajectories. Key differences often depend more upon the luck the state had when France and Britain were dividing the former eastern and southern stretches of the Ottoman Empire in anticipation of its impending defeat at the hands of the Allied powers in World War 1. The often whimsical decisions that determined the distribution of natural resources among these new states meant that many would enter the international system as weak rentier states—creating a region of strategic *haves* and *have nots*. States lacking in the natural rent of oil or gas

found themselves scrambling for revenue in the form of strategic rent or the exportation of surplus labor to the oil rich, but population poor, Gulf States.

In the case of Syria, it was France that would ultimately determine the former Ottoman district's new boundaries. France overran the Arab attempts at drawing a larger entity upon what they called the *bilad al-sham*, the 'northern region' in Arabic but which encompassed the concept of *Sooriya al-Kubra* or Greater Syria, in modern day Lebanon, Israel, Jordan as well as parts of Iraq and Turkey. The resulting truncated state was an imperialist-imposed object of shame to the Arabs in Syria and an uncomfortable arena for the myriad ethnic and religious minorities that accounted for a significant part of the population.

Out of this uncomfortable arrangement came a weak state fraught with such disparate internal forces that it became a virtual regional power vacuum. For a decade and a half Syria witnessed coup after coup, and even surrendered its sovereignty to a pan-Arab state, the 1958-1961 aligning with Nasser's Egypt in the United Arab Republic (UAR), in the hopes of regaining its perceived greater glory as the Arab heartland. While the political scene remained fraught with instability, the brief Egyptian presence in the country left a lasting legacy of bureaucratic organization that was a much needed and noticeably missing element of Syrian state formation.

ASAD THE SAVIOR

Out of this chaotic period rose the Syria of Hafez al-Asad that soon defied the logic of Syria's brief history by becoming a regional bulwark of stability. Asad accomplished this seemingly impossible task by installing a populist authoritarian government system. He was able to manage the dueling supra- and sub-state pressures of Syria successfully—the desire to be a part of a larger pan-Arab state juxtaposed by the internal pressures fueled by the spectrum of

religious and ethnic groups composing the state—and create a relatively successful state where none previously existed.

When Hafez al-Asad seized power in Syria, he rode in at the head of a curious French legacy that made the military the instrument of the Syrian minorities. Hafez's timing was also fortunate, coming at the end of a long period of coups that left little opposition standing in his way. He was able to woo the Syrian population by presenting himself as the long yearned for Arab hero, ready to do battle with the imperial pawn in the

region, Israel. Once in power, Asad was able to split the majority Sunni Arab population and secure the loyalty of the rural Sunni population by enacting land reforms at the expense of the Sunni urban absentee landowners. Simultaneously, Asad's one-party socialist system was able to co-opt the loyalty of the new classes that it was creating with new, state-led industrialization projects. The industrial barons at the head of the fledgling industries were a new upper-class ready to take the place of the urban Sunni notable families that had dominated Syrian trade and politics for so long. They owed their new position to Asad and the Ba'th party. By taking advantage of *asabiya* or kinship, tradition as well as a well-crafted system of patrimonial rewards, Asad was able to secure command on the instruments of force in Syria and thereby shield himself from military coup.

Over time, however, populist authoritarian structures have shown themselves to become decidedly less populist and increasingly authoritarian. The delicate balancing act that the leader must play between charismatic hero and hard-line authority figure, while still accounting for the needs of several spheres of society beholden to the state, ultimately leads to a state that is highly personalized. The qualities of the individual leader rather than the governing system itself become central to the state's survival—leading to an inherent challenge upon succession. Syria was no exception.

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After five successive trips to the ballot box in the first three years of his reign, Asad never would call upon the people in any substantial way again to dictate either the direction or composition of the state. Asad would become obsessed with foreign policy. His constant regional machinations earned him titles such as the *Sphinx of Damascus*.⁴ But with his attention directed elsewhere, Asad was soon beset with two challenges to his populist authoritarian state structure, economic policy stasis and political Islam. Though not unique, these two pressures seem to be particular to the populist authoritarian state structure.

DISTRESSED AT HOME – THE DEATH OF ASAD PÈRE

In 2000 the Ba’thist authoritarian ruler Hafez Asad struggled to start his fourth decade in power over the Syrian state apparatus. Visibly slowed by cancer and congestive heart failure, one of the longest serving rulers in the Middle East faced more than the usual challenges in his characteristically ornery state.⁵ Much like the ailing ruler himself, the turn of the century did not augur well for Syria. The condition of the state was perhaps a cruel reminder of the way in which both ruler and country became so indistinguishable during Asad’s rule. Syria’s sclerotic economy limped along, crippled by the lack of genuine liberal reforms needed to meet the challenges of an increasingly global world.⁶ While Syria’s foreign policy, long the primary focus of Asad, fell into a dangerous vise-grip of potential strategic retreat and apathetic marginalization.

At home, both economically and socially, Syria had all the earmarks for crisis. Peaking in the previous decade, Syrian oil reserves, upon which the government depended for over half of its revenues, started to wane.⁷ The only other domestic industry that generated substantial income remained the agricultural sector, which proved too dependent on the fickle Middle Eastern climate.⁸ A highly-corrupt system of patrimonial rewards kept the Sunni bourgeoisie on a virtual dole. Beholden to the hard-line Alawi

leader, the group served as a palpable reminder that precious few held the strings to Syria’s economy. The ruling elite in the Alawi, Sunni and Druze circles enriched by pay-offs and placated by sinecures showed that regime loyalty was a heavy burden upon the state that produced only a tenuous loyalty at best. The incendiary passions of the conservative Islamic urban centers of Hama and Aleppo remained largely silent. The exacting degree to which Asad retaliated against the Islamic movement in the 1980s, when it massacred thousands during a Muslim Brotherhood uprising, served as a stern warning against violent Islamic expression, but this still did not bode well for Syria as it entered a new century in which re-Islamization was becoming a reality throughout the Middle East.⁹ In addition to unresolved sectarian problems, Asad knew that his country increasingly faced the reality of regional and international marginalization.¹⁰

In all four major tenets of his foreign policy, Asad faced new challenges to the same problems. The delicate balancing system that maintained Syria’s hegemonic presence in Lebanon showed visible signs of breaking down. Rafiq Hariri, the anti-Syrian Sunni Billionaire, looked likely to return to the position of Prime Minister in Lebanon and his record of campaigning for Lebanese independence vis-à-vis Syria did not portend well for either the military-strategic element of Lebanon for Syria, or for its source as an economic release valve for the country’s booming population and struggling employment sector.¹¹ As a result of its continued support of non-state armed groups operating both within its borders as well as in Southern Lebanon and the Occupied Territories, Syria’s former position of power in the Middle East was compromised by the growing indifference of the U.S. and Israel to the Syrian-Israeli peace process.

The last ditched efforts to negotiate peace with Israel had a blatantly moribund character, leaving the thorn of Golan still in his side. With the passing of the guard in the U.S., Asad did not know what to expect from the son of George H. W. Bush. Indications were that Washington would no longer be as involved with Syria to nearly the same levels.¹² The growing illicit trade

with Iraq, mainly through subverting the UN Oil for food project served as both an economic buttress and a political detraction due to Iraq's unpopular stature among other Arab states. Finally, continued ties to Iran in the form of willing participation in the Shi'a crescent across the region made Syria even more of a pariah among Arab states. The relationship that started, *inter alia*, as a method for each country to enhance their respective geo-strategic depth vis-à-vis Israel, was proving by the end of the century to be more of a political deadweight for Syria than anything else.

Into this confluence of events stepped the thirty four year old, second son of Hafez al-Asad, Bashar. Basil al-Asad, Hafez's first-born son, died six years before in a car accident. Prior to 1994, Hafez had assiduously groomed Basil for the post of President. With Basil's death, the bookish and somewhat awkward Bashar abruptly ended his residency in Ophthalmology in London to begin his training as the next Asad of Syria in the Middle East. The second half of the decade, Hafez showed all the signs that it was now Bashar who would inherit the presidency.¹³ After the requisite year's mourning period, public spaces all across Syria soon became covered with posters of the Asad trinity of Hafez, Basil and Bashar with captions reading, "*Qa'idna, Mithalna, Amalna*" (*Our Leader, Our Ideal, Our Hope*).¹⁴

GROOMING THE NEXT ASAD

Bashar's training progressed along three essential paths: support within the powerful military and intelligence structures; support of the general population; and his father's instruction of the Asad application of the populist authoritarian governance structure.¹⁵ As such, within a few years, Bashar had achieved the rank of lieutenant colonel and subsequently staff colonel in 1999. Starting in the mid-nineties, Bashar became the face behind a well-orchestrated public relations campaign to rout the republic of corruption. A chief complaint of the Ba'thist state among

Syrians, the young Bashar was championed as the one who would lead Syria into a new era economic prosperity starting with a cleanup of the scourge of corruption within Syrian government and business circles.¹⁶ Bashar soon stood alone at military ceremonies beside defense minister Tlas and deputy chief of staff Aslan and attended meetings with regional leaders as the Syrian representative.¹⁷

Behind the scenes, Hafez started to eliminate potential early pitfalls to the intended succession. First he concentrated on solidifying his family's support for Bashar. To do so, Hafez dismissed his

brother Rifa't from his post as second vice president for national security affairs. Hafez had little trust for Rifa't in the wake of his 1983 attempted coup when the President was sidelined by a heart attack. With renewed paramilitary defense forces and several years of service to the state developing his own cadre of

loyalists, Hafez could not risk another coup attempt by his brother when his son stepped into power. In addition, Asif Shawkat, the husband of Bashar's sister, Bushra, entered into what would be a meteoric rise in the Syrian military intelligence apparatus. Hafez also made numerous other high and mid-level shifts in both the military and intelligence structures, replacing the older generation with younger officers. The young officers' loyalty to Bashar would be more certain as they would associate their rise to power with Bashar's.¹⁸

Further, and probably according to Hafez's calculations, Bashar as the Syrian heir apparent embodied a dual legitimacy. First, and perhaps the most obvious, Bashar was the son of Hafez al-Asad. Hafez al-Asad was the only leader that was able to bring the country out of the near constant state of disorder. Hafez al-Asad also gave the Syrians a certain amount of pride in being Syrian. Under his rule, Syria achieved a degree of success against Israel in 1973 and subsequently proved itself in the realm of Middle Eastern politics as an unflinching bulwark against Israeli aggression.

Hafez's doctrine of strategic parity with Israel throughout the decades gave Syria one of the most sophisticated military forces in the entire Arab world.

Hafez's doctrine of strategic parity with Israel throughout the decades gave Syria one of the most sophisticated military forces in the entire Arab world.¹⁹ Second, at the young age of thirty-four, Bashar was not tainted by the staid image of the older generation of statist elites in the inner circles of the military, intelligence and economic spheres. Bashar had the image of a genuine reformer, seeking to bring the country out of the economic doldrums and shake it out of its atavistic approach to technology.²⁰ His father allowed Syria to stand up. Now it was time for Syria to become a beacon of strength and prosperity for the entire Arab World.

While it was relatively clear that Asad secured his governance structure from challenge while he was in power, the questions of succession, especially a personalized one, were many. Could such a highly personalized populist authoritarian structure continue through a different channel? Asad had taken the most unstable and capricious state in the Middle East since the end of World War II and made it a virtual bulwark of stability. Yet the thirty-seven years of Ba'th rule, thirty of which were under Asad, failed to breach some of the most substantial sub-state challenges to Syria.

Among the Syrian elites, it was known that the country remained stable because of Asad's own formula for state control. Syria under another different leadership might return to the pre-1963 cycles of military coups and lost identity. In addition, many of those in the first, second and third circles surrounding the head of state owed their entire fortunes to the Asad state structure.²¹ The country's numerous intelligence and security services were steadfast reserves of loyalty, mainly due to their strong Alawi ranks. As such, many of the 'old guard' Ba'thist elites in the Syrian government must have found it preferable to rally behind Bashar's assumption of power, rather than face the possibility of an undesirable power play.²²

MISLEADING THAW – NOT A REFORMER AFTER ALL

Almost immediately after Bashar's assumption of power the intellectual, artistic and

political commentators of Syria banded together to call for an increase in political freedoms in Syria. Bashar's image as a young leader who had spent time in the West and was touted as the figure to rid the government of corruption almost certainly was a factor, but another is that the country had not seen a new leader for thirty years. As Hafez had ruled the country with an iron fist, people knew that there was no chance to speak out against the authoritarian nature of the regime. When his son stepped in, people sought to test the new limits of power imposed upon them.

The so-called Damascus Spring was initially met with little resistance from the state. As such, on September 27, 2000, the fledgling civil society movement published what has been translated as *The Statement of 99* calling for economic, legal and administrative reforms that it stated were "urgent" as Syria faced the challenges of the twenty-first century.²³ In the wake of the publication of the statement, the government moved forward with a series of releases of both political and non-political prisoners that soon numbered in the thousands.²⁴ While many of the prisoners released were of members of the Muslim Brotherhood, Bashar refused to go so far as to repeal Law 49, a law banning the Brotherhood promulgated by his father in the wake of an attempt on his life by the organization in 1980. Though the statement expressed the urgent need for reforms within Syria to move forward into the new millennium, it was careful not to criticize either Asad or the ruling Ba'th elites. The call for political reform was vague, but clear: "No reform, be it administrative or legal, will achieve tranquility and stability in the country unless fully accompanied by the desired political reform, which alone can steer our country towards safe shores."²⁵

The relatively positive reaction by Bashar and his cadre in the ruling circles of the Ba'th party sparked a sort of nation-wide airing of grievances. The tone of the opposition, though, remained mute when it came to demanding political change. The civil society reform movement essentially split into two distinct factions at this point. Those advocating for *islah*, or reform, within the current political system and

those moving to push for *taghyeer*, or change, of the whole Ba'th party system would soon come at odds with one another just a few months following the publication of *The Statement of 99*. On January 9, 2001, a large contingent of those decidedly in the *taghyeer* camp released *The Statement of 1,000* to the Arab press. Perhaps due to perceived openness on the part of the government, or a feeling that they could potentially tap into anti-government popular sentiment that would lead to wider civil society protest on the scale of what has been witnessed in the color revolutions, the statement openly called for the replacement of the one-party system with multi-party democracy.²⁶

An organized strike against the state by use of strategic non-violent means though would fail to come about as *The Statement of 1,000* did not elicit the popular reaction that it had hoped for in the early days of 2001. Instead, the crack down

Still, as Yasin Saleh is quick to point out, fears over state security have been the mantra of the governments of the entire Middle East for sixty years...

that ensued by the Bashar's government was swift. Within a few weeks, Bashar had the plurality of the most vocal proponents for government change jailed on charges of treason.²⁷ For all intents and purposes,

the short-lived Damascus Spring was cut short by what has become a long winter in the wake of the arrests of January and February of 2001.

In a recent interview with one Yasin Hajj Saleh, a journalist for *Al Hayat* and leading advocate for social reform in Syria, Saleh made it clear that the general population has become apathetic and the youth risk averse when speaking out against the Asad regime. Saleh stated that years of suppression had made the civil society landscape barren when he was released from prison in 1996 after sixteen years of incarceration. As a result, traction for any kind of real civil expression was difficult to gain.²⁸

Still, it can be argued that the movement for civil society reform laid the necessary groundwork for a future reappearance. As the

state bears more and more pressure due its immutable bureaucracy and lack of genuine liberal economic reforms, it is becoming more and more difficult to abate massive popular uprising.²⁹ This line of reasoning was certainly buoyed by the chain of events in the following years that can be perceived as serious setbacks for Syria's regional and international strategic positioning. The implication of the regime in the Hariri assassination and the subsequent regional and international fall out have led to an ongoing UN investigation, Syria's loss of its military hegemony in Lebanon and continued pariah status in the eyes of the West. But, as Waddah abd Rabbo, the editor-in-chief of *Al Watan*, Syria's only private daily newspaper, states, the timing of any kind of serious attempts at positive civil expression was simultaneously compromised by 9/11, the subsequent U.S. incursion into the region and the above-mentioned shifts in regional politics.³⁰ The Ba'thists portrayed the event as a potential existential crisis for Syria and the people rallied around a "Syria first approach, letting the desires for social reform become subsumed by an overriding Syrian patriotism in the face of potential foreign aggression." Still, as Yasin Saleh is quick to point out, fears over state security have been the mantra of the governments of the entire Middle East for sixty years – "there has been a major war in the region every decade since 1948 spurring the same governmental reaction; security first and reform later. How are liberals and advocates of democracy to fight this?"

Yet, the Syrian security first argument has become less and less plausible with the continued deterioration of the situation in Iraq, the electoral victory of Hamas in the Occupied Territories in December 2005 and the strategic victory of Hezbollah against Israel over the summer of 2006 as well the continued growth in the strength of the Syria's main ally in the region, Iran. Syria now seems to be in a stronger position than it has been for years. Still, the most serious effort at advocating civil reform, the Damascus Declaration, a group of prominent civil activists advocating social change over the last couple of years, recently saw the arrest of its newly elected

leader Hourani along with ten other persons of prominence in the movement.

ECONOMIC REALITIES – A CHINESE MODEL?

While Bashar may have ridden into office bearing the standard that hailed him as the anti-corruption knight embodying the ‘hope’ of the future for Syria, he certainly did not have much hope of enacting real reforms of the Syrian economy. As discussed above, the reasons for this are many. In large part they are due to the natural economic policy stasis that a state that enacted an import substitution industrialization (ISI) plan faces over time. Hafez al-Asad had been successful in his early days of breathing life into the Syrian economy. In the first half of the 1970s, ISI had been a very successful means of defensive modernization for Syria.³¹ But as he turned his attention more and more to the foreign policy arena, Hafez let the Syrian economy pay the price.

The bloated state bureaucracy soon employed over half of the working population of Syria. It was able to patch together enough cash in the form of strategic rent from the Gulf States for its position in the struggle against Israel and Russian military aide skyrocketed as the Soviets saw an occasion to re-engage with the U.S. in the Arab-Israeli conflict.³² Otherwise, Syria’s dominance of Lebanon at the political, and later military, level created another important outlet for the economy. Lebanon became an outlet for excess Syrian labor. Syrians could flow into Lebanon to work in the financial services or construction markets and send back monthly remittances.³³

As the 1980s progressed, relations with the Gulf countries turned sour and the inflow of financial support slowed to a trickle. The result was a burgeoning fiscal crisis in Syria. Fortunately enough, however, new oil reserves were found in the north of Syria near Djazereh. The sudden influx of revenue allowed the state to continue forward more or less independently, at least for the short-term.³⁴

During his reign, Hafez failed to commit to real liberal economic reforms. The only substantial measure taken was Investment Law

10, which reformed the legal and regulatory environment for foreign direct investment in the country. But this was only a half measure. It was therefore hindered in its efforts to become a regional player among the stronger rentier economies due to a lack of natural resources. In his later decades of power, Asad had been unable to transcend Syria’s resource deficiencies by way of developing a technology sector because of Syria’s continued subjugation to the State Sponsor of Terrorism list by the United States. The one real outlet to acquire the means to join the global marketplace quickly eluded him.³⁵ As such, Bashar inherited a State that still had all the hallmarks of a closed, almost command, economy.

Beyond the orchestrated, popularly perceived character of Bashar, there are indications that he genuinely favors reforming Syria’s seemingly moribund economy. Much like his reaction to the civil society movements calling for greater change and reform, Bashar will not support a plan for privatization and destruction of trading barriers in one fell swoop. Rather, he seems to prefer what could be termed the Chinese model for reform—a slow enactment of economic policies to stimulate a more robust entrepreneurial sector, a reduction in transactional costs in the domestic marketplace and a gradual lowering of barriers for Syrian business interaction at the global level.³⁶

Bashar started out his tenure in office by promoting much needed banking reform in Syria through the establishment of foreign banks in the country for the first time in over three and a half decades.³⁷ Smaller currency exchange reforms as well as interior free-market initiatives soon followed but the changes slowed to a trickle, becoming merely nominal gestures.³⁸ Still the barriers to achieve genuine economic reform, even at a slow pace, are high.

The U.S. also plays an indirect, though significant, role in the Syrian economy. Four years of increasingly broad sanctions have made American ill will a significant limiting factor to Syrian economic reform. Under the Syria Accountability and Lebanese Sovereignty Restoration Act (SALSA), the U.S. has imposed a bi-lateral ban on the export of U.S. goods or other

goods with a 10 percent or greater composition of U.S. parts. The only exceptions to this are medicine, food and mission-critical commercial aviation supply. Sanctions against the Syrian banking sector fall under the Patriot Act's efforts to stop terrorism financing. Furthermore, there are sanctions at the individual level targeting figures seen to be interfering with constitutional efforts in Lebanon, abetting the flow of foreign fighters and/or the supply of materiel to insurgent forces in Iraq or non-state armed groups with a presence in Syria such as Hamas, Hezbollah or Islamic Jihad.³⁹

According to Nabil Sukkar, a former World Banker and current CEO of the Syrian Consulting Firm for Business and Development in Damascus, the effects of Investment Law 10 are actually widening. In 2005, the Ba'th party declared support for a transition to a 'market social' economy. The effects can be seen in the increased wealth in the country as Syria saw between 6-6.5 percent growth in GDP.⁴⁰ As such, Sukkar says that while they are certainly a "nuisance" the American-imposed sanctions are far from having the desired effect of crippling the Syrian economy.

While sanctions do adversely affect the country, one of the main reasons that Syria lacks the capacity to reform its economic sectors is that it conflicts with the personal interests of many of the ruling families of the Ba'th party. Two examples are the Khaddam and Tlas families.⁴¹ The Khaddam family has amassed a fortune in the food processing business over the last several decades. Food processing is one area wherein Syria is seen as having a competitive advantage over other Middle Eastern countries in large part due to its vast farming industry and favorable climate. Former Defense Minister Tlas's family has held a virtual stranglehold over the entire Syrian telecommunications sector throughout the years of the Asad family rule. Telecommunications is a particularly sensitive

area for any economy to meet the demands of the hyper-information age.

In Internet connectivity alone, Syria is among the least connected countries in the region with barely five per cent of the population connected.⁴² As a former senior Ba'th party member with ties to the high command of the Defense industry, Tlas's family is in many ways untouchable. The system of patrimonial rewards that was started by Hafez to guarantee loyalty has created substantial barriers to entry for any new potential rival to the existing bourgeois class. There are signs, though, that these closed circles are beginning to be penetrated. In early 2006, the first private sector Internet Service Provider, *Aya*, was created. While this will help with Internet proliferation, the same government restrictions remain intact and intellectual property rights in the country are nonexistent.⁴³

While sanctions do adversely affect the country, one of the main reasons that Syria lacks the capacity to reform its economic sectors is that it directly goes against the personal interests of many of the ruling families of the Ba'th party.

Another example of a change can be found in the story of *Al Watan*. As Syria's first privately owned daily newspaper, *Al Watan* is a success story that may herald a new era in Syrian economic reform. After the death of Hafez in 2000, Bashar immediately enacted a new law allowing the establishment of private media in Syria. Waddah Abd Rabbo was quick to return from Paris to seize upon the

opportunity. Though all *Al Watan* facilities were in Damascus, bureaucratic difficulties forced him to conduct business under a French license. Rabbo describes the conditions at first to have been almost unbearable as he was forced to use the State-owned printing presses and continuous death threats kept him switching locations at night. Today, however, there are about 180 licenses for private press operations in Syria, *Al Watan* will soon be receiving its own printing press and there is almost never a morning that all printed copies of the journal will not be sold within a few hours of publication.⁴⁴

In despite of the obvious hurdle of the current sanctions regime against it, Syria also lacks the

capacity to move forward quickly with economic reform. An example of which would be the fact that, though the law permitting private banks in Syria was passed in 2001, it took a year to establish a credit committee and another after that to set-up the regulatory committee.⁴⁵ One principle reason behind this, in addition to bureaucratic inertia, is the lack of trained technocrats at key levels of government. Again, years of sinecures and handouts have created such a condition. All the same, Syria has recently made some progress toward bridging this gap. One such attempt is the recent accord with France to allow for Syrian bureaucrats to attend France's elite *Ecole Nationale d'Administration* which trains not only most of France's elite politicians and

technocrats, but some of other countries in Western Europe as well.⁴⁶

As Syria remains under the lock of U.S. bi-lateral sanctions, its oil reserves dwindle, the Lebanese market starts to shrink and Iraq remains in a state of chaos, one of its only means of support today is Iran.

European attempts at integrating the Syrian economy into the broader regional as well as global market place can be seen in the current negotiations with the Euro-

Mediterranean Free Trade Area (EU-MeFTA). The main goal of EU-MeFTA was to begin a process towards "peace and shared prosperity" and "sustainable and balanced economic and social development" in the Euro-Mediterranean Area.⁴⁷ Still, efforts to move forward with further EC-MeFTA integration have been stalled by discomfort within the EU's northern European ranks, specifically Germany who sees it as a French-led project outside of the EU aimed at bolstering an independent French powerbase.⁴⁸

The challenge of governance cannot be met overnight, and will require first and foremost the commitment of the governments themselves and a sincere and continuous effort to change public perceptions regarding the role of foreigners in these societies. These are prerequisites to successfully implementing the necessary legal

measures required to address the risks posed by the current structure of the labor market.

THE IRANIAN SPECTORE

In the wake of the country's general economic malaise, stopgap measures such as the illicit trade with Iraq in the UN Oil for Food Program provided only temporary relief from the harsh realities the state is faced with when it comes to the economy. Syria is fast becoming a rentier state that is running out of rent. Syria is already a net importer of refined oil. The rising price of oil on the world markets has forced the government to cut back on many of the substantial subsidies it has traditionally provided. The long queues at gas stations in the run-up to the change in the price of oil are a visible reminder of the pressure the population will feel as inflation begins to take hold in Syria.

As Syria remains under the lock of U.S. bi-lateral sanctions, its oil reserves dwindle, the Lebanese market starts to shrink and Iraq remains in a state of chaos, one of its only means of support today is Iran. Iran has had a long and complicated relationship with Syria in the wake of the Iranian revolution. Though initially cold, relations started to warm up in the 1990s when Syria found itself lacking traditional Soviet arms support. As such, Syria changed its tactic from strategic parity with Israel, which it attempted to do through the build-up of its conventional armed forces, to one perhaps best described as a balance of fear.

In order to maintain this new stance, Syria soon became the host to and supporter of the many non-state armed groups encamped along Israeli borders and within the Occupied Territories, the most high-profile being Hezbollah, Hamas and Islamic Jihad—all of which have offices in Damascus. With no real domestic arms manufacturing capacity, Syria soon allowed itself to become a funnel for Iranian arms to these groups. The conduit had already existed as Hezbollah was always an Iranian supported and funded project; the pathways had simply become clearer and the Syrian state reaped the benefits of having off-loaded the fighting with Israel to proxy

groups and gained an ally in Iran as it saw itself becoming increasingly marginalized elsewhere.⁴⁹

The relationship continues today and, as a result of continued Western rejection of Syria, it is more nuanced and solid than ever before. Contrary to most of the Western world and its allies, Syrians do not view Iran as a threat. As Syria's principle ally in the region, Iran's support can be seen not as a strategic liability, but rather as a strategic asset in the face of what it views as a largely hostile region vis-à-vis Israel on its western border and the U.S. in Iraq to the east. With each country facing a regional U.S. blockade in the form of imposed sanctions, increased cooperation between the two in the wake of the U.S. invasion into Iraq is logical.⁵⁰ Each state views the other as a necessary ally; Syria gets much needed foreign direct investment from Iran and Iran has an Arab counterweight in a region largely hostile to its every move.

As Nabil Sukkar points out, ties with Iran are becoming stronger and more nuanced all the time. Iranian investment ranges from car manufacturing to the provision of discounted natural gas for the Syrian economy that, as its reserves dry up, will soon face a domestic energy crisis. In 2006, Iranian investment in Syria was approximately \$400 million, making Iran the third largest investor in the country behind Saudi Arabia and Turkey. This is due to change rapidly. Currently there is a \$2 billion industrial zone planned for Iranian businesses. With the need for new auto industry projects as well as transportation networks, Iranian companies are moving in to Syria in droves. The recent privatization measures in Syria are certainly compelling for Iranian investors. Recently, officials from both countries announced plans to increase Iranian investment in Syria to approximately \$10 billion over the next five years. As such, Iran is proving more of a buttress to Syrian economic growth. Though ties with Iran remain strong and important, they are not sufficient to maintain Syria indefinitely and they certainly do not solve the larger problems the country faces.

The Syrian economy must still confront a variety of looming pressures. Increased strain

due to dwindling oil reserves, a booming youth population, rising unemployment and the influx of war refugees all put considerable strain on the Syrian economy. The shadow of these growing problems extends far into the future. Bi-lateral sanctions from the U.S. today restrict access to dollar-based transactions, crucial IT components to catch up to the information revolution, and the necessary room to maneuver itself into the global economy. While it is a release valve, Iran is certainly not a panacea to Syrian economic woes. Yet, the dilemma of dependence and subsequent prolongation of the Syrian cycle of diplomatic isolation and economic stasis at the hands of Iran remains. It will not be broken easily.

CONCLUSION

Many in Damascus today will talk about the U.S. and Israel being the real threats to Middle East peace. They cannot help but admit, however, to the pressure generated because of its international pariah status, a status that Syria has wittingly cultivated. The ongoing conflict in Iraq has sent about 1.7 million refugees into the country putting incredible strain upon Syria's socialist system. While the government has pledged to stymie the flow of foreign fighters into Iraq, it should perhaps be concerned with the implications in Syria once these fighters return or decide to turn their gaze upon what they view as an apostate regime in Damascus. Iranian aid in the form of cars and natural gas certainly have sped up the domestic economic motors, but the flow of Iranian arms into Lebanon is the most likely reason that Syria had to bear the brunt of Israeli fighter jets in September. Furthermore, as Iran moves closer to being the world's ninth nuclear power, Syria may want to rethink its contract with the state as it draws more and more global opprobrium.

The lack of response to the Israeli attack last September is perhaps the most telling. While the measured tone of President Bashar Asad in his interview with the BBC explaining the lack of Syrian military does not necessarily imply a weakness, it may show the dilemma that Syria has found itself in vis-à-vis its stronger neighbor and its truest ally.⁵¹ Asad stated that Syria "ha[s] its

own means of response," drawing many to conclude an asymmetrical response. The reality could be that Syria wishes to bow out of the military struggle with Israel; Faysal Mekkdad, deputy Foreign Minister recently said in an interview that a return of the Golan continues to be the price for Syrian peace.⁵² Perceptions of what is rightfully and not rightfully been occupied by Israel throughout the last four decades continues to cloud the waters of a lasting and legitimate peace between Syria and Israel. A Syrian Golan, he states, has always been the Arab consensus.

In the wake of the Arab summit held in Damascus at the end of March, Syria might do well to listen to the Arab consensus a little closer.

One way to do so would be to solidify that Arab consensus by showing its commitment to peace as ardently as it is trying show off its Arab stripes. Another may be for it to diversify its regional and global economic support as a means of weakening the Persian ties that have bound it far too closely to the whims of Tehran.

The views and opinions expressed in articles are strictly the author's own, and do not necessarily represent those of Al Nakhlah, its Advisory and Editorial Boards, or the Program for Southwest Asia and Islamic Civilization (SWAIC) at The Fletcher School.

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Interview with Said T. Jawad, Afghanistan's Ambassador to the US: "Where the Road Ends the Taliban Begins"

Michael Mylrea

Southwest Asia is experiencing an epoch of unprecedented change. Every day it appears history ebbs and flows. Both uncertainty and optimism are in the air. While globalization has spurred economic development and social reform, instability continues to present security challenges. With upcoming presidential elections in Afghanistan looming there is much at stake. Many are questioning the future of this dynamic region: How current changes underway will affect regional security, economic development and relations vis-à-vis the West?



Michael Mylrea, MALD 2009, works as co-editor-in-chief for al Nakhlah. He is a research director for oil and gas at a private think-tank, and conducts research at Harvard and MIT Lincoln Lab. This summer he worked on policy and security issues in the Middle East and Washington D.C.

One thing is for sure, Afghanistan will play an important role in determining the future of Southwest Asia. Afghanistan is a country made up of a diverse mosaic of cultures at the crossroads of Asia, trade, culture and civilization. The destiny of Afghanistan has long been interconnected to important regional events from the conquest of Alexander the Great to the collapse of the Soviet Union to today's frontline on the US-led war on terrorism.

Said T. Jawad, Afghanistan's Ambassador to the United States, offered his first hand perspective to al Nakhlah on how Islam, democracy, economic development and security challenges will shape the future of Afghanistan. Prior to his appointment as Ambassador, he served as the President's Press Secretary, Chief of Staff as well as the Director of the Office of International Relations at the Presidential Palace. Ambassador Jawad has worked closely with President Karzai in implementing policies, building national institutions and prioritizing reforms in Afghanistan. He also worked with the U.S. and Afghan military experts to help reform the Ministry of Defense and rebuild the Afghan National Army. Among his many accomplishments, he was instrumental in drafting



Afghanistan's foreign investment laws and drafting Afghanistan's new constitution.

ISLAM AND DEMOCRACY

What role will Islam play in the future of Afghanistan?

Afghans are moderate Muslims and religion has historically played an important role in Afghanistan. The role of Islam has become more prominent in Afghan society after the invasion of Soviet Union and resistance against the communist which had strong religious component to it. Today terrorists are trying to use Islam and religion as a pretext to attack freedom, Afghans, and the international community. We as the government of Afghanistan are working to capitalize on the views of religion and Islam based on peace and reconciliation in order to build prosperous and prolific society in our country.

Some Islamists believe Muslim countries should develop a society that is inspired by early Islamic history, symbolism and ideals. What challenges does Afghanistan face in incorporating this increasingly popular dynamic of Islamic revivalism as it progresses as a modern state?

The challenge we are facing is to build a modern state based on pluralism and respect for human rights with limited human capital and a lack of experts in Afghanistan. Another challenge we face is that the terrorist and extremists are trying to claim they are the bearer of the flag of Islam. And it's up to us to show that many values, including freedom, pluralism and prosperity are things the Afghan people demand, deserve and have shown are compatible with their religious and Islamic values. Afghans have proven that they are able to live with live with religious values while working hard to build prosperity and pluralism in Afghanistan.

Some Islamists argue that the secular state is a continuation of Western imperialism. This is partly driven by the assumption that the state has surrendered to international capital in the form of aid. What role should the West play in its relationship with Afghanistan to counter these notions?

After the Soviets were defeated in Afghanistan, the Afghan people demanded very clearly the engagement and assistance of the western countries to stay and help build the country; but this did not take place. It wasn't until later, when the terrorist that occupied Afghanistan reached places like New York and Washington that the international community came to help the Afghan people get rid of a tyranny imposed by the terrorists and Taliban. Certainly the presence of the international community is not part of a colonial design. The West has enabled the Afghan people to build religious institutions and stand on their own feet.

How does Afghanistan incorporate *shari'a* law into its government and rule of law and grow as a modern democratic state?

The constitution is very clear on that issue. Afghanistan has one of the most liberal constitutions in the region. Afghanistan has a codified system that means we have penal, commercial and civil code. The constitution and secondary laws in Afghanistan do comply with the requirement of Islamic jurisprudence, but in the current law in Afghanistan the civil law has been adopted. *Shari'a* has been a supported source of law, but the task has always been really how to combine the two sources of jurisprudence both civil and constitution code and Islamic laws in a way to build a plural society and respect human rights. It's a hard struggle and a difficult path to be taken. Afghanistan is just one of the countries that is working hard to achieve this. A similar struggle has historically taken place in

The current constitution of Afghanistan is an example of combining traditional religious values with a forward looking constitution based on pluralism and human rights.

Europe and other countries, and we have our own challenges to overcome these issues. We have made a lot of progress and the current constitution of Afghanistan is an example of combining traditional religious values with a forward looking constitution based on pluralism and human rights.

When tensions arise between Islam and democracy visa via the constitution of Afghanistan? Does Islam or constitutional law take precedent?

The constitution is the fundamental legal document that sets forth the principals of the legal system and political vision for the future of the country. But that constitution is being drafted with close cooperation with both secular experts and religious figures. But like any country, the constitution is the guiding document for both legal and political direction of the country.

How will Afghanistan handle the next presidential elections?

The next presidential election is scheduled in about 18 months. The Afghan constitution allows direct vote by all Afghan citizens. The preparation is underway, but holding an election is a costly exercise for Afghanistan. We are working with our partners in the UN and donor community to raise the funds needed for provincial election which runs close to 400 million dollars. There are discussions in Afghanistan to combine provincial and parliamentary election into one process to save money. This is fully technical and financial and the government and the parliament of Afghanistan will decide if this is the right course.

SECURITY AND DEVELOPMENT

Afghan-Pakistani relations have fluctuated over a number of issues, such as: the Durand Line, the war on terror, and Afghanistan's close relationship with India. Proponents of establishing better relations note that Pakistan has given considerable aid and relief to Afghan

refugees and established an important trade network through Afghanistan to Central Asia. Opponents, however, complain that a larger number of Pakistan's intelligence and security branch have established close ties to the Taliban regime and continue to destabilize the Government of Afghanistan. What can be done to foster peace and stability between both countries and in the region?

The Afghan and Pakistani people see extremism and terrorism as the real enemy of our people and governments. We have been asking our friends in Pakistan for a more sincere cooperation to fight extremism and terrorism both in Afghanistan and Pakistan. We claim that any kind of tolerance or support for extremist groups for the sake of political gains is dangerous for both our countries and the region and world will pay a heavy price for that. However, we are very

We think that a stable and prosperous Afghanistan will be the best friend of Pakistan because our stability is interconnected.

much encouraged by the recent elections in Pakistan. We are really looking forward to working with a new prime minister and government of Pakistan to fight extremism in both countries in a resolute and sincere manner.

How will relations between Afghanistan and Pakistan benefit by creating an environment of security and stability?

We think that a stable and prosperous Afghanistan will be the best friend of Pakistan because our stability and prosperity is interconnected. This will provide Pakistan with an opportunity to export products into central Asia and benefit from energy that is available in Central Asia. A stable Pakistan will insure Afghanistan secure and easy access to the Indian Ocean. We are really seeking the best possible relations with Pakistan for the sake of our national interest. We will not be able to rebuild Afghanistan unless we have good sincere political and economic relations with Pakistan.

What are some of the challenges in doing that?

There are some historic complications in relations with the government and the extremist elements in Pakistan. Sometimes this is exploited for tactical political gain, which has caused strategic losses and prevented the fight against extremism. The continued operations of the Taliban and terrorists have made it difficult for the two countries to overcome these challenges.

Afghanistan has engaged in cordial relations with both Iran and the United States, even as relations between the two continue to deteriorate over American objections to Iran's nuclear program and support for extremists. What role can Afghanistan play in bringing these two countries together and creating security and stability in the region?

While relations between U.S. and Iran have historic complications, we don't think that we will be in a position to play an important role in bringing the two countries together. We are asking for both Washington and Tehran to leave their differences out of Afghanistan. We are asking our friends in Tehran and Washington both to work to allow the Afghan people to rebuild their institutions and to work together in the reconstruction process of Afghanistan.

What lessons were learned in the last six years of state building?

Mistakes were made on both sides because of a shortage in human capital and qualified people. We didn't really know the magnitude of destruction that Afghanistan has undergone. The

international community underestimated the amount of investment and amount of security forces that were needed to face those challenges. And like many other post conflict countries there has been waste in the way that the money was spent and difficulties by the Afghan government to clearly indicate the priorities of Afghanistan and formalize them in a national development strategy. And, the lack of these proper unified strategies led to waste in the way the money was spent.

What can be done to make aid and development efforts in Afghanistan more effective?

Aid assistance should be used to build the capacity of the Afghan government to deliver services. This will show the people of Afghanistan the rewards of participating in the political process of

electing officials. It's also a reminder that the people have a voice in the way that the money is being spent and knowledge about where the projects are being built.

Can you touch on the recent report by Oxfam criticizing aid efforts in Afghanistan? The report suggests that more than half of all aid is conditional on the procurement of resources from donor countries and that projects appear to be launched without consulting the local people and lack transparency.²

The NGO's in Afghanistan have to face the reality on the ground. There is no doubt there is a need for more transparency. There is a need for getting more value out of each dollar that is being used in Afghanistan. But we also should not forget that the working environment both for government and NGO's is a difficult one. There is a shortage of human capital and security is challenging. But considering all of these factors

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there have been a number of projects that have implemented in a very successful and cost effective way both by the NGO's and government, such as the National Solidarity Program.

How can Afghanistan overcome the recent increase in security challenges?

When the Afghan forces, NATO and the international coalition carry out military operations they are usually successful: the Taliban are defeated quickly and generally pushed aside. The problem is that if you don't deliver services, and don't back up military operations with development then the terrorists will come back and all the efforts of military operation are wasted. It is very important that every military operation is followed by development activity. In Afghanistan where the road ends the Taliban Begins.

What kind of development projects are the most beneficial?

Development activity should include setting out operational courts system to deliver justice, schools, clinics, supporting the government, and making sure police have a strong presence in the region. After a military operation is over the people living there should feel there is a positive difference between the terrorist and the presence of the international community in terms of development and delivery of services. That is the only way we can get their support and that's why its very important to conduct properly military operations with development activities.

The poppy trade in Afghanistan has been growing rapidly despite over \$1.6 billion in counter narcotics spending by the U.S. government and over \$500 million by the United Kingdom. Over 90% of the world's illicit opium originates in Afghanistan, and poppy accounts for 52% of the nation's economy. How can you counter narcotics in Afghanistan when the economy is so reliant on poppy growth?

The best strategy is to prevent cultivation instead of focusing on eradication. The best way to accomplish this is to provide an alternative livelihood and take some people out of agribusiness. Give them a chance to have another job-like building roads and dams that generate electricity. And for those that continue to remain active in agriculture make sure that whatever they grow that their legitimate crop has a market and a buyer. An alternative crop project will only succeed if we have roads, transport, and market to sell. And this will only succeed if we

It is very important that every military operation is followed by development activity. In Afghanistan where the road ends the Taliban Begins.

continue building rule of law, interdiction efforts and going after big traffickers. The real drug money is not at the hand of the farmer, but at the hand of the processor and traffickers.

A recent project between local cotton growers and Chemonics, an international development consulting firm, planned to create thousands of jobs in Afghanistan, but due to a congressional ban on competitive agriculture projects it was denied funding. Does this suggest that some U.S. policies prevent Afghanistan from realizing their economic and security efforts?

A number of congressional amendments prevent support for certain agriculture products in Afghanistan. A lot of these funding issues are legacies connected to the Cold War and other domestic policies and priorities of U.S. congress and government. There is a need after 9-11 to look into issues of foreign assistance and remove some of the old impediments that prevent some very good projects from being implemented in post conflict countries like Afghanistan.

A number of security experts have suggested that al Qaeda and Osama Bin Laden is hiding in the North West Frontier Province bordering Afghanistan and Pakistan. Can you address this concern

and touch on your thoughts on the challenges of securing this region?

We are looking for Osama Bin Laden and al Qaeda in Afghanistan and so is the U.S. military and intelligence and NATO. I think if he were in Afghanistan he would have been found by now. Finding him is a big priority for the Afghani community, intelligence and military. Bin Laden is most likely hiding in major metropolitan centers in Pakistan where we found some of his colleagues and associates in the past. And if you look where we found his friends and associates its not been mainly in Afghanistan, but. It has not even been in tribal areas. So considering the fact that the head of al Qaeda needs to be connected to his followers and the world, it would be really hard to hide in a remote cave in Afghanistan.

You have previously said that Afghanistan and the region as a whole would be better off if the Taliban would return, denounce violence and embrace pluralism. This appears to be a unique method of using conflict resolution as an important tool in the war on terror. Can you talk more about the reconciliation process with the Taliban?

The reconciliation process is a success in Afghanistan. So far over 5,000 Taliban have joined. We are ready to talk and reconcile members of the Taliban that respect the Afghan constitution. The reconciliation process is challenging because they have an effective source of indoctrination that is hard to eliminate. The Taliban and al Qaeda use a very sophisticated media propaganda operation called As-Sahab that

produces DVD's, tapes and internet movies that support their operations and affiliates. This propaganda campaign is used to recruit members, using an ideology that capitalizes on poverty and ignorance.

Despite these continuing challenges do you have an optimistic vision for Afghanistan in 30 years? What are the short and long term goals? What is the road map for the future?

Afghanistan is located in a strategic part of the world. The Afghan people are moderate and they are pragmatic which is why they have a strong willingness to partner with the international community.

Afghanistan provides a good location for our friends and partners and they can count on the people and government of Afghanistan to be a long term partner. Prospects of peace depend on the continuing engagement of the international community particularly the United

States in helping to build institutions. If the United States and international community make large investments in building Afghan institutions the pressure will be relieved for them to keep long term military presence in Afghanistan. The Afghan people are looking to take charge of their destiny and will prove to be a reliable partner to the U.S. and the rest of the world during these challenging times in a difficult part of Asia.

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Bin Laden is most likely hiding in major metropolitan centers in Pakistan where we found some of his colleagues and associates in the past.

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Beirut Reconstruction: A Missed Opportunity for Conflict Resolution

Lourdes Martinez-Garrido, MALD 2008

INTRODUCTION

In the BBC documentary, “War generation: Beirut,” snipers from the different warring factions are interviewed. One reveals how the inequalities between the awful housing conditions in which he and his family were living and the opulence that he saw in the city center created in him a deep feeling of anger. According to his confession, this bitter emotion was only mitigated when he took part in the destruction of the St. Georges Hotel, a landmark of the luxurious side of Beirut. Urban references in the snipers’ memories of the war are a constant theme.

In 1975, Beirut became the setting of a protracted civil conflict that would dramatically change the city’s social milieu by the time it ended, over fifteen years later. What started as a disagreement between the Christian and the Muslim communities over the power of the Palestine Liberation Organization (PLO) in Lebanon, ended up involving regional actors (Syria, Saudi Arabia and Israel) and international powers (American and European military forces). As a result, in a country of about three million, 170,000 people died, twice as many were wounded and 900,000 emigrated. More than half of the population suffered some kind of displacement from their homes. The war came to an end in 1990 with the Taif Accords, signed in 1989, through which the Sunni and Shia communities were granted greater representation in the parliament.

One of the outcomes of this urban warfare was a significant shift in Beirut’s population distribution along sectarian lines. While before the war community intermixing was a characteristic of the city center, during the war the city was divided into two sectors: East Beirut, where the Christian community lived, and West Beirut, where the Muslim community was predominant. The demarcation line (the so called ‘green line’) that separated both sectors was the principle setting for militia fighting. The long-standing tensions in this area resulted in the disappearance of the main open public space, the central place known as Martyrs Square, from which the green line (the old road to Damascus) emerged.

This paper reviews the principal urban planning projects integrated into the reconstruction plan and their underlying implications in the current Lebanese socio-political dilemma. Two decidedly negative outcomes can be derived from this analysis within a conflict resolution framework. First is the disappearance of the main public space in which inter-communal social contact used to take place in pre-war Beirut, in particular Martyrs Square. The new public spaces that have emerged in post-civil-war Beirut,

While before the war community intermixing was a characteristic of the city center, during the war the city was divided into two sectors: East Beirut, where the Christian community lived, and West Beirut, where the Muslim community lived.

mainly commercial shopping centers, can be described as 'places for exclusion,' conceived for and accessible to only a minority of upper-class Lebanese. The second outcome is the entrenchment of segmentation along sectarian lines that was first undertaken during the civil war. Linked to the disappearance of Martyrs Square, the city center functioning changed from a monocentric structure to a polycentric one that reflected the new sectarian organization. Furthermore, the implementation of post-conflict reconstruction plans has not reversed this segmentation trend nor it has addressed the urban inequalities existing between the different areas of the city. Instead of spreading the reconstruction process throughout the metropolitan area, which could have helped bridge urban and social gaps, all efforts were concentrated in downtown, which is now perceived by a great part of the population as an exclusive zone. As such, it can be stated that Beirut's urban reconstruction is a missed opportunity for enhancing social cohesion.

LEBANESE COMMUNITIES

Lebanese state formation must be understood through the lens of seventeen different religious communities converging in an effort to build a new public order in the wake of the French Mandate period from 1920-1943: Christian communities (Maronites, Greek Orthodox, Greek Catholics); Muslim community (internally confronted in Shia and Sunni rivalry); Druze group and Armenians.¹ In 1936, a French decree required each citizen to declare allegiance to one of the communities in order to be legally recognized as a citizen of the burgeoning state. As a result, the problematic internal division was, in part, artificially created through the institutionalization of such differences by the foreign intervening power. It is also important to note that the term 'community' differs to a great extent from 'tribe,' 'ethnic group' or 'national minority.' Paradoxically, none of these divided groups can be considered as one of these in itself. The Lebanese communities were never historically social entities but religious groups whose division was due to the different conception over the nature of Christ in the Christian case, and over who should inherit

power after the Prophet's death in the Muslim case.²

The Maronite community received the greatest support from France, both during and after the Mandate period. As a result of this privileged position, members of this community have traditionally held prominent posts in the political, social and economic realms. Established in the National Pact of 1943, parliamentary power was to be divided in a fixed ratio of six Christians to five Muslims, by which the Maronites held the presidency and the Sunnis occupied the post of prime minister.³ This rigid formula set the beginning of the power struggle between the Muslim and Christian communities, in which the Maronite Christian and Sunni Muslim were the main beneficiaries. The civil war of 1975 was fought between two main groups: those pro-status quo and those advocating reform of the National Pact. After fifteen years of protracted conflict and having reached a 'mutually hurting stalemate' in which none of the parties could win, the Taif Accords were signed in 1989. Unfortunately, they did not produce a substantive political reform that reflected the demographical changes that the country had gone through. Although they provided more parliamentary representation to the Muslim communities, the community-based power system remained essentially the same.

ROOTS OF SOCIAL CONFLICT: THE URBAN DIMENSION

From 1950 to 1975, the expansion and composition of Beirut's metropolitan area clearly materialized the process of socio-economic differentiation that was taking place among the myriad communities. Further complicating matters, a large number of migrants coming from rural areas, mostly from the Shia community, migrated to the capital, lured by the flourishing economy. As they settled in the

Instead of spreading the reconstruction process throughout the metropolitan area, which could have helped bridge urban and social gaps, all efforts were concentrated in downtown, which is now perceived by a great part of the population as an exclusive zone.

villages of the city's outskirts, the villages became teeming slums, creating a ring of overcrowding and destitution that, over time, encroached upon Beirut's more affluent center. In addition, the Arab-Israeli war of 1967 originated two important facts: a rapid increase of Palestinian refugees in Lebanon and the controversial presence of the PLO. Although Lebanese forces did not take part in that conflict, the loss of territory in neighboring countries (the Golan Heights in Syria, the West Bank in Jordan) increased the number of Palestinians living in Lebanon. When in 1970 King Hussein expelled the PLO from Jordan, in the aftermath of what is known as Black September, Lebanon became the principal destination for Palestinian refugees. As a result, a belt of social deprivation, the 'belt of misery,' soon overlapped Palestinian and Armenian refugee camps, as depicted in Image 1 (see Page 8). These urban conditions were a source of growing civil unrest that reached its peak in 1975 with the outbreak of civil war.

After the Lebanese civil war of 1975 to 1990, the destruction of the city of Beirut and its post-conflict reconstruction created a new source of segregation and division. The lack of interest in prioritizing social reconciliation has resulted in a systematic elimination of the possibility of social interaction among the different communities due to the absence of shared public areas. This urban fragmentation only serves to accentuate the existing hard segmentation in Lebanese society between the previously warring factions. Two main projects guiding Beirut's post-conflict reconstruction program exemplify this phenomenon: one for the city center, better known as 'Solidere,' after the company's name that implemented the plan, and another for the Southern suburb, named 'Elyssar plan.'

SOLIDERE'S PLAN FOR BEIRUT'S CENTRAL DISTRICT

The reconstruction of the city center was officially entrusted to a real estate company named Solidere, which was created in 1992 for managing the development of the central district. The leading figure behind the promotion of the project (and also contributing twenty percent of the company's capital) was the Prime Minister at the time, Rafiq Hariri, who was assassinated in February 2005 on the streets of Beirut. The idea

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behind the project (Image 3 – see Page 9) was the revitalization of Lebanese economy by re-establishing Beirut as the regional center for trade and investment that it had been in the Eastern Mediterranean area before the war. However, the uncontrolled budget and several management failures of the reconstruction process had rather negative impacts on the Lebanese economic activity of the late 1990s. Among the causes that led to this failure, two can be pointed out. First, contracts were mainly awarded to foreign construction enterprises that subcontracted considerable amount of work to local companies at very low prices, thereby transferring much of the profit of this important public investment out of Lebanon. In addition, the opportunity to employ local population was diminished by the number of foreign workers contracted. For these and other

causes, Lebanese economic growth started to slow down by the mid 1990s, becoming negative by the year 2000.⁴ This is why some authors have argued that reconstruction was used as a pretext for a massive speculation and usurpation of the public resources.⁵ On the other hand and despite the major failures, some people recognize this model as the only one capable of getting things done in the Lebanese postwar context.

In terms of physical reconstruction, the project's implementation has mainly followed a policy of *tabula rasa*, made possible by the expropriation of the perimeter of the central

district, without due respect for original property rights. As a consequence of this policy, original proprietors and residents were given Solidere's shares in exchange for land; hence they have neither returned nor participated in rebuilding the area. It is also worth noting that the number of buildings torn down by Solidere exceeds the number destroyed during fifteen years of civil war.⁶ This major clearing has been considered

It is also worth noting that the number of buildings torn down by Solidere exceeds the number destroyed during fifteen years of civil war. This major clearing has been considered analogous to the effort of erasing the past in order to heal the wounds instead of remembering it to avoid repeating the same mistakes.

analogous to the effort of erasing the past in order to heal the wounds instead of remembering it to avoid repeating the same mistakes.⁷

The physical outcome of Solidere's plan is perceived as an island in the middle of the metropolitan area, an evocation of Dubai's model of exclusive housing compounds, private marinas and luxurious shopping centers. In no sense has it recaptured the inclusiveness that the pre-war district offered to the Lebanese citizens, regardless of their social condition. The central district and Martyrs Square in particular, have been described as inclusive spaces by several authors. According to Samir Khalaf, it was in 1879 when a landscaping project for a public garden in the 'bourj' (Marty's Square is also known as the 'bourj') was launched, that the area started to attract different types of public activities.

The bourj began to evolve into an urban hub that encompassed a variety of activities ranging from official state and municipal bureaucracies, travel terminals, hotels, locandas, and sidewalk cafes to retail stores, popular souks, and less reputable venues such as brothels, bars, and gambling houses.⁸

Hence, for decades, the site played an increasingly important part on all levels of the city life.

All across history, students and trade unions standing against the national government expressed in downtown Beirut all their dissatisfaction. On the other hand, this was also a center of tremendous intellectual activity, especially with the foundation of the 1950 Grand Theater.⁹

On the other hand, it has to be said that Solidere's project has achieved the environmental recovery of the central district's coastline, in which tonnes of garbage were spread over an area of 25,000 square meters and reached 14 meters high, as well as some remarkable restoration works, like the Foch-Allenby area.

ELYSSAR PLAN FOR THE TRANSFORMATION OF THE SOUTHERN SUBURB

The simple designation of 'southern suburb' has negative connotations in Beirut today: 'anarchy,' 'degradation,' and 'squatters' are terms that usually accompany any mention of the 'southern suburb.' Formed by the continuous flow of rural migrants, the current population is rather homogeneous, predominantly consisting of members of the Shia community. In contrast to Solidere's reconstruction plan, Elyssar's plan was agreed to be implemented by a public agency that reunited extremely diverse parties; from Prime Minister Hariri to representatives of the Shia groups Amal and Hezbollah. These contrasting voices assumed the express intent to reorganize this complex southern suburban area of the city in which one third of Beirut's population live.¹⁰

Aiming to develop and modernize a vast area five times bigger than the Central District, Elyssar's plan has been criticized by some specialists for its poor adaptation to social needs and for being based only on economic considerations. However, this project has not raised as many concerns as Solidere's plan for the Central District. This might be attributable to the longstanding fact that the Shia community, mostly of rural origin, has not been considered

part of urban Beirut. Although Elyssar's plan reprises a failed model tested in many Arab cities of Northern Africa¹¹ and proven ineffective due to its high density, the plan has not been modified.

The Elyssar plan has not been implemented yet, and it is increasingly less likely that it will be due to the continuing Lebanese political stalemate. Several driving forces lay behind this failed implementation: first, the difficulties in land expropriation from the myriad of proprietors of a territory that has been illegally occupied since the war; second, the bureaucracy and the lack of transparency characteristic of post-war Beirut's governance; and, third, the speculation associated with this land's location and its potential for private development (45 out of 550 hectares are coastline terrain). However, the largest obstacle remains the difficult communication between the main actors, namely the Lebanese Government and the Shia Community. Hizbullah and Amal, both Islamic fundamentalist groups, represent this community in the Elyssar's agency and tend to control the information that the inhabitants receive.

THE SOCIAL IMPACT OF MARTYR'S SQUARE DESTRUCTION

In summary, the reconstruction plan has not contributed to social healing and reconciliation due to the absence of effective initiatives for bridging the existing divide among communities. The intended economic development that the central district was supposed to bring never reached the 'misery belt.' The Elyssar project, although poorly designed and conceived, never became a reality. In addition to the above-mentioned obstacles to implementation of this project, some authors affirm that the fact that Elyssar was perceived by the Shia as another 'Hariri plan' constituted the key in the failure of negotiations among the parties that composed the public agency,¹² showing the difficulties that social division creates in the aftermath of the civil strife.

Furthermore, the way the reconstruction process has been carried out has not only enhanced but created new sources of inter-communal social segmentation among Beirut's citizens. In this sense, the impact that the

destruction of Martyrs Square has inflicted upon its citizens should be highlighted. Historically defined as a contested space for which different groups struggled, it represented the union point between the East and the West side of the city. In the pre-war years, it housed a multiplicity of activities; from cafes, hotels and gardens to the government's headquarters.

Due to its inclusive character, it constituted the unique heart of the district, from and to which transportation lines steered and where social encounters were possible. In this regard, it can be stated that the central district followed a monocentric structure, being Martyrs Square the core of the neighborhood.

Realizing the vitality that Martyrs Square reflected in the pre-war era can help to assess the impact of its destruction and the longing to recover this open public space in the post-war city. From 1975 on, it was taken as the center of combatants. Although Solidere's works have been going on in the Central District for over ten years, the building of housing compounds has been prioritized to that of recovering public spaces. Hitherto, and despite several provisional unclear plans for the site, Martyrs Square has not been defined. Despite the current emptiness of the site, massive demonstrations occupied the place after Rafiq Hariri's assassination, demanding the complete withdrawal of Syrian forces in Lebanese territory.

Understanding the importance of public spaces is essential in achieving reconciliation in divided societies, as they have the dual characteristic of being perceived as neutral and at the same time offer the possibility of contact and social interchange. According to Samir Khalaf, urban places that were sources of national pride have become inaccessible to citizens or transformed into spaces for commercial speculation in the aftermath of the civil conflict.¹³ The social impact of the deprivation or

In summary, the reconstruction plan has not contributed to social healing and reconciliation due to the absence of effective initiatives for bridging the existing divide among communities.

destruction of these landmarks is explained as follows:

Urban changes inevitably affect the habits of a few people, perplexing and troubling them....Groups designed their boundaries and defined their reactions in relation to a specific configuration of the physical environment.¹⁴

The way Beirut's reconstruction has been implemented might be enhancing casual contact rather than acquaintance or residential contact and thus increasing prejudice and division among the different communities. ... The lack of real knowledge of individuals belonging to a different socio-ethnic group only further entrenches existing prejudices.

Associated with the absence of inclusive public spaces that would be able to engender inter-communal social interaction is the reinforcement of communal segregation along sectarian lines that occurred during the civil strife. Before the war, inter-communal mixing was a significant characteristic among the different communities that comprise the totality

of the Lebanese population. Although there was always a Christian majority living in East Beirut, the percentage of Muslims living in the eastern suburbs of the city reached forty percent in 1975. As it has been described, social encounters were very much taking place in the central district area, especially in Martyrs Square, due to the myriad and type of activities located there: the parliament, financial institutions, religious centers, traditional souks, etc.¹⁵ East and West neighborhoods found their connection in one common spot: Martyrs Square.

During the war, diverse forms of forced displacement were experienced by almost two-thirds of the population. Ranging from home or neighborhood to country, the population shifts that occurred during the conflict reinforced the creation of community-based identities rather than forging a unitary national Lebanese identity. Hence, the percentage of Muslims living in the

eastern suburbs of Beirut decreased to five percent in 1980.¹⁶ In search of protection and shelter, members of the same communities tended to resettle together, leading to the formation of territorial identities¹⁷ and the configuration of a multi-centric city model. Nowadays there is no evidence of reversing this trend of community territorialization. Unfortunately, the reconstruction plan for the center has deprived original habitants from returning to their properties. The high prices of the housing compounds built in the central district have excluded many citizens, making them affordable only to a small minority of Lebanese or to foreign investors.

Although the process of communal territorialization is understandable in the context of a civil war, it poses a threat to coexistence in such a pluralistic society. In the aftermath of the civil war, the Lebanese society is more fragmented than it was before the conflict. The reconstruction process, which constitutes an opportunity for planners, architects and politicians to contribute to achieve reconciliation and social integration in this highly divided society, is not only repeating the problems of the past but actually only exacerbating them further. According to theories of conflict resolution based on social contact, the absence of contact among communities sets the basis for prejudice, which can originate hostility. The way Beirut's reconstruction has been implemented might be enhancing casual contact rather than acquaintance or residential contact and thus increasing prejudice and division among the different communities. Prejudice is defined as an aversive or hostile attitude toward a person who belongs to a group, simply because he belongs to a group, and is therefore presumed to have the objectionable qualities ascribed to the group.¹⁸ The lack of real knowledge of individuals belonging to a different social-ethnic group only further entrenches existing prejudices.

CONCLUSION

Urban factors are intimately intertwined with human conflict. In a complex interaction, the built environment affects human behavior; meanwhile the city form is very much shaped by human

needs as security. In the aftermath of protracted conflicts in which societies are highly divided, the urban environment can play a role in decreasing social tension. Therefore, urban planning interventions in post-conflict situations can be considered as an opportunity to change factors that were creating social conflict, as well as a tool to foster reconciliation in divided societies.

The Lebanese civil war resolved none of the conditions that generated the initial confrontation. Like any other type of violence, it generated fear, suffering and destruction. In the process of recovery, there was no political plan for social reconstruction. The current plans for urban reconstruction reflect past mistakes that should not be repeated. Approaching urban reconstruction through the theories of conflict resolution provides a framework that might give guidance on how to intervene in the city in post-conflict settings. At the same time, making an effort in trying to understand the root causes of conflict constitutes a premise in designing a long-term vision for peaceful coexistence.

The process of reconstruction can be seen as an opportunity to change factors that were creating social conflict, and as providing a chance to analyze what was not functioning correctly in that society and how to establish a basis for reconciliation and peaceful coexistence. In the case of Beirut's reconstruction, understanding the importance of recovering urban public spaces that promote social contact between the Lebanese communities is essential in helping to set the basis upon which national reconciliation could be built. Moreover, learning from the inclusive character of Martyrs Square might offer guidance to promote the type of social activities that can engage members from different communities. However,

all of these efforts might be futile unless the numerous Shia community participates in this urban experience. For that, not only urban interventions but also significant changes in the power-sharing formula are needed in the Lebanese political realm.

The different number and character of factors that intervene in the complex process of social conflict and conflict resolution go far beyond the scope of city planning. However, the opportunity that post-conflict reconstruction poses to architects, planners and politicians should be seized in the effort to bring healing and reconciliation to divided societies. In this sense, the concentration of the reconstruction efforts in Beirut's Central District have had negative consequences in eroding the role of the Lebanese state that have led to the current political stagnation of Lebanon. Instead of spreading the reconstruction process throughout the metropolitan area, which could have helped to bridge urban and social gaps, all efforts were concentrated in downtown, which is now perceived as an exclusive zone for a greater part of the population. Therefore, it can be stated that Beirut's urban reconstruction is a missed opportunity for enhancing social cohesion and community reconciliation since it failed to address one of the root causes of the civil conflict, this is to intervene in ameliorating the dreadful living conditions of approximately thirty-five percent of the city's population.

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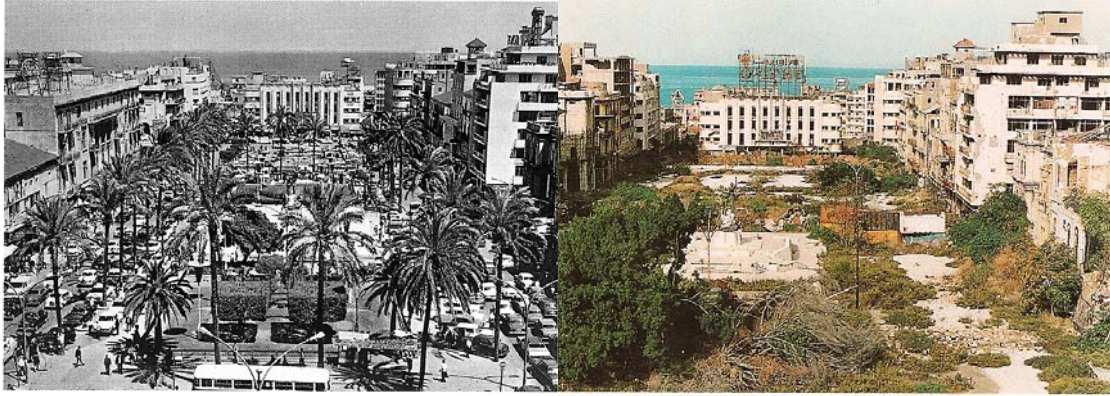


Image 1. Martyrs Square before and during the civil war

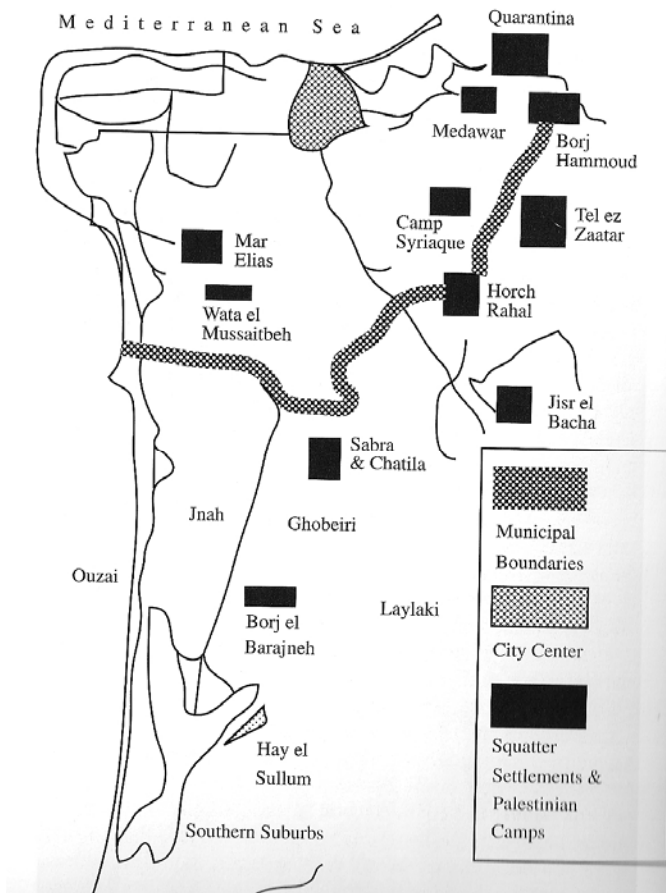


Image 2. Belts of Misery in the pre-war era

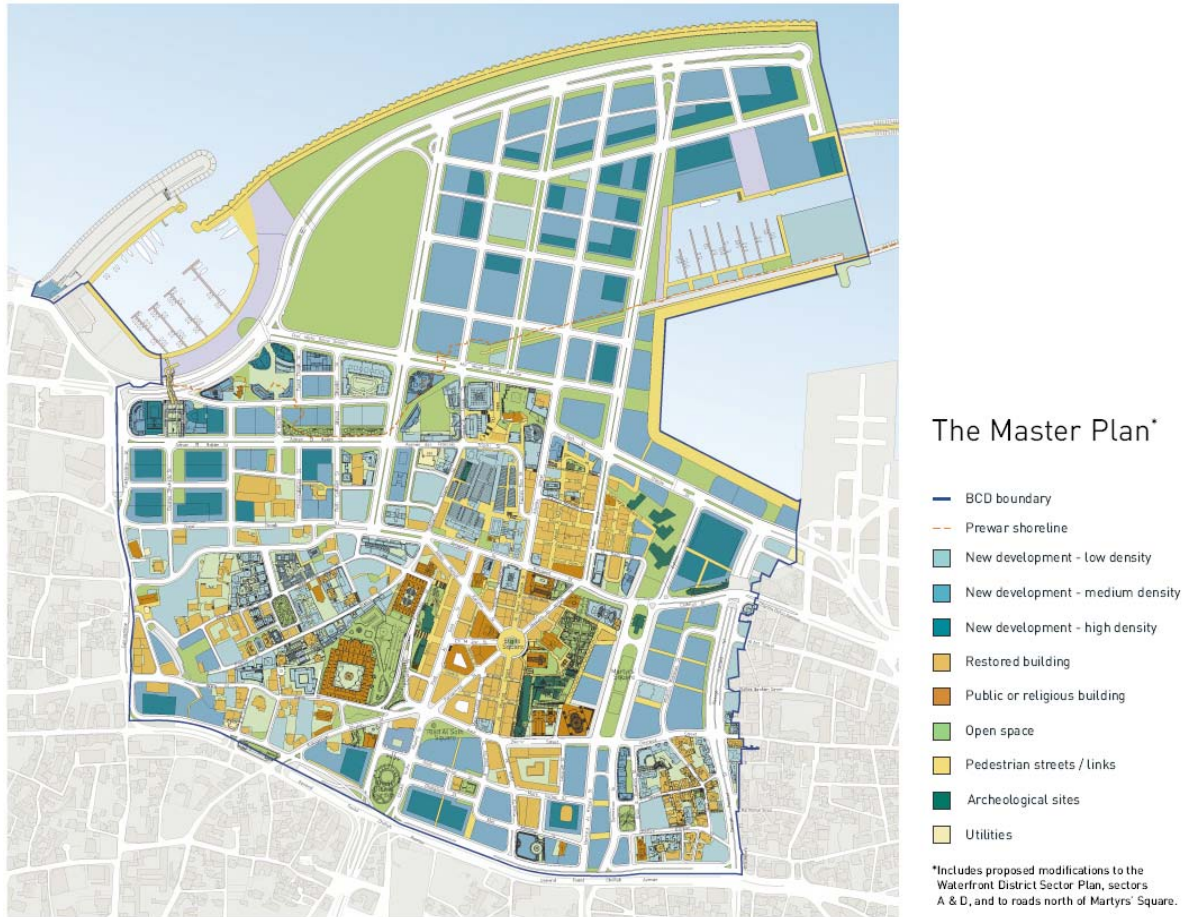


Image 3. Solidere's Master Plan for the reconstruction of the central district

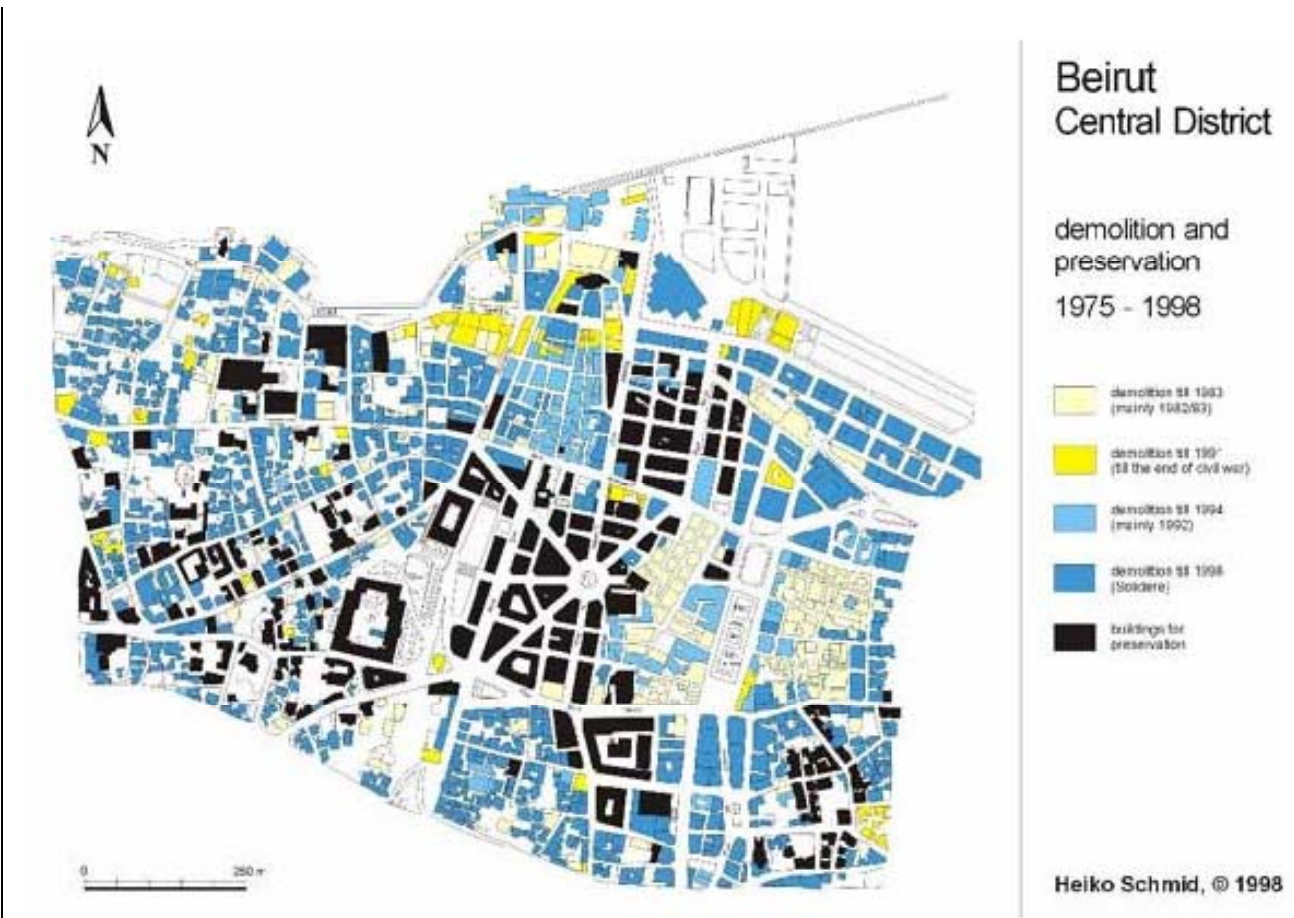


Image 4. Map showing a comparative study of the buildings destroyed during the war and the ones destroyed by Solidere



Image 5. Aerial view of Solidere's plan



Image 6. Example of housing compound



Image 7. Example of Solidere's restoration works: Restored quarter in Beirut's Central District

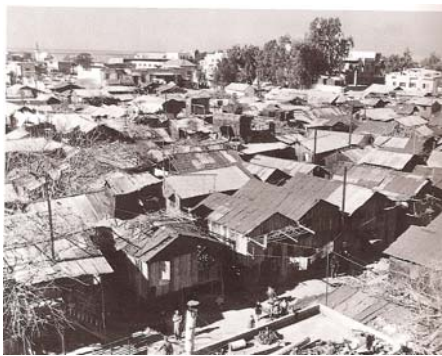


Image 8. Squatter settlement, 1957



Image 9. The Southern Suburb

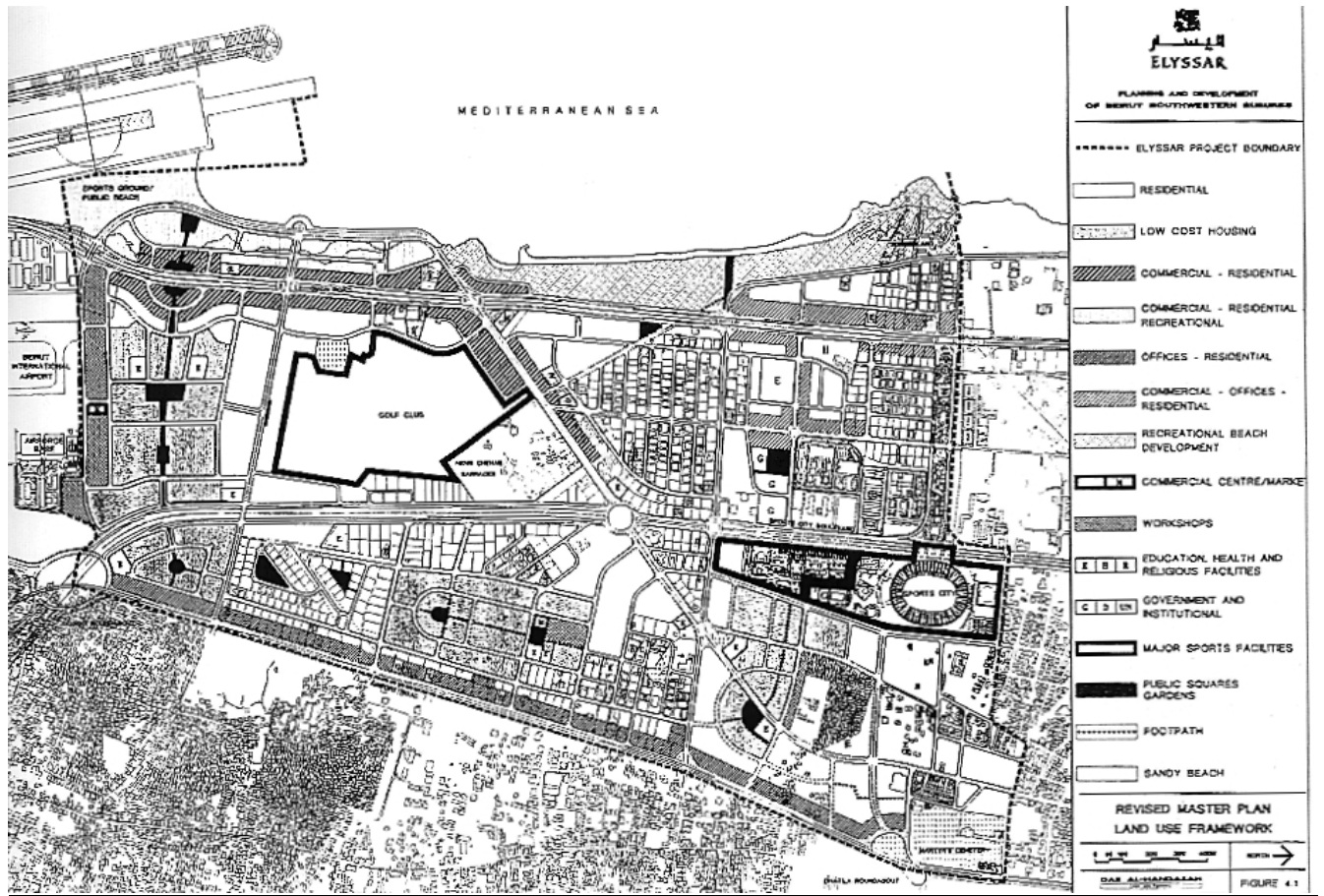


Image 10. Elyssar Plan for the Transformation of the Southern Suburb

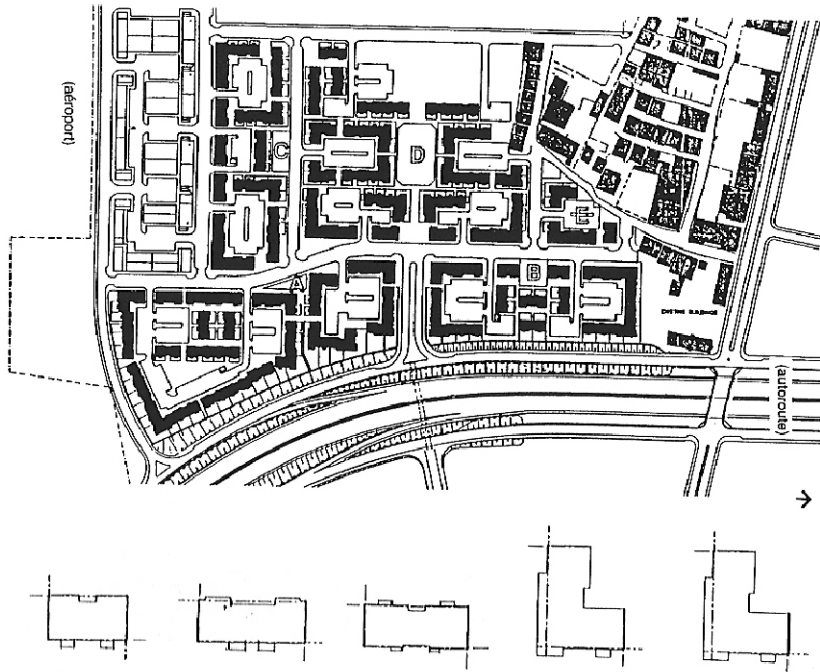


Image 11. Elyssar Plan: mass plan of 7,500 low-income housing units

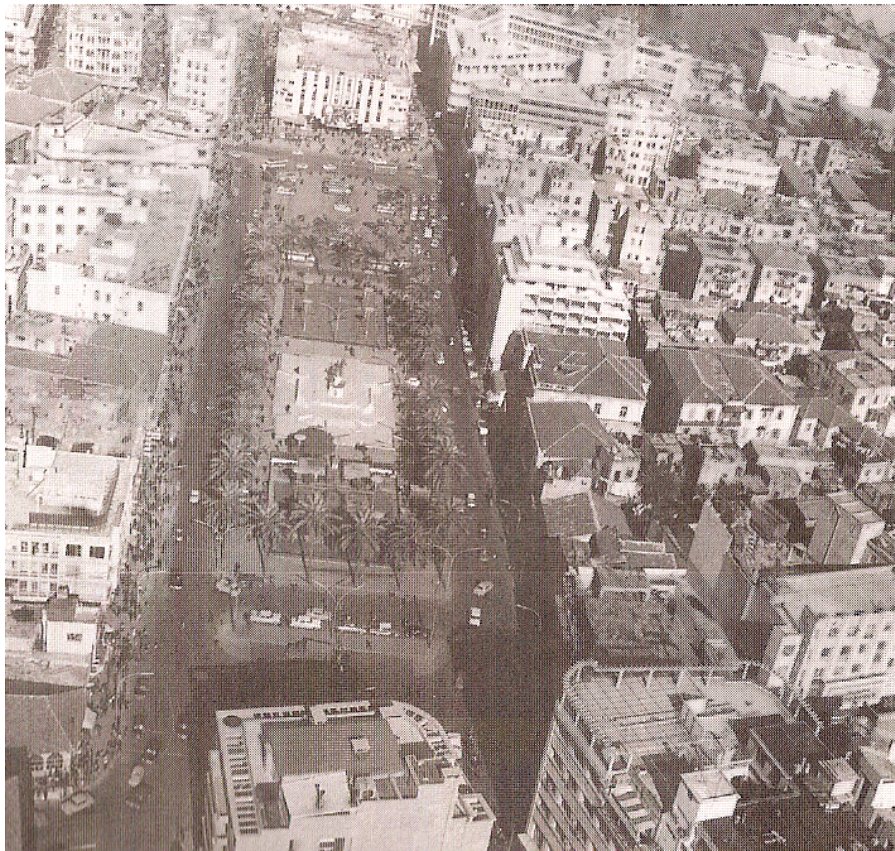


Image 12. Aerial view of Martyrs Square in 1960s



Image 13. Demonstrations after Hariri's assassinations



Image 14. Current view of Martyrs Square

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Foreign Labor in the Arab Gulf: Challenges to Nationalization

Dahlia Shaham, MALD 2009

The leaders of the Gulf Cooperation Council (GCC) states have much on their plates these days. Relations between the United States and Iran continue to deteriorate. As oil prices climb and local currencies remain pegged to a depreciating US Dollar, inflation within GCC countries has increased. This period of regional economic and diplomatic unease also coincides with the recent launch of the GCC Common Market. Yet, with so many pressing issues on the agenda, one of the hottest topics in Gulf media these past months involves a legal question of a somewhat technical nature: should GCC members limit residency visas for non-skilled foreign workers to six years?

Labor market regulation, particularly foreign labor, is a crucial economic and political concern for GCC countries. It inevitably relates to tensions between economic and political development and between financial surpluses and human capital shortages. This paper explores the nature of this concern, the factors behind it as well as past and present attempts to address foreign labor regulation. It focuses on the four Small Gulf Countries (SGCs): The Kingdom of Bahrain, The United Arab Emirates, Kuwait and Qatar. The common traits of the SGCs—their traditions, their size of territory and population and the origins of their political systems and economic growth—have created similar labor market trends. However, it is their differences that offer insight into the effect of certain political and economic factors on the regulation of those markets and on their prospects for development.

Nationals and Expatriates: Segmented Labor Markets

Until the 1950s, the indigenous Arab populations in the Gulf were small—consisting of nomadic Bedouins, peasants, fishermen and sailors. The only foreigners present in the region were merchants from neighboring states. This situation changed dramatically with the Gulf's transformation into a global energy hub. By the early 1970s, oil became the main source of income for all of the region's producing states, including the SGCs. Due to lack of local expertise in the field, development of the oil sector relied heavily on foreign knowledge and labor.

The processes of urbanization and industrialization that followed the Oil Boom of the 1970s were also accompanied by influx of foreign labor to other sectors—namely construction, production and trade.¹ 1965 to 1975 marked a period of accelerated growth in SGC foreign labor populations which, over time, exceeded the local population. The growth rate of the migrant worker population continues to exceed that of the local population.²

To grasp the extent and significance of this phenomenon, we need to look at the percentage of foreigners not only in the population as a whole but also in the work force—particularly the private sector (See Figure 1).

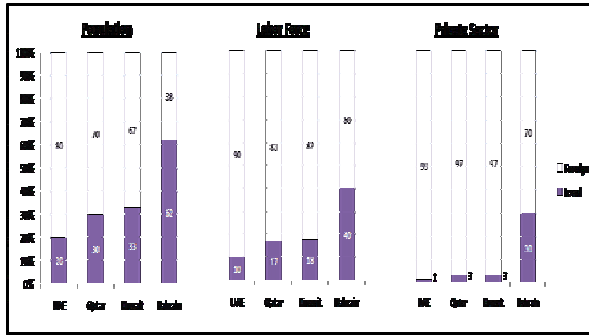


Figure 1
Source: EIU, Gulf Yearbook

As the 2003 data above reveals, the local labor force in the SGCs has limited access to the private sector. This employment dichotomy is best explained by distinguishing between the job markets for skilled and non-skilled workers and examining the different barriers that local workers face when seeking employment.

With regards to the *skill-based job market*, a majority of local workers lack the required technical skills to perform at those positions, for reasons that mostly trace back to the local education system. Educational curricula and methods have barely changed over past few decades, maintaining traditionalist religious doctrines.³ And despite high rates of university graduates, few attain skills demanded by the private sector.⁴ Most local populations within SGCs value academic learning—emphasizing the humanities and social sciences—over a technical education, which they traditionally associate with the lower classes.⁵ As the *Arab Human Development Report* explains, there is a strong correlation between the economic dependence on oil and the poor condition of knowledge acquisition:

This rentier economic pattern entices societies to import expertise from outside because this is a quick and easy resort that however ends up weakening local demand for knowledge and forfeiting opportunities to produce it locally and employ it effectively in economic activity.⁶

The entry barriers to the *non-skilled labor market* are equally rigid but for different reasons. Cheap and

accessible non-skilled labor has been an imperative condition for the economic growth of the SGCs. A combination of official policies and lax enforcement allows private sector employers much leeway in determining salaries and working conditions. Accompanied by a high supply of low-skilled labor from developing countries, these factors depress wages and bring labor conditions to the verge of, and occasionally beyond, exploitation.⁷ Local non-skilled workers wishing to work in the private sector must therefore compete in a race-to-the-bottom for salaries that leads to wage levels well below local living standards.⁸

Cultural perceptions also act as barriers for entry of locals into the non-skilled labor market. Many occupations in the services sector, such as taxi drivers, food service clerks, and particularly household workers (including cooks, nannies and cleaners) are considered the terrain of less-respected foreigners and are therefore unattractive for nationals. While the private sector increasingly became the domain of foreign labor, SGCs traditionally supplied nationals with unlimited work opportunities in the public sector—accommodating up to 90% of the local workforce.⁹ As bloated public wage bills consume an unsustainable portion of GDP¹⁰ and governments have begun privatizing public sector holdings, this policy has nearly reached its capacity limit.¹¹

The inability of the public sector to absorb local labor supply is closely linked to demographic trends. The SGCs went through a period of rapid population growth between the 1940's and the 1980's. Since then, fertility rates have steadily declined, but the wide-based age pyramid created in that population boom produced 'population momentum' in which absolute numbers of population growth will stay persistently high during the next decades.¹² Currently, forty-two per cent of the population in the Gulf area is under the age of 15.¹³ This data indicates a fast growing workforce in which the number of entrants grossly outweighs the number of retirees. Social reforms involving the educational advancement of women, who have traditionally been excluded from the labor

market, have further increased the workforce growth rate.¹⁴ The mismatch between the growing national workforce and the number of work opportunities available manifests itself in steadily increasing unemployment rates, reaching 15% in the UAE by 2003 and 12% in Qatar by 2001.¹⁵

COMPLEX POLICY CHALLENGES

The increasing pressure on the labor market poses economic, social and political challenges for the governments of the SGCs. On the macroeconomic front, the challenge is three-fold. First, the segmented labor market is inefficient and displays decreasing productivity. Because it has been cheaper for private sector companies to import workers rather than invest in capital and technology-intensive industry, productivity declined by 25-30% over the past decade. Additionally, the tendency of both local and foreign national workers to gravitate toward short-term employment in the private sector has contributed to this trend.¹⁶ Second, with the political economies of the SGCs based largely on a welfare state model, rapid population growth and rising unemployment have driven up budgetary costs.¹⁷

Since health and social benefits for the foreign national population is also government-funded, the increasing size of the migrant workforce only adds to that budgetary pressure.¹⁸ The third hurdle is the risk of long term decline in national revenues. Remittances of the foreign national workforce comprise approximately 10% of GDP.¹⁹ The past few years have seen a sharp increase in oil prices and therefore in revenues. However, some SGCs are facing potential depletion of their oil reserves,²⁰ while others are battling increasing inflation rates that undermine their real growth rates.²¹

The accelerated growth experienced by the SGCs over the past several decades has generated

numerous social challenges. Arab Gulf societies have all but abandoned their old socio-economic system through an extensive urbanization process. The “westernization” that accompanied this process, alongside the influx of foreigners, precipitated strong fears within SGCs regarding the loss of local identity.²² Migrant workers are therefore perceived as a “threat to the fabric” of local society.²³ These fears are particularly strong with regards to the influx of foreign workers in the domestic sector. Migrants are often employed as cooks, cleaners and nannies and their employment is perceived as a status symbols. In the UAE, for example, domestic servants currently make up 5% of the population, and sometimes outnumber family members.²⁴ Their employment has drastically altered traditional family roles as many children are brought up by foreign nannies. Teachers are known to complain of an increase of children who, having been brought up by Asian nannies, do not speak proper Arabic.²⁵

Politically, labor dynamics create various tensions. The stability of the political system hinges upon the governments’ ability to provide citizens with improvement in their standard of living, employment, and privileges that separate them from the migrant population.²⁶ As the system’s ability to do so decreases, internal pressure for political change rises.²⁷ And while demands by the foreign national population for political representation have so far been rare, as the processes of democratization persist in the SGCs, they may increase.²⁸ Foreign workers have also raised national security concerns. Some of them were involved in incidents of political turbulence in Gulf countries, including coup attempts, political assassinations and terrorist attacks. They are often perceived as “potentially dangerous political agents disloyal to their hosts”.²⁹

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Labor migration also influences the foreign policy of SGCs. During the 1960's and 1970's, immigration policy was used to express commitment to common causes of the Arab community. Today, it is a central component of relations with India and other Asian countries.³⁰ On the multinational level, conditions in the Gulf labor market and violations of workers' rights have been brought to the agenda of international

By the 1970's, this laissez-faire approach to migrant worker flows could not be sustained.

organizations such as the International Labor Organization (ILO) and the World Trade Organization (WTO).³¹ Clearly, the complexity of the policy challenge facing the SGCs cannot be

overstated. The governments have employed, over the years, a wide range of policies designed to minimize these risks and tensions. Much of this effort focused on the most distinct trait—the extreme reliance on foreign labor. High priority has therefore been given to the goal of “nationalizing” the labor force. In order to evaluate the success or failure of these attempts, we need to understand their evolution.

ORIGINAL STRUCTURE: RIGID SPONSORSHIP SYSTEM

At the early stage of oil industry development in the Gulf, regional governments understood that their ability to accelerate their emergence into the energy market hinged on the importation of foreign knowledge and workers.³² They did very little to regulate labor migration and generally perceived it as a temporary necessity that would disappear with time. By the 1970's, this laissez-faire approach to migrant worker flows could not be sustained. But rapid economic modernization and the lack of an existing legal infrastructure prevented the formulation of a coherent labor strategy.³³ Instead, the SGCs sought effective short-term measures to facilitate a level of migration necessary to support economic development, while minimizing its social and political ramifications. They did so by allowing industries to import labor almost

uninterrupted and instituting rigid restrictions on the workers themselves.

The first tenet of this policy was maintaining a flexible stance on immigration that could adjust rapidly to economic needs and political interests. Restrictions were lowered when demand was high, and workers were expelled when unemployment increased.³⁴ Similar methods were used in response to political threats. Following a surge of Arab secular nationalism in the 1980's and Iraq's invasion of Kuwait in 1990, some SGCs forcibly expelled Palestinians, Jordanians and other Arab workers—reorienting their migration policies to facilitate an influx of labor from the east. This legal flexibility, aided by authoritarian political structures, enabled the SGCs to replace most of the non-Gulf Arabs with Asian workers within less than a decade.³⁵

Alongside the flexible migration policy, policies regarding naturalization and citizenship have been restrictive and strictly enforced, “successfully limiting the enlargement of the privileged local populations by foreign elements”.³⁶ These policies formed the second crucial tenet or “Sponsorship System” (*Kafala*), which conditions the provisions of a migrant work visa to foreign nationals upon sponsorship by a local employer. The sponsor assumes full economic and legal responsibility for the employee during the contract period and must report any change in the labor contract. As it is illegal for an unemployed worker to remain in the country, the sponsor is required to repatriate that worker upon termination of his contract.³⁷

The Sponsorship System places heavy limitations on labor mobility. Since migrant workers can only legally remain in the country while under sponsorship, their ability to change jobs depends on the sponsorship transfer regulation, which is highly restrictive in all four countries.³⁸ Initially, this system achieved its goals. Access to national resources remained in local hands, labor supply met the industrial demand and foreign influence and integration was contained. Nonetheless, by the end of the 1980's, some side-effects became apparent.

Due to lack of enforcement infrastructure and the high returns for cheap qualified labor, an

illegal workforce has existed in the SGCs since the 1960's. The Sponsorship System not only fell short in abating this trend but rather exacerbated the problem. By the 1990's, illegal workers accounted for up to fifteen per cent of the total workforce in the Gulf. Of that fifteen, only a small minority of them illegally crossed the border. The vast majority arrived legally but overstayed their visa. Many started working while on a tourist visa and either changed employers without proper authorization or, for practical reasons, could not leave the country.³⁹ The driving force behind this phenomenon has been the structure of the Sponsorship System itself. The system shifted the weight of labor recruitment away from the government and into the hands of recruiting agents hired by employers. Unsupervised, many agencies thrived on selling sponsorship documents that had either been obtained illegally from shell companies or were not backed by the employment offer presented to the workers. Upon arrival in the Gulf, these workers found themselves underemployed, underpaid or in debt, and resorted to the illegal job market.⁴⁰

During the early 1990's, SGC governments responded by regulating labor-importing agencies, requiring agents to procure and renew their licenses, and prohibiting the charge of fees from workers.⁴¹ As the legality of the initial employer sponsorship did not guarantee continuous legal employment, these new measures helped but did not significantly address the problem. Often, employers did not repatriate workers when their visa expired and "neglected" to return their passports. In effect, these workers could neither leave the country nor acquire a new job—effectively driving them into the illegal job market.⁴² SGC governments tried to confront this second set of problems by tightening supervision over sponsors,⁴³ increasing penalties for workers, conducting raids to arrest and deport illegal workers⁴⁴ and granting temporary amnesties that allowed illegal workers to leave the country without penalty.⁴⁵ Due to the basic inconsistency

between the short-term political and economic objectives of the Sponsorship System and the structural realities of the labor market, these measures also failed.

One of the objectives of the *Kafala* system was to facilitate a continuous rotation of the migrant workforce. This objective primarily reflects a social priority that seeks to preempt the development of a permanent foreign presence in the Gulf. The premise for this rotation strategy is that migrant workers employed in the Gulf monarchies are hired one-job-at-a-time and expected to leave when it ends. This structure creates high transaction costs that neither the workers nor the employers are willing to shoulder. Demand for a mobile cheap workforce coupled with a supply of workers who prefer the mobility afforded by 'floating' illegally to adherence

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with the rigid demands of the current system drives the illegal job market.⁴⁶ The recurring amnesties in the UAE show that the problem lies not with the inability of illegal workers to leave but rather with the incentives they have to stay.

The structural weakness of the Sponsorship System also gave rise to wide-spread violations of workers' rights, from the failure to protect their contractual rights for payment and limited working hours to instances of straight-out slavery.⁴⁷ Labor laws in all four countries uphold the protection of workers' rights to compensation, health and social security benefits, as well as to vacations and limited working hours. The ability of a foreign national worker to guard against these types of violations, however, relies heavily on the means at his/her disposal to hold the perpetrator accountable. However, the extreme dependence of foreign workers on their local sponsors, along with limited access to dispute settlement mechanisms, has shielded most employers from any legal accountability.⁴⁸ Even within the realms of international law, vehicles for the protection of workers' rights are limited in their efficacy.⁴⁹ Nonetheless,

international organizations advocating human rights and fair trade have highlighted the issue of labor conditions in the Gulf and increased the pressure placed on the governments to reform:

The GCC countries can no longer continue the business-as-usual practices of violating the rights of foreign workers and subjecting them to exploitation and abuse. The GCC countries are under close scrutiny by the western countries, and the United States in particular, especially in relation to the status of migrant workers.⁵⁰

THE SGCs: DIVERSE PRESSURE TO REFORM

The SGCs exhibit similar macroeconomic characteristics and have experienced similar economic and demographic trends. Each of them instituted a Sponsorship System and each faces increased local unemployment and a surge of foreign workers in its labor market. However, differences among the SGCs in their economic and political structures are worth noting because they influence the incentives that drive labor nationalization policies as well as their implementation. One such difference, and perhaps the most significant one, corresponds to the reliance of the various states on their respective oil and gas sectors. The higher the flow of oil revenues, the easier it is for the governments to sustain their original rentier structure, providing welfare for their growing national population through budgetary transfers, while relying on foreign labor for economic development. It would therefore be reasonable to expect that there would be an adverse correlation between oil reserves and labor nationalization reforms.

While Bahrain was one of the first places in the Gulf to export oil, its reserves proved to be quite small. The government does not release official figures, but the estimates are that they will only last up to 15 years. This situation has forced Bahrain to diversify its economy, giving rise to a dominant tourism and financial services sectors, oil refining and aluminum production, with oil

accounting for only 10.3% of GDP.⁵¹ At the other end of the spectrum, Qatar, with the third largest natural gas reserve in the world and moderate oil reserves, relies on its energy sector for 61.9% of GDP.⁵² Kuwait's energy sector accounts for 42.3% of its GDP. The size of its oil reserves is uncertain. Early in 2006, a leaked government document implied that the true level of oil reserves is 48b barrels, less than a half of the public official figures, allowing for only 50 more years of production. The government denied this information but has so far failed to provide evidence to support its own estimate.⁵³

The situation in the UAE, the SGC's only federation, is more complex due to differences between its two prominent emirates, Abu-Dhabi and Dubai.⁵⁴ Abu-Dhabi manages the lion share of the UAE's oil endowment, which is estimated at 10% of the world's proven oil reserves. It is the largest and wealthiest of the emirates and therefore heads the federal administration.⁵⁵ Compensating for its minor oil reserves, Dubai has developed a bustling service economy—depending heavily on tourism, construction, telecommunications, and financial services.

While the ability to rely on oil reserves effects the incentive to nationalize the labor market, internal political factors such as the level of democratization and internal social divides impact how these reforms are carried out. Due to the systemic nature of these factors, it is difficult, in a purely qualitative analysis, to isolate the effect of each and assess its influence. Nonetheless, it is worth noting the unique characteristics of political participation in each of the SGCs that may affect the labor nationalization process.

Of the four SGCs, Kuwait is the most democratic. It is ruled by an elected member of

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the ruling al-Sabah family and its National Assembly (the parliament) has the power to block legislation and dismiss ministers.⁵⁶ Over the past few years, the National Assembly has been the main arena for public discourse on government transparency and accountability.⁵⁷ It is also the only SGC that allows the formation of trade and labor unions, which currently encompass 10% of the foreign workforce in the country.⁵⁸ On one hand, these relatively high levels of political participation are, on the one hand, inductive to relatively open public discourse on the effects of foreign labor on Kuwaiti economy and culture. On the other hand, the power of the National Assembly, and the checks it places on the government, sometimes undermine the latter's capacity to push through reforms that may be

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unpopular in the short-run.

Qatar, once again at the other end of the spectrum, is an absolute monarchy. Although it recently declared the establishment of an elected Consultative Council with limited legislative powers, no date for elections has been set.

Nonetheless, the royal family and the Emir Sheikh Hamad bin Khalifa al-Thani are considered quite popular and committed to issues of women's rights and regional liberalization.⁵⁹ Under conditions of political stability, extreme natural wealth and relative homogeneity of the local population, the government has faced very little public pressure with regards to its labor market policies.

The internal differences in the UAE between Dubai and Abu-Dhabi extend beyond their economic structure and to the nature of their reliance on foreign labor. The process of economic diversification away from oil in Dubai has been accompanied by social liberalization and an influx

of skilled western employees, unlike the predominantly unskilled Asian labor flowing into more traditional Abu Dhabi. These socio-economic differences entail diverging interests and political clashes over federal policies on immigration and labor regulation. The resolution of such tensions came through the proliferation of Free Economic Zones (FEZs) in Dubai, making it the FEZ capital of the Arab world.⁶⁰ This construct allows Dubai to enact special tax and labor legislation in those areas to attract Foreign Direct Investment (FDI). In terms of labor nationalization policies, however, the fragmentation of labor regulation poses challenges to the federal government.

Unlike its rather homogenous SGC neighbors, Bahrain is a majority Shiite country ruled by a Sunni royal family. Coupled with the fact that most government positions are held by members of the royal family, with clear socio-economic gaps between well-off Sunnis and poor Shiites, and with political suspicion following the Shiite Islamic revolution in Iran, this dynamic gives rise to complex political and social tensions.⁶¹ These tensions came to light in Bahrain's constitutional transition in 2002. After initially boycotting the elections, Shiite opposition parties actively participated in the process in 2006—winning a majority of seats in the lower legislative house.⁶² Ostensibly, it seems that the policy challenges posed by the phenomenon of foreign labor would only exacerbate the existing political tensions. However, to some extent the presence of a local lower socio-economic Shiite class, who is not incorporated into the public sector, also alleviates the need to export cheap labor and the reliance on foreign workers in the private sector.

NATIONALIZING THE LABOR MARKET

Over the past decades, the SGCs have grown aware of the deficiencies of the sponsorship system and of the socio-economic challenges created by the reliance on foreign labor. While all have declared their intention to reform the system, not much has actually been done. A straight line can be drawn between the ability to rely on oil reserves and the motivation to reform.

The larger the reserves are, the more capable the government is to maintain the system.

Indeed, the only country to have substantially reformed the sponsorship system is Bahrain. It has established a Labor Market Regulation Authority which is directly in charge of authorizing the employment of foreign nationals.⁶³ The new law allows foreign workers “reasonable time” to transfer jobs after the expiry or cancellation of previous work permits,⁶⁴ and increases supervision over employers.⁶⁵ Kuwait too has officially recognized the need to reform the sponsorship system, but has so far not taken any legislative actions to that effect.⁶⁶ Dubai seems to have somewhat mitigated the rigidity of the system through its FEZs. Foreigners working in these zones are sponsored by the FEZs authorities and not by any particular employer and therefore enjoy higher mobility. However, it should be noted that most of those who enjoy this increased mobility are high-skilled workers.

The UAE and Qatar, while able to set aside the structural deficiencies created by the sponsorship system, have nonetheless not ignored other challenges. Along with Kuwait and Bahrain they have been concerned with the dominance of foreign workers, particularly skilled ones, in the private sector and with the inability of nationals to penetrate the market. They have therefore pursued policies labeled Emiratisation, Qatarization, Kuwaitization and Bahrainization to increase local participation in the private sector. The various measures pursued within labor nationalization projects can be divided into two strategies: direct policies to integrate nationals into the private sector; and indirect policies, aimed at increasing the cost of foreign workers so as to level the playing field between locals and expatriates.

In terms of direct policies, setting employment quotas has been the ‘flagship’. The UAE has been the leader in pursuing this kind of policy, in which private sector companies are required to increase the percentage of their local

employees or appoint nationals for certain positions.⁶⁷ The rationale behind the quota system is to place the burden of identifying, training and maintaining local personnel on the employers, who are often foreign companies.⁶⁸ Requirements differ by sector and firm size and incentives to comply with the requirements include reduced labor transaction fees and waives of formal financial requirements. Companies that fail to comply with the requirements may incur increased fees, fines and suspension of transactions.⁶⁹

Data on the success of the quota system is quite inconsistent.⁷⁰ Employers complain that the

local supply does not meet their demands, and claim that local employees often lack motivation and skills.⁷¹ In terms of enforcement, the main challenge posed by the quota system stems from its emphasis on short-term quantity, rather than long-term quality, of employment.⁷² As compliance with the law is measured by the number of employed nationals, companies often find loopholes. Some cover

their quota demand by hiring locals for the cheapest price possible, to then use the benefits given by the government to import more skilled foreign personnel. Alternatively, they use “ghost companies” registered in sectors with lax quotas requirement (such as construction), import workers and release them illegally to other sectors where quotas are more restrictive.⁷³ Exceptions made in the Free Economic Zones further hamper the effective enforcement of the quotas policy.

A more long-term approach for increasing the presence of local labor in the private sector is seen through education and training policies. These have been difficult to pull through in the traditional governmental education systems.⁷⁴ Public-private sector collaborations have had greater success. Here too Bahrain took the lead, establishing a joint public-private training institute providing vocational training and work placement services by private companies.⁷⁵ These methods are of course not mutually exclusive. The

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'Qatarization' project, for example, combines the quota system with professional training initiatives. Its goal is to achieve 50% local employment in the energy sector (currently at 28%) within five years. It is based on the active participation of leading companies in the energy sector in processes of locating, training and employing Qatari nationals with the support of the government.⁷⁶

The indirect nationalization strategy is based on the recognition that the different costs to employing foreigners and locals are at the root of the segregated labor market in the Gulf. The low wages paid to foreign workers are competitive compensation compared to the average wages in their home countries, but hardly sufficient wages in GCC standards. Additionally, the sponsorship system, the restrictions it places on labor mobility and the poor enforcement of the rights of migrant workers, allow employers to hire foreigners for cheaper than locals. The main measure advocated to increase the cost of foreign, particularly non-skilled, labor, is to do away with the Sponsorship System.⁷⁷ As mentioned above, only Bahrain has so far gone down that path. It is also the only SGC to increase the cost of foreign labor by introducing a tax, planned to be gradually increased, on companies for the employment of foreign workers.⁷⁸

Once again, while other SGCs recognize the need to level the playing field between foreign and local workers, they have been reluctant to impose obligations that would undermine the supply of cheap foreign labor. This can be explained by their ability to rely on their energy reserves (or at least declared energy reserves, in the case of Kuwait); and by the fear of losing the competitive advantage they enjoy precisely due to their ability to offer private firms a tax-free cheap-labor environment. The need to preserve this competitive advantage, while pursuing nationalization of the work force, has prompted attempts to coordinate labor policy within the Gulf Cooperation Council (GCC).⁷⁹ Equating the benchmarks for foreign employment across the region will allow better enforcement and put a stop to the 'race to the bottom' dynamics of

competing for foreign investments by lowering labor costs.

Despite numerous discussions and declarations of their intention to work jointly on the subject, the leaders of the GCC countries have so far failed to go beyond general statements of commitment.⁸⁰ The relatively new policy of time limitations on foreign workers stay is also associated with the nationalization effort. Both Bahrain and the UAE have raised a proposal for a "3+3 Law", that would stipulate a maximum 6 year stay (three-year contract that may be renewed once) for non-skilled foreign workers. They suggested this policy should be adopted by all GCC members.⁸¹ However, this policy is really an extension of the old labor regime, trying to assure the rotation of the foreign labor force. It is unlikely to increase the employment of locals, it does not apply to the increasing number of skilled workers, and by mandating rotation it will further reduce the price of labor. Why pursue a policy so adverse to the proclaimed goal of increasing local employment? The rhetoric behind this proposal suggests that its primary goal is to abate social and political concerns. In the words of Bahrain's Labor Minister:

In some areas of the Gulf, you can't tell whether you are in an Arab Muslim country or in an Asian district. We can't call this diversity and no nation on earth could accept the erosion of its culture on its own land.⁸²

Why pursue a policy so adverse to the proclaimed goal of increasing local employment? The rhetoric behind this proposal suggests that its primary goal is to abate social and political concerns.

CONCLUSION: EVALUATING LABOR NATIONALIZATION

In principle, all SGCs are concerned with their reliance on foreign labor and the looming threat of increased local unemployment. In

practice, most of them are more concerned with maintaining the momentum of economic growth and are reluctant to risk their competitiveness by raising the cost of foreign labor.

The UAE seems to be the most invested in the current labor market structure. Dubai's economy in particular thrives on the premises of a tax-free cheap labor haven for foreign investments. In addition, its tourism industry is now basing itself on grandiose construction projects that would further require cheap labor. The combination of Dubai's ability to rely on Abu-Dhabi's oil reserves, Abu-Dhabi's ability to rely on Dubai's innovation and modernization, and the lack of local political opposition, will allow it to stay the course of maintaining sponsorship with sparse quotas requirements.

The challenge to the UAE comes from the increasing power of the foreign workers and international support for their plight for equal protection under international labor standards. It may therefore strive to comply with those standards without reforming the system itself. Qatar also relies on its energy reserves to support its local population, while maintaining foreign-labor driven growth. But it differs from the UAE in that its political system is more homogenous and authoritarian. In addition, it is less reliant than Dubai on the activities of foreign companies. Its moderate but consistent Qatarization policy may help it create a strategic and systemic trend of workforce nationalization through private-public sectors cooperation.

Kuwait's active political sphere has been pushing towards accountability and transparency, on the one hand, and continued social segregation on the other. It has thus far done little other than set ambitious goals for nationalization and build separate housing to prevent a spill-over of expatriates into local residential areas.⁸³ While in the short term it seems that Kuwait will not be effectively promoting its national workforce, in the long run it is possible that its current efforts to increase transparency and accountability will allow it to pursue other policies more successfully than its neighbors.

It is clear that out of the SGCs, Bahrain has been the pioneer of reform. Due to the depletion of its oil reserves and the relatively high rate of participation in its political system, Bahraini authorities could not afford to ignore the rising local unemployment and market inefficiency created by the sponsorship system and its reliance on foreign labor. Therefore, it has been moving forward faster than the other three to institute the legal and social mechanisms required to increase local labor participation.

In any case, the main challenge for any attempts of all SGCs to reform their labor market is one of effective governance and enforcement. The wide-spread socially-accepted illegality of the work force, problems in transparency and dissemination of information (particularly concerning the workers' rights), and the abundance of decrees and scarcity of laws have all created an uncertain legal atmosphere in which it is difficult for the state to set and enforce its own rules. Repeating amnesties for illegal workers, continuous need to crack down on abusive employers, and common policy loopholes indicate the severity of this challenge. The Sponsorship System contributes greatly to the erosion of the rule of law, as does the lenient corporate governance.

The challenge of governance cannot be met overnight, and will require first and foremost the commitment of the governments themselves and a sincere and continuous effort to change public perceptions regarding the role of foreigners in the societies. These are prerequisites to successfully implementing the necessary legal measures required to address the risks posed by the current structure of the labor market.

The views and opinions expressed in articles are strictly the author's own, and do not necessarily represent those of Al Nakhlah, its Advisory and Editorial Boards, or the Program for Southwest Asia and Islamic Civilization (SWAIC) at The Fletcher School.

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- ³⁰ Hickox, 363.
- ³¹ Alkery.
- ³² Hickox, 359-360.
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- ³⁷ Anh Nga Longva, "Keeping Migrant Workers in Check: The Kafala System in the Gulf," *Middle East Report* No. 211 (Summer 1999): 20-22.
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- ⁴⁷ Hickox, 360.
- ⁴⁸ Both Kuwait and the UAE require a preliminary process within the labor department, aimed at "settling the dispute amicably", only after which the worker may approach the court system. For The United Arab Emirates, see Federal Law No. 8, article 6 (1980), Regulation of Labor Relations; for Kuwait, see Kuwait Ministry of Social affairs and Labor, Private Sector Labor Law. Steps to improve this situation have recently been taken by Qatar, who has declared the establishment of a special court for the settlement of

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- ⁵⁵ *Country Profile 2006: UAE*, The Economist Intelligence Unit, 2006, 32.
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Is Time Ripe for Transitional Justice in Afghanistan?

David Wisner, MALD 2008

Background

Since 2001, transitional justice in Afghanistan has endured a precarious progression, with those supporting it forced to fight for each step forward. Despite the efforts of transitional justice proponents, the amnesty bill signed by President Karzai in early 2007 dramatically reversed much of the progress that had been achieved. While the Afghan Independent Human Rights Commission (AIHRC) has made substantial advancement in this field, several major obstacles remain in Afghanistan's political support. This paper will discuss the steps already taken to advance transitional justice, the various elements that obstruct it, and the measures that can realistically be carried out today.

Since 1978, Afghanistan has experienced relentless war, war crimes, crimes against humanity and mass human rights violations. Various external actors, particularly the Soviet Union, the United States, Pakistan and Saudi Arabia, contributed to and at times catalyzed some of the most horrendous events during the last thirty years.¹ Five distinct phases describe the on-going conflict in the country: the communist revolution, the Soviet invasion, the *mujahadeen* civil war, the Taliban regime, and the current post-Taliban period.² Although most Afghans acknowledge that different periods characterize their turbulent recent history, they refer to the conflicts as one long war, as the violence rarely paused and the perpetrators only changed faces.³

These wars produced approximately one million deaths and over seven million refugees, in addition to widespread rape, massacres of different ethnic groups, torture, and disappearances.⁴ For any transitional justice approach to work, it must consider this entire period, rather than just post-2001, and it must also deal with all the parties involved since many victims were also perpetrators of atrocities.

The Bonn Agreement of December 2001 inaugurated the current period and outlined the mandate for the interim government and the international peace operation. The Bonn Agreement was not a peace accord and did not bring together victors and losers; rather it forced a power-sharing agreement upon many 'losers'. Excluding the Taliban, these 'losers' were former members of the *mujahadeen*, particularly the Northern Alliance. These groups viciously fought one another for decades, leaving a trail of mass human rights violations. Given the tenuous nature, therefore, of this power-sharing agreement, political objectives for peace and stability took precedence over justice and disarmament. Though UN mediators strove to include commitments regarding accountability and disarmament, these were aggressively rejected by Afghan leaders and ultimately excluded in the final document.

The failure of the Bonn Agreement to address impunity established an inherently unstable peace process with long-lasting repercussions, effectively allowing for an unrestrained rise in violence and insecurity. Because well-known

perpetrators hold high positions in the current government and enjoy international support, major human rights abuses continue to be tolerated by both the Afghan government and the international community.⁵

ADDRESSING TRANSITIONAL JUSTICE

Although the Bonn Agreement fell short of explicitly addressing justice, it did succeed in establishing commissions responsible for transitional justice and reform of the judicial and civil service systems.⁶ The AIHRC was constituted in June 2002 by presidential decree to address human rights abuses, including those committed before 2001, and to propose a national strategy for transitional justice.⁷ The commission was initially marginalized because its role was deemed too sensitive.⁸ AIHRC and other international supporters, however, have worked to mainstream its role⁹ and have achieved several important accomplishments.

Before AIHRC could develop a transitional justice strategy, it would need to carry out nation-wide consultations to identify people's attitudes towards justice and their preferred mechanisms for achieving it.¹⁰ In 2004, AIHRC began these consultations and published their findings and recommendations in the report *A Call for Justice*.¹¹ The AIHRC then worked closely with the government to design a strategy, entitled *Action Plan for Peace, Reconciliation, and Justice*¹² that would implement its recommendations. The following section discusses both of these reports as well as the measures taken so far in pursuit of transitional justice.

Local Visions for Justice

In light of the fear of discussing past abuses, studies in 2003 showed that a national discourse on these issues was required to encourage Afghans to reflect upon and speak more openly about abuses and justice.¹³ *A Call for Justice*

directly responded to this need and is the most comprehensive study completed to date on local perceptions of transitional justice. Nevertheless, more consultations are needed to determine appropriate mechanisms for Afghanistan and more efforts must be made to alleviate people's fear of disclosure. Despite the necessity for further work, this initial report disclosed much and has contributed greatly to the transitional justice field.

The report disclosed important information including the systematic scale of human rights abuses and the preferred mechanisms for justice. Nearly 70% of respondents identified themselves or immediate family members as victims of a wide variety of abuses and nearly half aspired to obtain justice now rather than later. Most Afghans had not experienced accountability mechanisms other than criminal sanctions and customary justice. Consequently, they had little knowledge of alternative mechanisms.

Nearly 70% of respondents identified themselves or immediate family members as victims of a wide variety of abuses and nearly half aspired to obtain justice now rather than later.

Interestingly, an overwhelming majority of those interviewed (roughly 85%) felt that criminal sanctions would bring reconciliation and increase security. Thus, it became clear that prosecution must be the central pillar to any transitional justice strategy.

Nonetheless, participants of the study understood the challenges inherent in trying an overwhelming number of perpetrators in judicial system lacked the capacity to take on such a large number of cases. The respondents were pragmatic in suggesting that only perpetrators of the most heinous crimes and top commanders be prosecuted.¹⁴ They also felt strongly that Afghans should take a lead role in holding perpetrators accountable for their crimes. Still, approximately 50% of respondents asserted that a hybrid court would be more trustworthy, as long as it operated in Afghanistan so that locals could participate as witnesses and see justice being carried out before them.¹⁵

Once informed of non-judicial mechanisms, Afghans overwhelmingly supported vetting, truth-seeking and reparations. Each garnered more than 80% support among respondents.¹⁶ Vetting was particularly well regarded, as many people felt neither security nor justice was attainable without experienced, qualified leaders with untarnished record. Truth commissions presented a novel concept and 95% of respondents agreed that truth seeking was necessary, although people were uncertain how it should be carried out.¹⁷ Moreover, many people expressed a fear of speaking out even while voicing the need for greater documentation to educate leaders about abuses and to serve justice by exposing the names of criminals.¹⁸ Lastly, people focused on the need for reconciliation measures between state and citizen as well as between perpetrator and victim in order to create national unity and prevent widespread abuses from happening again.¹⁹

National Strategy for Transitional Justice

The conclusions offered in *A Call to Justice* provided a framework for the Afghan transitional justice strategy. Having sought out and compiled the expectations and perceptions of the local population, the report laid out specific recommendations and procedures. For example, it prescribed specific procedures for implementing the vetting of non-military security personnel. Most Afghans expressed the necessity of removing human rights abusers from official positions to increase stability and security, such as in the police force. The report also recommended the creation of a screening process for all civil service positions as well as the immediate removal of perpetrators implicated in its findings that continue to hold cabinet posts and governorships. Cognizant of the importance that respondents placed on prosecution, the report recommended creating a Special Prosecutor's Office to investigate and prosecute suspects of war crimes and crimes against humanity. Finally,

the report cited three specific areas within the judicial system requiring immediate reform in order for prosecutions to proceed: witness protection, defense counsel, and handling of evidence.²⁰

Following the publication of *A Call for Justice*, the President's Office, AIHRC, and the UN Assistance Mission to Afghanistan (UNAMA) drafted the *Action Plan for Peace* as the national strategy for transitional justice. The *Action Plan* aims to deal with the past in a "bold and just way that avoids revenge"²¹ and that builds coexistence based on tolerance, forgiveness, and rule of law.²² The *Action Plan's* strategy is a collection of activities that include symbolic measures, institutional reform, truth-seeking, reconciliation, and accountability measures.²³ The

Importantly, the document states that neither Islam nor international law provides amnesty for war crimes and crimes against humanity.

strategy dictates timelines for each activity and sequences key events in an effort to establish a smoother path toward justice. Importantly, the document states that neither Islam nor international law provides amnesty for war crimes and crimes against humanity. Equally important, the document emphasizes the importance of reconciliation and makes several recommendations. President Karzai the *Action Plan* in June 2005 and the government approved and launched the plan in December 2006.²⁴

While most of the recommendations discussed in *A Call for Justice* were incorporated into the *Action Plan*, the plan neglects to detail the specific actions and procedures of the former report. The *Action Plan* does not clearly state whether it rejects or accepts the detailed measures outlined in *A Call for Justice*. For some of its activities, the *Action Plan* calls only for greater consultations or establishing task forces. Under accountability mechanisms, the plan merely proposes to create a task force to advise the President on international legal obligations. Conversely, *A Call for Justice* explicitly recommended actions to create a prosecutorial body and court, thereby directly responding to local desires. In some activities such as truth-seeking, the *Action Plan* is justified is

recommending greater public consultation and education, considering the lack of popular knowledge about these alternative mechanisms.²⁵

Current Work of the AIHRC

Having created *A Call for Justice* and contributed to the formation of the *Action Plan*, AIHRC began its program to promote transitional justice. The organization found that Afghans overwhelmingly supported the concept of consultations. The process brought together mullahs, civil society, elders, and other activists.²⁶ Consultations triggered a national debate on transitional justice that has been perceived as a major step for regaining trust in public institutions.²⁷ With very little political support, AIHRC works in a dangerous and difficult environment and, consequently, considers their successful lobby to launch the *Action Plan* a major accomplishment. This campaign has made substantial contributions to the country's future transitional justice policies.²⁸ Unfortunately, for reasons that will be discussed below, the *Action*

Plan has not yet been implemented. However, the AIHRC continues to advocate both nationally and internationally for full implementation.

The first pillar of action for AIHRC was to

conduct national consultations in order to create a strategy for transitional justice. The second pillar of action was documentation of past and present human rights abuses, which the organization continues to do. Despite operating under dangerous circumstances, AIHRC continues to develop its investigation and documentation capacity. Additionally, AIHRC released a documentary film on abuses and accountability and it organizes community awareness raising activities for transitional justice, as well as encouraging the formation of victim support groups.²⁹ These activities—particularly

documentation of abuses—help to lay the groundwork for the pursuit of transitional justice on a larger scale, at a later date. However, due to numerous obstacles that will be discussed below, AIHRC has been unable to engage in other activities, demonstrating the current de-prioritization of transitional justice in Afghanistan.

Obstacles to Transitional Justice

Afghanistan's current situation imposes obstacles for achieving transitional justice on several fronts. Deteriorating security poses the most serious and difficult challenge. The precarious security situation is intricately linked to the presence and influence of perpetrators of mass crimes within the Afghan government. Naturally, this reduces domestic political backing for AIHRC's mandate and the transitional justice strategy. Simultaneously, it augments pressure on President Karzai to approve an amnesty bill, which he did in 2006. The international community has also dragged its feet on accountability, fearful that rising instability in the country could spiral into anarchy if it alienates its main allies in the government. Finally, current domestic institutions and capacity levels cannot support a comprehensive transitional justice process. Each of these issues (Afghan political landscape, role of the international community, judicial system, and security) will now be discussed, beginning with the national political environment and the amnesty bill.

The Political Environment in Afghanistan and the Amnesty Controversy

Members of the *mujahadeen*, including those holding government positions, felt threatened by *A Call for Justice* and the *Action Plan for Peace*, especially the emphasis both placed on criminal prosecutions for war crimes and crimes against humanity. They believed that they were national heroes, having fought for the nation, and were insulted by a transitional justice process that might potentially targeted them.³⁰ To aggravate the situation, around the time President Karzai accepted the *Action Plan*, Human Rights Watch released a publication entitled "Blood-Stained

The international community has also dragged its feet on accountability, fearful that rising instability in the country could spiral into anarchy if it alienates its main allies in the government.

Hands" naming violators of human rights from the early part of the *mujahadeen* civil war. Many of those named were and still are serving in various government posts, such as Vice President Karim Khalili who was implicated in taking Pashtun civilians as prisoners.³¹

The reaction to this report was so vitriolic that many have credited it, along with the execution of one-time U.S. ally Saddam Hussein, as the catalyst to the fervent push for an amnesty bill by *mujahadeen* members.³² *Mujahadeen* pressure, which manifest itself in a rally of over 25,000 members including key government officials, ultimately compelled President Karzai to sign the amnesty bill in March 2007 despite his previous assertions that amnesty violated both Islamic and international law. The bill was passed by the Lower House, and then sent to the Upper House, which still has not voted on it. The bill grants sweeping amnesty to "all political parties and belligerent groups" involved in pre-2002 conflicts, protecting them from legal and judicial hearings and retribution.³³ The bill does not, however, grant amnesty to individuals—permitting victims and other individuals to charge individual perpetrators for their abuses.³⁴

This concession appeased the international community's concern over victims' rights. Yet, by placing this responsibility on individuals and victims to bring charges before the courts, it permitted the government to elude its responsibility for investigating and prosecuting perpetrators. However, even if perpetrators can be tried on an individual basis, this small allowance amounts to very little in practical terms. With many of the most serious criminals exercising political and military control, it seems far-fetched that victims will attempt to bring them to court. Thus, perpetrators of war crimes, crimes against humanity, and other major human rights violations remain largely beyond the scope and reach of the judicial system.

Furthermore, though the government has demanded the prosecution of war criminals, it claims that a lack of evidence prevents trials from being carried out. However, seemingly in contradiction to such claims, various human rights organizations and NGOs have submitted

documentation of past abuses. Prosecutors are currently able to access these papers and are permitted to conduct further investigations based upon information gathered from these reports. This disconnect between government statements and third party substance has led to accusations that the current government is unwilling to pursue justice.³⁵

Lack of Domestic and International Political Will for Justice

While the UN, the United States, and other international actors have repeatedly acknowledged the imperative for justice and reconciliation, they have offered little assistance and encouragement. In need of allies to support the "War on Terror", the U.S. has armed and installed most of the leaders in Afghanistan's current government. To ensure their loyalty and cooperation, the international community has also avoided angering these leaders and compromised on major issues. During negotiations for the Bonn Agreement, the UN did not press them to include provisions for justice and disarmament. Though vetting criteria prevented human rights offenders from joining the Emergency Loya Jirga (National Assembly), the Constitutional Jirga, and parliament, the international community barely protested the unsanctioned participation of warlords who are some of the worst human rights abusers. According to some reports, certain countries such as the U.S. were complicit in negotiating the participation of key allies, regardless of their human rights background.³⁶ The international community has contributed to creating a situation in which leaders of different factions occupy high positions in government and enjoy impunity. Former *mujahadeen* members work in all sectors of the government on all levels. Moreover, many continue to operate their own militias. Even where these militias have been absorbed by the Afghan National Army and Police, their loyalty often remains with their original leaders.³⁷ Under such circumstances, it is reasonable to assume that the government might obstruct measures for transitional justice, particularly when government members perceive themselves to be the main targets.

The international community also did not pressure the Afghan government to enforce disarmament of militias and political groups, which is essential for victims to feel secure enough to challenge offenders.³⁸ The government also circumvented vetting procedures during elections. Candidates were required to sign an affidavit avowing they had never committed human rights violations in order to participate in elections. If they did not sign an affidavit, they were effectively admitting to having committed a violation. Hence, it was in each candidate's interest to sign the affidavits. And because little evidence had been prepared, no one could viably (and safely) contest any of the signatures.³⁹ Given absence of sufficient proof and the desire to uncover evidence, Human Rights Watch decided to record human rights abuses of the *mujahadeen* civil war in its report *Blood-stained Hands*. The past abuses and the hollow attempts to address them are obviously disturbing. More troubling still, however, are the mass violations that continue to be committed by those wielding power in and outside of the Afghan government and by international security forces.⁴⁰

Not only does the international community feel that "in Afghanistan, it is still premature to refer to 'transitional justice,'" ⁴¹ but it actively contributes to ongoing human rights violations. Many international security forces commit abuses and violations, particularly in the case of detainees.⁴² The U.S. military was implicated in massacres of Taliban captives in 2001 and continues to be accused of committing abuses, including the hand-over of detainees to the Afghan national intelligence agency—widely known for its torture tactics—in violation of international law.⁴³ These practices, among others, motivated the U.S. to reject a proposal by the UN High Commissioner for Human rights to create an independent enquiry.⁴⁴ According to a source intimately involved in negotiations for justice, the "U.S. strongly opposed any call for [its own] accountability."⁴⁵ The international community's glaring shortage of support for and, at times, their outright rejection of holding human rights

abusers accountable, coupled with domestic resistance, prohibit the realization of transitional justice.

Weak and Malfunctioning Judicial System

Weaknesses in the local judicial system also pose serious obstacles to the pursuit of transitional justice in Afghanistan. Over the last six years, the international community and the Afghan government have worked toward rebuilding a collapsed judicial system. Though much has been accomplished (i.e. the training judges and lawyers⁴⁶ as well as infrastructure building⁴⁷), the overall system lacks the capacity to handle regular criminal cases, much less the specialized cases of transitional justice. Judges and lawyers still lack adequate education and training in both Islamic and secular Afghan law. Some have training in just one type of law and quite a few have training in neither.⁴⁸ In some places, the government and donor community have not provided copies of legal texts and their translations.⁴⁹ Reforming the law and passing new ones has been, and continues to be, a slow process.

With such a weak judicial system, prosecuting major human rights offenders in Afghanistan according to the will of the people is almost impossible. Thus, criminal sanctions against perpetrators, a key component of the transitional justice strategy, must be delayed until the judicial system enjoys the capacity to try specialized crimes. Not only is the Afghan judicial system ill-equipped to handle basic duties and functions but also tensions between divergent legal philosophies have produced a weak and disjointed approach to judicial reform itself.

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For the system to adequately address issues of transitional justice, these fundamental disagreements over legal philosophy must also be addressed. One tension exists between those who advocate conservative Islamic law and those who promote more progressive, secular law.⁵⁰ The other tension involves judges who uphold different versions of Islamic law. Many judges apply Hanafi jurisprudence, one of five legal schools within the Sunni tradition of Sharia law interpretation. They have little knowledge of Shiite interpretations of Sharia or of secular legal interpretations, which exacerbate already existing religious and ethnic tensions.⁵¹ Contemporary Afghan law recognizes Hanafi jurisprudence for Sunni populations and Shiite jurisprudence for Shiite communities. Both exist alongside but are superior to secular Afghan law.⁵²

Worsening religious and ethnic frictions, some militia commanders control various judges and attorneys in certain areas, particularly during the early years of the present administration. Fazl Hadi Shinwari, a close ally to one of the major *mujahadeen* leaders, headed the Supreme Court during the first years after the Bonn Agreement. He appointed over a hundred judges who were loyal to his faction and who represented a conservative legal viewpoint but were overwhelmingly unqualified for their appointments.⁵³ In 2006, with parliamentary approval, President Karzai appointed eight jurists to replace all of these judges. He also sought to retain Shinwari for political purposes, whose appointment was voided by parliament. Unfortunately, where tribal, religious and political factions are still able to manipulate large segments of the judicial system, the system will continue to lack the credibility needed to lead a fair and impartial transitional justice process. Today, not only are judges and lawyers under-qualified and subject to control by local commanders but insufficient salaries leave them

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prone to bribery. Corruption among judges and lawyers, coupled with the perception that their positions have been politicized, has undermined their credibility among the Afghan population.

Today, locals still prefer traditional dispute resolution mechanisms to the judicial system. Thus, the judicial system lacks the ability to prosecute offenders fairly and impartially.⁵⁴ Ultimately, this debilitates one of the central pillars of Afghan transitional justice, criminal prosecutions. To address this credibility issue, many international human rights activists have emphasized a role for the International Criminal Court (ICC). The Afghan government ratified the ICC in 2003 but has not invited the court to take on crimes committed in the country⁵⁵ and the general consensus among Afghans has been to avoid ICC involvement. Since there is a strong desire among the Afghan population to keep transitional justice an Afghan process, the AIHRC fervently recommends rapidly strengthening the judicial system. This would deflect growing criticism that Afghanistan is incapable of trying crimes and prevent the international community from pushing for greater ICC involvement.⁵⁶ Nonetheless, future ICC involvement should not be ruled out.

Is Transitional Justice Compatible with an On-going War?

International and Afghan forces are fighting two wars, one against Al Qaeda and another against the Taliban. Yet destabilization is not limited to these two fronts. Militias, anti-government forces, the drug mafia, and bandits contribute to and worsen the tenuous security environment that currently exists. One could argue that the forces involved in stabilization and peace-building are so diverse and exhibit such divergent priorities and incentives that their mere presence contributes to the continued destabilization of the country. For example, the

large international presence consists of the International Security Assistance Forces, U.S. Operation Enduring Freedom Forces, and hundreds of private security companies. The Afghan National Army (ANA) is equally diverse, having recently absorbed a large number of former *mujahadeen* fighters whose loyalties may actually lie with their former commanders. With so many different actors working to achieve different goals (quelling the counter-insurgency, defeating Al Qaeda, fighting the drug mafia, strengthening the power of local commanders), the on-going war in the country threatens to continue unabated. This of course raises the question as to whether or not transitional justice can or should be pursued.

Debate about the interaction between peace and justice in Afghanistan has grown increasingly louder and more important. Many argue that negative peace (i.e. an end to war) must first be achieved before transitional justice can be pursued, while others advocate that negative and positive peace should and can be pursued simultaneously.⁵⁷ The International Crisis Group (ICG) strongly advocates for more aligned and complementary state-building and counter-insurgency efforts so that Afghans can secure a future based on principles that will secure a positive peace. ICG recommends ending impunity and screening recruits to public institutions.⁵⁸ On its face, such a recommendation appears reasonable. However, while armed conflicts persist across the country, it may be impractical. In order for this to happen, the international community would likely have to find new allies. This is unrealistic, though, considering that they have already invested heavily in their current allies. Moreover, allying with a large number of people with clean records to replace current power-holders is unlikely given that the line separating victim from perpetrator has largely been blurred after nearly 30 years of conflict.⁵⁹

Many successful transitional justice strategies have been conducted in post-conflict societies. Some examples include Argentina, El Salvador, Guatemala, South Africa,⁶⁰ and more recently Sierra Leone.⁶¹ Significantly, transitional justice has been incorporated into the peace agreements

themselves. Although each country faced its own challenges, transitional justice in one form or another was actually achieved. Patricia Gossman suggests that strategies for transition justice are much more likely to be successful if they are implemented at the start of the post-conflict transition.⁶² The dilemma in Afghanistan is that a transitional justice strategy was not included in the Bonn Agreement and on-going conflicts threaten to degenerate into a national war. Unfortunately, the *Action Plan* assumes that the Afghan government commands a post-conflict state, which is a major reason that its implementation has been thwarted. Although some of the activities under the strategy are feasible, overall it is not compatible with the current situation. In Afghanistan's case, a successful strategy depends on both negative peace and international support.

RECOMMENDATIONS

Although execution of a comprehensive strategy for transitional justice in Afghanistan is not viable in the face of continued destabilization, certain measures such as documentation and awareness-raising can be undertaken now initiate this process. These measures may not be focused on prosecutions but they do represent practical alternatives until the country is ready for criminal sanctions. As Louise Arbour of UNHCR has pointed out, transitional justice comprises a multi-faceted process and the current concentration on prosecution hampers the government's ability to pursue other options.⁶³ AIHRC responded with pragmatic activities that seek to begin the process of transitional justice by responding to less difficult issues while striving to create a permissive environment to take on the more sensitive issues.

Specifically, AIHRC has been building its capacity to conduct investigations and documentation. These efforts should continue with moral, technical, and financial support from the international community. The more documentation AIHRC compiles on delicate cases the better prepared they will be in the near future to prosecute current government leaders who are guilty of war crimes and human rights abuses.

Documentation is very dangerous work but the AIHRC should continue its activities in as many places as possible while taking all necessary precautions. Thus far, the organization has weathered severe challenges, including assaults on employees.⁶⁴

In some areas that are too sensitive for locals to investigate abuses, international staff may be an appropriate substitute and an outside storage site for records guarantees their protection against destruction.

Various human rights organizations have spoken about the possibility of establishing a documentation center outside of Afghanistan. This option should be further developed and implemented. However, this center should support AIHRC's efforts and

work closely with Afghan counterparts rather than divert personnel and resources away from AIHRC. In some areas that are too sensitive for locals to investigate abuses, international staff may be an appropriate substitute and an outside storage site for records guarantees their protection against destruction.

AIHRC and the international community should specify a more detailed vetting procedure than what has been proposed in *A Call for Justice*—guaranteeing due process without exception for all individuals undergoing lustration. To aid in organic vetting, records collected in the documentation process can and should be used during the upcoming elections in 2009 as evidence against human rights abusers who seek to run for, or be appointed to, office. In the last elections, some officials cited lack of evidence as reasons proper vetting could not take place. In the next elections, AIHRC must ensure that these same excuses are inadmissible.

While greater documentation and vetting are the major activities that AIHRC should focus on, several other measures deserve some attention. First, the community awareness-raising workshops run by AIHRC have been fairly successful and these should be expanded and streamlined. Where possible, local shuras and

jirgas (village councils) should be integrated and trained to conduct regular workshops. Second, reparations should be made available to the victims that AIHRC has documented. All external actors (U.S., present-day Russia, Pakistan, etc.) who have been integral to Afghanistan's wars should contribute, as a goodwill measure, to a reparations fund so that victims can at least begin to feel that they have received some degree of justice. Finally AIHRC should lobby for international compliance with humanitarian law. With large numbers of foreign forces committing abuses, the international community is left with little credibility to call for rule of law and other reforms.

CONCLUSION

Commendable efforts have been made in Afghanistan towards transitional justice. An enormous nationwide consultation process produced *A Call for Justice*, the first large-scale study to identify local perceptions and desires for justice, leading to the creation of a national strategy in the *Action Plan for Peace, Justice and Reconciliation*. These are significant first steps in the right direction. Unfortunately, they were followed by the amnesty bill, which largely undermined much of what the transitional justice movement had been working to achieve. Given the on-going hostilities and international support for *mujahadeen* leaders, it is not surprising that President Karzai approved the amnesty bill or that the *Action Plan* has not been implemented. More can be done domestically and internationally to strengthen transitional justice in Afghanistan. The consequences of inaction could be severe.

If the Afghan government and international community do not aggressively pursue justice, those enjoying impunity may continue to commit abuses and add to the deteriorating security situation. Donors might be discouraged from funding not only the transitional justice initiative but other government departments. Sectors that need the most help will lose the financial support they currently receive.⁶⁵ The government and the international community will also likely lose credibility in the eyes of local Afghans; first, for

committing atrocities and second, for not delivering on their promises. The more locals lose faith in their new government and international allies, the more they may be inclined to rejoin the Taliban in larger and larger numbers. We have already seen this take place, especially in the southern regions of Afghanistan. If progress toward transitional justice is not made soon, greater insecurity will likely intensify throughout the country.

The views and opinions expressed in articles are strictly the author's own, and do not necessarily represent those of Al Nakhlah, its Advisory and Editorial Boards, or the Program for Southwest Asia and Islamic Civilization (SWAIC) at The Fletcher School.

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