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EDITORIAL

The need for inclusivity in global governance

Writing the editorial for the inaugural issue of *Peace and Progress* was an endeavour that stretched out over two years, from the moment when I first proposed the idea to the faculty of the United Nations University. With all the planning, waiting and sleepless nights that the Editorial Board and I invested in this work, typing these words at the conclusion of our trials is still difficult to believe. Just two years ago, this journal seemed naught but a distant fantasy. Yet here we are, with the complete first issue of *Peace and Progress*, an academic journal entirely planned and facilitated by the postgraduate students of various institutions of the United Nations University that stretch across all continents.

As the first Editor-in-Chief writing the first editorial for the first issue of this journal, I believe myself to be in a unique place to introduce *Peace and Progress* and the motivations behind it at the point of its conception. This journal was inspired by and thus founded as a result of the Charter of the United Nations University and its mandate: a global community of learning and research whose works are devoted to solving the “pressing global problems of human survival, development and welfare” (Article 1, Paragraph 2) and the dissemination of that knowledge for “dynamic interaction” (Article 1, Paragraph 4). *Peace and Progress* was thus designed for that very purpose- encouraging enquiry and dynamic interaction surrounding those issues that pose real problems to the world today.

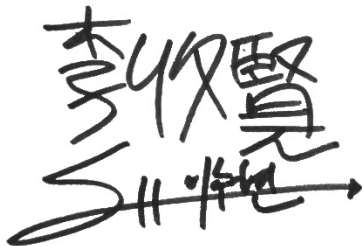
In that way, this journal is not your typical academic publication. Our focus and that of the articles in this volume are on delving into the existing problems of the day, guided by the Thematic Clusters of the United Nations University (UNU), to realize Secretary General U-Thant’s 1969 vision for the UNU as an institution that was “truly international and devoted to the Charter objectives of peace and progress.” A further departure is the journal’s focus on publishing the voices of emerging scholars through solely accepting the works of like-minded postgraduate students from any institution around the world. As a result of this intellectual chemistry, the volume that you hold in your hand is the research, commentary or enquiry into the objectives of peace and progress from the perspective of the world’s future scholars and practitioners in an exercise of collaborative contemplation on the faults of our respective and united societies.

The two research papers and two commentaries that comprise our inaugural issue find connection in the importance and general lack of inclusivity in international endeavours such as peacebuilding and economic governance. The lack of inclusivity in terms of providing greater representation to local ownership and awareness showed to have long run, structural implications in global institutional efforts such as peacebuilding processes and transitional justice, which Young, Chaobang and Wong approach from a post-positivist perspective.

Fernández-Wulff adds to this by pointing to the lacking representation of food security in global economic governance, particularly on matters of international trade regimes constructed by such institutions as the World Trade Organization.

By confronting the faults in trans-boundary efforts while identifying potential ways to expand these efforts, this issue suggests that limited purviews based on overly institutional sensibilities not only limit the success of such efforts, but also result in consequences that possibly negate their long run sustainability. This is what Chaobang identified as a “value myopia,” which Young may agree resulted in the failings of transitional justice mechanisms in Sierra Leone. This lack of a wide angle receives further attention and criticism from Fernández-Wulff and Wong in an overreliance on international institutions and institutionalized beliefs in defining concepts like local ownership and economic success that do not pay proper attention to issues such as food security, biodiversity, internal strife and civil discontent. The articles in this issue seek to problematize institutional beliefs that resulted in limited success of such crucial efforts as peacebuilding, transitional justice and local ownership. Without a more inclusive approach to these efforts, no matter how noble the cause, structural weaknesses will ultimately prove to detract from their lasting power as solutions.

Thus it is with this issue that *Peace and Progress* launches into its endeavour to engage in a dynamic interaction on the unified concerns that pressure our societies today. With each issue of this journal, new approaches, criticism and research will seek to contribute to our shared awareness and conscience in the search for ever-deeper insight and perspective, led by the belief that truly sustainable and inclusive solutions do exist and thus must be sought.



LEE, Soohyun
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TRACK ONE: RESEARCH PAPER

Cluster 2: Peace, Security and Human Rights

Transitional Justice in Sierra Leone: A Critical Analysis

YOUNG, Graeme[†]

ABSTRACT

This paper seeks to problematize contemporary forms of transitional justice by contextualizing dominant theory and praxis within the broader project of liberal peacebuilding. In doing so, it emphasizes the extent to which critiques of liberal peacebuilding can provide a useful framework for understanding transitional justice, particularly in the sense that contemporary peacebuilding operations focus on top-down rule of law initiatives that lack local ownership and popular support. As a result, there is a significant disconnect between the aims, logics, and methods of transitional justice and the expectations and desires of local populations that is related to a similar disconnect in peacebuilding more generally. This significantly undermines the efficacy of current transitional justice mechanisms in post-conflict situations and is severely detrimental to the likelihood that these can be considered successful by any relevant standards. These arguments are explored in the context of the transitional justice mechanisms adopted in Sierra Leone—specifically the Special Court and the Truth and Reconciliation Commission—where, it is claimed, the underlying assumptions and significant shortcomings that define contemporary peacebuilding processes led to the implementation of transitional justice mechanisms that were conceptually incoherent, compromised for internationally motivated political purposes, and culturally and contextually inappropriate. This has serious implications for the long-term success of Sierra Leone’s peacebuilding projects that must be addressed in a way that emphasizes the country’s specific conflict and post-conflict realities, local ownership, and emancipatory forms of justice.

KEYWORDS: *Peacebuilding, Transitional Justice, Rule of Law, Sierra Leone, Critical Theory, Peace and Conflict*

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The promotion of transitional justice has become a central element of contemporary peace processes. Although this is often seen as a positive development, it raises a number of important questions: what assumptions define the post-conflict justice models commonly promoted by the international community? Whose interests are these intended to serve? And is it possible to identify a disconnect between internationally designed systems of justice and the needs of local populations? Addressing these questions, this paper seeks to problematize the theoretical underpinnings and dominant praxis of transitional justice. Using Sierra Leone as a case study, it argues that transitional justice mechanisms designed and implemented in post-conflict contexts should be understood within the broader project of liberal peacebuilding, in which rule of law initiatives, because of their assumed relationship with peace, security, and development, play a central role. As a result of the problematic assumptions inherent in such projects, the forms of transitional justice that were adopted in Sierra Leone were conceptually unstable, problematically politicized, and contextually inappropriate. By advancing the interests of international actors, they led to a situation in which local needs and expectations were fundamentally disconnected from the processes and objectives of the liberal peace. These failures suggest broader underlying problems with the theory and praxis of contemporary transitional justice. As a result, the utility of such mechanisms in post-conflict situations, at least in their present form, must not be taken for granted.

This paper addresses these themes in the following way. After a discussion of important theoretical considerations, Part I contextualizes the contemporary theory and praxis of transitional justice within the broader project of post-conflict liberal peacebuilding. The centrality of the rule of law in liberal peace processes is emphasized, and the way this frames modern transitional justice mechanisms is subsequently explored. Part II applies these concepts to Sierra Leone, examining how the transitional justice mechanisms implemented following that country's civil war were conceptually incoherent, compromised for internationally motivated political purposes, and culturally and contextually inappropriate. In doing so, it highlights specific shortcomings of the Special Court for Sierra Leone (SCSL) and the country's Truth and Reconciliation Commission (TRC), arguing that the problems that characterized each suggest broader failures of transitional justice in contemporary peacebuilding processes. Conclusions and valuable avenues for future research are outlined in Part III.

Broadly speaking, the theoretical framework employed in this study seeks to synthesize two separate, yet largely complementary, fields of critical literature: works addressing the liberal peace and critiques of contemporary legal theory. In relation to the former, the arguments of two authors are particularly useful. David Chandler claims that the movement away from externally imposed state-building in favour of methods that work within existing institutions is detrimental to self-governance as it distances international actors from responsibility while minimizing space for local agency and resistance.¹ Similarly, Oliver Richmond argues that the universalizing pretences of the liberal peace commonly ignore or co-opt local needs, processes, and understandings of peace, thus precluding more bottom-up, inclusive, contextually appropriate, and viable forms of post-conflict peacebuilding. Furthermore, he posits, the liberal peace can be understood, in reference to the Foucauldian concepts of

¹ Chandler, David, "The Liberal Peace: Statebuilding, Democracy and Local Ownership," in *Rethinking the Liberal Peace: External Models and Local Alternatives*, by Shahrbanou Tadjbakhsh ed. Abingdon: Routledge, 2011, 77-88.

disciplinarity, governmentality, and biopower, as a project of normalizing foreign, illiberal ‘others’ based on unproblematized assumptions about security, development, and peace and conflict.² These have important implications for conceptualizing the role of ‘hybrid’ models of transitional justice within broader trends that define liberal peacebuilding, as they suggest that common attempts to engage with the local are superficial, self-interested, and insufficient. Truly hybrid systems of justice, following Richmond’s arguments, must move beyond normalization processes and engage with the local-local and the everyday; the failure to do so will fundamentally undermine their appropriateness and chances of success.³

From critical legal theory, this study adopts the arguments that legal systems based on liberal notions of justice often reinforce existing—and commonly unjust—power relations; that rights-based discourses, rather than encouraging equality and empowering disenfranchised groups, serve to legitimize otherwise unpopular social norms and institutions; that the common assumption that the law is neutral, apolitical, objective, and universal is both theoretically and practically problematic; and that more inclusive and emancipatory understandings of justice must supplement overly rigid Western notions of logical positivism, modernity, agency, responsibility, and right and wrong with concepts that take subject positionality, cultural sensitivity, various epistemologies, and independent context into account.⁴ These theoretical underpinnings represent a significant departure from much of the academic literature addressing transitional justice, which can be situated, in general terms, within a liberal legalist framework that conceptualizes law as both a vehicle and prerequisite for liberal transitions.⁵ Critical legal theory allows for an appropriate problematization of this framework, and its implications for transitional justice will be explored in greater detail below.

I: TRANSITIONAL JUSTICE, THE RULE OF LAW, AND THE LIBERAL PEACE

Before these arguments can be addressed, it is first necessary to contextualize contemporary transitional justice mechanisms within liberal peacebuilding processes. For the purposes of this paper, the extent to which the liberal peace promotes security through top-down, internationally driven institution-building and development projects is particularly important. This security-centrism can be seen to dominate transitional justice initiatives, which the United Nations conceptually situates within broader rule of law projects.⁶ In doing so, it frames the rule of law and transitional justice as inseparable tools for “ensuring accountability and reinforcing norms, building confidence in justice and security institutions, and promoting gender equality” in post-conflict contexts.⁷ This is necessary, it is argued, as societies affected by weak and corrupt institutions, widespread oppression,

² Richmond, Oliver, *A Post-Liberal Peace*, Abingdon: Routledge, 2011.

³ Ibid.

⁴ Ward, Ian, *Introduction to Critical Legal Theory: Second Edition*, London: Cavendish Publishing, 2004; Boyle, James, “The Politics of Reason: Critical Legal Theory and Local Social Thought,” *University of Pennsylvania Law Review* 133 (4) 1984-1985: 685-780; Kennedy, Duncan, “Legal Education and the Reproduction of Hierarchy,” *Journal of Legal Education* 32 (4) 1982: 591-615; and Gabel, Pater and Paul Harris, “Building Power and Breaking Images: Critical Legal Theory and the Practice of Law,” *NYU Review of Law and Social Change* 11 (3) 1982/1983: 369-412.

⁵ Teitel, Ruti G., *Transitional Justice*, Oxford: Oxford University Press, 2000.

⁶ Guidance Note of the Secretary General, “United Nations Approach to Transitional Justice,” March 2010.

⁷ Report of the Secretary General, “The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies,” UN Document S/2011/634, 12 October 2011, 3.

underdevelopment, criminality, and little or no legal accountability “pose significant threats to international peace and security”.⁸ Establishing the rule of law is seen as necessary for addressing the underlying causes of conflict—with a special emphasis on issues pertaining to social justice and economic grievances—as well as ensuring peace, security, and development.⁹ Importantly, such a program is not unique to the UN, as the promotion of rule of law initiatives for the purpose of peacebuilding is the stated objective of several governmental development programs, intergovernmental organizations (IGOs), and non-governmental organizations (NGOs).¹⁰ These concepts have also become prevalent in academia, as the relationship between justice, the rule of law, and conflict management, along with the institutionalization of the rule of law as a prerequisite for the benefits of peace, security, and development based on democratization and marketization, has been stressed in recent scholarship.¹¹

Situating transitional justice within this liberal peacebuilding framework, it becomes possible to analyze the extent to which the shortcomings of the latter can be applied to the former. Chandra Sriram, for example, demonstrates how many critiques of democratization and marketization—both key elements of the liberal peace—can also be applied to transitional justice: it exacerbates tensions and increases the likelihood of a return to conflict; it threatens reconciliation and rehabilitation by demanding accountability; and it institutionalizes animosities and rivalries.¹² The relationship between peace and the rule of law,¹³ as well as peace and transitional justice,¹⁴ is highly contested; transitional justice, which seeks to be at once retributive (accountability/normative-centric) and restorative/rehabilitative (victim-centric),¹⁵ can be counter-productive to the promotion of peace, as many authors not only doubt the efficacy of criminal trials, but also question the rationale that truth-telling is linked

⁸ Ibid, 4.

⁹ Ibid; Report of the Secretary General, “The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies,” UN Document S/2004/616, 23 August 2004; Report of the Secretary General, “Uniting our Strengths: Enhancing United Nations Support for the Rule of Law,” UN Document S/2006/980, 14 December 2006; and Guidance Note of the Secretary-General (2010).

¹⁰ Barnett, Michael et al., “Peacebuilding: What Is In a Name?” *Global Governance* 13 (1) 2007: 35-58.

¹¹ Call, Charles T. ed., *Constructing Justice and Security after War*, Washington: United States Institute of Peace, 2007; Call, Charles T. And Vanessa Wyeth eds. *Building States to Build Peace*, London: Lynne Rienner Publishers, Inc., 2008; Hurwitz, Agnès G. and Reyko Huang eds., *Civil War and the Rule of Law: Security, Development, Human Rights*, Boulder: Lynne Rienner Publishers, Inc., 2008; Paris, Roland, *At War's End: Building Peace after Civil Conflict*, Cambridge: Cambridge University Press, 2004, 151-233; Stromseth, Jane, David Wippman and Rosa Brooks, *Can Might Make Rights? Building the Rule of Law After Military Interventions*, Cambridge: Cambridge University Press, 2006; Voorhoeve, Joris, *From War to the Rule of Law: Peace Building After Violent Conflicts*, Amsterdam: Amsterdam University Press, 2007; Jallow, Justice Hassan B., “Justice and the Rule of Law: A Global Perspective,” *International Lawyer* 43 (1) 2009: 77-81; Tolbert, David and Andrews Solomon, “United Nations Reform and Supporting the Rule of Law in Post-Conflict Societies,” *Harvard Human Rights Journal* 19 (1) 2006: 29-62; and Turner, Catharine, “Delivering Lasting Peace, Democracy and Human Rights in Times of Transition: The Role of International Law,” *The International Journal of Transitional Justice* 2 (2) 2008: 126-151.

¹² Sriram, Chandra, “Justice as Peace? Liberal Peacebuilding and Strategies of Transitional Justice,” *Global Society* 12 (4) 2007: 279-291.

¹³ Peterson, Jenny H., “‘Rule of Law’ Initiatives and the Liberal Peace: The Impact of Politicized Reform in Post-Conflict States,” *Disasters* 34 (S1) 2010: S15-S39.

¹⁴ Zartman, I. William and Victor Kremenyuk eds., *Peace Versus Justice: Negotiating Forward- and Backward-Looking Outcomes*, Lanham: Rowman & Littlefield Publishers, 2005; and Snyder, Jack and Leslie Vinjamuri, “Trials and Errors: Principles and Pragmatism in Strategies of International Justice,” *International Security* 28 (3) 2003/2004: 5-44.

¹⁵ Report of the Secretary General (2004); Report of the Secretary General (2006); and Guidance Note of the Secretary-General (2010).

to reconciliation, justice, the construction of authoritative historical accounts, public education, reform, democracy, and the prevention of future crimes.¹⁶ Furthermore, the security-centric conflation of transitional justice with the rule of law ignores the extent to which the relationship between the two, rather than being complementary and mutually reinforcing, is commonly defined by compromise, contextually dependent fluctuation, ambiguous uncertainty, and transformation in post-conflict situations.¹⁷

As Sriram notes, another important critique of the liberal peace can be applied to transitional justice: that it is insensitive to local context, ignoring political and judicial histories, cultural worldviews, and the needs and desires of those affected by past crimes.¹⁸ Framing transitional justice within rule of law projects requires the adoption of certain forms and understandings of justice. Importantly, a genealogy of contemporary understandings of transitional justice suggests that they have been decontextualized from their spatio-temporal roots and applied to post-conflict situations regardless of local culture or the nature of the crimes under consideration. This is problematic for two reasons: first, it ignores the extent to which the success of the mechanisms and practices that were specifically designed, for example, to address the covert crimes of Latin American authoritarianism or apartheid-era South Africa is highly debated;¹⁹ and second, it detaches these from their origins and, by focusing on ‘lessoned learned’ and ‘best practice,’ narrativizes them into legal models that assume a universal, unquestioned discursive legitimacy.²⁰ This conceptual depoliticization of transitional justice is especially noticeable when its supposedly transcendent norms become recontextualized in its contacts with the local, where transitional justice mechanisms are commonly destabilized, resisted, and reformulated.²¹

Indeed, the UN acknowledges the dangers of universalizing mechanisms of transitional justice, rejecting “one-size-fits-all formulas and the importation of foreign models” in favour of “national assessments, national participation and national needs and aspirations”.²² Simultaneously, however, it also stresses that the success of transitional justice depends upon its ability to “ensure a common basis in international norms and standards”.²³ This disconnect has been highlighted by a number of theorists. James Cockayne, for example, frames hybrid courts as international degradation ceremonies in which local moral understandings are transformed to cohere with international norms.²⁴ Similarly, Augustine Park argues that the

¹⁶ Clark, Janine Natalya, “Transitional Justice, Truth and Reconciliation: And Underexplored Relationship,” *International Criminal Law Review* 11 (2) 2011: 241-261; and Mendeloff, David, “Truth-Seeking, Truth-Telling, and Postconflict Peacebuilding: Curb the Enthusiasm?” *International Studies Review* 6 (3) 2005: 355-380.

¹⁷ Leebaw, Bronwyn Anne, “The Irreconcilable Goals of Transitional Justice,” *Human Rights Quarterly* 30 (1) 2008: 95-118; McAuliffe, Pádraig, “Transitional Justice and the Rule of Law: The Perfect Couple or Awkward Bedfellows?” *Hague Journal on the Rule of Law* 2 (2) 2010: 127-154; McAuliffe, Pádraig, “UN Peacebuilding, Transitional Justice and the Rule of Law in East Timor: The Limits of Institutional Responses to Political Questions,” *Netherlands International Law Review* 58 (1) 2011: 103-135; and Teitel (2000).

¹⁸ Sriram (2007).

¹⁹ See, for example, Graybill, Lyn and Kimberly Lanegran, “Truth, Justice, and Reconciliation in Africa: Issues and Cases,” *African Studies Quarterly* 8 (1) 2004: 1-18.

²⁰ Arthur, Paige, “How “Transitions” Reshaped Human Rights: A Conceptual History of Transitional Justice,” *Human Rights Quarterly* 31 (2) 2009: 321-367; and Teitel, Ruti G., “Transitional Justice Genealogy,” *Harvard Human Rights Journal* 16 (1) 2003: 69-94.

²¹ Shaw, Rosalind et al. eds., *Localizing Transitional Justice: Interventions and Priorities after Mass Violence*, Stanford: Stanford University Press, 2010.

²² Report of the Secretary General (2004).

²³ Ibid.

²⁴ Cockayne, James, “Hybrids or Mongrels? Internationalized War Crimes Trials as Unsuccessful Degradation Ceremonies,” *Journal of Human Rights* 4 (4) 2005: 455-473.

notions of transitional justice inherent in the liberal peace pathologize cultural difference, treating diversity as a problem to be corrected for the creation of a modern liberal society. This, according to Park, is done in a number of forms: assimilation aims to construct cultural uniformity; accommodation is employed to depoliticize difference through multiculturalism; and deployment seeks to co-opt the local into the enforcement of rule of law mechanisms.²⁵ This teleological discursive dichotomization of supposedly rational, modern understandings of justice—conceived in relation to peace-as-governance—with backward, illiberal tradition demonstrates the applicability of Richmond’s Foucauldian critiques of the liberal peace to dominant transitional justice mechanisms.²⁶ Furthermore, following Chandler and Richmond’s respective arguments, it suggests that the emphasis placed by the UN on incorporating local actors, processes, and traditions into its transitional justice mechanisms²⁷ can be understood as a means of legitimization and disavowal; only those that adhere to the discursive parameters defined by international norms are engaged with, thereby promoting local ownership while minimizing the discursive space available for dissent.²⁸

Understanding transitional justice within the broader project of liberal peacebuilding, therefore, allows for an appropriate problematization of its contemporary theory and praxis. Doing so reveals that the purportedly universal benefits of transitional justice, as commonly understood in relation to the rule of law, should not be taken for granted. Internationally driven transitional justice mechanisms are not value-neutral, apolitical, or even internally stable; indeed, they are so under-conceptualized that some authors have rejected the notion that transitional justice constitutes a coherent field on the grounds that it masks such a variety of (sometimes incompatible) normative underpinnings.²⁹ The remainder of this paper will apply these concepts to the transitional justice mechanisms implemented in Sierra Leone as a means of exploring their potential ramifications.

II: PROBLEMATIZING TRANSITIONAL JUSTICE IN SIERRA LEONE

As this section seeks to analyze how Sierra Leone’s internationally imposed systems of justice were conceptually incoherent, politically compromised, and contextually inappropriate, it is first necessary to emphasize the extent to which these can be understood in relation to rule of law initiatives and security-centric peacebuilding orthodoxy.³⁰ Sierra Leone’s transitional justice process, particularly its narrativization of morality and the atrocities committed by the Revolutionary United Front (RUF), was directed by the openly articulated assumption that the country’s conflict was caused by societal collapse, a crisis of modernity, greed and the competition over valuable resources (especially diamonds), and the absence or inadequacy of pre-war rule of law mechanisms. According to this logic, the

²⁵ Park, Augustine S.J., “Peacebuilding, the Rule of Law and the Problem of Culture: Assimilation, Multiculturalism, Deployment,” *Journal of Intervention and Statebuilding* 4 (4) 2010: 413-432.

²⁶ Richmond, Oliver, “The Rule of Law in Liberal Peacebuilding,” in *Peacebuilding and Rule of Law in Africa: Just Peace?* by Chandra Sriram et al. eds. Abingdon: Routledge, 2011.

²⁷ Report of the Secretary General (2011).

²⁸ Chandler; and Richmond (2011). Also see Andrieu, Kora, “Civilizing Peacebuilding: Transitional Justice, Civil Society and the Liberal Paradigm,” *Security Dialogue* 41 (5) 2010: 537-558.

²⁹ Bell, Christine, “Transitional Justice, Interdisciplinarity and the State of the “Field” or “Non-Field,”” *International Journal of Transitional Justice* 3 (1) 2008: 5-27.

³⁰ Park, Augustine S.J., “Consolidating the Peace: Rule of Law Institutions and Local Justice Practices in Sierra Leone,” *South African Journal on Human Rights* 24 (1) 2008: 536-564; and Sriram, Chandra, “(Re)building the Rule of Law in Sierra Leone: Beyond the Formal Sector?” in Sriram et al. eds.

institutionalization of such mechanisms, in coherence with liberal peacebuilding rationale, would therefore address the root causes of conflict and prevent its recurrence.³¹ This reasoning is highly contested in the scholarly literature on the origins of the Sierra Leone Civil War, and, following Susan Willett's argument that the security-development nexus in Africa is rooted in unproblematized assumptions about African conflict,³² ignores how much of the violence was, despite its brutality, distinctly political, modern, and directed towards rational ends.³³ Following the arguments explored in Part I of this paper, Sierra Leone's conflict was pathologized and framed as something to be corrected by supposedly modern liberal forms of order and stability, and it is within this conceptual framework that its transitional justice mechanisms must be considered.

As Sierra Leone's transitional justice process involved both a hybrid court and a TRC, each of these deserves to be analyzed in turn. Regarding the political nature of the former, there is a considerable amount of debate surrounding the extent to which the SCSL upheld the principles of fairness, impartiality, and due process. Indeed, some authors claim that these were observed to an almost damaging extent, as, for example, the Civil Defence Forces (CDF) trial—and particularly the indictment of Samuel Hinga Norman—threatened the Court's local popularity and legitimacy.³⁴ It is, however, possible to identify a number of ways in which Sierra Leone's transitional justice mechanisms were politically compromised. Primarily, the Court's mandate of holding accountable "those who bear the greatest responsibility", along with the decision to only prosecute crimes committed after November 30, 1996,³⁵ has been criticized as conceptually vague, arbitrary, politically influenced, or dictated by budget restraints. Issues of who *was* charged—referring to either the amnesty provided in the Lomé Peace Accord or individuals such as Norman and Issa Sesay, the RUF leader who cooperated with demobilization—as well as who *was not* charged—including President Ahmad Tejan Kabbah, junior commanders or those who directly committed atrocities, corporate profiteers who benefited from the trade of goods that sustained the conflict, foreign leaders such as Muammar Gaddafi, and members of intervening actors such as Executive Outcomes (a private military company), the Economic Community of West African States Monitoring Group (ECOMOG), or the UN—have been criticized on similar grounds.³⁶ Furthermore, the inclusion or omission of certain indictments in different trials can

³¹ Jalloh, Charles Chernor, "Special Court for Sierra Leone: Achieving Justice?" *Michigan Journal of International Law* 32 (3) 2011: 395-460; Kelsall, Tim, "Politics, Anti-Politics, International Justice: Language and Power in the Special Court for Sierra Leone," *Review of International Studies* 32 (4) 2006: 587-602; Kieh, George Klay Jr., "State-building in Post-Civil War Sierra Leone," *African & Asian Studies* 4 (1/2) 2005: 163-185; and Cockayne.

³² Willett, Susan, "New Barbarians at the Gate: Losing the Liberal Peace in Africa," *Review of African Political Economy* 32 (106) 2005: 569-594.

³³ Richards, Paul, *Fighting for the Rainforest: War, Youth & Resources in Sierra Leone*, Oxford: James Currey Publishers Ltd., 1996. Also see: Keen, David, *Conflict and Collusion in Sierra Leone*, Oxford: James Currey Publishers Ltd., 2005; Reno, William, *Warlord Politics and African States*, London: Lynne Rienner Publishers, Inc., 1998; Williams, Paul, "Peace Operations and the International Financial Institutions: Insights from Rwanda and Sierra Leone," *International Peacekeeping* 11 (1) 2004: 103-124; and Kaplan, Robert, "The Coming Anarchy," *Atlantic Magazine*, February 1994.

³⁴ Arzt, Donna E., "Views on the Ground: the Local Perceptions of International Criminal Tribunals in the Former Yugoslavia and Sierra Leone," *Annals of the American Academy of Political and Social Science* 603 (1) 2006: 226-239; and Sriram, Chandra, "Wrong-Sizing International Justice? The Hybrid Tribunal in Sierra Leone," *Fordham International Law Journal* 29 (3) 2006: 472-506.

³⁵ Special Court for Sierra Leone, "About," <http://www.sc-sl.org/ABOUT/tabid/70/Default.aspx>.

³⁶ Dougherty, Beth K., "Right-Sizing International Criminal Justice: The Hybrid Experiment at the Special Court for Sierra Leone," *International Affairs* 80 (2) 2004: 311-328; Howarth, Kathryn, "The Special Court for

be seen as politically motivated. In some instances, such as the refusal to consider gender-based crimes in the CDF trial, these compromises had serious psychological effects on victims, demonstrating the extent to which normative-centric retribution was valued over rehabilitation.³⁷ Similarly, the pursuit of international norms and jurisprudence resulted in a number of instances in which fairness and due process—especially in relation to the rights of the accused and problems of precedent and *nullum crimen sine lege* in landmark rulings on child soldiers, gender-oriented crimes, and joint criminal enterprise—were sacrificed, rendering the Court’s neutrality and conceptual coherence doubtful.³⁸

This relationship between justice and the needs, values, and objectives of different actors also highlights the supposed hybridity of the SCSL. Hybrid courts are commonly assumed to have a number of benefits. They are, unlike domestic courts, apparently detached from political interests and more likely to adhere to universal standards of justice. They are also seen as preferable to strictly international courts as they are better able to gain access to witnesses, interact with local populations, (re)construct local judicial capacities, and promote a rights-oriented local culture of accountability by demonstrating that no persons or actions are outside of the rule of law.³⁹ The hybridity of Sierra Leone’s transitional justice system is, however, questionable. The SCSL did not charge any of its defendants under the Sierra Leonean legal system, instead focusing on violations of international norms, jurisprudence, and humanitarian law (war crimes and crimes against humanity). Such a disparity brings into question the extent to which hybridity is merely a means of gaining local legitimacy for enforcing international norms.⁴⁰ Following the arguments presented above, the UN’s efforts to establish community outreach projects, incorporate local civil society into justice mechanisms, and assist local actors in the development of professional skills can be seen as an attempt to implicate local actors in a project that seeks to transform illiberal states, peoples, traditions, and modernities in coherence with unproblematized understandings of security and development.⁴¹ The success of this, however, has been limited, as a large portion of Sierra Leoneans see the court as driven by and serving foreign interests, sentiments that were exacerbated by the transfer of Charles Taylor to The Hague.⁴²

Sierra Leone—Fair Trials and Justice for the Accused and Victims,” *International Criminal Law Review* 8 (3) 2008: 399-422; and Jalloh.

³⁷ Kelsall, Michelle Staggs and Shanee Stepakoff, “‘When We Wanted to Talk About Rape’: Silencing Sexual Violence at the Special Court for Sierra Leone,” *International Journal of Transitional Justice* 1 (3) 2007: 355-374.

³⁸ Jordash, Wayne and Scott Martin, “Due Process and Fair Trial Rights at the Special Court: How the Desire for Accountability Outweighed the Demands of Justice at the Special Court for Sierra Leone,” *Leiden Journal of International Law* 23 (3) 2010: 585-608; Jordash, Wayne and Penelope Van Tuyl, “Failure to Carry the Burden of Proof: How Joint Criminal Enterprise Lost its Way at the Special Court for Sierra Leone,” *Journal of International Criminal Justice* 8 (2) 2010: 591-613; Rose, Cecily, “Troubled Indictments at the Special Court for Sierra Leone: The Pleading of Joint Criminal Enterprise and Sex-based Crimes,” *Journal of International Criminal Justice* 7 (2) 2009: 353-372; Howarth; and Jalloh.

³⁹ Office of the United Nations High Commissioner for Human Rights, “Rule of Law Tools for Post-Conflict States: Maximizing the Legacy of Hybrid Courts,” UN Document HR/PUB/08/2, 2008; and Sriram (2006).

⁴⁰ Kendall, Sara, “‘Hybrid’ Justice at the Special Court for Sierra Leone,” *Studies in Law, Politics and Society* 51 (1) 2010: 1-27.

⁴¹ OHCHR (2008).

⁴² Call, Charles T., “Is Transitional Justice Really Just?” *Brown Journal of World Affairs* 11 (1) 2004: 101-113; and McAuliffe, Padraig, “Transitional Justice in Transit: Why Transferring A Special Court for Sierra Leone Trial to The Hague Defeats the Purposes of Hybrid Tribunals,” *Netherlands International Law Review* 55 (3) 2008: 365-393.

Perhaps most significant, however, is the extent to which these internationally driven norms ignored Sierra Leone's post-conflict contextual specificities. As Tim Kelsall argues, this became manifest in a number of ways: the charges for enlisting child soldiers presupposed a universal understanding of "childhood" that had little socio-cultural resonance in Sierra Leone; the concepts of command responsibility and joint criminal enterprise reflected inappropriate notions of military hierarchy and ignored Sierra Leonean forms of social organization and mobilization; and the SCSL's legalistic framework was divorced from local ontologies, epistemologies, and notions of agency, responsibility, evidence, truth, and magic.⁴³ Furthermore, the argument that transitional justice promotes adherence to universal conceptions of rights and justice overlooks the degree to which, in Sierra Leone, contemporary understandings of these are grounded in a constant renegotiation of post-conflict social realities.⁴⁴ Countering such claims, many argue that engaging with local traditions will reinforce oppressive social practices and recreate the conditions of conflict;⁴⁵ however, given that most Sierra Leoneans have no access to the formal systems of justice, working with local traditions in ways that provide space for the needs, values, and desires of various actors to be articulated is necessary for the success of the country's transitional justice mechanisms.⁴⁶

Many of these problems also defined the country's TRC, the utility of which is highly contentious for two reasons. First, its complementarity with the SCSL is subject to a considerable amount of debate. Whereas a number of commentators, including the UN, see each as promoting different, yet equally essential, aspects of post-conflict justice,⁴⁷ others highlight how issues such as sequencing and the sharing of findings and witnesses can lead to tension and local scepticism.⁴⁸ Furthermore, Sierra Leone's TRC has been critiqued as culturally inappropriate; following the arguments presented in Part I of this study, the benefits of truth commissions were problematically assumed and universalized, ignoring local practices of rehabilitation based on forgiveness and forgetting. As a result, the type of justice promoted by Sierra Leone's TRC was seen as incomplete and unsatisfactory—or worse, detrimental to peace and rehabilitation—by affected communities and individuals.⁴⁹ Its

⁴³ Kelsall, Tim, *Culture Under Cross-Examination: International Justice and the Special Court for Sierra Leone*, New York: Cambridge University Press, 2009. Also see: Hoffman, Danny, "The Meaning of a Militia: Understanding the Civil Defence Forces of Sierra Leone," *African Affairs* 106 (425) 2007: 639-662; and Park (2008).

⁴⁴ Archibald, Steven and Paul Richards, "Converts to Human Rights? Popular Debate about War and Justice in Rural Central Sierra Leone," *Africa* 72 (3) 2002: 339-367.

⁴⁵ Fanthorpe, Richard, "On the Limits of Liberal Peace: Chiefs and Democratic Decentralization in Post-War Sierra Leone," *African Affairs* 105 (418) 2006: 27-49.

⁴⁶ Sriram, (2011).

⁴⁷ Report of the Secretary General (2004); Report of the Secretary General (2006); Guidance Note of the Secretary-General (2010); Schabas, William, "A Synergistic Relationship: The Sierra Leone Truth and Reconciliation Commission and the Special Court for Sierra Leone," *Criminal Law Forum* 15 (1/2) 2004: 3-54; and Schabas, William, "The Relationship Between Truth Commissions and International Courts: The Case for Sierra Leone," *Human Rights Quarterly* 25 (4) 2003: 1035-1066.

⁴⁸ Boister, Neil, "Failing to Get to the Heart of the Matter in Sierra Leone?" *Journal of International Criminal Justice* 2 (4) 2004: 1100-1117; Dougherty, Beth K., "Searching for Answers: Sierra Leone's Truth & Reconciliation Commission," *African Studies Quarterly* 8 (1) 2004: 39-56; Evenson, Elizabeth M., "Truth and Justice in Sierra Leone: Coordination between Commission and Court," *Columbia Law Review* 104 (3) 2004: 730-767; Kelsall, Tim, "Truth, Lies, Ritual: Preliminary Reflections of the Truth and Reconciliation Commission in Sierra Leone," *Human Rights Quarterly* 27 (2) 2005: 361-391.

⁴⁹ Millar, Gearoid, "Assessing Local Experiences of Truth-Telling in Sierra Leone: Getting to 'Why' in Qualitative Case Study Analysis," *International Journal of Transitional Justice* 4 (3) 2010: 477-496; Millar, Gearoid, "Local Evaluations of Justice through Truth Telling in Sierra Leone: Postwar Needs and Transitional

benefits, like those of the SCSL, should therefore not be taken for granted; instead, the failures of both should be viewed as manifestations of more deeply rooted problems that define contemporary transitional justice. The unwillingness to acknowledge these as such will only increase the likelihood of similar problems in the future.

III: CONCLUSIONS AND AVENUES FOR FUTURE RESEARCH

This paper has sought to problematize the role of transitional justice in contemporary peacebuilding operations as a means of demonstrating the extent to which the concept, given its service of international interests and widespread equation with the rule of law, is both practically and theoretically unstable. In doing so, it has explored the transitional justice mechanisms adopted in Sierra Leone, arguing these were incoherent, inherently politicized, and culturally inappropriate. Rather than assuming that these failings are specific to Sierra Leone, it is important to question whether or not they suggest more general failings of transitional justice mechanisms in peacebuilding processes. If, as this paper has argued, they do, then it is essential to devise new forms of transitional justice that cohere with local contexts, contingencies, ontologies, epistemologies, everyday needs and desires, and understandings and traditions of justice.

Although an examination of such alternatives is beyond the scope of this paper, these nevertheless merit future scholarly consideration. Both Richmond and Roger Mac Ginty have explored local alternatives to liberal peacebuilding, although the applicability of their arguments to transitional justice, as well as the extent to which such alternatives can be equated to emancipation, deserves further analysis.⁵⁰ In this regard, it is important not to romanticize local systems of justice over internationally backed liberal counterparts, assume their authenticity or utility, or ignore how understandings and practices of justice are, and have historically been, tied to certain interests and power relations.⁵¹ Such arguments pose serious difficulties for the possibility of identifying space for emancipatory forms of transitional justice, as no understanding of justice can be seen as apolitical, disinterested, or value-neutral. This reality, however, perhaps only increases the necessity of exploring creative alternatives to contemporary transitional justice mechanisms by questioning unproblematized hierarchies, both locally and internationally, and locating new discursive space for previously voiceless actors and perspectives. Such an endeavour is essential if the conceptual and practical utility of transitional justice is to be maintained.

Justice,” *Human Rights Review* 12 (4) 2011: 515-535; Shaw, Rosalind, “Memory Frictions: Localizing the Truth and Reconciliation Commission in Sierra Leone,” *International Journal of Transitional Justice* 1 (2) 2007: 183-207; Shaw, Rosalind, “Rethinking Truth and Reconciliation Commissions: Lessons from Sierra Leone,” United States Institute for Peace, Special Report No. 130, Washington DC, February 2005; and Kelsall (2005).

⁵⁰ Mac Ginty, Roger, *International Peacebuilding and Local Resistance: Hybrid forms of Peace*, Basingstoke: Palgrave, 2011; and Richmond (2011).

⁵¹ Obarrio, Juan, “Traditional Justice as Rule of Law in Africa: An Anthropological Perspective,” in Sriram et al. eds., 23-43.

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TRACK ONE: RESEARCH PAPER

Cluster 2: Development Governance

International Trade and Food Security: Can Agrobiodiversity Reconcile Both?

FERNÁNDEZ-WULFF, Paula[†]

ABSTRACT

This paper focuses on how economic dynamics regarding global markets and international trade regulations affect food security, with a specific focus on agrobiodiversity, mainly by identifying major gaps in existing international reports. The question of how the concept of food security has evolved and how it has been addressed and analyzed at the international level by the Food and Agriculture Organization (FAO) and the World Trade Organization (WTO) will first be explained, followed by argument on how the lack of an internationally coordinated response to address the economic impacts on food insecurity has led to market disruptions and price volatility. This paper argues that global economic governance should focus on tackling these issues through international trade policies aimed at enhancing agrobiodiversity, which would in turn enhance food security, especially for those countries where people in demand of food is not particularly solvent.

Issues that are clearly linked with food security, namely global governance, political economy, and agrobiodiversity, will be addressed here. Food security is also strongly linked with other thematic areas, including climate change, rural development, sustainable land use, aid effectiveness, and health. It is difficult to understand the international response to global food security as an isolated issue; we must see it as part of the larger picture of the global development framework, and analyze it along with other on-going international processes.

KEYWORDS: *International trade, food security, agrobiodiversity, economic governance, World Trade Organization*

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*INTERNATIONAL TRADE AND FOOD SECURITY: CAN AGROBIODIVERSITY
RECONCILE BOTH?*

I: GLOBAL FOOD SECURITY GOVERNANCE: A FAILED ENTERPRISE

Concepts of food security have evolved in the last thirty years to reflect changes in official policy thinking (FAO, 2003; Heidhues et al., 2004). The FAO (1983) and the World Bank's (1986) definitions have reflected these changes, complemented by the work of academics, for example Amartya Sen's theory of famine (1981). The World Food Summit's widely accepted 1996 definition now encompasses four dimensions: food availability, access, utilization, and stability (FAO, 2008):

“Food security exists when all people, at all times, have physical and economic access to sufficient, safe, and nutritious food that meets their dietary needs and food preferences for an active and healthy life.”

(World Food Summit, 1996)

The term ‘security’ itself has also undergone constant evolution. Historically, the concept of security has been defined primarily in military terms; it was restricted to the issues related to armed conflicts the major threat to human safety. Today, however, climate unpredictability, water scarcity, spreading hunger, and failing states are the new threats to survival (Brown, 2012), and as such, increasingly considered security issues as well. Food has ceased to be in the sole hands of agricultural departments, and has turned into a matter of international and national security. Today, it seems one of the major challenges for governments is how to adjust national fiscal priorities in order to match these new dangers.

At the same time, the system of food security governance has become increasingly complex. For most of the 20th century, food governance focused mainly on issues of agricultural production. Today, other issues such as access, benefit-sharing, and ecological concerns are understood to be equally relevant. Global governance needs to consider not only how food is produced but must also include the entire food chain – what has been called ‘from fertilizer to fork’ (Vermeulen, 2012): how it is processed, distributed, and consumed. Food governance has become a complex system of often overlapping or contradictory policies and regulations, obscured by unwritten rules and practices that are not supervised in any political or institutional administration.

Food security governance is further complicated by a decrease in the importance of the role of states as once uncontested mediators (Cashore, 2002), today substituted by the increasing presence and influence of worldwide actors such as businesses, civil society, and the scientific community.

At the international level, global food governance – partly due to its implications regarding national sovereignty, partly due to a lack of political will – has not been properly addressed. Contentions that international organizations were created from an exclusively Western point of view on one hand, and their lack of adaptive capacity on the other, have led to the progressive stagnation of international negotiations regarding food security. Businesses and transnational corporations have taken the lead in response to this paralysis. It seems clear that the need for a readjustment of international priorities has now become crucial.

Although it is often said that food security begins at home, the need for global food governance was recognized even in the earliest days of the UN, leading to the creation of

FAO in 1945. These last 67 years have seen a massive growth in food quantity and quality, enabling a 40 percent rise in food intake per person for a population that has also increased from 2.5 billion to 7 billion (De Haen, 2010). Despite these figures, nearly 870 million people, or one in eight, were suffering from chronic undernourishment in 2010-2012 (FAO, WFP and IFAD, 2012); it is clear that the extra food has not led to equitable distribution. In spite of the ‘productivist’ argument being still present in the international political debate, it is obvious that quantity is not the issue, but rather getting the existing food to where it is needed.

New and recurrent food crises in the last twenty years have taken place, uncovering inefficiencies (or failure) of the global food governance system. With each food crisis, new institutions have been launched, including the World Food Programme (WFP), the International Fund for Agricultural Development (IFAD), the UN High Level Task Force (HLTF) on the Global Food Security Crisis, and although not directly related, the WTO through its Agriculture Committee and the Doha Development Agenda. Typically, crises have also led to summits and pledges to cut hunger. Today, almost every country subscribes to the global target of halving hunger between 1990 and 2015 (MDG 1). In spite of this, the number of hungry people is rising (FAO, WFP and IFAD, 2012). It was estimated that at least 50 million more people became hungry in the 2008 food crisis - in January 2008, 923 million people were estimated to be hungry (with a daily calorie intake of less than 1,800), and this figure was probably around 980 million a year later (FAO, 2008c). While the reasons for this are numerous and still highly debated, one factor that clearly determines people’s food security is price volatility, especially for net buyers of food. Price spikes in the international food market affect national food prices, and this has a strong impact on food access and availability.

II: FOOD CRISES AND FOOD PRICES, ESTABLISHING A CAUSALITY LINK

If food security encompasses price stability, the on-going food crisis that started in 2008 reveals that international economic institutions have not set in place necessary regulations that would have eventually acted as a safety net against price spikes. This is despite a clear duty to do so. As noted by the UN Special Rapporteur on the Right to Food, Olivier De Schutter (2011), the WTO Agreement on Agriculture contains several provisions that explicitly mention food security, confirming that the WTO has international legal authority for certain aspects of food security policy.

The international food crisis in 2008 sparked a series of global responses to mitigate its widespread effects, tackle the underlying causes and increase food security. Although food prices returned to a pre-crisis market averages for some time after the crisis, price volatility has remained and world food prices rose sharply again at the end of 2010, bringing them close to the crisis levels of 2008 (UNCCD, 2011).

Higher food prices affect countries differently depending on whether they are net exporters or net importers of food. Net food-exporting countries will benefit and experience higher terms of trade and more income as a result of higher prices. Net food-importing countries, on the other hand, will face worsened terms of trade and have to pay a larger food import bill, which will impact negatively on trade balance and affect the strength of their currency (FAO,

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2010a). This is especially worrying for developing countries, the majority (55 per cent) of which are net food importers (FAO, 2011a).

The High Level Panel of Experts on Food Security and Nutrition has given three interlinked explanations for the recent food price behaviour (HLPE, 2011): (1) agricultural price volatility; (2) the dynamics of agricultural investment; and (3) scarcity.

Agricultural price volatility

First, they argue that food price increases are a problem of natural “agricultural price volatility”, so high prices will not last¹. Price volatility in the last five years has been higher than in the previous two decades, but lower than it was in the 1970s. Because of the liberalization of markets over the past 20 years, however, domestic prices in many countries are more connected to international prices than they were in the 1970s. The Panel of experts discuss three possible causes for this international food price volatility, namely demand elasticity, trade policies and speculation, the latter being the most controversial.

To stabilize domestic prices, developed countries make use of policies such as domestic support for food and agriculture production in the form of subsidies, compulsory biofuel percentages and export bans, amongst others. This keeps domestic prices stable at the cost of further warping market prices at the international level.

Most developing countries, on the other hand, do not have the resources to pay high subsidies or follow such policies in order to compete in international food markets. Consequently, many of them imposed export restrictions or export tariffs on key commodities, such as wheat in the case of Russia and rice in India², which reduced supply on international markets and also contributed to the recent food price spikes. However, one must note that not all export restrictions cause these sorts of disruptions; in many cases, export taxes and restrictions can stabilize domestic prices (Nogués, 2011).

Nonetheless, when unexpected events take place, such as environmental disasters or unusual seasonal changes, highly populated countries can make pressing demands on markets with export restrictions where only a fraction of production is being traded internationally. The first agricultural price volatility explanation overlooks how domestic policies affect the interconnectedness between exporting and importing countries, especially crucial in the case of key commodities as previously mentioned. Moreover, even if supply is sufficient to meet pressing demands, it is unclear whether it will reach the part of the demand that is least solvent and most food insecure.

Agricultural investment dynamics

A second explanation posits that periodic food crises (1950s, 1970s, and present) can be explained by the dynamics of agricultural investment: high prices trigger investment and technological development, which lead to a rise in production and lower prices. In contrast,

1 This point is arguable, and it has been made even inside the FAO, vid. FAO, IFAD and WFP, 2011.

2 Vid. for more information recent analyses in Sharma, 2011 or Martin and Anderson, 2011.

low prices lead to a reduction in investment until supply is so low that prices begin to spike, which again triggers investment.

Public investment in agriculture has been argued to be critical to achieving MDG1 (Fan, 2008), although this is not the only factor in overcoming hunger. Controlling food prices is key in addressing the issue of food availability, and public investment is certainly one of the ways to achieve it, but not if domestic policies lead to global food price volatility and spikes. Although higher food prices can help poor farmers receive a greater return on their crops, a large number of rural households are actually net buyers of staple foods³, meaning a net increase in food insecurity even as income rises. Many countries have gone from being net food exporters in the 1970s to being net importers in recent years⁴. This shift took place after the decline in world food prices from the mid-1970s to the mid-2000s, as food became readily available on international markets due to subsidized overproduction in developed countries (De Schutter, 2011). This explanation fails therefore to address the issue of the trade liberalization era as well as the effect of foreign agricultural trade policies in domestic markets.

Scarcity.

The third explanation sees the current price increases as an early signal of long-lasting scarcity in agricultural markets. The world could be facing the end of a long period of structural overproduction in international agricultural markets, previously made possible by the extensive use of cheap natural resources (e.g. oil, water, biodiversity, phosphate, and land). The FAO's explanation fails to address other factors like rapid population growth and does not adequately explain the link between food prices and new emerging demands for biomass, the most visible part coming from the conversion of agricultural land for the production of biofuels. A major problem concerning biofuels is the complete lack of international discipline to address their distortive effects. Countries like the USA have adopted national policies on biofuels (specifically ethanol) that have contributed significantly to higher staple crop prices and modestly to higher food prices as a whole (Babcock, 2011).

The prices of food crops are now inextricably linked to the price of oil, due mainly to the heavy reliance of conventional agriculture on fossil fuels (Altieri, 2002). The more the price of oil increases, the more profitable it is to convert food crops into biofuels, even if larger economies like USA had not applied subsidy policies (Babcock, 2011). Even at current oil prices, in 2012 the USA produced 272 million tons of grain, of which 114 million tons – around 42% - was used for the production of fuel ethanol (up from 16 million tons in 2000) (Earth Policy, 2012).

It appears that all three explanations apply to some extent to the behaviour of food prices. However, they are all only partially true, and not entirely appropriate when applied to higher levels of non-traditional analysis.

3 Around 60 per cent in Bangladesh, Kenya and Mozambique, for example, vid. FAO, 2008b.

4 This is the case of many countries in Africa, which is puzzling given their vast agricultural potential in many instances (vid. Rakotoarisoa, 2011).

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There are several ways of analyzing problems; a traditional form of analysis focuses on separating the individual pieces of what is being studied. A non-traditional analysis could consider systems thinking, that in contrast focuses on how the thing being studied interacts with other constituents of its system (Aronson, 1998). This way of approaching problems gives solutions that are strikingly different to those of traditional analyzes, especially when what is being analyzed is marked by complexity and a great number of interactions, such as the behaviour of food prices.

The Panel of Experts applies a traditional reductivist approach for trying to elucidate this complex situation, which leads to the three different explanations discussed above, all of them incorrect if taken in isolation. Although they do mention that the explanations are complementary, they do not provide an explanation as to how, to what extent, or in which areas they are complementary. The report also fails to expand on the linkages of food security to key issues such as the impact of trade liberalization and increased interdependence among countries pursuing non-liberal domestic policies, as previously discussed. Applying systems thinking and making food prices part of a larger picture would give a different perspective and perhaps more comprehensive explanation.

Food prices and security as part of the issue of agrobiodiversity loss is seldom examined, and warrants further discussion. How economic development and liberalization has affected food prices (and therefore food security) has been studied (Panagariya, 2002), but there is no comprehensive study of the impact on food prices and security of inter-linkages and interdependencies driven by trade liberalization. There are some studies of the impact of the WTO Agreement on Agriculture on food security (Gonzalez, 2002; Gayi, 2006), but none measure its role in the recent food crisis.

A systems analysis of food security as part (or consequence) of agrobiodiversity economics could have numerous and beneficial impacts. A comprehensive analysis, however, of the economic impact of international regulations on agrobiodiversity conservation seems to be almost impossible⁵. This paper will try to carry out an assessment of the impact of some trade liberalizing measures on agrobiodiversity, in the hope to raise awareness of the importance of the effects of international regulations in national policies, which in turn affect global levels of *in situ* conservation. More specifically, neoliberal economies⁶ and trade liberalising regulations have affected the level of on-farm agrobiodiversity, in turn affecting food security. The political economy of agriculture cannot be studied without having those international regulations in mind, and the effects of the latter on agrobiodiversity and food security.

III: GLOBAL ECONOMIC GOVERNANCE OF AGROBIODIVERSITY FOR FOOD INSECURITY: AN IMPACT ASSESSMENT OF SOME TRADE LIBERALIZING MEASURES

The role of biodiversity for food and agriculture is crucial, and diversity is recognized as the basis for local cultures in traditional sustainable food systems that have a strong connection to

⁵ Vid. CBD Secretariat (2004) and in particular paragraphs 89, 93, 99, 105 and 109.

⁶ Neoliberal is used here in reference to Western free market ideals based on the principles of self-interest, self-regulated markets and liberal democratic ideals.

cultural diversity. Strong local cultures and institutions play a significant role in strengthening both the resilience of local farming systems and their capacity to cope with change in ways that maintain or improve livelihoods (FAO, 2011). Biodiversity provides a variety of wild and domesticated plants and animals critical to food security and nutrition, especially in times of famine or environmental stresses. Genetic diversity can provide access to seeds and planting material better adapted to various existing conditions (e.g. drought-resistant traits, or resistance to pests and disease), and is the basis of adaptation as needs and conditions change (CBD COP8, 2006).

A key concept in biodiversity conservation is food sovereignty, defined as the right of each nation to maintain and develop its own capacity to produce the staple foods of its peoples, respecting their diversity in methods of production, genetic material and related culture (Menezes, 2001). This concept often underlies or goes hand in hand with the promotion of regional and local food systems, and thus food security (Lee, 2007). Reliance on a lesser number of local crops can result in erosion of plant genetic resources and an increased risk of widespread diseases. When a variety is susceptible to a new plant disease, this results in food insecurity. From an analysis of 104 country reports, it appears that genetic erosion may be greatest in cereals (FAO, 2010), a phenomenon known as agrobiodiversity loss.

Although sometimes used interchangeably, the words “agrodiversity” and “agrobiodiversity” have distinct meanings. Agrobiodiversity has generally been a shorthand for biological diversity on lands used for agricultural purposes, defined as the management and direct use of biological species, including all crops, semi-domesticates and wild species (Guo et al., 1996). Agrodiversity on the other hand, is a much broader term that includes management of the lands, waters, and biota as a whole, and is considered beyond the scope of this paper (Brookfield and Padoch, 1994).

Small-scale farmers – who constitute around 85% of world-wide farmers (Von Braun, 2008) – traditionally conserve and grow a variety of crops for cultural, economic, and environmental reasons: it is widely considered a form of insurance against socially, economically and ecologically risky environments (Lipper and Cooper, 2009; Baumgärtner and Quaas, 2009; Pascual et al., 2011).

While the study of the impact of agreements such as the Trade-Related aspects of Intellectual Property rights (TRIPs) has been discussed extensively in available literature (Rosendal, 2003; Gonzalez, 2004; De Schutter, 2009), other international agreements that restrict the economic sovereignty of individual countries, such as the WTO Agreement on Agriculture, have less discussion. If, as previously explained, food security is inextricably linked to agrobiodiversity, which in turn relies on maintaining food sovereignty, then such international agreements can hinder the possibility for a country to become food secure. However, as discussed, food prices need to remain under constant scrutiny in order to prevent instabilities and market disruptions that create price spikes. International economic coordination is therefore required, but not at the expense of national sovereignty over agricultural public policies. Assessing the impact of international measures on agrobiodiversity consequently seems to be key in the quest of tackling food insecurity.

The WTO Agreement on Agriculture purported to address the structural inequities in global agricultural trade to create a “fair and market-oriented agricultural trading system” (Uruguay Round Agreement, 1994). However, the Agreement contained numerous ambiguities that

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enabled wealthy countries to subsidize and protect the domestic agricultural sector while constraining the ability of developing countries to use tariffs to protect their small farmers (Gonzalez, 2002). In effect, the Agreement has been said to establish that agricultural commodities could be sold on world markets at prices below the cost of production, thus allowing subsidized agricultural producers in the USA and the European Union to negatively affect the livelihoods of farmers in the developing world (Murphy et al., 2005).

Furthermore, although food security concerns fall within the broader mandate of the Doha Development Agenda of the WTO, early negotiators of the Round did not foresee the current scenario of high prices and focused their efforts on the decline in commodity prices (Ahmad, 2011). Most difficulties in negotiating new economic disciplines during the Doha Round are frequently due to disagreements between major economies (mainly the G20) that demand such policies in the international arena (Fergusson, 2008). If agriculture and food security have been a failed experience in terms of international economic negotiations, linking agrobiodiversity to food security seems to be very far from even entering international political discussions for practical legal and economic outcomes.

Approximately 7,000 crop varieties are used worldwide to produce food (Vaughan and Patterson, 2002). Nevertheless, there has been a shift from complex agro-ecosystems, usually comprising small-scale family-owned farms, to specialized industrial-sized farms, which has raised numerous questions regarding crop genetic diversity. Modern, large-scale agricultural production relies on an increasingly narrow and homogenous group of plant genetic resources for most of the world's food output (Altieri, 2002). Today, just 15 crop plants provide 90 per cent of the world's food energy intake, with three - rice, maize and wheat - making up two-thirds of this. These three are the staples of over 4 billion people (Loftas, 1995).

If analyzing the effect of trade policies on food prices and security is arduous, assessing the impact of specific economic measures on biodiversity has proven almost impossible (CBD Secretariat, 2005). Specifically, the CBD identified data gaps and methodological problems that make it very difficult to give robust empirical assessments of the direction of the overall effects of trade liberalization on agrobiodiversity. This report analyzes the impact of a specific kind of trade-liberalizing agro-economic measures – domestic support measures - on agrobiodiversity. However, it leaves out other measures such as export bans and subsidies, which are also restricted by international agreements.

The WTO claims domestic support measures are trade distorting (WTO, 2001). It has therefore worked for their reduction in both developed and developing countries (WTO, 2003). Incongruously, the bound rates, or highest allowable rates, as agreed on in the Uruguay Round often allowed higher protection levels than those of the base period. As a result, protection actually increased for a number of agricultural products (CBD Secretariat, 2005). Paradoxically as well considering their overt commitment to WTO-driven liberalization, the EU, Japan, and the USA for reducing domestic support measures, in 2001, these blocs accounted for 82 per cent of total domestic support of the whole OECD area (CBD Secretariat, 2005).

In fact, despite the WTO's efforts to reduce domestic support, the CBD Secretariat (2005) provides extensive literature⁷ proving that the reduction of trade-distorting domestic support,

⁷ Vid. Point 42, footnote 36 (page 17).

mostly used by developed countries, would directly reduce producer prices, leading to lower incentives for production in those countries, and increased prices for the consumer. In contrast, agricultural production in other – mainly developing – countries is usually expected to increase following removals of domestic support, as a consequence of increased consumer prices acting as an incentive for production. This is said to have positive environmental impacts in developed countries (due to reduced agricultural production), but negative environmental impacts in developing countries. The report is mainly conceptual, but it identifies many challenges for the generalization of conclusions when assessing the impact of domestic support measures on agrobiodiversity. The identification of these challenges can be very helpful for further studies: for instance, the need to recognize the level of aggregation between environmental and trade-related data sets; short-term and long-term effects; or the differences among regions and countries with different socioeconomic status. Case studies provide insightful information about the specific impact (the report includes examples from Nigeria, Ecuador, and China⁸), although generalizing conclusions is undesirable given the agricultural specificities of every country. This would, however, shed light on the level of interdependence existing among countries, which could be useful for designing future policies.⁹

Governments have a clear role in promoting or discouraging agrobiodiversity through economic measures, and international regulations directly affect their decisions. Economic subsidies and taxes have a very powerful effect in posing barriers to or promoting agriculturally sustainable solutions. As well as discouraging unsustainable practices, governments can invest in the maintenance (or improvement) of ecosystem regulating and supporting services that derive from the maintenance of diversity in the agricultural landscape. Payments for Agricultural Conservation Services (PACS) can increase the private benefits from utilizing diverse local plant and animal genetic resources on-farm through voluntary reward mechanisms, so as to sustain their on-farm conservation (Narloch et al., 2011). In Indonesia, the government's commitment to Integrated Pest Management strategies for rice culminated in the establishment of a ban on a number of pesticides. This resulted in a 75% reduction in the use of chemical control methods for rice although yields continued to rise by 25% over the same period (FAO, 2009). Careful planning of such schemes is needed to avoid some recurrent problems such as the lack of additionality (i.e. paying for activities that would have been conducted anyway) and leakage (i.e. shifting environmentally-damaging activities elsewhere) (FAO, 2011). The potential internationalization of such initiatives should be further studied.

Most related economic studies similar to the Economics of Ecosystems and Biodiversity initiative (TEEB, 2010) are conducted to assess and support the value of ecosystems and biodiversity, seeking to argue for ecosystem conservation as a viable investment option. There is an overall lack of studies, however, that address the issue of international economic policies that would enhance agrobiodiversity conservation as well as ensuring food security. International economic policies affect farmers' decisions greatly, and if used wisely, they can ensure that farmers diversify livelihood options, benefitting both the environment and their communities.

8 Vid. Point 64, page 22.

9 Although countries' interdependence on genetic resources for food and agriculture has been studied (Fujisaka et al. (eds.), 2009), the economic interdependence (resulting of or as a consequence of the latter) has not.

IV. CONCLUSIONS

Economic studies rarely focus on impacts on biodiversity, and very seldom relate agrobiodiversity to food security. In regards to the existing international economic regulations, trade concerns should come after food security and ecological sustainability: the right to food is a basic human right (UDHR, 1948; ICESCR, 1966), whereas trade is not. The CBD recognizes the intrinsic value of biological diversity, its critical role in maintaining the life-sustaining systems of the biosphere, and its “importance for meeting food, health, and other needs” of human beings (CBD, 1992). Trade should be a means to achieve these needs, not an end itself.

In particular, the WTO Agreement on Agriculture cannot be reconciled with food security or ecological sustainability so long as its sole objective is the elimination of trade barriers in order to promote export production of agricultural goods. In this sense, agrobiodiversity can provide a safety net against trade liberalization as well as the need for heavy subsidization. Protecting small farmers and adapting international standards to the reality of the developing world has not been satisfactorily realized so far, and this should be changed. Small-scale farmers, which constitute 85% of the farmers around the world, are the ones that should be protected against international markets’ distortions. Designing international trade regulations that reward agrobiodiverse farms could redefine the debate of global food insecurity within the terms of ecological sustainability, instead of economic profitability. The inclusion of provisions protective of agrobiodiversity in international trade regulations could be key supporting those farmers currently in socially, economically, and ecologically risky environments, for instance by incentivizing the most agrobiodiverse farms with reduced export tariffs. Such measures would need to be carefully designed, especially regarding how agrobiodiversity is calculated, in order to avoid undesired effects.

Transforming the rules that govern global trade will require persistent cooperation and coordination among highly heterogeneous developing countries with conflicting priorities. A way to achieve this could be exempting protectionist measures when designed to ensure food security. However, reforming the entire concept of the WTO, which based solely on the promotion of trade, is a challenging endeavour. Still, human rights law should counter-balance the supremacy of WTO trade rhetoric, an indispensable tool to protect the basic right of all human beings to sufficient, safe, and nutritious food and to advance the procedural and substantive rights essential to the achievement of ecological sustainability. As discussed, international trade has numerous effects on food security, and its impact on agrobiodiversity is only beginning to be monitored. The WTO could use its international legal authority regarding the impacts of international trade on food security for promoting collaboration with the FAO and the Secretariat of the CBD, as well as institutionalizing the linkages between the three in order to address the global challenge of feeding the world. Redefining the principles upon which the WTO is established under the sphere of basic human rights such as the right to food is crucial, and a sole mention in the Preamble of the Agreement on Agriculture is certainly not enough for effectively realising it.

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TRACK TWO: COMMENTARY

Cluster 1: Peace, Security and Human Rights

How well has the causality of the conflict in East Timor been reflected in its UN peacebuilding experience?

CHAOBANG, Ai[†]

ABSTRACT

The end of the UN's thirteen-year peacebuilding effort in East Timor has left behind uncertain prospects, for a country still recovering from a quarter of a century of violent occupation and conflict. This article, written in the concluding year of UN Mission in Timor-Leste (UNMIT) operations, assesses that conflict in search of its causes. It then examines the post-conflict peacebuilding exercise across a number of its dimensions, including security, governance, and post-conflict justice, to consider how far peacebuilding efforts took into account the driving forces behind East Timor's ordeals in the first place. Through these strands the argument is made that some of the most significant such drivers have not been addressed, including accountability for those who carried out what was in essence a war of aggression, and the persistence of their foreign backers in maintaining self-interest-based foreign policy frameworks, among other factors. It is further argued that unless such drivers are addressed, the prospects of long-term peace in East Timor, or other comparable situations, will remain under threat.

KEYWORDS: *East Timor, Indonesia, International Relations, Peacebuilding, Peacekeeping, Timor-Leste, Transitional Justice, United Nations*

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I. INTRODUCTION

In December 1975, the world turned its back on East Timor. Twenty-four-years of Indonesian occupation visited brutality of demonic proportions upon its people: one of the worst genocides of the late twentieth century, in which over two hundred thousand Timorese, a third of the population, were killed.¹

It was answered, extremely belatedly, with the largest, furthest reaching and most committed international response in the history of United Nations (UN) peacebuilding.

The UN is now thirteen years into its intervention in East Timor, or in what, to the intervention's credit, became in 2002 the independent state of Timor-Leste. However, despite considerable success against astonishing odds, peacebuilding in East Timor has not been an unmitigated success. Today the outlook for Timor-Leste remains uncertain, its stability and prospects still appearing to hinge on the continued UN presence.

This analysis has two parts. In the first I explore the background to the East Timor conflict, in search of the causes of its traumatic violence in both the original conflict and the persisting unrest which still brings strife to its pursuit of peace. In the second I consider the UN peacebuilding exercise in depth, and ask whether it has sufficiently taken those roots of conflict into account. Through this I advance that the experience in East Timor offers lessons by which the UN might improve its peacebuilding exercises in future; but that the obstacles have been less due to faults in the UN organization, and more the responsibility of its member states and the international paradigm they yet uphold. For indeed it was this paradigm, of states which choose to act on the world only in terms of their own "national interest" calculations, and which struggle to see through value frameworks other than their own, that was ultimately responsible for East Timor's nightmares; and this choice of paradigm which, although the UN's foundational principles reject it, made East Timor all the more challenging to raise from the wreckage to which the very same choices reduced it.

II. 1975-1999: THE CAUSES OF CONFLICT IN EAST TIMOR

From 1702 to 1975, East Timor was a Portuguese colony in an archipelago occupied by the Dutch Empire. As a maritime crossroads between several great civilizational hubs – the Indian Ocean, Southeast Asia, the Pacific – these were islands immense in ethnic, cultural and spiritual diversity, natural resources, and geostrategic weight.

This history had profound consequences when the islands won their fight for independence in 1949 as the Republic of Indonesia: a state which has ever since struggled, often violently, to build a national identity acceptable to all its peoples, and whose prospects became tied to the geopolitical ambitions of foreign powers.² Intense nationalism prevailed under the founding Sukarno regime, which laid this identity's ideological foundations in the *pancasila* doctrine, and set forth a centralizing of Indonesia's political and economic centre of gravity on the island of Java, with the religious dominance of Islam. Along with this came severe repression

¹ As found by a comprehensive study commissioned by the Parliament of Australia. See Hanisworth, Paul and McCloskey, Stephen, *The East Timor Question – The Struggle for Independence from Indonesia*, London: I.B. Tauris (2000), ix.

² Rae, James DeShaw, *Peacebuilding and Transitional Justice in East Timor*, Boulder: First Forum Press, 2009, 46-49.

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and a growing role for coercion in holding this identity together, which only accelerated with the bloodshed in 1965-7 which brought General Suharto to power. This atmosphere in which violence was considered an acceptable or necessary tool to enforce national unity, especially against restive regional dissent, set the scene for the invasion of East Timor in 1975.³

East Timor was itself diverse, but its different colonial experience had given it an altogether separate journey from its neighbouring islands. As such, when Portugal relinquished its colonies following the Carnation Revolution, East Timorese political movements burgeoned – among them FRETILIN, calling for independence, and a number of other parties arguing for integration into Indonesia. Civil war broke out on account of infiltration and manipulation by the Indonesian military – including the special forces, *Kopassus* – attempting to destroy the independence movement, yet popular support was such that FRETILIN prevailed and, on 28 November, 1975, declared the independence of the Democratic Republic of East Timor.⁴

Indonesian full-scale invasion and occupation followed, and heralded a quarter-century era of horror in which East Timor, subjected as the twenty-seventh province of Indonesia, experienced atrocities, crimes against humanity and genocide on an unimaginable scale. The 1975 invasion saw Indonesian forces descend on the capital, Dili, in an indiscriminate wave of slaughter, destruction and rape; inhabitants were subjected throughout the occupation to such experiences as disembowelling, being thrown into the sea from helicopters, beheadings and cannibalism; and 'scorched earth' military methods, along with forced movement of people from ancestral sites to land unfit for cultivation which led to devastating famine.⁵ Suharto also resettled Indonesians from other islands on East Timor, to assimilate it into the Indonesian nation through 'the eradication of indigenous culture, language and religion'.⁶

Thus, the conflict's immediate causes are in plain sight. This was first and foremost an Indonesian war of aggression, driven by violent and authoritarian nationalism, against a vulnerable neighbour viewed as a rebellious part of Indonesia's own territory: hence, its efforts not just to dominate East Timor but to utterly abolish it as a nation. Additional drivers included lucrative oil reserves in the Timor Sea; the powerful role of the army in Indonesian politics; and the Cold War fear of an independent East Timor under leftist FRETILIN as a communist stronghold in the region, agitating for further destabilization of the Indonesian state. However, no extent of such fears or postulated gains explain the staggering brutalities which Indonesian political and military actors chose to inflict on the East Timorese.

Conflict theories can help to identify such causes, but only when they acknowledge the conflicts' complexity. Even a conflict as simple on the surface as this one is not monolithic: it was a story with a vast array of characters, each with complicated and not necessarily coherent motivations. It is of limited value, therefore, to debate between categories of causation such as 'material' and 'idea-based' causes, or 'greed and grievance'⁷, when this

³ See Budiardjo, Carmel, "The Legacy of the Suharto Dictatorship," in Hanisworth and McCloskey, .51-67, for more on the Suharto regime's attitude towards and use of violence against regional independence movements and internal dissent.

⁴ Rae, 44-45.

⁵ *Ibid.*, 45.

⁶ Hanisworth and McCloskey, 5.

⁷ The theme of a prominent debate in present conflict discourse, as contributed to in Collier, Paul and Hoeffler, Anne, *Greedy and Grievance in Civil War*, The Centre for the Study of African Economies Working Paper Series, (2002). Though the East Timor conflict was not a civil war, a range of factors under both the 'greedy'

conflict was driven by a compound of both: whether the ideological vision of a unified Indonesia, or the territorial and economic gains to be made in East Timor's annexation.

The importance of both dimensions is still more apparent when we look at the conflict's enabling context: the foreign support for Indonesia's war, from beginning to end, from the United States of America, the United Kingdom, and Australia. The U.S. assisted the coup which brought Suharto to power, and thereafter provided him robust support, in wilful complicity with what was inflicted on East Timor: indeed, Suharto was only prepared to invade after U.S. President Gerald Ford and Secretary of State Henry Kissinger personally visited him in Jakarta and gave him the go-ahead, hoping in the words of the U.S. Ambassador that the invasion would occur 'effectively, quickly, and not using our equipment'.⁸ Throughout the occupation the U.S. provided military training and arms sales to the Indonesian army, as did Britain, where companies such as British Aerospace profited tremendously from the arms trade with Suharto's regime.⁹ Australian support was most overt, extending to diplomatic recognition of Indonesia's claims to East Timor as a province¹⁰, and active endorsement of the occupation through five successive Australian administrations, including military aid to Indonesia; ideological support for the concept of East Timor's integration into Indonesia; the plundering of East Timorese oil in the 1989 Timor Gap Treaty¹¹; portrayal of the East Timorese independence movement as communist; and staunch opposition whenever the East Timor issue was raised at the UN, along with support for Indonesia's position in UN forums.¹²

As with Indonesian actions, complex perspectives feed into this international role. The U.S., U.K. and Australia were leading powers in the Cold War capitalist bloc, and the U.S. tendency in this period to endorse regimes capable of any depth of barbarousness, so long as they were an alternative to the slightest possibility of communist rule, is well established – especially following its trauma in Vietnam and the ascent of communism in Southeast Asia. Suharto's 'New Order' prioritized economic stability and was seen as a crucial ally and bulwark against communism in the region, especially by Australia next door; while materially, the Indonesian islands' richness in natural resources made for profitable economic relations.

Once again, conflict theories may explain why certain parties might *benefit* from promoting a

label and 'grievance' label were significant in driving it.

⁸ As quoted in Scheiner, Charles, "The United States: From Complicity to Ambiguity", in Hanisworth and McCloskey, p.118. See also Ishizuka, Katsumi, *The History of Peace-building in East Timor – The Issues of International Intervention*, Delhi, Cambridge University Press India, 2010, 30-35; and Candio, Patrick and Bleiker, Roland, "Peacebuilding in East Timor", in *The Pacific Review* 14:1 (2001), 67-68. For more on the international contribution to the conflict, see also John Pilger's documentary *Death of a Nation* (1994), which played a major role in exposing these countries' involvement and raising East Timor to international significance: <http://johnpilger.com/videos/death-of-a-nation-the-timor-conspiracy>.

⁹ On the role of the U.K., see Hanisworth, Paul, "New Labour, New Codes of Conduct? British Government Policy towards Indonesia and East Timor after the 1997 Election", and Needham, Andrea et al., "Seeds of Hope – East Timor Ploughshares Disarming the Hawks", in Hanisworth and McCloskey, 95-116 and 85-93, respectively.

¹⁰ Indonesia's occupation was considered illegal under international law – indeed the United Nations continued to recognize Portugal as the legitimate sovereign in East Timor.

¹¹ The Timor Gap oil arrangements were of dubious legality, and were challenged by Portugal in the International Court of Justice in 1995. See Gunn, Geoffrey C., *East Timor and the United Nations: The Case for Intervention*, Lawrenceville and Asmara: The Red Sea Press, 1997, 57-68. See also Ishizuka, 178-189.

¹² Aubrey, Jim, "Canberra: Jakarta's Trojan Horse in East Timor", in Hanisworth and McCloskey, 133-149.

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conflict, but say nothing about why such parties might *choose* to derelict the very basics of human ethics to do so – that is, to override the empathy for others' suffering, and the reasoning that inflicting it can stir hatred and a will to reciprocate it. This is why conflict theories do not suffice: the ordeal of East Timor was not the outcome of a mechanical chain of causes and consequences, but of a perfect storm of choices by governments, businesses and media organizations to pursue the most callous possible conceptions of self-interest – any single one of which, if they had chosen differently, might have impeded or even prevented the Indonesian invasion in 1975 and the crimes against humanity which followed.

Herein lies the problem impeding much of conflict theorizing, but also the spotlight this problem places on the deepest foundation we can yet observe for the causes of conflict in East Timor. Too many theories, especially in the tradition of Thomas Hobbes's *Leviathan*, are built upon crude and observably inaccurate (or at least incomplete) generalizations about human nature as inherently self-serving, pursuing dominance over or destruction of others; but the choices in question were made not because this is in fact human nature, but because a paradigm of state behaviour which held that people and states *should* behave in this way was permitted to dominate in the Cold War period. Most damagingly, this paradigm was established as inherently 'realistic' in political and academic discourse, through terms such as 'realism' and '*realpolitik*', developing legitimacy for the pursuit of geostrategic, economic or ideological gain to the detriment of human rights: an approach synonymous, in Cold War symbolism, with one of this very story's primary characters, Henry Kissinger. The wilful construction of this paradigm, and the decisions it conducted to, were the most underlying causes of conflict in East Timor we can yet arrive at; and no method of explaining it should exempt those who made those choices from responsibility.

This is essential to the UN peacebuilding experience that followed. In peacebuilding, in Timor-Leste and everywhere else, we are chained to the problem that to implement the principles beneath it, we are relying on states which so recently complied with eagerness in one of the most protracted and bloody episodes of crimes against humanity in modern history: which fully aware of the depth of the cruelties being visited upon the East Timorese, opted not to assist them, but to encourage that bloodshed onwards by supplying its perpetrators with all the quarter-of-a-century's worth of armaments, cover-ups, diplomatic support and insulation from accountability that they could muster. Those very states, which in a remarkable irony would become the bedrock of the international effort to help East Timor recover, continue to operate by the same paradigm by which myopic national perspectives dominate their actions: and this has generated serious practical obstacles and mistakes throughout the peacebuilding period.

What was the underlying cause of that phenomenon, whereby so many characters so readily relinquished their most basic ethical instincts, so as to permit, and contribute to, the conflict in East Timor? By what process were they able to take these decisions without their own humanity giving them pause; and how did our kind permit these processes to become an international paradigm? These questions lead into murky waters, beyond this inquiry's immediate scope; but only when we get past the resignation that this was merely human nature, and seek to properly address the paradigm of selfish interests and those who practice it a *problem*, and one of the most inglorious of our age – that is, not reality, but a *broken* reality – can we hope in earnest that the world has seen the last of ordeals such as those unleashed on the East Timorese.

III. 1999-2012: PEACEBUILDING

The Indonesian occupation faltered in the 1990s. International coverage of atrocities like the Santa Cruz massacre thrust its inhumanity into global public awareness, on account of foreign activism on East Timor's behalf from NGOs, journalists, solidarity movements, independent activists, and a few governments such as the Irish. Their years of work, along with the collapse of the Soviet bloc, brought a gradual erosion of international support for Suharto's regime, which culminated when the rioting, bloodshed and ethnic turmoil following the Asian Financial Crisis led at last to Suharto's fall from power in 1998.

No longer able to advertise economic stability or the status of a Cold War bulwark for international support, and with pressure mounting over human rights violations, the new regime of B.J. Habibie was forced to reassess Indonesia's relationship with East Timor; and in no position to resist, gave its assent for a UN-supervised referendum on independence in 1999. On 11 June, the UN Security Council passed Resolution 1246, creating the United Nations Mission in East Timor (UNAMET) to 'organize and conduct a popular consultation...to ascertain whether the East Timorese people accept...or reject the proposed special autonomy for East Timor, (the latter) leading to East Timor's separation from Indonesia.'¹³ Under the oversight of the Indonesian army and police, a 98 per cent turnout voted almost 80 per cent in favour of independence: and in response, militias, armed and premeditated by the Indonesian army, went on a rampage of burning, smashing, looting and atrocities which killed over two thousand people, forced hundreds of thousands more into the bush or into West Timor as refugees, and systematically obliterated East Timor's infrastructure – it is thought at least 70 per cent of all private homes, public buildings and essential services were destroyed.¹⁴

The Security Council replied with the fastest response in the history of UN peacekeeping, passing Resolution 1264 and creating INTERFET, the International Force for East Timor: an armed multinational peacekeeping force mandated with 'all necessary measures' to 'restore peace and security'.¹⁵ Its arrival led the militias to melt away to the west; and these initial missions would evolve into the process of helping the East Timorese emerge from the debris and construct their nation from what little remained standing.

The UN peacebuilding commitment has consisted of six different missions in total, replacing each other over a period of thirteen years and counting. The UN Transitional Administration in East Timor (UNTAET) stands out as the first time a UN mission was tasked with effectively functioning as a sovereign government: an exhaustive range of responsibilities including political restructuring, social and economic concerns, infrastructure, justice, security, policing, and even the power to make treaties on East Timor's behalf.¹⁶ From a country reduced to the 'true meaning of emptiness'¹⁷ in 1999, UNTAET saw East Timor achieve independence in 2002 as the Democratic Republic of Timor-Leste, with full UN membership, on the back of significant accomplishments in humanitarian relief, successful

¹³ UN Security Council Resolution 1246 (11 June 1999).

¹⁴ Rae, 53-4. See also Traub, James, "Inventing East Timor", in *Foreign Affairs* Vol. 79, Issue 4 (Jul./Aug. 2000), 74-89; and Ishizuka, 126-7 on the responsibility of the Indonesian army for the violence, as established by the UN Secretary-General's International Commission of Inquiry on East Timor in 2000.

¹⁵ UN Security Council Resolution 1264 (15 September 1999).

¹⁶ Ishizuka, 63.

¹⁷ Traub, 74.

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elections, restoration of basic services, and a baseline, at least, of peace and security.¹⁸

However, after UNTAET was downscaled, first to the UN Mission of Support in East Timor (UNMISET) and then the UN Office in Timor-Leste (UNOTIL), renewed instability and violence came to a head in the crisis of 2006, when what started as a police strike led to factional disputes, rioting, deaths and displacement, and the arrival of an Australian-led intervention force to restore order. Thus was established the UN Integrated Mission in Timor-Leste (UNMIT), operating on a broadened mandate of capacity-building, restoring and maintaining public security, and 'enhancing a culture of democratic governance...to bring about a process of national reconciliation and to foster social cohesion.'¹⁹

UNMIT has operated in Timor-Leste ever since, and at the time of writing is mandated to run until 26 February 2012. Since 2006 there has been further unrest, including election violence, and an assassination attempt on the President and Prime Minister in 2008. Peace remains elusive despite a decade of UN commitment, highlighting problems and setbacks from which the UN can learn lessons, but which come ultimately from beyond the UN organization itself. In three aspects of peacebuilding in East Timor – security, governance, and justice – one can observe persisting obstacles posed by the states on whose involvement the peacebuilding process relies; and the ways in which their international paradigm, by which their own 'interest' calculations and value frameworks take foremost priority, have drastically impeded the Timorese pursuit of peace.

III-A. SECURITY

The first mistake, and by far the most serious in consequence, was that of the Security Council in 1999 to entrust the government of Indonesia to 'monitor and ensure the security of the popular consultation' about the independence of a territory on which it had shown, unambiguously, that there was no destruction it would not inflict to keep it subjected. Although the consent of conflicting parties was a pillar of peacekeeping operations, and a legitimate reputational concern following disasters in Somalia, Yugoslavia and Rwanda, there should have been no illusion that the Indonesian army and police could be relied on to promote a peace they had no interest in. The credibility of UN peace operations was thus dealt another blow, whether due to intelligence failures or, more likely, an unwillingness by the relevant states to confront the difficult questions about the East Timor situation in practice. An armed international force, as deployed following the militia rampage that followed, should have been dispatched with UNAMET to provide security for the referendum, with all necessary pressure applied to the Indonesian authorities, as aggressors, to withdraw their armed presence from East Timor.

Thereafter, the UN missions sought to develop East Timor's security capacity – that is, the defence forces and police – and a recurring problem was a lack of attention to legitimating this capacity in the eyes of Timorese people. The previous problem of excessively dogmatic regard for mission principles at the expense of looking at realities on the ground, was repeated when INTERFET, and then UNAMET, were mandated to believe mission impartiality was cause to disarm and disband FALINTIL.²⁰ This was the military arm of FRETILIN which had single-handedly resisted the Indonesian occupation for over two

¹⁸ Ishizuka, 64-66.

¹⁹ UN Security Council Resolution 1704 (25 August 2006).

²⁰ Ishizuka, 74.

decades; one might surmise that Timorese would not have thought highly of their courageous guerrillas being forced to disband because a supposedly benign occupation force, led by some of the very nations responsible for their miseries in the first place, wished to appear impartial.

Legitimacy – that is, the confidence and will to cooperate of local people, who must be able to feel that they are the authors of their own process – may be peacebuilding's most valuable resource. In failing to appreciate FALINTIL's advantage in this resource, the peacebuilding states squandered an opportunity to legitimate the development of East Timorese security capacity by integrating FALINTIL into the new security apparatus – which to its credit it did eventually do – and worse still, could not therefore take advantage of FALINTIL's accumulation of local intelligence during the conflict.²¹ A question remains however as to whether East Timor, at this stage, needed a defence force at all.²² Another full-scale invasion by either of its massive neighbours was considered unlikely, due to the presence and international legitimacy of armed UN operations in the country; nor would a fledgling F-FDTL be postulated as particularly effective in the case that such an invasion occurred.

Concurrently, the development of PNTL – the police – was hindered not only by corruption, human rights violations and unprofessionalism, but the fact that since 1975, the police had for the Timorese become the very face of crimes against humanity, due to its role in Indonesian atrocities. Confidence in the PNTL thus had to be earned out of deep-rooted mistrust, and was extremely quick to vanish when the PNTL was ineffective or abusive.²³ All of these factors contributed to the politicized rivalry between the defence forces and police, and its eruption in violence in the 2006 Crisis.

Whether better attention to the conflict's legacy could have forestalled such turbulence in the security apparatus and prevented its descent into violence, is of course unanswerable. Nevertheless, with more consideration for East Timor's experience and its legitimacy implications, these problems might at least have been mitigated. As the difficulties for these missions to do so stemmed significantly from mandate constraints, the improvement of mandate design thus requires the states involved to forego their own 'interest' perspectives in favour of a more rigorous and reflective analysis of the situations these operations must contend with; although the missions themselves would benefit from greater prerogative to act when they find that building peace, in practice, requires exceeding the mandate's authority.

III-B. GOVERNANCE

Nowhere is legitimacy more important in peacebuilding than in locals' authorship of their own political destiny, and UNTAET was much criticized for its reluctance for Timorese participation in governance. This caused immense frustration, a mistake acknowledged by UNTAET officials including the Transitional Administrator, Sergio de Mello²⁴; and was worsened by the notoriously lavish lifestyles international staff seemed intent on exhibiting:

²¹ Ishizuka, 75.

²² Personal correspondence with Professor Sukehiro Hasegawa, Special Representative of the Secretary-General for Timor-Leste (2004-06), January 2012. While FALINTIL's credibility resources could have been put to use elsewhere in the security apparatus, postponing development of the national capacity for force might even have opened a path for rejecting it altogether, with lessons perhaps from the Costa Rican or Japanese approaches. Such a direction, emerging from so anguished a historical backdrop, might have done much to maintain international interest in East Timor in all the most respected and rewarding of ways.

²³ *Ibid.*, 107-111.

²⁴ *Ibid.*, 88-89.

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their massive vehicles, expensive restaurants, air-conditioned offices, floating hotel, and incomes colossal compared to those of the impoverished Timorese whose island it was, could only have created the sense of yet another foreign occupation; and when this did not test Timorese tolerance enough, incidents of decadent parties, alcoholism and drink-driving, and sexual harassment, abuse or irresponsibility were obscenely insulting and sullied the UN's reputation.²⁵ This disparity also gave the missions an air of enormous power, and thus enormous expectation on them to deliver: expectations that did not match the capabilities of often inexperienced staff tasked with raising a country from rubble.

But the imposition was more elemental in depth. The dominant states pursued a vision of good governance grown from Euro-American models, characterized by concepts such as democracy in those foreign states' image, rule of law, and especially high normative weight attached to elections: hence the equating of successful elections in 2002 as 'mission success', when in fact elections are a competitive and divisive process, based on majoritarian norms of legitimacy, that produce winners and losers: not necessarily intuitive for building a common identity or mending peace among peoples with different traditional legitimacy norms, emerging factional acrimony, and a recent history embedding violence as the standard tool with which to resolve disagreements.²⁶

Democracy, properly defined, must inherently grow out of the journey of the people who choose it: many Timorese indeed called for it, but in a context of their own traditions and culture which the peacebuilding missions neglected. It requires no normative judgement on either the international nor indigenous approaches to say that the missions' approach to governance sacrificed enormous legitimacy potential by imposing a 'one-size-fits-all', 'Western' model, rather than engaging international standards with traditional Timorese institutions to develop a system the Timorese could support, feel familiar with, and call their own.²⁷

Again the UN can institutionally learn from these mistakes, but the real problem lies deep in the international order whereby states pursue dogmatic, rather than organic, conceptions of governance: that is, which either satisfy and extend their notions of the supremacy of their own systems, or in the least do not represent a perceived threat. Letting the letter of democracy take precedence over the essence of democracy was not to East Timor's advantage, and this doctrinaire approach echoes those countries' Cold War attitudes, by which, to East Timor's agony, any alternative outcome – at all – was preferable to the chance of a communist government.

III-C. JUSTICE

Justice presented some of East Timor's most complex challenges. Many concerned the period it had just emerged from in which the very notion had been bludgeoned to meaninglessness; and the meanings returned all at once in questions of accountability for atrocities during the 1975-1999 occupation and 1999 militia rampage. On top of that emerged issues of refugee

²⁵ Ishizuka, 119-120, and Rae, 63-65.

²⁶ Rae, 83.

²⁷ *Ibid.*, 81-2. A famous example of this kind of creative pragmatism may be seen in the American occupation of Japan from 1945 to 1952, in which the Showa emperor, Hirohito, was kept on the throne, and the unique public respect his office derived was used to legitimate the occupation and gain the Japanese people's cooperation.

return, social reconciliation, and worsening domestic violence and gender conflict; all beneath the overarching question of how, and on what normative foundations, to build East Timor's justice infrastructure.

Again the answers were dealt a disservice by colliding foreign and Timorese approaches. As with governance, the UN was deployed with the established norms and frameworks of its dominant states: a traditionally Euro-American – perhaps Abrahamic – mentality of exhasutive investigations, strict procedures, prosecutions, punishments and prisons.²⁸ This was reflected in UNTAET's Serious Crimes Unit (SCU), a tribunal created in 2000 to investigate and prosecute crimes during the 1999 violence. The SCU was not well suited to the circumstances: in the absence of judicial infrastructure, a shambles in pre-trial detention, confusion between legal practitioners from different backgrounds, and lack of cooperation from Indonesian authorities harbouring many of the suspects, it was critically constrained. Nor did its remit extend past 1999 to the occupation period; and its closure at the end of UNMISSET, with all the imagery of incompleteness, ineffectiveness and political expediency, was calamitous for the UN's judicial credibility in East Timor.²⁹

Conversely, the Timorese already had a venerable traditional justice system, based in customary law institutions such as *adat* or *lisan* (a comprehensive justice ethos), *bandu* (the ethos's basis of legitimacy in ancestors still living in the spirit world), *nahe bitu* (conflict resolution process) and *juramento* (blood oath to seal settlements reached and restore peace).³⁰ In contrast to the more punitive 'Western' tradition, Timorese justice is a communal concern emphasizing reconciliation, dialogue, engagement and taking responsibility, and reaching social harmony.

For post-conflict East Timor, reconciliation was as much a pragmatic necessity as a principle. This traditional emphasis on reconciliation over strict formality was reflected in President Xanana Gusmão's approach to refugee repatriation and justice for the 1999 militia crimes³¹; and in the establishment of the Commission for Reception, Truth and Reconciliation (CAVR) in 2001, a truth commission without high judicial function, tasked to investigate and acknowledge the truth, hold hearings, and assist community reconciliation for the victims of crimes through the entire 1975-1999 period. Though not without criticism, the CAVR was generally well-received by a population more familiar and at ease with its practices than with the 'solemn, adversarial courtroom', and made major accomplishments in documenting crimes, rehabilitating perpetrators, and providing closure to victims by the time of its final report in October 2005.³² Post-conflict justice presents an often painful challenge of balancing accountability for the past with advancement into the future, both of which are essential concerns; and by engaging local customs with international human rights perspectives, the CAVR made important contributions to the demands of both in a highly precarious period.

²⁸ Ishizuka, 234.

²⁹ *Ibid.*, 129-134.

³⁰ Increasing attention has been paid to Timorese justice customs and their peacebuilding relevance in recent analyses. See Rae, 143-5 and Ishizuka, 229-231.

³¹ *Ibid.*, 234-5. Quoting Gusmão in September 2001 on the rank-and-file militias: 'Who will pay for their daily life in prison? The money that you pay in taxation...What we have discussed is that if we need to repair buildings, the people who burned the buildings will repair them.'

³² Rae, 177-181 and 201; and Ishizuka, 138-143.

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Like international standards, indigenous justice approaches are not beyond fault. Reconciliation might not be enough for extremely serious crimes, such as the Indonesian executive architects of the occupation and 1999 violence. Moreover, the communal basis of the indigenous approach may lead its outcomes to be prejudiced by family or kinship connections, or sacrifice individual rights for the sake of stability or social norms, especially in domestic and gender violence situations.³³ *Juramento* may also raise questions of animal welfare. Thus, it is important for international and local approaches to engage with one another, to combine the strengths of both and overcome one another's weaknesses: the demands of post-conflict justice are so multi-faceted as to be best addressed with a similarly multi-faceted, creative and flexible approach. The onus is on the states leading the peacebuilding effort to develop such an approach to peacebuilding operations, and this requires greater open-mindedness in states with perhaps more pride in their norms and systems of justice than their outcomes merit.

The paradigm of political selfishness remains an obstacle. One of the most damaging long-term failures of justice in East Timor is the impunity to this day of Indonesian war criminals, including those indicted by the SCU: as of 2003 there were 221 suspects so indicted which the Indonesian authorities refused to extradite for trial, and Indonesia has consistently refused to cooperate with Timorese judicial processes.³⁴ This includes several high-ranking officials, some of whom, such as General Wiranto, remain politically active in Indonesia at the highest levels.³⁵ Here we see self-interest calculations impeding accountability for crimes against humanity, not only within Indonesia, but by an international community reluctant to pressurize an Indonesia supposedly emerging from authoritarian repression and economic instability into a new democratic era; but in fact still struggling with notorious political corruption, serious abuses against regional populations (such as in Papua), and the mass destruction of its tropical rainforests, of enormous global biodiversity and climate change significance – an order which must be considered unsatisfactory, at best.

The parallels with international behaviour during the occupation are striking. As events after 1999 stoked concerns that other regions would break from Indonesia and follow East Timor to independence, Indonesia's geopolitical partners still prioritize its stability both as a trading partner and a strategic bulwark: if no longer against communism, then against Islamist terrorism and the expansion of China as a regional power.³⁶ Without significant international leverage, the question emerges as to whether culpability for East Timor's ordeal is acknowledged by Indonesia at all: for there could be no more ominous shadow over Timor-Leste's long-term prospects than an enduring attitude in its dominant neighbour, acquiesced to by the international community, that it was right all along.

Similarly, accountability has yet to be extended to the foreign backers of the Indonesian occupation, and must be for the same reasons: that peacebuilding means nothing if it does not

³³ See Ishizuka, 238-245. Gender is complex in East Timor, influenced both by the patriarchal influence of the Catholic Church and, according to J.D. Rae, matrilineal and even matriarchal traditions where political and economic power was controlled by females, some influences of which have endured. See Rae, 92-93. Especially given the many gendered inadequacies even of international frameworks, indigenous culture may again offer considerable legitimacy resources to appeal to in addressing the worsening gender violence situation.

³⁴ Ishizuka, 131-2.

³⁵ Rae, 176.

³⁶ See Emmerson, Donald K., "Will Indonesia Survive?", in *Foreign Affairs* 79:3 (May/June 2000), 95-106, for a post-referendum analysis on the implications of Timorese independence for Indonesian territorial unity.

mean taking the necessary steps to ensure whatever peace is built will not be knocked down in future. Far from establishing recognition for the British, American and Australian roles in East Timor's calamity, the very notion that self-interest is an acceptable primary pursuit for states and businesses, in persisting today, still enables legitimization of their choices during that period: and thus makes it intuitive that if the circumstances were repeated, their behaviour would be no different.

As with the justice process within East Timor, the 'international' formalized court-cases model of justice might not be most appropriate or effective for this. Indeed, in the spirit of reconciliation, the best penance might be those states' continued commitment to the peacebuilding process, for as long as is necessary or desired by the Timorese people: accompanied however by considerably clearer contrition than has yet been expressed, and a recognition that this commitment, with all expenses it incurs, is an act not of kindness, but of reparation.

IV. CONCLUSIONS

This has not been a fully comprehensive consideration of East Timor's challenges, some of which, such as refugee concerns and socio-economic development, are just as important to its pursuit of peace, and exhibit the same trends of international and local collision, and obstruction by the self-interest of participating states.³⁷

Foreign material greed or value myopia, in the context of a *chosen* predatory international paradigm, caused the conflict in East Timor. As East Timor sought to rebuild, the persistence of those currents in the international peacebuilding contribution, and the failure to consider the consequences thereof, hindered the process. Governance and justice were approached on the basis of 'Western' models and systems, marginalizing the Timorese in terms of participation, accessibility and values; the conflict's effects on Timorese were not adequately considered when it came to defence force and police legitimacy; and those who actually carried out the destruction, whether in Indonesia or the powers which supported it, have not been held to account.

The UN's founding premise is the pursuit of a very different order: one which rejects the 'scourge of war', reaffirms 'fundamental human rights', and works for 'the economic and social advancement of all peoples'.³⁸ Though progress at the paradigmatic level has advanced in recent decades, such as through developing and implementing concepts such as Human Security and the Responsibility to Protect, UN peacebuilding remains bound to the decisions and attitudes of its dominant states, and thus cannot be held culpable for when the self-interest paradigm obstructs its mission. Nonetheless there are practical steps the UN can take as an organization to learn from the East Timor experience: such as institutionalizing local

³⁷As expressed by Professor Sukehiro Hasegawa in personal correspondence (January 2010), difficulties in economic rehabilitation and the creation of employment were very significant in the relapse into conflict. Moreover, attention must be drawn to Australian policies of consistently bullying East Timorese authorities to cede it oil and gas revenues in the Timor Straits: an unconscionable approach potentially devastating to Timor-Leste's economic recovery. See Bellamy, Alex J. And Williams, Paul D., *Understanding Peacekeeping* (Polity Press, 2010), 275. See also Rae, 107 on the significance of these revenues, as well as other examples of foreign agendas taking precedence in economic assistance to Timor-Leste; and Ishizuka, 166-196 for more detail on the evolution of the Timor Sea oil politics, and Australia's unworthy behaviour towards East Timor throughout the peacebuilding period.

³⁸Preamble to the *Charter of the United Nations* (1945), <http://www.un.org/en/documents/charter/>.

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participation in governance; introducing systematic training for staff in local history and culture; more thorough briefing for staff on the purpose and proper culture of peacebuilding missions, to curtail extravagant lifestyles or arrogant mindsets in mission zones; institutional additions, such as military lawyers as a part of peacekeeping forces³⁹; and improved investigation and vetting of staff to prevent the serious disciplinary failures by UN peacekeepers occurring in recent years, including sexual exploitation and abuse.⁴⁰

This should not detract from the peacebuilding missions' remarkable accomplishments, but the deep roots of the troubles they have encountered must not be ignored. Rectifying them is not a matter of idealistic hope, but of practical necessity. The success of peacebuilding in Timor-Leste, and the development of a reliable approach to peacebuilding generally, requires a shift from dogmatic to more organic peacebuilding: that is, less top-down imposition of structures and practices based in dominant states' norms and loaded with their agendas, and more the *growing* of peace from the soil of wherever that peace is to be pursued, with the needs and values of those societies engaged with by international frameworks, and definitely questioned and scrutinized, but nevertheless at centre stage. And furthermore, for the prevention of the conflicts that bring about such painstaking need for peacebuilding in the first place, a fundamental shift is required in the values and attitudes by which international actors, above all states, conduct themselves towards others.

³⁹ As suggested by Hansjorg Stohmeyer. See Ishizuka, 81.

⁴⁰ U.N. General Assembly, *Report of the Secretary-General – In larger freedom: towards development, security and human rights for all* (A/59/2005) (21 March 2005), Section III, Article 113.

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TRACK TWO: COMMENTARY

Cluster 1: Peace, Security, and Human Rights

‘Local Ownership’ in Peacebuilding – a Premature Rhetoric?

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ABSTRACT

The concept of “local ownership” was endorsed in peace operations in 2001. However, its recognition and advocacy has not been followed by equal analysis, explanation or scrutiny in policy statements. This paper attempts to look at the limitations and practicality of ‘local ownership’ in peacebuilding efforts. Four major issues of local peacebuilding are discussed: the definitional problem, difficulty in achieving consensus, lack of capacity and resources and conflicts with the liberal peacebuilding model. At the moment, the notion of local ownership in the field is found to be premature. Many gaps still exist in the concept of local ownership. The concept requires substantial reconsideration and clarification regarding its definition, purpose and practicality before any significant contribution to the field of peacebuilding is conceivable.

KEYWORDS: *Peacebuilding, Local Ownership, Bottom Up, Sustainability*

I. INTRODUCTION

The term “local ownership” was widely used by international organizations throughout 1980s and 1990s, and recognized as a key concept for development aid in 1996, when the Development and Assistance Committee of the Organization for Economic Co-operation and Development (OECD) called for an inclusive approach that respects local ownership of the development process (OECD-DAC, 1996). The concept of “local ownership” was endorsed in peace operations in 2001, when UN Secretary General Kofi Annan noted that sustainable peace and development “can only be achieved by the local population itself; the role of the United Nations is merely to facilitate the process that seeks to dismantle the structures of violence and create the conditions conducive to durable peace and sustainable development” (United Nations, 2001). The Joint Utstein Study, a key document at that time, propagated the

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same position: “It is important that partner countries be in the driver’s seat as far as peace building efforts are concerned, especially in post-conflict situations” (GTZ, 2003).

The rationale of propagating local ownership is to obtain greater efficiency and sustainability in peacebuilding activities (Mateos, 2011). With local ownership, peacebuilding activities are expected to encounter minimal resistance by the local actors; solutions that come from within are also considered more appropriate for application to specific local conditions (Van Brabant, 2010). The efforts and effects of peacebuilding activities with local ownership are considered to be more sustainable in the medium to longer term since the commitment to the action and the results is not dependent on the presence and dominant financial support of external actors (Van Brabant, 2010). Another reason for propagating local ownership has to do with ethics and legitimacy (Mateos, 2011). Peacebuilding reform has been criticized for its lack of sovereignty. It is said to be an activity controlled by outsiders and imposed on post-conflict nations (Donais, 2009). Local ownership with its moral notion of respecting self-determination thus comes very much to the rescue from this accusation.

Many have been paying lip service to the concept of local ownership in the field of peacebuilding, including international donors and key policy documents on peacebuilding from the UN, the World Bank and the OECD-DAC (Sending, 2009). However, this recognition and advocacy has not been followed by parallel analysis, explanation or scrutiny. This paper aims to problematize the concept of “local ownership” by examining the ambiguity and contentions within its definition. The paper will also question the practicality of implementing the concept in post-conflict nations and whether it can potentially produce different outcomes from its intent. The paper will then highlight its contradictions with the dominant doctrine of “liberal peacebuilding,” which carries tenets such as liberal democracy, liberal human rights, market values, the integration of societies into globalization and the centralized secular state, which are not necessarily universal (or universally applicable) values (Newman, Paris & Richmond, 2009). The paper concludes that “local ownership” is at best, a premature rhetoric that requires substantial reconsideration.

II. DEFINITIONAL PROBLEM

What exactly is local ownership? The concept is very vague as local ownership can mean different things for different actors. There is no concrete meaning of it when its implication is being discussed in policy papers or even in conceptual frameworks where the importance of local ownership is highlighted (Reich, 2006).

First of all, who are the “locals”? Are they the state actors of the post-conflict country, the civil society organizations, or the indigenous peoples? Different “locals” can result in very different priorities and interests and pose different problems. There is rarely any discussion on which people or groups to which this label actually refers (Diamond 1999; Peck 1999; van Tongeren 1998; van Tongeren 1999). Kuehne (2003). This points out that a major difficulty in the field is to identify local actors who are simultaneously “relevant, reliable, and willing.” What is the constituent of local ownership in failed states where there is, by definition, no political class available to take this ownership in a responsible way? (Kuehne, 2003) The local political elites left standing might initially seem to be the most obvious or convenient locals. However, they can also be rather problematic, particularly if the manner in which the elites rose to prominence was illegitimate, especially in the context of armed conflict. In war-torn societies the government is usually fragile, lacks legitimacy and faces multiple

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confronting forces (Shinoda, 2008). While local political elites are in the best positions to stake an ownership claim in the peace process, they might possess hidden agendas and cannot always be held accountable in committing themselves towards nation building (Donais, 2009). In Sierra Leone for example, local ownership between 2002 and 2007 had a limited nature in the sense that while local elites were involved in some ways in the design and implementation of reforms, it is evident that other local actors such as civil society organizations and local communities, were excluded from consultation processes (Mateos, 2011). Decision-making within small policy circles of international and national government actors is not always trusted by other local actors. This threatens the legitimacy and thus the implementation of the policy or decision made (Van Brabant, 2010).

Due to this factor, there is an increasing discussion to alter the primary focus from political elites to civil society, which is viewed as being more prone to commit themselves to nation buildings without problems (Donais, 2009). However, there is an overestimation of the after-war condition of civil society, its independence, and “localness”. Rather than being a manifestation of local ownership, the involvement of local nongovernmental organizations (NGOs) can be viewed as an extra channel to exercise external influence. As Jenny Pearce (2005) noted in the Guatemalan context, outside funders have viewed local civil society as “a tool for processes whose parameters were decided by donors and which turned NGOs and social organizations into projects for an externally driven agenda.” NGOs are financially dependent on donors, rendering total self-determination rather difficult. Moreover, civil society can sometimes be politicized in itself.

For instance, in Sri Lanka during the civil war, the civil society is to a large extent ethnically divided, and popular mobilization has been nationalist and violent rather than pro-peace. The space of political protest is often limited to Tamils, who are viewed suspiciously by the government as potential terrorists in connections with the Liberation Tigers of Tamil Eelam, a rebellion force which demanded sovereignty. Many Tamils primarily desire justice over other causes and this has restricted their movements in peace organizations, which are dominated by the Sinhalese. Tamils instead are more involved in human rights-related activities (Orjuela, 2003).

The second puzzle lies in the level of participation required to be termed ownership. To what extent do the locals have to be involved in the process to qualify as such? For Edomwonyi (2003), local ownership means that the reconstruction effort is locally conceived and led. For Boughton and Mourmouras (2002), it requires the local actors to appreciate the benefits of the policies and to accept responsibility for them, leaving aside those who conceived the policies in the first place. Chesterman (2007) has stated that there is no explicit and coherent meaning of ownership in post-conflict situation. As in natural resource management, participation can be a form of manipulation (passive participation merely to show others that locals are involved), information giving, consultation, or it can be functional, interactive or even self-mobilization (Pretty, 1995). The meaning is less important than indicated by the term ownership. International actors will promote local ownership according to different mandates, perceptions and interests at their headquarters (Sending, 2010).

Van Brabant (2010) has categorized different levels of local participation: public consultation, public participation and public acceptance without participation, and analyzes them towards the goal of creating a sense of ownership. (Note that Van Brabant has assumed “locals” to be the public in general). Public consultations, e.g. a public opinion poll, provide a feel of public

opinions, but these opinions are often based on insufficient information and the act is often viewed cynically for coming after the major decisions have already been made, or would not be taken seriously if the results contradict the elites' opinions. Hence, it is said to be insufficient in providing a sense of ownership. Genuine public participation, on the other hand, requires a very daunting, long and often expensive process, though the results can be rewarding. However, genuine public participation has to have a limited amount of participants. How many participants exactly are good enough remains the question. Besides, due to the enormous amount of decisions to be made in nation-building, genuine public participation is often not feasible.

III. CONSENSUS-BUILDING

In the field of natural resource management, local management usually works better when the community size is smaller and the resource boundary is fixed (Ostrom, 1990). When the size gets bigger, there will be higher heterogeneity, lower cohesion and different interests. It is realistic to expect that there are no homogenous views in any given society, and even less so in divided societies. Among the local actors, there are not only conflicting interests but also different perspectives and proposals (Van Brabant, 2010). There is a balance needed between involving the sufficient amount of right people in promoting a sense of ownership and feasibility of achieving consensus. Successful peace processes must almost necessarily end in negotiated hybridity, ideally achieved through consensus-building along a horizontal axis of relevant local actors and a vertical axis spanning grassroots civil society, the national government and the broader international community (Donais, 2009). Unfortunately, this is often too daunting and time-consuming a task to be completed within a limited time frame of peacebuilding.

Even worse than conflicting interests, however, some local actors might not possess the will in the very first place to attain sustainable peace, as they might have benefited much more from continuous war. Indeed, the very notion of local ownership lies in an implicit and dangerous assumption that local actors will actually make use of such space to build peace. Tangible tensions often arise between a commitment to substantive local ownership and a commitment to achieve sustainable peace (Donais, 2009). A locally-owned peacebuilding process requires identification of local actors who are willing to exercise ownership to build peace, which is not always easy, or these people might be found to be in an extremely weak position (Shinoda, 2008). For instance, in Afghanistan, the international community, committed to a light foot approach, turned to notorious Afghan commanders and warlords who had been marginalized during the Taliban years, designating them to leadership positions. These commanders raced to establish their own authority, allowing a culture of impunity to take root (International Crisis Group, 2006). As Scheye and Peake (2005) pointed out, local actors are not necessarily benevolent stakeholders but might regard reform as a threat to their power, livelihoods, and practices. These are so-called "spoilers" in peace processes, distinguished between limited, greedy and total spoilers, each of which has to be managed in a specific way, either by incorporating into the peacebuilding process, isolating or neutralizing them (Stedman, 1997).

In short, although not impossible, meaningful local ownership demands much more than what the international actors has been attempting so far. It becomes a problem of both will and practicality. It is not just about external actors wanting to exit and finish their mission soon,

but also about the post-conflict nation deserving a strong foundation as soon as possible to enable future development and prosperity. Further consideration and discussion is needed to decide whether complicating the process in order to have local ownership as an end in itself is worthwhile and necessary.

IV. CAPACITY AND RESOURCES

Even if locals possess the will to exercise ownership, they are possibly lacking political, economic and social capacity in terms of human, institutional, material and financial resources to perform essential roles (Shinoda, 2008). Organizing multiparty elections, a thorough reform of the security sector or developing processes of decentralization are demanding tasks for a fragile post-war country (Mateos, 2011). This would justify external interventions for practical purposes, especially in the early stages when the civil society is hardly left with any functioning systems after war, while local elites are highly militarized and factionalized. This inevitably minimizes the local input (Miall, Ramsbotham & Woodhouse 1999).

For instance, in the case of Sierra Leone, most of the donors recognized that at least in the beginning, many of the peacebuilding documents and strategies were designed outside the country due to the lack of local capacity and resources (Mateos, 2011). Unfortunately, this is usually the crucial time when key elements of the post-war settlement are locked in at the time of the signing of a peace accord and the broad outlines of post-conflict political and economic arrangements are determined. In such cases local ownership rhetoric’s projection that locals are the ones in control of everything would be an exaggeration, if not hypocritical.

Realizing the limitation of local actors, capacity building becomes an almost necessary element for local ownership. Capacity building, if being defined as instilling the ability to put in place liberal reforms in the way that is understood by external partners, will take enormous patience and time. An optimist would argue that ownership can be transferred to the locals once the necessary capacities have been developed. High local ownership thus follows “capacity-strengthening.” However, capacity-development itself has to provide a sense of ownership too (Van Brabant, 2010) in avoid being taken as a way for imposition of external ways and norms. Capacity building driven by external actor itself is in potential contradiction with the notion of local ownership.

Faced with such challenges, external actors are often in the dilemma of retreating to merely technical, achievable tasks of capacity building, or engaging themselves more deeply with what might be called capacity disabling. Often in peacebuilding efforts, effective capacity building requires parallel efforts to disable domestic political power structures or local norms that obstruct effective establishment of new institutions (since new institutions threaten the position of those who are powerful in old institutions). Due to this almost necessary coupling of post-conflict capacity building and local capacity disabling, substantive local ownership is difficult to attain (Donais, 2009).

Due to the lack of local resources in a post-conflict situation, local actors are strongly dependent on external funding. The asymmetrical relationship can be a large obstacle for locals to freely pursue what they aspire as there is a large degree of dependency. Conditionality is for instance, a way of ensuring local’s behaviour to reform in the way that

external actors consider. Even if the project explicitly aims at creating local ownership, donors hinder substantive local ownership by controlling the budget, providing the benchmark and designing participatory program implementation (Mateos, 2011).

V. CONFLICTS WITH LIBERAL PEACE

The constituting elements advocated in liberal peacebuilding e.g. democratization, economic liberalization, neoliberal development, human rights, and the rule of law (Richmond, 2007) have been so widely adopted and propagated as non-negotiable principles that, in a sense, disregard society-specific history and politics (Mateos, 2011). However, the promotion of liberal democracy and market economics in volatile conflict-prone societies are increasingly contested. In addition to the question of legitimacy using top-down mediation between powerbrokers and building state institutions towards infrastructure rebuilding and stability, the imposition of liberal peace principles as “principles true in every country” ignores the fundamental causes of conflicts and suggests to some that the nature of the “peace” being built is not really inclusive or contextually sensitive (Sending, 2009). This perpetuates deep and unresolved internal contradictions in the peacebuilding project.

In reality, there are cases where domestic cultural and political practices e.g. clientelism, corruption or treatment of women, run counter to the norms promoted in liberal peacebuilding. In such cases, trade-offs are necessary between making peace and “good” governance. Decisions are to be made about which domestic practices should be allowed for sustainable peace without compromising the universal norms (Donais, 2009). Situation like this prove that local culture matters, especially amidst the propagation of local ownership. Outsiders cannot simply dismiss local perspectives or recreate them in their own image. As Duffey (2000) noted, the discourse of conflict resolution “has principally relegated cultural specificity to the background and diminished, even rejected, the importance of the diverse cultural milieus that conflict is embedded in.”

VI. CONCLUSION

The concept of “ocal ownership” is a premature and contested one, given that there are still many gaps in existence as discussed above. Its translation into implementation has also been slow and lacking (Pouligny, 2009), demonstrating the practical difficulty in its application. In addition, the conceptual risks being abused as a tool to increase hypocritical legitimacy and mask donors’ imposition, or works as a convenient excuse for early exit by donors. Although “local ownership” might have had its own virtuous intentions, it will remain problematic so long as the many issues highlighted in this paper are left unaddressed. The concept requires substantial reconsideration and clarification regarding its definition, purpose and practicality before any significant contribution to the field of peacebuilding is conceivable.

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