

FAULTLINES

The K.P.S. Gill Journal of Conflict & Resolution

Volume 24

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Volume 24

edited by
AJAI SAHNI



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THE INSTITUTE FOR CONFLICT MANAGEMENT



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FAULTLINES: THE K.P.S. GILL JOURNAL OF CONFLICT & RESOLUTION

Edited by Ajai Sahni

FAULTLINES - THE SERIES

FAULTLINES focuses on various sources and aspects of existing and emerging conflict in the Indian subcontinent. Terrorism and low-intensity wars, communal, caste and other sectarian strife, political violence, organised crime, policing, the criminal justice system and human rights constitute the central focus of the Journal.

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Foreword

An aspiration for a world of peace, long rooted in global rhetoric, is quickly giving way to despair and cynicism. International organisations, forged in the wake of the carnage of the World War II, have been instrumentalised by the great powers, and have failed to act with fairness in the many conflicts around the world over the decades that followed. Lesser powers have clustered together, not around shared values, but opportunities, leveraging numbers for deals, bartering influence, reducing the high mandate of global organisations to a lobby, a forum for influence peddling and low politics. Expediency, rather than any considerations of principle, now appears to dominate global affairs, even as new ‘Great Games’ destabilise large parts of the world, provoking great bloodshed.

The unprincipled use of international instrumentalities is manifest in the gross biases in international responses to excesses committed by the great powers across the world, which are overwhelmingly ignored or weakly resisted. On the other hand, blind inflexibility has often characterised global institutional responses to lesser powers, even where strong extenuating circumstances exist. Three papers in this volume directly address some of these contradictions.

The increasing use of drones, in purported ‘counter-insurgency’ operations by the ‘great powers’, particularly the Western powers led by the US are a major challenge, both of morality and of policy. The fact that many of the conflicts where indiscriminate use of

drones, and other forms of aerial or remote warfare, have resulted in massive civilian casualties – unceremoniously dismissed as ‘collateral’ damage – are the result of unconscionable and unauthorised wars initiated by the West, has often been buried under the rhetoric of the ‘war against terrorism’. Even where evidence of confirmed bombings of civilian targets – including hospitals and schools – in these campaigns has been ample, there is a deafening silence, or a trivialisation of these ‘errors’ or ‘unintended consequences’. On the other hand, strident condemnation of every action of the adversaries of the West piles up relentlessly.

The campaign against Sri Lanka for alleged human rights violations during the terminal phase of the war against the Liberation Tigers of Tamil Eelam is an example of the one-sided hectoring of a small country and the visible double standards that are applied to states outside the privileged club of the great powers and their satellites. The paper documents the dubious processes followed in the various ‘investigations’ and the sequence of deception, often outright fabrication, that attended these.

High rhetoric has rarely been matched with principled action in the global arena, and the R2P – the ‘Responsibility to Protect’ – discourse illustrates this divergence. Where it is intended to enable the international community to intervene in order to protect populations against the worst of crimes against humanity – genocide, ethnic cleansing and large-scale war crimes – not only have global institutions failed to respond to some of the worst of such exigencies, particularly where great powers have been directly or indirectly involved, R2P provisions have often been abused. These reflect the questionable motives of intervening states, visible inconsistencies in the application of the principle and, in some cases, “Machiavellian subversion”.

The essential lesson of unreliable international interventions is that states need best to protect themselves, where possible, both in intra-and inter-state conflicts, rather than to depend on the dubious ‘good offices’ of international institutions or great power

interventions. Sagacity and a desire, in good faith, to resolve conflicts without, or with a minimum use of force, can yield a range of resolutions, and there is significant experience of such outcomes in theatres across the world. The remaining two papers in this volume focus on the experience of such resolution, in one case, of an inter-state conflict, and in another, of the efficacy of policy alternatives in domestic counter-insurgency.

In a global environment of moral collapse and rising conflict potential – despite evident declines in manifest conflict – states, policy makers and analysts must focus on their own capacities to address existing and emerging conflicts, as faith in the international system and great power intercession rightly diminishes. This volume underlines this challenge, even as it explores some alternatives for resolution.

Ajai Sahni

July 13, 2019

Deceit Magnified

The Western World's Appraisal of Eelam War IV

Michael Roberts*

The last stage of Eelam War IV in Sri Lanka in 2008/09 has generated a large volume of literature. In addressing the issues arising from this work, it is possible to proceed by assertions founded upon previous articles with their supporting evidence.¹ The focus here is on the pursuits of the US State Department through its point man in Colombo, US Ambassador Robert Orris Blake Jr., as well as its 'auxiliaries' in the UN and European Union.²

The arguments here are deliberately provocative. They commence with 11 assertions that highlight a worldwide ignorance of alarming proportions in 2009, a shortcoming that persists today. From late 2008 the Western media and government were mostly oblivious to these 11 facts:

1. That in late January 2009, as the British Defence Attaché in Colombo noted then, it was "not possible to

* Dr. Roberts is Adjunct Associate Professor in Department of Anthropology, University of Adelaide, Australia.

1 The literature on this topic is vast and my own writings are numerous. In particular, see Citizen Silva 2013: Noble 2013 and the several items Roberts.

2 We are assisted here by the Wikileaks material. See Michael Roberts, "Ball-by-Ball through Wikileaks: US Embassy Despatches from Colombo, 2009: ONE", 2014, <https://thuppahi.wordpress.com/2014/08/27/ball-by-ball-through-wikileaks-us-embassy-despatches-from-colombo-2009-one/>.

distinguish civilians from LTTE cadres, as few cadres are now in military uniform.”³

2. That by mid-2008 the LTTE had devised a grand strategy directed towards creating a picture of “an impending humanitarian catastrophe” with the objective of stimulating forceful Western intervention to save their project in circumstances where they were outgunned and outnumbered.⁴
3. That the mass of civilians was deployed by the LTTE as ‘tinder’ for this picture, while also serving as just so many ‘sandbags’ in the Tiger defensive formation.⁵
4. That KP Pathmanathan⁶ had been re-installed as the head of the LTTE’s international operations on December 31, 2008, with the prime objective of

3 Michael Roberts, “Reflections: Interpreting the Gash IV”, August 27, 2018, <https://thuppahi.wordpress.com/2018/04/29/reflections-interpreting-the-gash-files-iv/> (quoting a secret document from Lt Col Gash that has only been revealed recently). Also see LTTE War Video 2013 where civilians are firing machine guns or walking purposefully with weapons.

4 See Michael Roberts, “Generating Calamity”, 2014 and De Silva-Ranasinghe 2009. Note a subsequent discovery that sustains this assessment: “Without the presence of the IDPs the LTTE would be subjected to unrestricted air and artillery strikes, so have no incentive to release them” (Gash in his secret despatch of January 28, 2009, Roberts, “Reflections: Interpreting the Gash IV,” 2018).

5 Michael Roberts, “BBC-Blind: Misreading the Tamil Tiger Strategy of International Blackmail, 2008-13”, December 3, 2013, <https://thuppahi.wordpress.com/2013/12/08/bbc-blind-misreading-the-tamil-tiger-strategy-of-international-blackmail-2008-13/#more-11221> and Michael Roberts, “Generating Calamity, 2008-2014: An Overview of Tamil Nationalist Operations and Their Marvels”, 2014, <https://groundviews.org/2014/04/10/generating-calamity-2008-2014-an-overview-of-tamil-nationalist-operations-and-their-marvels/>.

6 KP Pathmanathan was from the same little town VVT as Prabhakaran and was the latter’s best man at his wedding in India in 1984. He was placed in charge of the LTTE’s international operations at an early stage and was based in Thailand. He was a mastermind in this work and his displacement circa 2002 via the appointment of Castro and others contributed to the decline of the LTTE in the first decade of the 21st century.

instigating Western intervention directed towards spiriting the Tiger leaders to a favourable country.⁷

5. That Pathmanathan convened a secret meeting at Kuala Lumpur in mid-February⁸ which brought together the Norwegian ambassador in Lanka, two Norwegian diplomats from back home and two senior LTTE activists from the international arena⁹ in a conspiracy involving the US that was directed towards forceful intervention in the war.
6. That in accordance with these intentions, an American Pacific Air Command visited Sri Lanka in order to work out a plan for this line of intervention (a scheme that was torpedoed by backroom Indian veto).¹⁰
7. That this intervention was in pursuance of a policy devised by the US Ambassador Blake from late 2008 under the influence of a new Secretary of State, Hillary Clinton, and her advisors (Susan Rice and Samantha Power).¹¹

7 See Jeyaraj, “*KP*” *speaks out: An Interview with former Tiger Chief*, Kum Pvt., Vavuniya, 2011, pp. 23-25. The countries in the Tiger scheme were Eritrea, South Africa and East Timor, *Ibid*, p. 34.

8 See Mark Salter, *To End a Civil War: Norway's Peace Engagement in Sri Lanka*, Hurst, London, 2015, pp. 348-49 and 355-56. Salter does not give the precise date of this meeting in Kuala Lumpur or even the date or source for Blake's note on this topic (pages 355-56). We can surmise that these omissions are deliberate.

9 Namely, V. Rudrakumaran from USA and Jay Maheswaran from Australia.

10 See, Michael Roberts, “Where USA sought to arm-wrestle Sri Lanka in March-April-May 2009,” May 11, 2018, <https://thuppahi.wordpress.com/2018/05/11/where-usa-sought-to-arm-wrestle-sri-lanka-in-march-april-may-2009/> and Balachandran, P. K. “PK Balachandran on Overt & Covert Paths in Indian and American Policies towards Sri Lanka, 2008-09,” September 26, 2015, <https://thuppahi.wordpress.com/2015/09/16/pk-balachandran-on-overt-and-covert-faces-in-indian-and-american-policies-towards-the-sri-lankan-war-2008-09/>.

11 Ishanka Jayathilaka holds that Richard Armitage was a major driver within the US administration in directing this line of policy and that he was particularly close to the Norwegian Foreign Service personnel. She also

8. That Blake consistently pressed both warring parties in 2009 to establish a ceasefire, while being resigned to the fact (in despatches to Washington) that the LTTE would not heed any such demand – in effect rendering the diplomatic pressure one-sided and one way.¹²
9. That this high-handed intervention was taken to an extreme point in mid-March 2009 when Blake directed the Sri Lankan, Secretary of Ministry of Defence, Gotabhaya Rajapaksa, to cease military advances via a veiled threat: “sending the army in would be disastrous for Sri Lanka.”¹³
10. That Blake then pressed the demand home by telling Foreign Minister Rohitha Bogollagama on March 18, 2009, that “Sri Lanka would likely meet war crime charges” if they continued their military advance – a threat that was in tune with the warning issued by Navanethem ‘Navy’ Pillai, the UN Human Rights Commissioner, five days previously¹⁴-an indication to us today that the US and key UN agencies were operating arm-in-arm.

indicated that in 2015 the US ambassador in Colombo, Atul Keshap, had a key role in preparing the US sponsored resolution against Sri Lanka in the UNHRC in 2015 (phone chats and email, October, 14 2018).

- 12 Michael Roberts “Ambassador Blake in Never-Never-Land: Misreading LTTE Capacity in Early 2009,” August 26, 2015, <https://thuppahi.wordpress.com/2015/08/26/ambassador-blake-in-never-never-land-misreading-ltte-capacity-in-early-2009/> and Roberts, “Ball-by-Ball through Wikileaks: US Embassy Despatches from Colombo 2009: ONE”, 2014.
- 13 Blake indicated this to Washington in his Despatch No. 283 of 12 March 2009. In another despatch on the March 18, 2009, Blake noted that he had cautioned Foreign Minister Bogollagama by noting that “Sri Lanka would likely meet war crime charges” if they continued their military advance. Note that, on the first occasion on March 12, Gotabhaya played poker: he said that the SL Army “would take a passive stance”.
- 14 Mark Salter, *op.cit.*, p. 352.

11. That these interventions were partly directed by concerns for the fate of the many civilians trapped on the north-eastern coast and included schemes of US naval intervention¹⁵ – an ostentatious humanitarian emphasis that has to be qualified by the import of the rescue schemes hatched by Pathmanathan and Norway at Kuala Lumpur and by the disclosure in Washington on May 6, 2009 from US Acting Deputy Assistant Secretary for South and Central Asia, Michael Owen: “...some in the Tamil community do have legitimate grievances, and we need to find — [and thus] I think it’s imperative for Sri Lankans to find a way to give everyone in the community, all Sri Lankans, a legitimate voice in their government.” Owen then spoke of the USA’s “desire to negotiate an LTTE surrender to a third party via a “limited amnesty” as a step that would initiate “the beginning of a political process.”¹⁶

This striking list of occluded facts was shored up by a set of exaggerations and lies peddled in the Western media as well as the UN. Thus, it was widely asserted

15 This line of policy has been drum-beaten subsequently by Robert Blake (Sri Lanka Brief 2017). This is not pure concoction: his despatches displayed this emphasis and he was even willing to be airlifted to LTTE territory to negotiate such a plan. However, this evidence must be balanced by the revelations from Pathmanathan extracted by Jeyaraj (2011) and indications that Blake was ready to hand Pirapāharan over to India (see secret despatch 33 of January 9 in Michael Roberts, “Ball-by-Ball through Wikileaks”, 2014). Thus, the other Tiger leaders would have been taken to an US ‘hatchery’ in Eritrea, South Africa or East Timor.

16 See full quotation in Daya Gamage, “The American Agenda for Sri Lanka’s National Issues, 1970s-2014,” July 5, 2014, <https://thuppahi.wordpress.com/2014/07/05/the-american-agenda-for-sri-lankas-national-issues-1970s-2014/>.

12. That the events occurring on the war front were terra incognita since it was “a war without witnesses”¹⁷ – even though 131 local and foreign journalists were ferried to the front by plane on day-visits (mostly) between the January 1 and May 15, 2009.¹⁸
13. That the government forces were indulging in merciless artillery bombardment.
14. That this shelling and the military advances were exacting a horrific civilian death toll – with figures sent by satellite phone by Tamil NGO officials and/or Tamil medicos working under the LTTE being served up and circulated as ‘conclusive proof’ of such outcomes.¹⁹

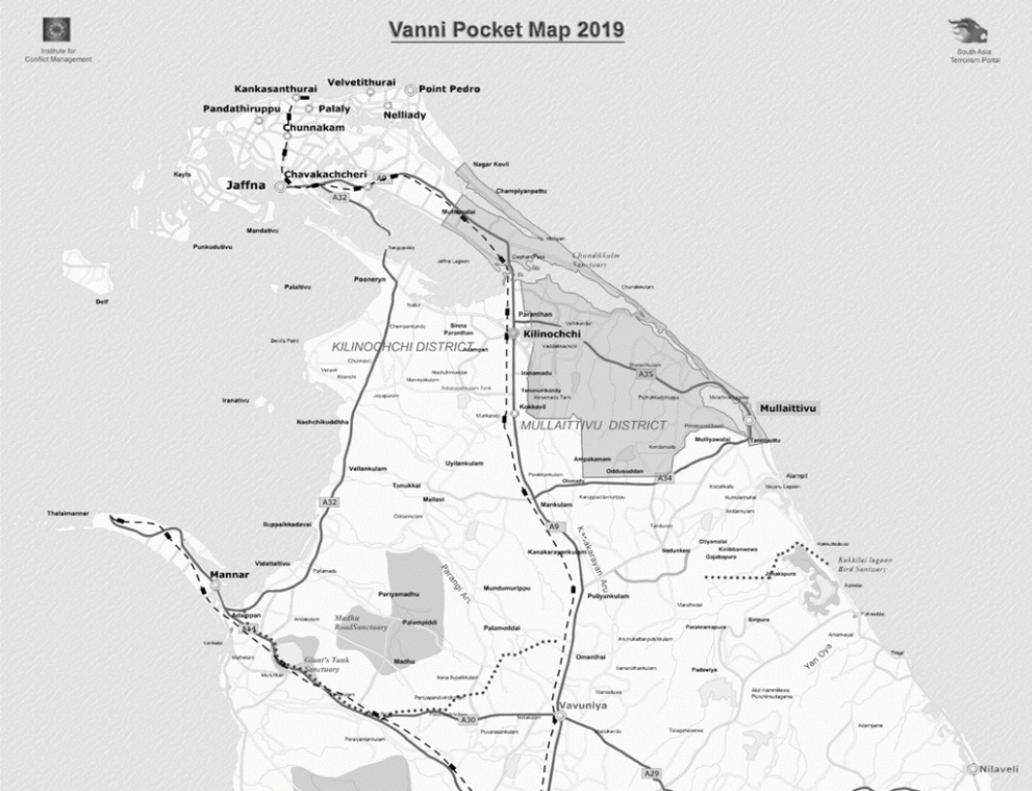
17 This was the catch-phrase constantly repeated by Ravi Nessman of Associated Press from the moment that he spoke on the Tavis Smiley show in USA on the February 18, 2009 (see Ravi Nessman, “The War in Sri Lanka: Ravi Nessman’s Slanted Story for USA on the Tavis Smiley Show, 18 February 2009,” January 31, 2014, <https://thuppahi.wordpress.com/2014/01/31/the-war-in-sri-lanka-ravi-nessmans-slanted-story-for-usa-on-the-tavis-smiley-show-18-february-2009>). However, Nessman had been snapped by Kanchan Prasad of Prasar Bharathi on a SLAF plane as well as the rear battle front in late January 2009 (see photos in Nessman 2014). Even today in September 2018 a senior Sri Lankan reporter from Associated Press told me that it was “a war without witnesses” when I contacted him on the telephone from Adelaide.

18 This is a list that extracted from an SL Army officer who was at a talk on the IDP camps which I presented at ICES in 2011. It is reproduced in Roberts, *TPS. Pictorial*, 2014, pp. 252-63. I note here for the benefit of lay readers that it is rare for reporters to gain access to the interface of fighting in any war situation where battle lines are sharply drawn in rural terrain. Where reporters have been caught in cross-fire, it has usually been in locations where the fighting is in mosaic patches and in confused and swirling urban landscapes.

19 As an Indian journalist in Colombo noted sarcastically: “none of these westerners raised any inquiries as to how the various Tamil informants in LTTE terrain had access to satellite phones.” As a further indictment of Nessman and Weiss, I note here that (A) Weiss was reprimanded by the Ministry of Foreign Affairs for using the term “bloodbath” in an interview aired for Associated Press in early April 2009 and that (B) on the May 13,

Western World's Appraisal of Eelam War IV

This picture became widely entrenched in the West and remains active to this day.



MAP I- Situation Map on January 6, 2009 depicting the “Vanni Pocket” where the fighters and civilians of Tamil Eelam were cornered

It was because this picture was so widely entrenched and because further calamity was deemed to be around the corner that the Foreign Ministers of Britain and France rushed to Sri

2009 Nessman regurgitated the claims of severe shelling and many deaths presented by human rights agencies in UK who were repeating claims on *TamilNet*.

Michael Roberts

Lanka in late-April 2009 and ordered the President to cease military activity. Mahinda Rajapaksa, however, did not kowtow to this gunboat diplomacy and squashed the effort.²⁰

Its fiasco notwithstanding, the Miliband-Kouchner effort reveals the position taken by the West tout court. Most arms of the UN (but not the Security Council) were an integral part of this Western course of action. Various UN officials visited Sri Lanka at different moments in 2009 as elements in this line of intervention: Tamrat Samuel in mid-February 2009; John Holmes on March 26, 2009 and Vijay Nambiar on April 15, 2009.

A little later, when the LTTE was finally crushed by May 18, 2009 the Secretary General Ban Ki-Moon rushed to the island and visited the IDP camps on the May 22, 2009. He then flew in a helicopter over the coastal stretch in the Vanni Pocket where the final denouement had taken place (see Map I). He summed up his reading from the air thus: “seeing complete devastation and no movement of human beings” – a viewpoint that grabbed world news headlines.²¹

Ban Ki-Moon’s reading displays one of the major problems bedeviling the assessments of the war: namely, the gross incompetence of powerful political figures arising from their limited experience of warring scenarios. If Ban Ki-Moon had taken note of the aerial pictures of that very same war zone on the

20 Michael Roberts, “David Miliband’s Imperious Intervention in Lanka left in Tatters,” July 5, 2016, <https://thuppahi.wordpress.com/2016/07/05/david-milibands-imperious-intervention-in-lanka-left-in-tatters/>.

21 See Michael Roberts, “Reading “devastation”: Botham, CMJ and Ban Ki-Moon,” in Roberts, *Tamil Person and State Essays*, Vijitha Yapa Publications, Colombo, 2014, pp. 259-73. There were no human beings THEN on 22/23 May because the civilians had fled or been rescued and taken to IDP camps, while most Tiger personnel had been killed or captured. Note, too, that this coastal area is wind swept and the abandoned tents and gear would have been subject to the force of such elements. See the selection of snaps in Times 2009.

coast before the final battles occurred therein,²² he would have seen that this particular arena had been immensely crowded and was in fact a tent city in many parts, with the existing houses located only in certain localities and that too in a pattern that was not wall-to-wall. Fortunately, a cameraman stringer was in the same helicopter as Moon. So, we have photographs that enable one to assess the arena within Moon's compass then in mid-May and to note the several undamaged red roof-tops.²³

Such evidence indicates a biased reading on Moon's part. His appraisal, moreover, is overshadowed by the careful assessment of the last stages of the war in the north-eastern corner of the island provided by the former Head of SAS, Major General Holmes in 2015: "the SL [Army] did not rush in, but instead took its time to plan and adapt its tactics to take account of the civilian presence. It was, in the view of the author, an entirely unique situation and the fact that 290,000 people escaped alive is in itself remarkable."²⁴

22 The pictorial evidence of the civilian settlements in the "Last Redoubt" on the coast in the period February to early May 2009 which are available in *TamilNet* and a range of sources are valuable for this reason. For a selection, see Michael Roberts, *Tamil Person and State. Pictorial*, Vijitha Yapa Publications, Colombo, 2014 and Michael Roberts, "Congestion in the "Vanni Pocket" January-May 2009: Appendix IV for "BBC Blind," <https://thuppahi.wordpress.com/2013/12/09/congestion-in-the-vanni-pocket-january-may-2009-appendix-iv-for-bbc-blind/>. Also see Kanchan Prasad, 2011 "Two Indian Reporters' Post-War Pictures at the LTTE's Last Redoubt, May 14-19, 2009," June 2011, <http://asiapacific.anu.edu.au/blogs/southasiamasala/2011/06/10/two-indian-reporters%E2%80%99-post-war-pictures-at-the-ltte%E2%80%99s-last-redoubt-may-14-19-2009>.

23 See "TIMES Aerial Images," <http://www.flickr.com/photos/thuppahi/sets/72157626922360092/> and for the commentary on some snaps, see Michael Roberts, *Tamil Person and State Essays*, Vijitha Yapa Publications, Colombo, 2014, figs. 11-16. Also see Prasad "Two Indian Reporters' Post-War Pictures at the LTTE's Last Redoubt, May 14-19, 2009," All the houses in this part of the coast would have been new dwellings built after the arena was flattened by the tsunami of December 26, 2004.

24 Military Expert Opinion by Major General (Retd) John Holmes, in Paranagama Commission Report, 2015. pp. 243-44. Also note, D.B. S. Jeyaraj, "Wretched



Figure 1 – Source *The Daily Mirror*, late April 2009.

Moon’s venture into the island is profoundly significant. It heralded the line of punishing action that the Western world and its UN handmaidens took over the next months and years. Sri Lanka was literally hauled over the coals by UNHRC resolutions from 2009 to 2012.

Perhaps the most significant project on these lines was the UN Panel of Experts appointed in June 2010 with Marzuki Darusman as Chairman and Yasmin Sooka and Steven Ratner as members. Its investigations and its assessment from afar without visits to the island were characterised by glaring deficiencies in its range of sources. An evaluation by a competent team from the Marga Institute in Colombo concluded that its methodology was slipshod. They criticised the UN Panel of Experts (UNPoE) Report for paying no heed

of the Wannai Earth break Free of Bondage,” *Daily Mirror*, April 25, 2009, <http://dbsjeyaraj.com/dbsj/archives/380>; B. Muralidhar Reddy, “An Escape from Hellhole,” *The Hindu*, April 25, 2009, <http://www.hindu.com/2009/04/25/stories/2009042558390100.html> and Vidura “The Great Escapes,” *Sunday Leader*, May 17, 2009.

to “the restricted battle space” involving LTTE fighters (many without uniforms) amidst a mass of civilians in most localities within the coastal strip which was the focus of battle from mid-April-mid May.²⁵ To present just one illustration from the Marga reviews:

The report focuses only on civilian casualties and gives no information of Tiger units coming under fire in close proximity to the civilians, something which many eyewitnesses have admitted to seeing themselves. Leaving this out of the Panel’s narrative suggests that there was very little or no military activity in the areas around the civilians, and that therefore there was no reason for any shelling by the SL Army.

Such grave shortcomings notwithstanding, the UNPoE’s findings dominated the world’s media waves. Its leading conclusions were that (A) “A number of credible sources have estimated that there could have been as many as 40,000 civilian deaths. [and] multiple sources of information indicate that a range of up to 40,000 civilian deaths cannot be ruled out at this stage;” and that (B) these “credible allegations, ... if proven, indicate that a wide range of serious violations of international humanitarian law and international human rights law was committed by both the Government of Sri Lanka and the LTTE, some of which would amount to war crimes and crimes against humanity” (emphasis added).

25 See Marga, “Preliminary Summary re the Marga Seminar on the UNPoE Report”, drafted by Godfrey Gunatilleka, 2011, <http://www.margasrilanka.org/Darusman-Seminar%20Report.pdf>; Marga, “An Analysis and Evaluation of The Report of the Advisory Panel to the UNSG in the Final Stages of the War in Sri Lanka”, 2011, <https://www.dropbox.com/s/0eybj1ynej6spaa/The%20Darusman%20Report-%20Final%20doc-2.doc> and Marga, “Truth and Accountability. The Last Stages of the War in Sri Lanka”, 2011, <http://www.margasrilanka.org/Truth-Accountability.pdf>.

WHAT HAPPENED FROM THEN ON?

As a Sri Lankan observer named Harshula carefully illustrated, a troupe of respectable HR organisations and media outfits converted “credible allegations” into “credible evidence” in wielding and disseminating this quotation worldwide.²⁶ Amnesty International and International Crisis Group abroad as well as *Groundviews* in Sri Lanka were among those who perpetuated this deceit. Only *Groundviews* altered the reference after Harshula pointed out the error. Thus armed, media personalities such as Kerry O’Brien, Amanda Hodge and Gordon Weiss in Australia and Jon Snow of Channel Four in Britain disseminated this distorted quotation during a visceral campaign against the Government of Sri Lanka and its head, Mahinda Rajapaksa.²⁷

The duplicity, amplification and specious thinking that resulted in such definitive exaggerations should not obscure the root cause behind the bloated death toll figures circulated around the world. From the outset very few people had any idea about the number of people (whether civilians, conscripted aides or fighters) assembled within the “Vanni Pocket” in, say, January-February 2009. The figures presented by the Government of Sri Lanka were gross underestimates; but so too were those noted by Ambassador Blake in some of his despatches: thus, one despatch on 19th March noted that

26 Harshula, “When allegations becomes evidence,” June 6, 2011, <http://groundviews.org/2011/06/06/when-allegations-become-evidence/> and Harshula, “Channel 4 ‘Killing Fields’: Journalism, Advocacy or Propaganda?” September 13, 2011, <http://groundviews.org/2011/09/13/channel-4s-killing-fields-journalism-advocacy-or-propaganda/>.

27 The horrendous assassination of the respected editor of *The Sunday Leader*, Lasantha Wickrematunga, on January 8, 2009 – clearly, at face value, by elements in the Sri Lankan defence establishment — had raised the bar of hostility in media circles in Sri Lanka and the West; while alienating liberal thinkers in both domains.

“the US and some others [are] engaged in intensive efforts to protect the estimated 120-150,000 civilians ... from shelling” (Wikileaks).

In the light of subsequent knowledge, in fact, our calculations of the total civilian-cum-fighter population circa February 2009 must move into the 300,000 range, while yet applying adjustments over time to take account of the numbers escaping by sea²⁸ or on foot or being evacuated by agreements on both sides via ICRC ships under SL Navy escort.²⁹

But that is retrospective knowledge from subsequent overviews. Then, in the year 2009, some observers chose to rely on the figures presented by Parthipan, one of the senior Tamil officials in the Vanni Pocket, who presented a guesstimate based on statistics from household and tent sites collected by his underling *gramasevakas* over the course of February 2009: namely, the figure of 33,600 residents in what was, by then, the remnant state of *Tamil Eelam*. This was a gross figure in the worst sense of the term “gross” -- because it was not a head count and because 31,694 Tamil civilians escaped by foot or by sea, or been formally evacuated, during the month of February.³⁰

28 At least 3,389 escaped by sea according to the reports provided by Lt. Col. Gash (see Michael Roberts, “The Gash Files III: Trapped Tamils out by Sea,” April 20, 2018, <https://thuppahi.wordpress.com/2018/04/09/the-gash-files-iii-trapped-tamils-out-by-sea-in-2009/>).

29 Citizen Silva somehow tracked the ICRC summaries and recorded 31 voyages between February 9 and May 9, carrying 13,794 persons. Figures from 23 of these trips show a total of 10,103 with the following breakdown: 1789 injured/sick males; 3537 injured/sick females; and 3,471 children -the rest being defined as “caretakers” – see Michael Roberts, *TPS. Pictorial*, 2014, Fig. 95 on page 140.

30 See details from Citizen Silva “The Numbers Game: Politics of Retributive Justice,” 2013, <http://www.scribd.com/doc/132499266/The-Numbers-Game-Politics-of-Retributive-Justice> reiterated in Michael Roberts, “Revisiting Critical Issues in Eelam War IV: Summarizing Citizen Silva’s The NUMBERS GAME,” November 10, 2017, <https://thuppahi.wordpress.com>.

It appears that the UN Panel arrived at the guesswork figure of 40,000 dead by subtracting the rough figures for the number of survivors (both those deemed LTTE and those deemed IDP) in the camps under government control in May-June 2009 from this crude Parthipan estimate. This was horrendous guesswork.

Parthipan’s estimate of 336,000 for the total population was also overshadowed by the figure of 436,000 which the fervent nationalist Bishop Rayappu plucked from thin air – a figure which encouraged some writers (e. g. Frances Harrison) to suggest that the death toll could even be 146,000 (436,000 less 290,000 survivors).³¹ With the alternatives of 146,000 or 70,000 or 40,000 civilian deaths being touted by various international agencies, some observers from afar may have considered the lower figure to be a reasonable option.

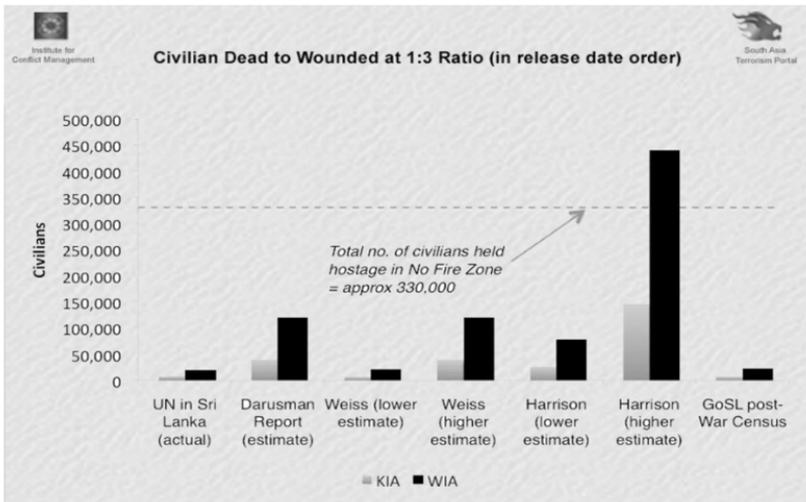


Figure 2: A graph of the various estimates prepared by Mango 2014

com/2017/11/10/revisiting-critical-issues-in-eelam-war-iv-summarizing-citizen-silvas-the-numbers-game/ as well as Frances Harrison, *Still Counting the Dead*, Portobello Books, London, 2012, p. 337.

31 Frances Harrison, op.cit., p. 238.

For educated commentators to give credence to this shadowy guesswork is amazing. Major General Holmes said as much: “[t]he figure of 40,000 civilians killed which has been repeatedly published is, in my view, extremely difficult to sustain on the evidence which I have seen.”

Many observers have been oblivious to one of the cardinal statistical ‘rules’ relating to casualty figures in war: namely, that the wounded or “Wounded in Action” (WIA) always outnumber the dead or “Killed in Action” (KIA). One medical report that reviewed the casualty ratios in wars from 1940 to 1988 reached this verdict: the “number of people wounded is at least twice the number killed and maybe 13 times as high.”³² During the Korean War the ratio for wounded US soldiers was over three: 103,284 WIA against 33,651 KIA.

Versed as they should have been in the travails faced by the Australian troops during the Gallipoli campaign in 1915-16, one would have expected such Australian media men as O’Brien and Weiss to have brought some of this experiential sense into their evaluation of the UNPoE’s statements. Within the restricted physical arena of Gallipoli³³ in 1915, the casualties on all sides were heavy. In that context, 8,709 Australians were

32 See R. Coupland and David R. Meddings, “Mortality associated with use of weapons in armed conflicts, wartime atrocities, and civilian mass shootings: literature review.” *British Medical Journal*, 1999, <https://doi.org/10.1136/bmj.319.7207.407> and Mango, “Sri Lanka’s War In Its Last Phase: Where WIA Figures Defeat The Gross KIA Estimates,” February 14, 2014, <https://www.colombotelegraph.com/index.php/sri-lankas-war-in-its-last-phase-where-wia-figures-defeat-the-gross-kia-estimates/>.

33 The confined physical extent of the area to which the LTTE and its remaining ‘sandbags’ of civilian people had been reduced by April 2009 was not dissimilar to that of the Gallipoli Peninsula, though the latter was hilly and criss-crossed with gullies.

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killed (KIA) and 19,441 were wounded: thus, the ratio of WIA to KIA was 2.23.³⁴

The UN Panel of Experts as well as numerous commentators with university degrees in their belt did not raise a simple question: if 40,000 Tamils had died, where were the 80,000 wounded? As it happens, in May-June 2009 after the fighting ended, the UN personnel in Colombo had computed figures for the wounded in hospitals and detention centres. This computation is referred to in passing by the UNPoE: “The United Nations Country Team is one source of information; in a document that was never released publicly, it estimated a total figure of 7,721 killed and 18,479 injured from August 2008 up to 13 May 2009, after which it became too difficult to count” (paragraph 134, UNPoE).

The UNPoE and numerous commentators in subsequent surveys have simply bypassed the implications of this data – a mark of their office room blindness compounded by prejudice.

Thus, we see that a wide range of political figures in both the West and Sri Lanka failed to transcend their office-room deficiencies in computations of the death toll. Why? One’s answers must necessarily be conjecture. To denote the reasons in point-form:

- A. Some, such as Sanjana Hattotuwa of the Centre for Policy Alternatives, have been directed by their sympathy for the Sri Lankan Tamils because they believed that the Tamil people have been denied

34 Michael Roberts, “A Drama in Four Acts: Dishonest Reportage by Amnesty International and Aussie Journalists remains Unmasked,” September 2, 2015, <https://wordpress.com/post/thuppahi.wordpress.com/17560>.

“identity, belonging and dignity”³⁵ in the course of Sri Lankan politics extending from 1956-to-2009.

- B. Some were animated by a moral fervour that has been blinding.
- C. Some were directed by a visceral dislike for Mahinda Rajapaksa and his regime for a variety of reasons including its various excesses.
- D. Some powerful figures in the corridors of Western states were determined to pursue their political goals in the Indian Ocean and desired to wreak vengeance on little Lanka for defying its dictates in the period 2006-2009.³⁶ When no less a person than the US Ambassador to the UNHRC, Eileen Donahoe, spat out “we will get you” to her Sri Lankan counterpart, Tamara Kunanayakam, within the stately corridors of the UN in Geneva,³⁷ we know that the primeval desire for revenge had been provoked within powerful entities.

It is as ironic as it is tragic that such big-power strategies are supported by personnel attached to strands of secular fundamentalism in ways that persuade them to support

35 Sanjana Hattotuwa, “Identity, Belonging, Dignity. Lessons from Francis Fukuyama for Sri Lanka Today,” October 2, 2018, <https://thuppahi.wordpress.com/2018/10/02/identity-belonging-dignity-lessons-from-francis-fukuyama-for-sri-lanka-today/>.

36 In my surmise the key drivers behind USA’s targeting of Sri Lanka have been Hillary Clinton (Secy-of-State), Samantha Power, Susan Rice and Richard Armitage. From her researches Ishanka Jayatilleka is convinced (personal communication) that Richard Armitage was the key figure shaping US policy.

37 Tamara Kunanayakam, “A Tour de Force by Tamara Kunanayakam in Reviewing THE RAJAPAKSA YEARS”, February 23, 2016, <https://thuppahi.wordpress.com/2016/02/23/a-tour-de-force-by-tamara-kunanayakam-in-reviewing-the-rajapaksa-years/>.

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interventions in favour of fascist dictatorships – the LTTE in this instance. One of the intriguing sidelights arising from any survey of the debates among Sri Lankans to this day is the picture of Sinhalese of liberal, radical and Marxist persuasions pinpointing the excesses (e. g. the killings associated with “white vans”) during the Rajapaksa administrations, while sliding over the numerous assassinations and huge bomb blasts in civilian space effected by the LTTE as a consistent programme of war and terror. Located physically within the south western regions of Sri Lanka, during the period 1990-2009, their hostility to the “Near Enemy” constituted by the various shades of Sinhala chauvinism has overwhelmed their attentiveness to the “Far Enemy” constituted by the fascist state of Tamil Eelam³⁸ under Velupillai Prabhakaran. The imbalances in their evaluations are glaring. But belief, or faith, as they say, has always been blind.

38 Note the arguments in Michael Roberts, “Pirapāharan’s Inspirations and Mind-Set”, August 10, 2018, <https://thuppahi.wordpress.com/2018/08/10/pirapaharans-inspirations-and-mind-set/> and Michael Roberts, “Pirapāharan’s Thamililam, 1990-2009: Aspirations and Achievements”, September 6, 2018, <https://thuppahi.wordpress.com/2018/09/06/pirapaharans-thamililam-1990-2009-aspirations-and-achievements/>.

‘R2P’

From ‘Privileged Intervention’ to ‘Responsible Protection’

Dattesh D. Parulekar*

The use of military force to coerce a sovereign state to adhere to ostensible humanitarian impulses has always been a contentious issue. The concept harks back to the 17th century Grotian precepts, which upheld the punitive culpability of the regent, if he was seen as unable or abjectly unwilling to preserve the emancipatory sanctity of his subjects. This tradition is now enshrined in the 20th Century provisions of the UN Charter, which indelibly enshrined its normative dialectic between an apparent affirmation of the inviolable sovereign primacy of the State, but set it against equally inalienable considerations of establishing and promoting human rights and fundamental freedoms of the citizenry.¹

Squaring-the-peg of these compulsive yet competitive instincts has been a formidable challenge for the global community, cutting to the heart of tri-dimensional dilemmas:

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1 J.L. Holzgrefe, "The Humanitarian Intervention Debate", in J. L. Holzgrefe and R. O. Keohane eds., *Humanitarian Intervention: Ethical, Legal and Political Dilemmas*, Cambridge University Press, Cambridge, 2003.

'ethical-solidarist' conceptions of a human milieu partaking in universalised-values; the *'legal-legitimate'* dichotomy contending with the constitutional duality of Sovereignty and placing a premium on the sanctity of the intervention authorising entity and its orderly prior decision-making, all through to the invariability of *'consequentialist-realism'*. These put any prospective militarised humanitarian intervention through the parochial sieve of narrowly outlined national self-interest, whether enlightened or existential.²

The overweening disposition of the global comity of nations to respond to the human egregiousness in Libya, albeit chaotically and inchoately, starkly contrasted with the prevaricating positions on the gruesome humanitarian atavism in Syria, and accentuated further by the chilling indifference of the preponderant powers-that-be to the festering situation in Yemen. This has catapulted to the fore questions that have persistently dogged the framework of coercive multilateral humanitarian interventions, through the numbing, fiendish experiences of the volatile and tumultuous decade of the 1990s.

How should the international society come to terms with the daunting spectre of existentiality of innocent marooned civilians, unwittingly ensnared in the crosshairs of degenerative intra-state conflict, within sovereign boundaries? Can the arguably sacrosanct dint of State Sovereignty serve as carte-blanche immunity, for national dispensations which turn on their own citizenry with impunity? How can any globally militarized humanitarian missive, impelled by the hallowed objective of ameliorating and alleviating popular excesses and angst, be requisitely insulated from the potential susceptibility of Machiavellian subversion? How can they be prevented

2 Taylor B. Seybolt, *Humanitarian Military Intervention: The Conditions for Success and Failure*, Oxford University Press, Oxford, 2007.

from constituting a convenient ruse for politically-induced, collateral regime-change, by the privileged powers-that-be?

With neither the phenomenon of ‘Conflict’ being quintessentially novel, nor the propensity for ‘Intervention’, being innately unique in the annals of history, the persistent quest for legitimacy in upholding the rule of law has dwelt upon neither condoning nor sanctioning impunity yet ensuring that perfunctory recourse to armed force is neither blatantly impulsive nor patently unilateralist. This found codification within the aegis of the UN Charter, vide the framework of multilaterally determined ‘*individual and collective self-defence*’ under Chapter VII, and immediately thereafter, through the pioneering entrenchment of the UN mandated Peacekeeping Operations (PKOs). These PKOs envision the mandating of multilateral, multi-national military contingents, primed in pacific-disposition, interposing between hostilely juxtaposed entities to keep them subdued and wedged.³ With the UN widely acclaimed as the institutional repository of lawful legitimacy, to the extent that the global body’s Charter provisions are regarded as legal precepts outside of the twin qualifications set-out earlier, all other uses of armed force, on sovereign states was either expressly proscribed, or tantamount to being held as legally untenable.

But despite the Charter providing for the establishment and promotion of the protection of human rights and fundamental freedoms, such hallowed considerations were perceptively and practically suborned to the greater good consideration, of

3 Only two instances of Chapter VII mandated Collective Security operations, come to light, in the form of the Korean intervention of 1950, and later, the application of measures, to repudiate Iraqi aggression and ingress into Kuwait, in 1990. As regards the format of UN Peacekeeping, notwithstanding its relatively greater traction, still, only a dozen missions were mounted, in the four decades since its inception, in 1948.

preserving the superior sovereign character of the State in the Westphalian mould.

Furthermore, the onerousness of finding political consensus over prosecuting human-rights infractions through the UN system was evident from the limited dint of secularly applicable regime-instruments. Though the Universal Declaration of Human Rights and the Genocide Convention were adopted early only few statist perpetrators have been brought to book so far through the Nuremberg and Tokyo Tribunals, for delinquent actions.⁴

While the Cold War was replete with instances of abominable human rights assailment, the long hiatus in prosecuting such macabre exponents of deliberate pre-meditated human pogroms was due to the bipolar strategic schema, which, placed stifling fetters on meting out condign punitive punishment by virtually precluding potential consensus at the UN.

Four phenomena have grown on the dial since the end of the Cold War and the coinciding advent of globalisation.

First, the emergence of the proverbial '*Unipolar Moment*', marked by the dismemberment of the peer superpower, spawned surging idealism, which had the United States in the vein of the global ring-master and arbiter super-cop, incorporating the promotion of liberal democracies and free market economics, as new-found, though some would say revived, touchstones

4 While human rights violations within sovereign frontiers, remains beyond, the juridical purview of the UN's International Court of Justice (ICJ), the push for establishing a Permanent Court along the lines of the present day International Criminal Court, was left fledgling through the heydays of the Cold War, until the mechanism of the International War Crimes Tribunals (IWCTs), found, almost cataclysmic traction, during the decade of the 1990s.

of its foreign policy.⁵ As blissful optimism abounded over ideological incompatibility no longer being a constituting factor in global politics, the United Nations Security Council (UNSC), refreshingly saw greater consensual decision-making.⁶

Second, the emergence of new idioms surrounding human rights, leading to an enlightened and sophisticated understanding of the continuum spanning rudimentary human survival and dignity to beneficent human development, contributed to a broader conception of an all-encompassing and well-rounded concept of '*Human-Security*'. Feral propensities, most notably, genocide, ethnic cleansing, war crimes and crimes against humanity have slithered up the pecking-order, conflating statist security and systemic stability with human-security.⁷

Third, the reality of an increasingly interconnected and interdependent global schema engendered plausible anxieties and delusional insecurities in certain fragile and artificial statist societies, which found convenient release through the rising tide of ethno-nationalist virulence, civil strife and state-led marauding repression.

And finally, the Post-Cold War era saw a new visage of contemporary media, or of embedded-journalism, involving

5 Francis Fukuyama, "The End of History?", *The National Interest*, Summer 1989, https://www.embl.de/aboutus/science_society/discussion/discussion_2006/ref1-22june06.pdf.

6 Between 1946 and 1989, six hundred and forty-six (646) Resolutions were adopted, by the UN Security Council, compared to six hundred and thirty-eight (638) UNSC Resolutions, adopted, during 1990-1999. See Simon Chesterman, *Just War or Just Peace?: Humanitarian Intervention and International Law*, Oxford University Press, New York, 2002.

7 J. Jones, "Humanitarian Intervention in a Multipolar World", *Washington University Global Studies Law Review*, Volume 15, Issue 1, 2015.

permeated media-coverage of conflict-hotspots leveraged by round-the-clock media scrutiny known as the ‘*CNN Effect*’, This ensured that myriad human-induced humanitarian catastrophes transpiring in nondescript regions and *mofussil* (rural or provincial) areas, in particular, obscured from mainstream consciousness in the past, were now transported and purveyed in real-time into the public domain, and catapulted to the mind-space and attention of policymakers, compelling strategic reactions and response.⁸

MODELS OF POST-COLD WAR ARMED HUMANITARIAN INTERVENTIONS

The most vivid defining feature of the Post-Cold War period has been the rising spate of internal conflicts of eclectic hues, morphing away from the staple of inter-state hostilities of the preceding era. What made these conflicts difficult to handle wasn’t just the complex humanitarian emergencies that were the upshot of internecine warfare. The warring terrains hugely treacherous due to the intrinsic caprice and cupidity of the protagonists implied that conventionally comprehended rules of engagement were dispensed with, and established avenues for diplomatic resolution and mediating measures were despairingly feckless. The sobering aspect of this was that unlike earlier times, when such messianic acts remained the preserve and province of the State within which they panned out, such hideous actions now found amplification on the global stage, demanding attention and redress. The Post-Cold War Era ushered in a new age of global politics where action taken by the Security Council was increasingly based on the doctrine of collective humanitarian intervention. The

8 J. Western, “Sources of Humanitarian Intervention: Beliefs, Information, and Advocacy in the U.S. Decisions on Somalia and Bosnia”, *International Security*, Volume 26, Number 4, 2002, p. 122.

resolutions passed by the Security Council in this period suggest it was progressively willing to treat gross violations of human rights and democracy as threats to regional and international peace and security.

In the 1990s, the question of justifiable humanitarian intervention took on new urgency when states, the United Nations and regional multinational organisations recurrently intervened to help populaces subject to clear human rights abuses and depriving depredations, from Iraq in 1991 to East Timor in 1999.

Much of the drift of such interventions, feeding-off humanitarian impulses, lacked theoretical and operational coherence. The international community's strategic response could be distilled into four forms and formats of intervention.⁹ One, an abstention model, where there is no military intervention at all, as was the case at the apogee of the catastrophe in Rwanda; two, an intervention that mainly curatively addressed itself to disaster relief requirements, without appropriating itself to the underlying political and economic causes, as was manifest in the US-led UN mission (UNOSOM/UNITAF) in Somalia; three, a 'relief plus' model, where a 'friendly' government is also installed, like the US has done in several Caribbean and Central American nations, and four, undertaking a full-on reconstruction of the entire political, economic and administrative system of the afflicted country, along the lines of some sort of liberal, democratic and even multicultural system, as has been in evidence in independent Bosnia and Herzegovina and the self-arrogating liberation by Kosovo in the former Yugoslavia and the linear trajectory of freedom in East Timor.

9 K. James, "Models of Humanitarian Intervention: Assessing the Past and Discerning the Future", *Foreign Policy Research Institute (FPRI) WIRE*, Volume 9, Number 6, August 2001.

The varied forms of humanitarian interventions, from authorisation of collective interventions through the UN to unilateralist ‘coalition-of-the-willing’ operations through the auspices of NATO, from circumscribed operations to expansive missions, have raised a phalanx of profound questions about the contentious and selective tenor of humanitarian interventions, devoid of conceptual clarity, legal tenability and political commitment.

First, were the interventions in question genuinely motivated by a sincere desire to assist the victims of atrocities, or borne of ulterior motives, underpinned by insidious collateral considerations? Are the States’ rights invariably superior to those of individuals, both morally and legally, or can there be circumstances and situations in which States forfeit certain rights in favour of rights of the Individuals? How can dispensations address the inherent tension reposed within the UN Charter? Can a meaningful and substantive distinction be implemented, between the obsession over legalistic action and the compulsions for undertaking steps borne of legitimate considerations? If States occasionally engage in humanitarian intervention despite its legal prohibition, should their actions be subject to certain standards of behaviour, and if so, what should they be?¹⁰

An efficacious humanitarian intervention is one which saves lives by preventing or ending violent attacks on unarmed civilians, or by assisting the delivery of aid, or both. Its moral rationalisation is based on the premise that military intervention for human protection purposes can only be justified if the intervention does more good than harm.

10 O. Ramsbotham and T. Woodhouse, *Humanitarian Intervention in Contemporary Conflict*, Polity Press, Cambridge, 1996, pp.8–66.

R2P Privileged Intervention to Responsible Protection

More formally, humanitarian military intervention is morally justifiable only when, at a bare minimum, the intended beneficiaries of the action are better off after the intervention than they would have been had the intervention not taken place. Thus, no matter what other legitimating rationale is offered, the means of military intervention cannot be justified in humanitarian terms unless there is a reasonable prospect that it will achieve the desired ends (betterment of the human condition).

Having said that, humanitarian intervention is a short time-bound exercise, with limited political objectives, in that it is intended to stall or stave-off suffering. It is not intended to establish enduring peace, or to recast a supplanting or renewed political system in place, although it can establish a basis for peace-building by creating an environment in which people can think about more than mere survival. Explicitly political objectives follow, but are distinct from humanitarian objectives. This distinction becomes blurred when policymakers want an intervention to alleviate human suffering and promote a political resolution to the crisis, as UN-led operations were called-upon to accomplish in tribal-conflict riven Somalia, and ethno-nationalistically chiselled Bosnia and Herzegovina. The difference between humanitarian and political objectives was more obvious in Kosovo and East Timor, where initial humanitarian operations quickly changed to long-term political operations. In brief, humanitarian intervention is meant to protect fundamental human rights in extreme circumstances; it is not meant directly to protect or promote civil and political rights.

Military intervention for human protection purposes takes place in a hostile environment, where the political order is contested and the national government does not have the

capacity or the will to respond to the basic needs of people for safety, shelter, food, water and medical services. In some cases, the government itself is responsible for creating the humanitarian crisis in its effort to defeat rebels or impose demographic changes through killing and forced displacement.

Whatever the moniker or trigger, the essential point is that humanitarian crises are a symptom of deeper political and social problems. The fundamental cause of success and failure across all the cases was the interaction of military strategy with humanitarian objectives and the demands of the situation on the ground. When strategy, objectives and demands were aligned, success was far more likely than when one or more pieces were incongruent. Intervening governments, have a great deal of control over the outcome of a humanitarian intervention if they understand what they are up against and have the political will to pay a price in soldiers' lives to save strangers.¹¹

REFRAMING THE 'SOVEREIGNTY' DISCOURSE

The principle of sovereignty has been an ever-present theme in international law and politics, and is considered one of the cornerstone principles of the Westphalian statist order. Corollary principles such as non-intervention, non-use of force and non-interference in internal affairs are all hemmed-in, within the Sovereignty doctrine, which has undergone metamorphosing reconceptualisation, in the post-Cold War era. The modern international system is founded on the premise that sovereign states have a right to non-intervention, to be free from unwanted external involvement in their internal affairs. Yet repeated humanitarian interventions since 1991 have impugned the idea of sovereign immunity at the altar of protecting civilians from un-condonable and incalculable

11 Taylor B. Seybolt, *op.cit.* p.4.

harm. This human security perspective on the use of force, anchored in the belief that the rights of people, not states, are the bedrock of a just and secure world, has found its voice in the concept that states have a responsibility to protect civilians within their jurisdiction.¹²

With the shift from interstate conflicts that plagued the Cold War to the more frequent intrastate conflicts that flared up after the collapse of the Soviet Union, the international community was confronted with the dilemma of undermining the principles delineated in the Charter by intervening in states where gross human rights violations were taking place. These conflicts, fuelled by ethnic or religious tensions have raised the vexing issue of protection of civilians and citizens of these *'failed/failing state(s)'*. Interventions in Somalia, Haiti and East Timor have been poster-boys for the readiness by international actors to circumvent state sovereignty to protect the rights of civilians. This new way of regarding the legitimacy of sovereignty was also emphasised by the NATO intervention in Kosovo (without Security Council authorisation), which clearly highlighted the degradation of the concept of sovereignty in circumstances where human right violations were taking place. The controversy surrounding humanitarian interventions centres, among other things, on its possible violation of the basic principles of state sovereignty, namely interfering in the internal affairs of states on issues that are within in its jurisdiction.

In the past this infringement was frowned upon in international circles, but with the changing paradigm of sovereignty where people's rights are promoted at the expense

12 M. Ayoob, "Humanitarian Intervention and State Sovereignty", *The International Journal of Human Rights*, Volume 6, Number 1, 2002, pp. 81-102.

of traditional principles, this practice has been increasingly welcomed in the international community. This was characterised by the then UN Secretary General Kofi Annan in his UNGA address (September 20, 1999) as a “developing international norm, in favour of intervention to protect civilians from wholesale slaughter,” underscoring a new age of global politics that is increasingly, people-centred.¹³

The averment that humanitarian intervention through militarist means can transpire for wholly altruistic reasons is palpably false. Nevertheless, humanitarian interventions can be sought to be made less arbitrary, selective and unilateralist by tethering them to the time-honoured jus-ad-bellum (just cause; right intention; right authority; last resort; and reasonable prospect for success) attributes for endeavouring to war, and the jus-in-bello (proportionality and discrimination) criterion for conduct during such wars.

PUNITIVE INTERVENTION VIS-À-VIS R2P

Recognising this tension in dovetailing the conceptual tradition of State Sovereignty, against the epochal moral and political imperative for Militarized Humanitarian Interventions, Kofi Annan frontally addressed this convolute dialectic in his twin expositions, as part of the Annual ‘Work of the Organization’ Report to the UN General Assembly, as also in his op-ed in *The Economist*¹⁴. Endeavouring to elicit the forging of politico-diplomatic unity around basic principles of intervention in cases of extenuating need, he asked: “if humanitarian intervention is, indeed, an unacceptable assault

13 M. Ottaway and L. Bethany, “International Interventions and Imperialism: Lessons from the 1990s”, *S AIS Review* (Print), Volume 23, Number 2, 2003, pp.71-92.

14 K. Annan, “Two Concepts of Sovereignty”, *The Economist*, September 18, 1999, pp. 81-82.

on sovereignty, how should we respond to a Rwanda, to a Srebrenica, to gross and systematic violations of human rights that affect every precept of our common humanity?"¹⁵

At the nub of the issue was the notion of an undiminished 'Responsibility', anchored in the acknowledgment that when universally accepted human rights are being audaciously trampled-upon or being given a short-shrift on a profligate and rampant scale, there exists an unceasing responsibility on the part of the deviant or delinquent state and the global comity to uphold the primordial welfare of its citizenry.

In response to the UNSG's throwing-down-the-gauntlet impugn, Canada broached and spearheaded the erudite work of the blue-ribbon *'International Commission on Intervention and State Sovereignty'* (ICISS), which produced the seminal *'The Responsibility to Protect (R2P)'* Report in 2001. This fundamentally reconceptualised the dilemma, wedding the upholding of the principle of Sovereignty and the ineluctable consideration for Human Rights.¹⁶ In its attempt to square the circle of Order and Justice, Sovereignty and Individual Rights, the Commission placed a premium on *'Duties'*, latent in a State's privilege of Sovereignty. It flipped the issue of intervention for human-protection purposes from a debate about the *'Right-to-Intervene'* (R2I), into one about the *'Responsibility-to-Protect'* (R2P) innocent lives. This follows the logic set out by then UN Under Secretary General Francis Deng and his colleagues through their pioneering work on *'Internally Displaced*

15 K. Annan, "Secretary-General Presents his Annual Report to the General Assembly", The United Nations, <http://www.un.org/News/Press/docs/1999/19990920.sgsm7136.html>.

16 International Commission on Intervention and State Sovereignty (ICISS), Evans, Gareth J. & Sahnoun, Mohamed, "The Responsibility to Protect Report of the International Commission on Intervention and State Sovereignty", International Development Research Centre, Ottawa, 2001.

Persons' and their rights and entitlements as being integral to human development and security, and bringing a qualitatively refinement to a broad-brush characterisation of Refugees.¹⁷

The R2P doctrine is based on the premise that whenever a State is unwilling or unable to protect its citizens from gross human rights violations, the responsibility is then shifted to the international community. The ICISS underlined the responsibility of sovereign states to uphold basic human rights. This definition of Sovereignty as Responsibility emphasises two essential elements: one, that state authorities are responsible for the functioning of the state and the protection of the safety and lives of its citizens, and two, that states are responsible for their actions and are thus legally accountable for the consequences of their acts.

The report intended to resolve conflicts between the principles of sovereignty and human rights protections by linking the two and ultimately making human rights the basis for all Sovereignty. Therefore, the principles of sovereignty are legitimate only as long as the State provides the fundamental rights for its citizens.

With the emergence of this new norm of intervention that ultimately minimises the importance and significance of state sovereignty, concerns have been raised over the possibility of ushering in a new form of imperialism. This fear is particularly relevant in parts of the world that had previously fallen under the cloak of colonialism, as humanitarian interventions share certain traits with the civilising missions of the imperial past, where European colonial policies and practices were justified on similar humanitarian grounds.

17 Nicholas J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society*, Oxford University Press, Oxford, 2002.

R2P Privileged Intervention to Responsible Protection

The R2P emerged as a response to the inadequacy of protocols associated with the practice of humanitarian intervention, and the difficulty of reconciling sovereignty with human rights. Apprehensions and deficiencies that defined Humanitarian Interventions during the decade of the 1990s, viz., a possible throwback to imperialism by other means, the gross inability to ensure self-governance, a misplaced focus on the ‘intervener’ as against the ‘intervened’, etc., informed the discussion and development of R2P. Through the coinage of the Responsibility to Protect (R2P), the Commission (ICISS) hoped to “*bridge the gap between so-called legitimate (ethically justifiable) and legal (legally authorized) intervention.*”¹⁸

Recognising the lack of regulation surrounding humanitarian interventions, R2P attempts to re-frame and refine the idea of militarily intervention for the purpose of human security by relegating Sovereignty concerns subsidiary to the “*protection of individuals against threats to life, livelihood, or dignity that can come from within or without,*” thereby reformulating the phenomenon of human rights-based interventionism.¹⁹ The R2P makes the case for the issue to be reframed not as an argument about the ‘*Right-to-Intervene*’, but about the ‘*Responsibility-to-Protect*’. Although this responsibility is owed by all sovereign states to their own citizens in the first instance, it must be picked up by the international community if that first-tier responsibility is abdicated or if it cannot be exercised.

The Report insists on a dual responsibility of Sovereignty; *externally—to respect the sovereignty of other states, and internally, to respect the dignity and basic rights of all the people within the state*, utilising the philosophy that

18 M. W. Doyle, “The Folly of Protection: Is Intervention Against Qaddafi’s Regime Legal and Legitimate?”, *Foreign Affairs*, March 20, 2011.

19 Gareth Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All*, The Brookings Institution Press, Washington DC, 2009.

sovereignty hinges on the behaviour of the sovereign.²⁰ While not according States, the explicit right to intervene militarily in cases of mass atrocities, R2P acknowledges the responsibility of the international community to respond when a government is either unwilling or unable to protect its own citizens. The ICISS panel consciously choose sagacious conservatism over plausible adventurism as the reactionary component inherent in R2P, stating that, “*the Responsibility-to-React, with military coercion, can only be justified, when the Responsibility-to-Prevent, has been fully discharged,*” even as they reaffirmed that Just War principles as determinants of the legitimacy of any given Intervention.²¹

With its foundations in prevailing international law, the Commission mooted R2P as a response mechanism to address the broad spreadsheet of threats confronting states, which included natural disasters too, hoping that it would make for facile acceptance. However, the synthesised UN document produced by the Secretary General’s Office as a working draft for consideration and subsequent adoption by the Membership confined it specifically to four sets of mass atrocities: genocide, war crimes, ethnic cleansing, and crimes against humanity.

Curiously enough this found traction in the 2005 World Summit’s ‘Outcome Document’, that enshrined and mainstreamed the R2P doctrine within the UN System.²² The identification of such crimes as the premise for the application of R2P derives much of its legitimacy from the jurisprudence

20 Thomas G. Weiss, *Humanitarian Intervention: War and Conflict in the Modern World*, Polity Press, Cambridge, 2012.

21 Alex J. Bellamy, *Global Politics and the Responsibility to Protect: From Words to Deeds*, Routledge, New York, 2011.

22 United Nations General Assembly, “2005 World Summit Outcome”, September 15, 2005, <http://daccess-ddsny.un.org/doc/UNDOC/GEN/N05/487/60/PDF/N0548760.pdf?OpenElement>.

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of the international and hybrid Criminal Tribunals (CTs), built during the 1990s, such as the International Criminal Tribunals for the Former Yugoslavia (ICTY) and Rwanda (ICTR), and the permanent International Criminal Court (ICC).

R2P was a conscious attempt to pare through what had become the Gordian-knot of humanitarian intervention. States have insisted for too long on the concept of sovereignty as necessarily being free from external control; but sovereignty has evolved to mean much more than that. While it is established that all States are equally sovereign, despite each State's individual sovereignty, evolving international law has already set many constraints on what States can do. The emerging concept of human security has created additional demands and expectations in relation to the way States treat their own people. The defense of State sovereignty does not include a claim of the unlimited power of a State to do what it wants, to its own people.

The **first**, and perhaps ultimately the most politically useful contribution of R2P was to invent a new way of talking about humanitarian intervention. The ICISS sought to throw out the debate about the right to intervene and to re-characterise it not as an argument about any right at all but rather about a responsibility to protect people at grave risk, with the relevant perspective not being that of the prospective interveners, but more appropriately, of those needing support.²³ This new language clearly has been helpful in taking the heat and emotion out of the policy debate, and forced the actors to think afresh about what the real issues are.

23 J. Welsh, "Review Essay: From Right to Responsibility: Humanitarian Intervention and International Society", *Global Governance*, Volume 8, Number 4, 2002, pp. 503-521.

The **second** contribution of the ICISS, was to formulate a new lingua-franca alluding to sovereignty, in essence arguing it should not be seen not as ‘Control’, but as a ‘Responsibility’. Sovereignty is no longer just the ability of a country to exercise exclusive and absolute control within its territory, it is also the recognition of the equal worth and dignity of its people, it argues. As much as Sovereignty accords States the right to protect themselves from external interference, it also proffers the people of such a State the right to protection from brutal disturbances of their personal lives. This dual responsibility vests primarily with the State. But, if the State is unwilling or unable to honor that responsibility, or itself turns perpetrator of atrocities against its people, then the responsibility to protect the victims of such atrocities transfers to the international community, acting ideally, though not necessarily, through the United Nations Security Council.

The **third** contribution was to make it clear, that the responsibility to protect extends to a whole continuum of obligations, encapsulated-in and delineated-through the Three Pillars framework, viz., *the ‘Responsibility-to-Prevent’, the ‘Responsibility-to-React’ and the ‘Responsibility-to-Rebuild’*, where military intervention is only considered as a last resort in the second option.²⁴

The **fourth** contribution was to come up with guidelines for when military action is finally appropriate from the standpoint of its legality and legitimacy. The effectiveness of the global Collective Security System, as with any other legal order, depends ultimately not only on the legality of decisions, but also on the common perception of their legitimacy, i.e.,

24 Gareth Evans, “The Responsibility to Protect: Ending Mass Atrocity Crimes Once and for All,” *Irish Studies in International Affairs*, Volume 20, Number 1, 2009.

their being made on solid evidentiary grounds and for the right reasons, morally as well as legally.²⁵

Starting from a presumption of Non-Intervention, deviation from which must be exceptional and justified, the ICISS Report (2001), offered practical guidelines for the exceptional and exigent measure of military intervention to protect large swathes of people from imminent and intolerable danger. The Commission argued that all the relevant decision-making criteria can be succinctly summarised under six basic rubrics: *Right Authority, Just Cause, Right Intention, Last Resort, Proportional Means and Reasonable Prospects*.²⁶

R2P should be heralded as a normative principle for guiding international behavior because of its multi-dimensionality. The responsibility to protect is an umbrella concept, embracing not just the “*responsibility to react*”, but the “*responsibility to prevent*” and the “*responsibility to rebuild*” as well, the last two of which have been relatively neglected in the traditional discourse.²⁷ Elevating their importance to the same level as that of reaction should do much to make the concept of reaction itself more palatable.

25 Eugenia Lopez-Jacoiste, "The UN Collective Security and its Relationship with Economic Sanctions and Human Rights", *Max Planck Yearbook of United Nations Law*, Volume 14, 2010.

26 The Just War principles have been retained, but suitably modernized, in that, 'Just Cause' no longer pertains to religious affiliation, but implies large-scale loss of life and extrication from homelands. Similarly, the idea of 'Right Authority,' no longer vests with the Pope, as it was once considered to do, but with the United Nations, and possibly with Regional Organizations.

27 N. J. Wheeler, "A Victory for Common Humanity?: The Responsibility to Protect after the 2005 World Summit", *Journal of International Relations and International Law*, Volume 2, Number 1, 2005, p. 95.

THE RESPONSIBILITY TO PREVENT

This relates to taking cogent preventive measures before the onset of the humanitarian exigency to the extent it may be possible. The imperative intent should be to mitigate rancor and address the sources of violence that imperil populations in terms of the political, economic and security risks. This prioritises the quest for identifying situations which portend the specter of mass atrocity crimes, a crucial factor that distinguishes R2P from humanitarian intervention. The issue with humanitarian intervention with its tendency to singularly focus on military intervention, which lent it to skepticism and misgivings. The focus was on halting the problem, but not necessarily to solve it. It addressed the problem only after the damage had already been done, rather than preventing it from occurring in the first place.

The strength of 'R2P' lies in the fact that the antidote or elixir is intended to precede the problem. The idea of premature readiness-in-response was broached by the then UN Secretary General Boutros Boutros Ghali in his Supplement to the Agenda for Peace document of January, 1992. But the chasms between platitudinous rhetorical commitment and the gaping shortfall in tangible operational contributions by the major powers at the UN meant repeated pleas for a real-time hands-on diplomatic/military mechanism within the UN System, met with tepid support and remained largely elusive. Cases of the Secretary General indulging in Crisis Diplomacy, with the imprimatur of the Security Council, were few and far between.²⁸ The R2P pitch for an integral preventive structure has also acted as a fillip to the boots-on-the-ground 'Peace Operations' (POs) architecture

28 "Agenda for Peace: Preventive Diplomacy, Peace-making and Peacekeeping", Report of the UN Secretary General, pursuant to the Statement Adopted by the Security Council, 47th Session of the UN General Assembly, June 17, 1992, www.un-documents.net/a47-277.htm.

of the UN Peace-building Commission, although much more needs to be done.

THE RESPONSIBILITY TO REACT

Arguably the most critical strand of the R2P, it's also the most arduous and onerous of aspects to actualise and get right, within the framework. It proffers a slew of operative measures from coercive instruments such as sanctions and the threat of international prosecution, all the way upto actual military intervention. Drawing on the numbing experiences of Rwanda and Srebrenica, where pre-meditated slaughter of innocent civilians took place under the gaze of the UN and the international community, it is rooted in the resolve to not let such aggravating incidents recur. However, rather than put the onus on an overweening section within the global community which could use this for strategic political ends through the notion of 'regime-change', the responsibility to protect is cast upon the state where the crisis is erupting.

Only if that state is unable or unwilling to redress situations of grave human need, in some cases perhaps even because it is the government itself that is doing the damage, the responsibility to take appropriate action falls upon other members of the international community.

The Outcome Document makes this clear beyond a smidgen of doubt, identifying the flexible means available in a sequence, moving from the less to more intrusive and coercive. Unlike humanitarian intervention, which is the one trick pony of deployment of armed force for all conditions and situations, here military intervention is not the only option. The failure of direct prevention measures to contain a humanitarian crisis does not mean that military action is necessarily required. Wherever possible, coercive measures short of military

intervention ought first to be examined, and employed as an escalatory ladder. The continuum moves from peace mediation, facilitation and negotiations of varied hues and persuasions, to ostracising and sequestering strategies of revoking diplomatic recognition, expulsion from international organisations, and even travel embargoes.

A whole range of economic incentives and disincentives can be operationalised as carrot and stick, although, as has been documented, their efficaciousness rests on widest possible embrace by the UN's membership. Should all this fail, the prospect of military intervention is the last resort. What distinguishes this from outright humanitarian intervention is that though the range of measures held true for them, too, they were invariably shunned for an overt all-or-nothing consideration of militarised interventions, generating much angst. It cannot be over-emphasised that military intervention is only a last resort.

But in the event, it does happen, R2P has sought to allay and assuage the squeamishness of the international community with humanitarian intervention by formulating clear rules defining when and how to proceed. The R2P doctrine asserts that "*the international responsibility to intervene and halt mass killings and ethnic cleansing is situated in the Security Council, and that any intervention should be efficient and effective.*"

Towards this end, it draws on the Just War principles. For instance, under the threshold of '*Just Cause*', R2P presupposes action both in times of actuality and in real-time anticipation of extreme conditions which implies a reasoned apprehension of major loss of human life. Similarly, in respect of the '*Right Intention*', R2P affords the latitude to use past experiences with the turpitude of a certain target state or its regime, as basis enough to mandate real-time action to forestall potential

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mass murder or crimes against humanity. In a similar vein, the qualifying bar for *'Last Resort'*, according to R2P, need not mean the deployment of armed measures as the last option. Instead, where the situation is observed as fast degenerating, it counsels to dispense with considerations of fostering domestic order over an earnest undertaking of pre-emptive armed action.

Much in consonance, the yardstick for *'Proportionate Means'* is kept normatively foreclosed, yet, tied to the duration it might take to consummate the mission. It sets out and makes it incumbent upon the intervening entity to stay the course as long as it takes to accomplish the objectives, not more, not less, implicitly making it mandatory for intervening states to make an enduring commitment to the mission. Moreover, the conception of *'Reasonable Prospects for Success,'* makes it incumbent upon the decision-making powers to deliberate not only whether they want to get their hands dirty, but as to what it would take to overturn the situation to favorable disposition, clearly aimed and intended at checking blithe and flippant interventions.

Finally, it addresses *'Legitimate Authority'* suggesting that while the United Nations is the prima donna and not merely first-among-equals in authorising the Use of Force for R2P led intervention, it's not sacrilegious to look beyond the pale of the UN. Particularly when the threat or actual use of Veto power by a P5 member could scuttle overwhelming sentiment and predominant consensus.

THE RESPONSIBILITY TO REBUILD

Where the R2P clearly diverges from classical humanitarian intervention is in this remit of obligation. The manner in which most humanitarian military interventions have been deployed during the 1990s, was virtually a mirror-image of speculative-

Dattesh D. Parulekar

money that makes it's way to equity-markets; *quick to enter, even quicker to exit, with little-to-no appetite for stomaching risk, with seldom the tenacity and resilience, to see-out momentary adversity and stay the course.* R2P obligates the interventionists to assume a genuine international commitment to help rebuild peace, promote good governance, and foster sustainable development processes. This implies staying the course on full assistance, with recovery; reconstruction and reconciliation; and addressing in the process the causes of the harm the intervention was designed to halt or avert, such as mine clearance, or apprehending of indicted war criminals.

The responsibility to rebuild focuses on the recovery, reconstruction and reconciliation of a state, and aims at preventing potential recurrences of humanitarian crises. After the conflict has been arrested, there is still no guarantee that the crisis is completely over. The responsibility to rebuild is necessary to stabilise the situation.

Post-conflict peace building is not the end of the process of conflict resolution; rather, it is the beginning of a new process of conflict prevention, with a focus on strengthening structures to tackle the longer-term, root causes of the violence in question.

STRUCTURAL INFIRMITIES IN THE 'PUNITIVE INTERVENTIONS' CONTINUUM

The R2P has been in vogue for over a decade, and has become a touchstone in academic discourse and literature as well in diplomatic resolutions and language. But its conceptual weakness stems from its inability to reconcile the moral impulse of saving strangers in distress with the often-militating parochial self-interest that predominates the strategic calculus of nations primed to intervene, and underpins considerations,

for or against, precise and tangible interventionism.²⁹ In a practical universe of national interests, it's hard to believe that nations can motivate themselves into intervening in god-forsaken strategic environments, treacherous for their troops, and exacting prohibitively high costs, simply in the quixotic belief of shielding innocent civilians, alien to them, from the depravity of abhorrent, mass atrocity crimes.

Despite the empirical and anecdotal evidence of humanitarian intervention in Somalia, and later in Serbia over the province of Kosovo, such instances of the 1990s remain exceptions rather than the norm in exhorting and stirring action in support of the spirit of humanitarianism.

The more plausible explanation for multilateral humanitarian action is likely to be of '*mixed motives*', representing the embodiment of a dynamic interplay between the virtues and dividends of value driven perception politics on the one hand, with the unvarnished recognition of the vexatious pitfalls of getting embroiled in foreign soil for little to no strategic gain.

The framework of R2P, which transcends singular militarised intervention by encouraging the deployment of the full spectrum of tools and instruments in preventive hue, seems best placed to embrace the notion of mixed motives, inherent to its exercise. Intervening states need to explain to their domestic audiences and electoral constituencies the extenuating rationale for intervening in milieus where no apparent or existential interests are at stake. They may even seek prior approbation under the principle of governmental accountability through informed consent, and in the same vein, would need sustained popular traction to be able to endure the intervention operation,

29 M. Barnett, *The Empire of Humanity: A History of Humanitarianism*, Cornell University Press, New York, 2011.

until its logical conclusion, and not cataclysmically about the mandate as has been the norm in interventions gone by.³⁰

This said, since the ostensible object of such R2P driven actions are to essentially protect civilians, the inevitability of some degree of narrow self-interest bringing intervening states on board must be seamlessly assimilated within the overriding humanitarian impulse of the intervention. Otherwise, it would be a formidable proposition to convince the dispensation of the target-state that such action is not masquerading imperialist machinations or seeking insidious regime-change, as has been the case with Omar Bashir regime over Darfur in Sudan (2005), and lately, with the civilian-military government over the Rakhine state in Myanmar.

Intrinsic to the concept and praxis of R2P, is the ‘triad of pillars’ approach. The most interesting is Responsibility to Prevent, with much riding on the outcome of deployment of pertinent measures as an antidote.

In a world of imagined, constructed, interpreted and contrived realities, when R2P steps in to thwart what might have been, the ability to clearly quantify the benefits of such preventive action(s), are obviously subject to argument and debate. This is premised on the contestable principle of the immediate costs of action outweighing the inevitable consequences of inaction. One could also quibble over the scope and extent of the portending crisis having been averted, and to what extent it could have metastasised had it been allowed to fester and stew.

While empirical and anecdotal evidence can be marshalled to argue either side of the debate it is difficult to argue either

30 A. Krieg, *Motivations for Humanitarian Intervention: Theoretical and Empirical Considerations*, Springer, Heidelberg, 2013, p. 126.

way with certitude. While numbing inaction in Rwanda during the mid-1990s exemplified the unparadigmatic cost of inertia, one cannot but point to the cost staved-off by action against Serbia over Kosovo (albeit a tad delayed), and the smothering dividends of reasonably swift move to action, under UNSCR 1973, in Libya.³¹

While the benefits of humanitarian intervention are in the remit of imagination, its exacting costs are eminently evident.

No matter how meticulously planned and targeted coercive operations are, they invariably exert collateral damage and accidental deaths; killing of innocent civilians and depredation of infrastructure, which is bound to have a more immediate impact on popular collective consciousness, than a conjectured counterfactual scenario. It is broadly understood that the proposition of deployment of military force without collateral damage or infractions of humanitarian and legal norms is a non-sequitur. Perceptions of the costs and benefits of preventive operations tend to be slanted and skewed towards costs, even when the mission arguably accomplishes what it set out to do, viz., averting a mass atrocity. To that extent, there appears to be a structural tendency for such operations to be judged more by the damage they inflict, than by the harm they stave-off, with the threshold being particularly high where the intervention is preceded or accosted by concomitant propaganda surrounding the hallowed objectives.

What's good for the goose should be good for the gander, is a tough proposition to argue in favour of the interveners,

31 R. Murray, "Humanitarianism, Responsibility or Rationality? Evaluating Intervention as State Strategy", in Aidan Hehir and Robert W. Murray eds., *Libya, the Responsibility to Protect and the Future of Humanitarian Intervention*, Palgrave Macmillan, Houndmills, 2013.

since their moral superiority in relation to the recalcitrant and devious elements perpetrating human rights violence makes them beholden to a higher standard. This makes it incumbent upon them to ensure, without exception, that the militarist goals of intervention do not come at the expense of moral standards and rationale behind the operation. The inability to satisfy this criterion imperils the legitimacy of the mission itself. Another predicament confronting interveners is to operate authoritatively in a fluid environment in a manner that maintains their neutrality and action-objectivity. This includes identifying and calling-out combatants on their perfidy, particularly where they tend to be sub-national actors or militias, or even the deviant regime itself.

The dimensional pillar of the '*Responsibility to Prevent*' is bookended by the '*Responsibility to Rebuild*'. This asserts that interveners in R2P situations should exude a genuine commitment to forging a durable peace and promoting good governance and sustainable development, predicated on the philosophical mooring that *peace is not just the absence of violence but the procreation of enduring mechanisms, for inclusive development*.

While some have averred that an international legal duty in the nature of an obligation exists, this has been contested by others. Nevertheless, despite the fact that the 2005 version of the R2P doctrine, adopted and embraced by the global comity, was conspicuous by its absence of any reference to a duty or responsibility to rebuild war-torn societies lacerated by ravenous strife, the chaos in post-Gadaffi Libya, which ensued in the aftermath of operationalising R2P mandated action in Libya in 2011, shows that military interventions commandeered within a narrow straitjacket are susceptible to destabilisation and extraneous subversions. This casts misgivings on the inherent

efficaciousness of the operation.³² This in turn can conflagrate not just the target country in question, but engulf an entire sub-region, sparking exponentially burgeoned deleterious consequences, both politico-security and humanitarian.

R2P also remains bedevilled by the difficulties of determining how far to venture and where exactly to cease.³³ The ground-zero experience of myriad humanitarian interventions, in the pre-R2P period and even since, is that, mandates often get over-extended by the vagaries and vicissitudes of how things shape up in real-time. This requires the intervening framework to being dynamic and hands-on in responding to quickly changing situations. While offering protective cover seems the no-brainer way to go to shield innocent populations, how long can such protection be proffered without effecting material changes to the situation on ground? And in the absence of any substantive change, what happens when such protective cover is withdrawn, other than to witness a relapse of conflict and its pernicious consequences, is moot.

TENUOUS GAINS

There is little gain saying that since the end of the Cold War, the question of legitimacy has cropped up in areas like humanitarian intervention, the scope of international institutions and the realm of law. Legitimacy in essence is multifaceted, finding its basis in myriad constructs, encompassing the concepts (moral and epistemic) of *Right, Legality, Custom, Tradition and Popular Approbation*. Conflict

32 Alex J. Bellamy, "The Responsibilities of Victory: Just Post Bellum and the Just War", *Review of International Studies*, Volume 34, Number 4, 2008, pp. 601-625.

33 M. Binder, "Humanitarian Crises and the International Politics of Selectivity", *Human Rights Review*, Volume 10, Number 3, 2009, pp. 327-348.

in inter-state affairs is ubiquitous, and involves the process of legitimisation and de-legitimisation, framed in terms of norms and principles, which are deemed generally accepted, and accordingly compared to corresponding criteria through which the legitimacy of certain practices or institutions are measured.

The legitimacy of humanitarian intervention has been contested, for more than a century, yet the clamour for such intervention persists. Normative evolution and institutional design have been closely linked since the first debates over humanitarian intervention more than a century ago.

Three norms have competed in shaping state practice and the normative discourse; *Human Rights, Peace Preservation, and Sovereignty*. The rebalancing of these norms over time, most recently as the state's responsibility to protect, has reflected specific international institutional environments. The contemporary legitimacy of humanitarian intervention is based on UN Security Council's authorisation of the use of force. Although the Security Council is often viewed as representative of great-power influence, international acceptance of its role is based on the role of non-permanent members and their support for the sovereignty norm. The current rebalanced norms support humanitarian intervention, but institutional bias that protects state sovereignty and the changing character of mass violence may undermine its tenuous contemporary legitimacy. Normative adjustments and new institutional designs are required to ensure the legitimacy of international action which protects populations against mass violence. There is no silver bullet to adorn interventions with guaranteed success. Yet, should interventionism meet with the widest possible consensus in terms of their conception and in the scope of the mission, their efficacy can be significantly enhanced towards alleviation and amelioration of human rights violations. Towards this end,

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R2P despite its more than decade long inception, remains a norm in evolution, and shorn of a practical action plan which can indemnify against the factors that hobbled and blighted unilateralist humanitarian interventions of yore, will be challenged by similar insinuations of selective application and circumscribed impact.

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The Ethics of Drone Warfare

S. Krishnan*

The Unmanned Aerial Vehicle (UAV) or ‘drone’ is increasingly the weapon of choice in America’s military operations. Moral ambiguity about US drone policy arises from the gray area between law enforcement and warfare. The ‘law enforcement’ approach seeks to foresee threats and retaliate for attacks. It polices and reacts within the traditional model of defense and war. On the other hand, a ‘war against terror’ has no endpoint, and its theatre of operations can be anywhere on earth.

Drones are the equivalent of the robotic armies discussed in so many science fiction novels. While drones indeed do a great service and possible justice by protecting the lives of citizens and preventing unnecessary deaths of thousands of soldiers, the long-term impact of this approach is not yet well understood. Popular culture uses terms like “Convenient Killing”, “Death by Remote Control”, “PlayStation Mentality” and “Death Machine” to describe drone operations.

UAVs – both weaponised and non-weaponised – are used for multiple civilian and military purposes. The discussion in

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this paper refers only to weaponised UAVs used for military purposes. The military use of drones by the US has been attracting increasing attention and controversy mostly due to their use in the “War on Terror.” However, drones are in use across a number of industrialised and non-industrialised nations and their proliferation is likely to increase.

The use of drones in warfare has several obvious advantages. Being unmanned, they involve no direct risk to pilots compared to manned aerial vehicles. They also have operational advantages, such as being able to stay airborne in-theater for long periods of time without requiring refueling or inducing pilot fatigue. Also, unlike manned aircraft, decisions regarding the use of their weapons can involve multiple parties in the chain of command. However, the use of drones has also raised questions regarding their potential impact on both the operators and the targeted communities.

Drone operations require flexibility and reach, beyond the traditional parameters of war. And so, the strongest ethical argument in the favour of drone strikes boils down to efficiency. The virtues of US drone policy include precision targeting, limited collateral damage, and preventing troops from going into full combat mode and being killed. But each of these virtues has its limits. We know of targeting errors, tragic accounts of unintentional killing of innocent bystanders, and the fear that drones turn foreign public opinion against the United States. When the stakes are so high, is the efficiency argument good enough? Of particular ethical concern are the questions of due process and accountability. Who makes decisions about who the targets will be and whether to execute a strike? What is the procedure for those calls, and what is the degree of oversight? Again, we see blurred lines.

Early in J.J. Abrams film *Star Trek: Into Darkness* (Paramount 2013), Captain Kirk is faced with a moral dilemma. Should he follow orders and fire a missile into enemy territory from afar to kill a known terrorist, or should he risk sending his men into foreign territory to try to capture him? This choice is no accident. It is an allegory about the morality of the drone war, and the dilemmas it poses are those we face today. As in *Star Trek*, we have this amazing technology that can apparently be employed with little risk to our own forces, but its improper use poses an enormous risk to our way of life. How can we be certain of identifying an appropriate target? Is it enough to simply trust high government officials? What is the right way to use such weapons? In what follows, these questions are illuminated by ethics and the just war tradition, to clearly bring out what is missing in the US administration's approach to the use of drones.

For the US (and other states that have the capability) drones have become today's weapon of choice in counter-terrorism operations. Over the next 40 years or so, they are expected largely to replace piloted aircraft. In nine years, the Pentagon has increased its drone fleet 13-fold and the generals are spending at least roughly USD 5 billion a year adding to it. The frequency of drone strikes on al Qaeda and other terrorists that lurk in Pakistan's tribal areas of the north-west rose under former US President Barack Obama to one every four days, compared with one every 40 during George Bush's Presidency. In Libya, NATO commanders turned to drones when their fast jets failed to find and hit Muammar Qaddafi's mobile rocket launchers.¹

1 "Drones and the man", *The Economist*, June 30, 2011, <https://www.economist.com/leaders/2011/07/30/drones-and-the-man>.

IMPACT OF DRONES ON TARGETED SOCIETIES

Partly due to the classified nature of drone missions, the reluctance of civilian victims to talk for fear of retribution, and problems with access to affected areas, there are very few empirical studies on the impact of drone warfare on civilians, and most of the information is from reports by Non-Governmental Organisation and academic legal centers. Similarly, it is not always clear whether the emotional impact of drone strikes differs from the impact of manned aircraft. Increased anxiety and trauma are common responses for individuals living in warzones. Although speculations for and against the concern that drone attacks might result in greater trauma, may be reasonable. However, there is a dearth of sound, objective empirical research on this issue. This observation is not intended to minimise the emotional and physical impact on individuals living in areas under drone surveillance and attack, but to note the lack of evidence that drones have a unique impact.

COMPETING NARRATIVES

A key premise supporting the use of drones is that they are more precise than typical aerial bombings and thus, cause minimal collateral damage. Yet, there continues to be disagreement as to how accurate these pinpoint assaults are, and how many civilians are killed.² *Bureau of Investigative*

2 A. R. Deri, “Costless” war: American and Pakistani reactions to the U.S. Drone war”, *Intersect*, Volume 5, 2012, pp.1–16; James Cavallaro, et.al., “Living Under Drones: Death, Injury and Trauma to Civilians from US Drone Practices in Pakistan”, Stanford International Human Rights and Conflict Resolution Clinic, Stanford Law School; New York: NYU School of Law, Global Justice Clinic, September 25, 2012, <https://law.stanford.edu/publications/living-under-drones-death-injury-and-trauma-to-civilians-from-us-drone-practices-in-pakistan/>.

*Journalism*³ noted that 344 drone strikes have killed between 2562 and 3325 people in Pakistan between 2004 and 2012. Of these totals, 474 to 881 have been identified as civilians, including 176 children.⁴ U.N. Special Rapporteur, Ben Emmerson projected 450 civilian casualties in Pakistan, Yemen and Afghanistan.⁵ Data from the New American Foundation (2017) suggest that civilians make up approximately 10 per cent of the casualties in drone strikes in Pakistan and Yemen.⁶ The Long War Journal (2017) likewise finds relatively lower rates of civilian casualties due to drone strikes. However, lack of clear official delineation on whether drones or manned aircraft were used in several strikes makes comparisons difficult.⁷

One of the most salient psychological effects civilians describe is the pervasive sense of anticipatory apprehension of impending drone strikes.⁸ Drones can hover for hours over targeted areas as part of constant surveillance missions. Civilians describe feeling severely stressed, depressed, anxious, and being constantly reminded of deaths in prior

3 Sarah Leo, "A Picture of War: The CIA's Drone Strikes in Pakistan", *Bureau of Investigative Journalism*, 2012, <http://www.thebureauinvestigates.com/stories/2012-09-10/a-picture-of-war-the-cias-drone-strikes-in-pakistan>.

4 Speaker's Briefing, "Psychological terror? Lessons from Pakistan and Yemen", Washington D.C., 2013, <https://appgondrones.files.wordpress.com/2013/03/speakers-briefings-05-03-2013.pdf>.

5 "U.N. expert urges U.S. to reveal civilian drone deaths", *The Japan Times*, October 19, 2013, <https://www.japantimes.co.jp/news/2013/10/19/world/u-n-expert-urges-u-s-to-reveal-civilian-drone-deaths/#.XSLzjugzY2w>.

6 New American Foundation, "International Security Data Site", 2017, <http://securitydata.newamerica.net/>.

7 "Pakistan Strikes", *Long War Journal*, 2017, <http://www.longwarjournal.org/pakistan-strikes/>.

8 "Will I be next? US drone strikes in Pakistan", *Amnesty International*, October 21, 2013, <https://www.amnestyusa.org/reports/will-i-be-next-us-drone-strikes-in-pakistan/>.

strikes.⁹ Interviewees also describe reactions reminiscent of post-traumatic stress such as emotional breakdowns, anger outbursts, exaggerated startle responses, fleeing indoors and hiding when seeing or hearing drones, fainting, poor appetite, psychosomatic symptoms, insomnia, and startled awakening at night with hallucinations about drones. Patients -particularly those who are later found to have been victims or had relatives who were victims of drone strikes- exhibit high rates of post-traumatic stress symptoms and various psychosomatic complaints associated with actual strikes and apprehension of future attacks.

These fears cripple their daily activities, such as leaving their homes, going for work, attending social functions, and sending children to school. Dr. Peter Schaapveld, a clinical and forensic psychologist, reported from Yemen that most of the people he surveyed manifested clinical levels of Post-Traumatic Stress Disorder (PTSD) symptoms. Children were particularly affected, and reported nightmares of dead people, fear of going to sleep, and fears they will be harmed by drones, he added.¹⁰

Unable to predict when, why and where the next strike will come, they describe helplessness, significant lack of control, and powerlessness to escape, avoid, or protect themselves from drone strikes.¹¹ Civilians in targeted areas are poor, experience travel restrictions by local militias or militaries,

9 Ibid; “The Civilian Impact of Drones: Unexamined Costs, Unanswered Questions”, Center for Civilians in Conflict and Human Rights Clinic, Columbia Law School, September 11, 2012, http://civiliansinconflict.org/uploads/files/publications/The_Civilian_Impact_of_Drones_w_cover.pdf.

10 “Drones in Yemen causing a ‘psychological emergency’, psychologist tells MPs”, *Reprieve*, March 5, 2013, http://www.reprieve.org.uk/press/2013_03_05_drones_in_yemen_psychological_emergency/.

11 “The Civilian Impact of Drones: Unexamined Costs, Unanswered Questions”, op.cit.

live under curfews, or are subjected to a range of other factors that limit their mobility and ability to flee to safer locations.¹² Two aspects that may exacerbate psychological problems are the US's reported policy of conducting signature strikes and double taps. A signature strike, rather than targeting an individual, is based on analysis of signature behaviour associated with suspicious or militant activities.¹³ That these strikes are not based on a specific militant's identity serves to heighten their unpredictability.

Although the definition of who is a combatant and therefore a legitimate target of strikes is often discussed in the context of policy and legality, it is also important in understanding the impact of drone strikes on targeted communities.

In Pakistan, many fighters live among their families or in joint family compounds. Although they may technically qualify as combatants, the networks of civilians within which they are embedded are similarly affected by drone strikes. Many of the affected communities also have strong cultural customs regarding hospitality like not denying guests refuge and food regardless of their background.¹⁴ Civilians also describe feelings of helplessness at being wedged between US drones and the militants amidst them.¹⁵

12 Metin Basoglu, "Drone strikes or mass torture? – A learning theory analysis", November 25, 2012, <http://metinbasoglu.wordpress.com/2012/11/25/drone-warfare-or-mass-torture-a-learning-theory-analysis/>.

13 "Will I be next? US drone strikes in Pakistan", op.cit.

14 Palwasha L. Kakar, "Tribal Law of Pashtunwali and Women's Legislative Authority", Afghan Legal History Project Papers Series, Harvard Law School, Islamic Legal Studies, 2003, <http://www.law.harvard.edu/programs/ilsp/research/kakar.pdf>.

15 "Between drones and Al-Qaeda: The civilian cost of US targeted killings in Yemen", *Human Rights Watch*, October, 2013, http://www.hrw.org/sites/default/files/reports/yemen1013_ForUpload_1.pdf.

Warfare theorists believe constant drone surveillance sows distrust and paranoia amongst terrorist groups¹⁶, though it appears this paranoia affects larger communities as well. Civilians may seek to cope with the ambiguous yet constant possibility of death by trying to create a system of understanding, such as explanations for how and why strikes happen. For example, some communities in Waziristan area of Pakistan believe the US identifies drone strike targets through chips (small electronic tracking devices). Many Waziris believe the Pakistani government and/or the CIA enlists help from local informants who plant these chips in targets' homes and cars. Consequently, community members either fear being marked by a chip, or fear the Taliban will suspect them of being informants and execute them. These beliefs appear to fuel suspicion between neighbours who suspect each other of being informants or see drone strikes as extracting revenge over a local dispute. Even in absence of this narrative about chips, when civilians are mistakenly struck, the fabled precision of drones may lead others to stigmatise them and suspect them of being related to militants. The victims then bear the dual burden of being victimised by the drones and the stigma and pressure to exonerate their name.¹⁷

Children are particularly vulnerable to disruptions and losses caused by war, including loss of homes, injuries from strikes and subsequent difficulty accessing medical care, PTSD and other psychological symptoms, and being deprived of the opportunity to play with friends for fear of assembling in large groups.¹⁸ The loss of a male head of household or a

16 Andrew Callam, "Drone Wars: Armed Unmanned Aerial Vehicles", *International Affairs Review*, Volume 18, Number 3, 2010.

17 "The Civilian Impact of Drones: Unexamined Costs, Unanswered Questions", op.cit.

18 "Drones: No safe place for children", *Reprieve*, March, 2013, http://www.reprieve.org.uk/media/downloads/2013_04_04_PUB_drones_no_safe_place_for_children.pdf.

female caregiver often means older children are removed from school prematurely to assume those roles.¹⁹ Some parents have also stopped sending their children to school for fear over their safety. As for women, mothers report feeling helpless at the prospect of their children being recruited by the Taliban, especially since they have limited ability to leave the house and thus monitor their children. Because larger decisions are made by men, they often have no choice if their older male children or other male relatives bring home Taliban members as guests, which leaves them caught between concern for family and fear they will be struck by drones because of guests they did not invite. Traditionally, women in targeted communities have limited control over financial resources and difficulty accessing government resources or income-generating activities. Customs dictating that widowed women live with other male family members may leave them especially vulnerable and prone to harm and exploitation.²⁰ That these issues, however, may be common to war theaters, not necessarily unique or more prevalent in areas targeted by drone strikes.

ETHICAL ASPECTS

Not everyone feels comfortable with all this. The increasing deployment of military drones raises a wide variety of important ethical questions, concerns, and challenges. Critics say the legal and ethical issues surrounding the use of drones have been neglected. Some of those concerns may be exaggerated, but others need to be taken seriously, particularly if, as seems certain, armies will increasingly fight with machines, not men.

19 Ibid.

20 “Civilian harm and conflict in Northwestern Pakistan”, Center for Civilians in Conflict, October 20, 2010, <https://civiliansinconflict.org/publications/research/civilian-harm-conflict-northwest-pakistan/>.

What are the moral implications of such asymmetry on armies that employ drones and the broader questions for war and a hope for peace in the world? How does this technology impact counter-insurgency operations or humanitarian interventions? Does such weaponry run the risk of making war too easy to wage, tempting policy makers into killing without exploring other more difficult means to end hostilities?

There are certainly good reasons for using more drones. Cruise missiles and jet fighters work against fixed targets, concentrations of forces or heavy weapons on open ground. They are not as useful, however, in today's "wars among the people" fought against insurgents and terrorists. Drones such as the Predator and the Reaper can loiter, maintaining what one former CIA Director described as an "unblinking stare" over a chosen area for up to 18 hours.²¹ With the drone's ability to watch and wait, its "pilot", often thousands of miles away, can patiently choose the best moment to fire its missiles, both increasing the chances of success and minimising the harm to civilians.

From the start just war theorists have been occupied with two central questions: when it was appropriate to go to war (*jus ad bellum*) and how the war should be fought (*jus in bello*). There is already an emphasis on both these questions in Cicero's *On The Commonwealth*, and the theory of *jus ad bellum* was already well developed early in the just war tradition.²²

The four just war principles (Necessity, Distinction, Proportionality and Humanity) cited by the US Justice

21 "Drones and the man", op.cit.

22 Cicero, *On the Commonwealth in: Cicero's Tusculan Disputations Also, Treatises on the Nature of the Gods, And On the Commonwealth*, 2005 and Cicero, 1913, *De Officiis*, tr. By Walter Miller, Loeb edn., Harvard University Press, Cambridge, I, xi, 33-36.

Department's "white paper"²³, echo those cited by President Obama in his acceptance speech for the Nobel Peace Prize in 2009. "A war can only be considered just if it is waged as a last resort, in self-defense, if the force used is proportional, and pains are made to spare civilians from violence wherever possible," he said.²⁴

That makes the drone the ideal weapon for tracking down and killing terrorists, particularly in places like the (erstwhile) FATA in Pakistan where other options, such as sending in special forces, are not politically feasible. Claims in Pakistan that American drone attacks have killed thousands of civilians are undermined by research carried out by the New America Foundation, a think-tank, (as reported in July, 2011) suggesting that in the seven years since 2004, 80 per cent of the fatalities have been militants. The increasing accuracy of these attacks and the evidence that they have helped to weaken al Qaeda encourage some to believe (not least in the White House) that counter-terrorist campaigns in the future can be waged without the sacrifice of blood and treasure, that goes with putting thousands of boots on the ground.

There is also considerable controversy, much of it ethical, about the use of drones for the "targeted killings" of individuals outside the context of a conventional war, or an armed conflict that at least starts as a struggle between two states. Pakistan is one such example. Drones are ethically interesting, in part, because the case for drones is often made in moral terms.

23 The memo, or "White Paper", http://msnbcmedia.msn.com/i/msnbc/sections/news/020413_DOJ_White_Paper.pdf.

24 Barack Obama's Nobel Peace Prize Acceptance Speech, December 10, 2009, http://www.nobelprize.org/nobel_prizes/peace/laureates/2009/obama-lecture_en.html.

The development of military technology often poses new and difficult moral problems, and drones are no exception. In investigating the ethics of new military technology, it is helpful to distinguish between two sorts of moral problems it may create. The first sort, ordinary problems, may be addressed or resolved by a modification in the way in which the technology is configured or the military activities involving it are conducted. The second sort, extraordinary problems, are problems so severe that they may require that the technology not be used at all. This is obviously a rough distinction, given that there is no sharp line between engaging in an activity in a modified way and not engaging in it at all. Some of the moral problems raised by drones are ordinary, but some are extraordinary.

USE OF DRONES IN THE WAR ON TERROR

The United States, and the West in general, is in a global struggle with Islamic insurgents, a struggle often referred to in the US as the Global War on Terror (GWOT). Conventional wars, such as those in Iraq and Afghanistan, are part of the GWOT, but much of the GWOT, the more controversial parts, takes place outside of conventional war. I will use the term GWOT idiosyncratically to refer to those parts of this struggle that are outside of a conventional war. One question we need to consider is whether the GWOT, understood in this way, is a war at all. The GWOT is an asymmetric conflict. Asymmetric conflicts, in general, are those in which one of the sides has great relative advantage over the other. There are many forms of asymmetry, but the kind I am concerned with is one in which one side has a great military advantage in terms of its technology and/or the size of its military forces.²⁵

25 The term asymmetric war is sometimes used in a more limited way, for example, to refer to the tactical asymmetry of insurgent groups fighting an established military power in the light of their ability to employ

This form of asymmetry characterises most of the wars fought by the US and other Western powers in the past few decades. This is even more the case with the GWOT, where the asymmetry is extreme. Drones are, in fact, especially useful in fighting such asymmetric wars. Because of their surveillance capabilities, they are good at tracking and attacking individuals. Other advanced technologies, such as cruise missiles, are good at attacking and hitting fixed targets, mainly infrastructure, but insurgent groups often have little in the way of infrastructure. Their ability to inflict harm resides in their person, which is what drones are good at targeting. As the technology of drones matured during the GWOT, the US has come to rely increasingly on them to fight its asymmetric battles, and an increasing portion of US military aviation is devoted to them. The cruise missile is a paradigmatic weapon of the Cold War, while the drone is a paradigmatic weapon of the post Cold War world.

OBJECTIONS TO USE OF DRONES

Two of the most commonly heard objections to drones are more strategic than moral. They are primarily prudential because they concern not what drones do to their victims, but what they do to the interests of their users. The fundamental argument appears to be that the use of drones is counterproductive.

The first objection is that the use of drones by the US against Islamic insurgents is counterproductive because, as it is crudely put, drones produce more terrorists than they kill, due to the animosity they generate in local populations.²⁶ Concerning

unconventional tactics such as guerrilla warfare or terrorism. See Rodin, David, "The Ethics of Asymmetric War," in Richard Sorabji and David Rodin eds., *The Ethics of War*, Ashgate, Hants, 2006, p. 154.

26 There is some empirical evidence that drone use does increase the number of insurgents. See Zenko, Micah, "Reforming U.S. Drone Strike Policies," Council on Foreign Relations Special Report #65, January 2013, <https://www.cfr.org/report/reforming-us-drone-strike-policies>.

the civilians killed by drones, “every one of these dead non-combatants represents an alienated family, a new desire for revenge, and more recruits for a militant movement that has grown exponentially even as drone strikes have increased.”²⁷ If defeat of the insurgents in Pakistan and elsewhere requires that their numbers be reduced and that the local population be turned against them, drone attacks will not succeed.

The second strategic objection is that the development and use of drones by the US is counterproductive because it encourages the development of military capabilities and attitudes among other states that are, in the long run, inimical to US interests. First, it will lead to the development and deployment of drones by other states, some of whom will be opponents of the US. As two journalists note: “With Russia and China watching, the United States has set an international precedent for sending drones over borders to kill enemies.”²⁸

Moreover, it is argued that the deployment of drones by other states, whether friendly to US interests or not, will lead to a harmful climate of military instability. In addition, the use of drones by the US for target killings is widely perceived in the rest of the world as a flouting of international law.²⁹ The role of international law in the criticism of drone use shall be discussed later in the article, but the point here is, respect for international law depends on a sense of reciprocity among states, and the perception by the rest of the world that the greatest military power is ignoring international law leading other states to do

27 David Kilcullen and Andrew McDonald Exum, “Death From Above, Outrage Down Below”, *The New York Times*, May 17, 2009.

28 Jo Becker and Scott Shane, “Secret ‘Kill List’ Proves a Test of Obama’s Principles and Will,” *The New York Times*, May 29, 2012.

29 Steven Ratner, “Predator and Prey: Seizing and Killing Suspected Terrorists Abroad,” *Journal of Political Philosophy*, Volume 15, Number 3, 2007, pp. 251-275.

so as well, resulting in a sort of international lawlessness that harms the interests of everyone. The use of drones may make everyone worse off. We have seen this dynamics before in the development of nuclear weapons technology during the Cold War.

To put it briefly, the use of drones creates “blowback” that does more harm than good to US security. These objections do have some moral import because, if the use of drones is counterproductive, it will be a great waste of lives and resources. Were the GWOT a war in the morally relevant sense, the moral objections to this waste would be represented by its failure to satisfy the *jus ad bellum* principle that a war is just only if it has a reasonable chance of success.³⁰

Supporters claim that drones are a morally valuable military technology, and three virtues of drones are often cited. First, drones have a greater capacity for precision, thus potentially reducing “collateral damage” and better adhering, when used in war, to the important *in bello* principles of discrimination and proportionality. Bradley Strawser claims that “UAV technology actually increases a pilot’s ability to discriminate.”³¹ Drone operators can observe a potential target for hours before deciding whether to attack, making them better able to avoid civilian casualties. Kenneth Anderson makes a similar point, claiming that drone use allows us to avoid the “proportionality trap,” a trade-off characteristic of military actions where attacks that provide greater military

30 David Luban, “What Would Augustine Do?”, *Boston Review*, July 6, 2012, http://www.bostonreview.net/BR37.3/david_luban_obama_drones_just_war_theory.php.

31 Bradley Jay Strawser, “Moral Predators: The Duty to Employ Uninhabited Aerial Vehicles,” *Journal of Military Ethics*, Volume 9, Number 4, 2010, pp. 342-368.

advantage also put civilians increasingly at risk and attacks providing more protection to civilians achieve less military advantage.³² Drones break this linkage, achieving increased military advantage while also providing greater protection for civilians. They are a win-win.

Second, the use of drones poses no risk to the pilots, allowing military operations to better realise the principle of force protection. Force protection is not generally recognised as an *in bello* principle, but, other things being equal, it certainly is morally preferable to reduce one's own combatant casualties. Strawser also argues that drones have this virtue. He casts it in terms of what he calls the "principle of unnecessary risk", according to which military leaders have a moral obligation when pursuing a legitimate military goal to choose a means, if available and just, that does not pose a risk to their combatants.³³

Third, the use of drones may avoid the need to wage a full-scale war.³⁴ This is related to the first virtue. Just as it would be preferable to use drones instead of troops for a particular mission in a conventional war, so it would be preferable to use drones instead of fighting a full-scale war involving boots on the ground, assuming these are exhaustive alternatives. Speaking of "force-short-of-war," a category of military force in which he would presumably include drone use outside of a full-scale war, Michael Walzer notes that the use of such force avoids the

32 Anderson, Kenneth, "Efficiency in *Bello* and *ad Bellum*: Targeted Killings Through Drone Warfare", in Claire Finkelstein, et.al., eds., *Targeted Killings: Law and Morality in an Asymmetrical World*, Oxford University Press, 2012, pp. 374-399.

33 Bradley Jay Strawser, op.cit.

34 Daniel Brunstetter and Megan Braun, "The Implication of Drones on the Just War Tradition," *Ethics and International Affairs*, Volume 25, Number 3, 2011, pp. 337-358.

“unpredictable and often catastrophic consequences” of war.³⁵ If a state can avoid a need to go to war by using drones to obviate the threat it faces, it certainly is a moral benefit to have drone technology available for that purpose.

These three moral claims about drones represent the idea that the use of drones is morally preferable to other methods, such as traditional air strikes or the use of combatants, whether in special operations or a full-scale war. First, air strikes are less precise and the use of combatants on the ground generally leads to a greater number of civilian casualties. “Many military experts support the government’s claim that using conventional airstrikes or troops on the ground to attack terrorist compounds would be likely to kill far more civilians than drones have.”³⁶ Second, of course, boots on the ground, and to a lesser extent traditional airstrike, puts one’s combatants at risk.

Considering that drone use for targeted killings occurs outside the context of conventional war, which is morally unacceptable, this is a claim about the paradigm under which drone use should be considered, that it should be considered as policing rather than a war. The GWOT is not a war.

Of course, the response to this theory is that the GWOT is in fact a war, a “war on terror,” fought on a global battlefield, so that any drone strike against combatants in this war is permissible.³⁷ The government asserts that the GWOT is a war: “The United States is in an armed conflict with al Qaeda and its associated forces.”³⁸

35 Michael Walzer, *Just and Unjust Wars*, (fourth edition), Basic Books, New York, 2006, p. xiv.

36 Scott Shane, “Report Cites High Civilian Toll in Pakistan Drone Strikes,” *The New York Times (blog)*, September 25, 2012.

37 Kenneth Anderson, *op. cit.*

38 Department of Justice White Paper: Lawfulness of a Lethal Operation Directed Against a U.S. Citizen Who Is a Senior Operational Leader of

But the question is whether the GWOT is a war at all. The question of the justice of the war is a different and secondary question. The GWOT departs from the standard case of war to such an extent that it is implausible to claim that it is anything other than war in an analogical sense (as in the “war on crime”). Crime is not an organisation, and it is without spatial or temporal bounds, as it occurs everywhere and presumably will never come to an end.

A number of points support this. First, it is a self-proclaimed fight not primarily against an organisation, as in the standard case of war, but against a tactic, that is, terror.³⁹ Perhaps in response to this concern, the Obama Administration has replaced “GWOT” with the phrase “armed conflict with al Qaeda, the Taliban, and associated forces.”⁴⁰ But the new phrase makes the point that the US sees itself as battling not a single organisation or even a set of organisations, but, given the elasticity in the term “associated,” an open-ended list of organisations, effectively, all alleged practitioners of terror. Second, the GWOT, unlike a standard case of war, has no temporal and spatial bounds, as terror will never be completely eliminated and the struggle against it has no spatial boundaries, no fixed geographical location.

One other difference between the GWOT and the standard case of war is that each relates differently to the notion of state sovereignty. The standard case of war is conceptualised in terms

Al-Qa’ida or an Associated Force, http://msnbcmedia.msn.com/i/msnbc/sections/news/020413_DOJ_White_Paper.pdf.

39 Alex Bellamy, “Is the War on Terror Just?” *International Relations*, Volume 19, Number 3, 2005, pp. 275-296.

40 O’Connell, Mary Ellen, “Lawful Use of Combat Drones,” testimony before the House of Representatives subcommittee on National Security and Foreign Affairs, April 28, 2010, http://www.fas.org/irp/congress/2010_hr/042810oconnell.pdf.

of sovereignty—it is fought to attack sovereignty or to defend sovereignty. But the GWOT, conceived as a global struggle, considers sovereignty only from a practical perspective. It sees itself as attacking terrorists wherever they are, which is always in some sovereign state, but the sovereignty of that state is immaterial to the justification for the strike.⁴¹ The US may seek permission from a state for a strike, but it does so merely as a practical matter to facilitate its activities, not because it has an obligation to do so.

Drone strikes have occurred in conventional war zones, for example, in Afghanistan, Iraq, and Libya. But many drone strikes for targeted killings, over three hundred in the past years, have occurred elsewhere, in Pakistan, Yemen, and Somalia, where the US is not a belligerent in a conventional war.⁴² This difference in US policy is marked by the fact that, while drone strikes in recognised war zones are conducted by the Air Force, strikes outside recognised war zones are conducted by the Central Intelligence Agency- CIA, a civilian organisation.⁴³ A commentator notes, “just how radical it is [that] for the first time in history, a civilian intelligence agency is using robots to carry out a military mission, selecting people for killing in a country where the United States is not officially at war.”⁴⁴ It is

41 William Saletan, “Editors for Predators,” *Slate*, February 8, 2013, <https://slate.com/news-and-politics/2013/02/drones-law-and-imminent-attacks-how-the-u-s-redefines-legal-terms-to-justify-targeted-killing.html>.

42 Olivia Ward, “‘Earthlings, there is no place to hide’-drone strikes blur the laws of war”, *The Star*, February 2, 2013, https://www.thestar.com/news/world/2013/02/03/earthlings_there_is_no_place_to_hide_drone_strikes_blur_the_laws_of_war.html.

43 Jane Mayer, “The Predator War,” *The New Yorker*, October 26, 2009, <https://www.newyorker.com/magazine/2009/10/26/the-predator-war>.

44 Scott Shane, “C.I.A. To Expand Use of Drones in Pakistan”, *The New York Times*, December 3, 2009, <https://www.nytimes.com/2009/12/04/world/asia/04drones.html?mtrref=www.google.com&gwh=2BBB0590F9B67917F109223CA91CF4DD&gwt=pay>.

odd that, while the US claims that the GWOT is a war, it assigns the operations of that war to a civilian organisation. As Mary Ellen O'Connell notes: "Only members of the United States armed forces have the combatant's privilege to use lethal force without facing prosecution. CIA operatives are not trained in the law of armed conflict."⁴⁵ Indeed, in this regard, the US policy faces a dilemma. Either a targeted killing by drone in Pakistan, say, is an act of war (as the US claims) or it is not. If it is an act of war, it is not morally acceptable because the rules of war require that acts of war be undertaken by military rather than civilian personnel. If it is not an act of war, then it is morally unacceptable because it falls under the policing rather than the warring paradigm and does not show the proper respect for human rights.

In addition to these conceptual and moral objections to the claim that GWOT is a war in the proper sense, there are also objections from International Law. These are developed by Philip Alston.⁴⁶ He argues that according to International Humanitarian Law (IHL), there are two conditions that must be satisfied for hostilities to constitute an armed conflict (that is, a war). One is that an armed conflict is a struggle between sufficiently organised and structured "parties." But "al Qaeda and other alleged 'associated' groups are often only

45 Mary Ellen O'Connell, "Lawful Use." In dissent, however, Philip Alston, United Nations Special Rapporteur concerned with targeted killings, avers that International Humanitarian Law does not prohibit non-military personnel from engaging in conflict. "Report of the Special Rapporteur on Extrajudicial, Summary, or Arbitrary Execution: Study on Targeted Killings," United Nations Human Rights Council, <http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.24.Add6.pdf>, paragraphs 70-71.

46 Alston was the United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions. "Study on targeted killings", *United Nations*, May 28, 2010, <http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.24.Add6.pdf>.

loosely linked, if at all,” so they “cannot constitute a ‘party’ as required by IHL—although they can be criminals.”⁴⁷ The other condition is that there must be a minimum threshold of intensity and extent to the violence perpetrated by each party, and it is questionable whether the violence perpetrated by al Qaeda and associates rises to the level essential for an armed clash to exist. Alston thus concludes that taken cumulatively, these reasons make it challenging for the US to demonstrate that it is at war with the terrorists.

Furthermore, the victims of targeted killings are dispatched without any judicial determination of guilt for alleged harmful conduct. These strikes must be governed by international human rights law. If targeted killings by drone were considered under the warring paradigm, they might be justified by the status of the victims as combatants under *jus in bello* or IHL. But without war, just war theory can do no justificatory work. War may legitimate military violence, but outside the context of a war, military violence is simply violence, and lacking in moral justification. Terrorism is not warfare but crime, and its perpetrators should be treated as criminals, not combatants. This means that they cannot be subject to targeted killing. Under the human rights paradigm, these killings are extrajudicial and amount to assassination.

Describing himself as an ex-CIA official, Phillip Mudd writing in *Newsweek* acknowledges there are ethical issues arising from the use of drones but argues that in relation to war zones they are “misdirected”.⁴⁸ In war zones, he writes, drones

47 See also Craig Martin, “Going Medieval: Targeted Killing, Self-Defense and the jus Ad Bellum Regime,” in Claire Finkelstein, et.al., eds., *Targeted Killings: Law and Morality in an Asymmetrical World*, OUP, 2012, pp. 223-252.

48 “The Morality of Drone Warfare”, *Global Research*, August 19, 2012, <https://www.globalresearch.ca/the-morality-of-drone-warfare/32412>.

are just another “delivery tool” to apply lethal force, like a rifle or a piece of artillery. The point he clearly misses though is that unlike the rifleman or tank driver, the drone operator is sitting safely thousands of miles away, and it is this very distance—both physical and psychological – that is a key ethical issue.

Those who defend drone strikes outside conventional wars have an added argument to justify these strikes. They claim that the strikes are an exercise of a right of national self-defense. For example, the US claims: “Targeting a member of an enemy force who poses an imminent threat of violent attack to the United States is not unlawful. It is a lawful act of self-defense.”⁴⁹ This claim is interesting because it offers what is in effect a third way to justify drones strikes, an effort to deny that the paradigms of policing and warring are exhaustive. In this spirit, defenders of drones have appealed to a principle of national self-defense. This principle can be seen as a hybrid between the two paradigms. Like the warring paradigm, it permits the killing of individuals without judicial process, and like the policing paradigm, it is not inconsistent with human rights.

The national self-defense justification is based on a domestic analogy with individual self-defense, but the government’s understanding of it may be based on confusion between the just war categories of *jus ad bellum* and *jus in bello*.⁵⁰ The initiation of war under *jus ad bellum* can be justified on the

49 Department of Justice White Paper, “Lawfulness of a Lethal Operation Directed Against a U.S. Citizen Who Is a Senior Operational Leader of Al-Qa’ida or An Associated Force”, November 8, 2011, <https://fas.org/irp/eprint/doj-lethal.pdf>.

50 Gregory S. McNeal, “Six Key Points Regarding the DOJ Targeted Killing White Paper,” *Forbes*, February 5, 2013, <http://www.forbes.com/sites/gregorymneal/2013/02/05/six-key-points-regarding-the-doj-targeted-killing-white-paper/>.

basis of national self-defense. But once war is underway and *jus in bello* becomes relevant, the killing of enemy combatants is justified not on the grounds of self-defense (which would be a matter of conduct), but simply because they are combatants (a matter of status). This confusion can be seen when the government justifies targeted killings as based on the inherent right to national self-defense recognised in international law (for example, U.N. Charter Article 51). But Article 51 in a matter of *jus ad bellum* concerning the justification of going to war, not an *in bello* justification of killing individuals. If the national self-defense justification is to succeed, it must be seen as independent of an *in bello* justification, since the military's struggle with the insurgents is not a war. Were it not independent, it would not be a third way. But there is some indication that the government perceives the two justifications as independent, like when it speaks of a drone strike as “a lethal operation against an enemy leader undertaken in national self-defense or during an armed conflict.”⁵¹

In any case, the applicability of a principle of self-defense requires a showing of imminence and necessity. In domestic society, one can take the life of another in self-defense only if that person poses an immediate risk to one's own life (imminence) that cannot be avoided in other ways (necessity). So understood, national self-defense fails as a justification for the targeted killings. The claim would have to be that the victims of targeted killings pose an imminent risk of attack against the US, which is implausible. Indeed, the government claims that it is justified in killing “an operational leader” who presents “an ‘imminent’ threat of violent attack against the United States.” But how does it understand such attacks as

51 Taking the “or” as exclusive. Department of Justice White Paper; emphasis added. See also Carig Martin, *op. cit.*, pp. 225-26.

imminent? Defense against the insurgents “demands a broader concept of imminence” because the targets are “continually planning terror attacks” and there may be “only a limited window of opportunity” in which they can be attacked.⁵² But this is an unacceptable expansion of the notion of imminence, which completely strips it of its role in providing a self-defense justification. It is like the purported justification for preventive war at the *ad bellum* level that because we expect some state to attack us in the indefinite future, we are justified in striking it now. David Cole notes that “the administration has reportedly defined ‘imminent’ capaciously, reasoning that because al Qaeda and its affiliates want to strike us whenever they get the chance, they always pose an imminent threat,” but this “effectively eliminates the requirement altogether.”⁵³

If drones make war easier, then some wars that would be fought with drones, would not be fought otherwise. Call this category the drone-only wars. The claim that drones make war too easy thus underlines the argument that is overall not morally preferable that the drone-only wars be fought.

But what about humanitarian interventions? It is a good thing to fight a justified humanitarian intervention, but these wars are more likely to be drone-only wars because the state fighting them is less likely to see its fundamental interests at stake. (Think of the absence of humanitarian intervention in the case of Rwanda.) Christopher Kutz, in an apparent endorsement of Anderson’s point, argues that military actions of “other-defense,” that is, humanitarian interventions, does not require that the combatants in this war be exposed to

52 Department of Justice White Paper, *op.cit.*

53 David Cole, “Obama and Terror: the Hovering Questions,” *The New York Review of Books*, July 12, 2012, and David Cole, “How We Made Killing Easy,” NYR Blog, June 2, 2013, <http://www.nybooks.com/blogs/nyrblog/2013/feb/06/drones-killing-made-easy/>.

risk.⁵⁴ There are two responses to this view. First, not all wars claimed to be humanitarian are just wars. Some wars fought by powerful states are disingenuously given a humanitarian rationale or are overall unjust despite having a humanitarian rationale (as with the 2003 Iraq War). (A humanitarian intervention, like any war, is unjust in case it fails to satisfy the criteria of *jus ad bellum*.) Nor can a state's belief that its war is humanitarian guarantee that it is so. Second, justified humanitarian interventions fought exclusively by drones are less likely to succeed in their humanitarian purpose. Again, Kosovo is an example. It is generally acknowledged that more Kosovars would have been saved from Serb forces had NATO fought the war with troops on the ground. Overall, the value of restraining powerful states from fighting drone-only wars outweighs the risk that some of these would be just wars.

A stronger point may be made about riskless humanitarian intervention: it may be an incoherent notion. "Riskless war in pursuit of human rights is," Kahn argues, "a moral contradiction."⁵⁵ This is because the moral message of riskless humanitarian war is that the lives of combatants of the intervening state "are of greater value than the lives of those who might benefit from these interventions," which creates "an incompatibility between the morality of the ends, which are universal, and the morality of the means," which favor one group over another."⁵⁶

54 Christopher Kutz, "Drones, Democracy, and the Future of War," unpublished MS.

55 Paul W. Kahn, "War and Sacrifice in Kosovo", *Philosophy and Public Policy Quarterly*, Spring-Summer, Volume 19, Number 2/3, pp 1-6, 1999, http://www.puaf.umd.edu/IPPP/spring_summer99/kosovo.htm.

56 Ibid.

DRONES AND THE PARADOX OF MILITARY ETHICS

The paradox of military ethics is that ethics is the safest where risking life is part of taking military action. Putting one's own safety on the line for a cause inoculates the military from a large part of recklessness and corrupt manipulation in the use of deadly force that might otherwise plague its missions. This is especially the case with the most globally powerful military forces, which tend to be employed in interventionist missions across the world. The use of drones is arguably one of the most effective ways to reduce the risk to own soldiers, while at the same time providing substantially increased operational possibilities for clandestine attacks, assassinations, or selective strikes for which neither accountability, nor visibility or detectability (as with the use of substantial conventional forces) are a concern.

The dissident US former drone operator Brandon Bryant described how drones conducting strikes in the Middle East were operated from over 10,000 kilometres away in Las Vegas, Nevada.⁵⁷ He explained how civilians, as well as 'friendlies' were killed by drones with no investigation ever having been launched. In fact, Bryant stated, quite starkly, that the only situations in which investigations into drone operations took place were ones where the aircraft were 'crashed' and lost. He described how the drone he had helped operate had killed a child and then 'maintained target' with the pilot laconically dismissing his shock. The human cost, including the killing of civilians and third parties, is treated as an acceptable part of engaging in drone warfare.

On a practical level, descriptions like Bryant's illustrate why robotised violence conducted by the military, especially when it takes place outside the framework of full-fledged war,

57 Interview with Brandon Bryant, Drone Operator, on August 27, 2018.

undermines military morality. Soldiers engage in actions which are enormously disproportionate in various ways. They are not only disproportionate in the technological capabilities of the sides in conflict, or in their strategies or daily tactics; they are also disproportionate in the moral dimensions which define the side's identities in the conflict and their modes of engagement in the field. The conflict in the Middle East illustrates just how dramatic this moral and psychological disproportionality is. According to Bryant, tens of thousands of drone missions are flown every month in the Middle East, and civilian casualties rarely get reported by the military.⁵⁸ He claims that the only situations where civilian casualties are reported in the media are those where there is 'unquestionable evidence from third parties', and this is only a small fraction of the civilian deaths inflicted by drone strikes.

The moral disproportion between drone operators and soldiers who fought on the ground on the other side in the Middle East in 2015 and 2016 is stark.

Whatever their values and beliefs, those on the ground – , whether they fought for the legal government in Syria or for their renegade Islamic communities against the government – , engaged in conventional warfare where they put their existence on the line for their beliefs. This alone gave them a moral stance within the conflict. The reason why one of the parties in the conflict, the Islamic Caliphate, was stigmatised, not just by the world at large but also by the other parties in the same conflict, was that it drastically breached the conventional moral rules of conventional warfare by killing civilians, beheading hostages and instilling terror in civilian communities. It is this moral reason that primarily explains why the Islamic State has been targeted by the civilised countries, and these actions have been

58 Ibid.

accepted and supported by civilised populations, including those in Syria itself, as well as in Iraq and in Libya. Finally, these morally appalling crimes, which so drastically violate the conventional values of armed conflict, have caused global outrage against the very beliefs and ways of life of those who represent the Islamic State. It seems, on a different level but no less dramatically, that the use of drones in the Middle Eastern conflict has been as morally disproportionate to what the other parties have done on the ground as have been the actions of the Islamic State.

While drone operators did not personally decapitate anyone, they conducted aerial operations which left children and civilians torn into pieces without so much as blinking, by clicking a computer mouse. They engaged in what Bryant calls cowardly operations with no real sense of moral responsibility for the consequences and with no real personal identification with the values in the name of which such operations were launched. It is apparently possible for a socially problematic person, even for a child molester, to work as a drone operator, alongside with 'proper' air force personnel such as Bryant. However, a child molester would likely find it extremely difficult, if not impossible, much less desirable, to become a Marine or find themselves in a personnel carrier somewhere in the Middle East. There are multiple reasons for this which hardly require elaboration here. However, individuals with such personal credentials can, and have been, recruited as drone operators, and the reason is principled: the nature of the 'cowardly' strikes does not require morally integrated individuals to conduct them.

GRAVE CONSEQUENCES

The prospect of totally autonomous drones would radically alter the complex processes and decisions behind military killings. But legal and ethical responsibility does not somehow just disappear if you remove human oversight. Instead, responsibility will increasingly fall on other people, including artificial intelligence scientists.

The legal implications of these developments are already becoming evident. Under current international humanitarian law, “dual-use” facilities – those which develop products for both civilian and military application – can be attacked in the right circumstances. For example, in the 1999 Kosovo War, the Pancevo oil refinery was attacked because it could fuel Yugoslav tanks as well as fuel civilian cars.

With an autonomous drone weapon system, certain lines of computer code would almost certainly be classed as dual-use. Companies like Google, its employees or its systems, could become liable to attack from an enemy state. For example, if Google’s Project Maven image recognition AI software is incorporated into an American military autonomous drone, Google could find itself implicated in the drone “killing” business, as might every other civilian contributor to such lethal autonomous systems.

Ethically, there are even darker issues still. The whole point of the self-learning algorithms – programs that independently learn from whatever data they can collect – that the technology uses is that they become better at whatever task they are given. If a lethal autonomous drone is to get better at its job through self-learning, someone will need to decide on an acceptable stage of development – how much it still has to learn – at which it can be deployed. In militarised machine learning, that means

political, military and industry leaders will have to specify how many civilian deaths will count as acceptable as the technology is refined.

If machines are left to decide who dies, especially on a grand scale, then what we are witnessing is extermination. Any government or military that unleashed such forces would violate whatever values it claimed to be defending. In comparison, a drone pilot wrestling with a “kill or no kill” decision becomes the last vestige of humanity in the often-inhuman business of war.

POLICY RECOMMENDATIONS

Drones present, in terms of the difficulties they have in satisfying the principles of *jus in bello* and their tendency to make possible riskless war, what was referred to earlier as extraordinary moral problems. Ordinary moral problems can be resolved by tweaking the technology or altering how it is used, but extraordinary moral problems are difficult to resolve in this way. Their solution may require that the technology be abandoned. The first two objections reveal the ordinary moral problems that drone use gives rise to. These problems could be largely avoided by using drones in a different way. But the last three objections reveal that drone use has moral problems that are extraordinary, problems effectively inherent in the technology, problems that are not subject to easy correction by attempts to limit their use to acceptable forms.

What practical and feasible policy commendations follow from our conclusions about drone technology? First, any solution must be systemic. The problems cannot be corrected unilaterally, by requiring, say, that military commanders deliberately expose their combatants to unnecessary risk in order to avoid a situation of extreme asymmetry. Kahn notes:

“Military forces cannot be asked to assume unnecessary risks. . . . Indeed, it would be immoral for the military leadership not to try to minimise the risk of injury to its own forces.”⁵⁹ The imperative for force protection must be able to operate for each side within an overall scheme that attempts to deal with the moral problems that drones raise.

Consider a comparison between drones and other military technologies that pose extraordinary moral problems. The prime examples are weapons of mass destruction (WMD). Some have drawn comparisons between drone technology and nuclear weapons. David Remnick notes: “We are in the same position now, with drones that we were with nuclear weapons in 1945. For the moment we are the only ones with this technology that is going to change the morality, psychology, and strategic thinking of warfare for years to come.”⁶⁰ This brings out some similarities between the two technologies, especially the fact that both were initially in the possession of the US alone, as well as the resulting concern by the US to keep them out of the hands of other states. But in other ways, especially in their physical impact, the technologies could not be more different.⁶¹ The same holds for a comparison of drones and the other two forms of WMD, chemical and biological weapons.

But these comparisons allow us to explain more clearly what an extraordinary moral problem is. Such a problem exists for a technology not when it is impossible to use it in a morally acceptable way, but when, were it used, it is very

59 Paul Kahn, “Paradox of Riskless War,” *Philosophy and Public Policy Quarterly*, Volume 22, Number 3, 2002, p. 7.

60 Remnick, David, quoted in David Carr, “Debating Drones, in the Open,” *The New York Times*, February 10, 2013.

61 There is, of course, a certain irony in finding a comparison between the most indiscriminate technology and the technology claimed to be the most discriminate.

likely to end up being used in a morally unacceptable way. WMD can all be used in morally acceptable “counterforce” ways. Nuclear and chemical weapons could be used against isolated military targets with little or no civilian damage. This could presumably also be the case with biological weapons, if the pathogens in question were designed not to be infectious. The reason there are efforts to ban them, in the light of the *in bello* principles of discrimination and proportionality, is the recognition that if they existed, they would not be limited to the morally acceptable uses, either because these uses are less effective militarily or due to the likelihood of escalation to morally unacceptable uses.⁶² This is also the case with drones. While they can be used in morally acceptable ways (such as tactically in a larger conventional war), usage is unlikely to remain so limited. The tendency to use them for GWOT-style military violence or in wars of extreme asymmetry would be irresistible.

An effort to ban such weapons is morally more urgent for WMDs than for drones is because of the greater destructiveness of WMD, but the moral need for a ban is present for drones as well. A more apt comparison, in terms of destructive capabilities, would be between drone technology and the technologies of anti-personnel landmines and cluster munitions. Each of these technologies can be used in morally acceptable ways. Anti-personnel mines can be used in areas of combat where civilians are not present and can be configured to deactivate by the time that civilians are likely to repopulate those areas. Cluster munitions could be used when only combatants are present and could be configured so that all of the bomblets explode on impact. But the strong likelihood is that their use

62 Nuclear weapons have been only partially banned through the Nuclear Non-Proliferation Treaty, but they represent a special case.

would not be limited to these morally acceptable forms, and they thus pose extraordinary moral problems. In recognition of this, they have been banned under international law, by the 1997 Ottawa Treaty banning anti-personnel landmines and the 2008 Convention on Cluster Munitions.

But a similar convention on drones is quite unlikely. First, drones are such an integral part of US military capacity and planning that there is little chance the US would give them up. Second, several other powers are well on their way to having a full-fledged drone program of their own. Third, any convention would apply only to attack drones, leaving surveillance drones unaffected, but the line between the two would be difficult to police. The only way we are likely to resolve the extraordinary moral problems posed by drones is to hasten the future toward which they push us, a future in which warring has been replaced by policing and where anti-criminal force is exercised by a legitimate global authority. That such a future is unlikely, and indeed has serious moral problems of its own, will leave drones and other robotic military technology as a continuing moral problem.

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The Grand Ethiopian Renaissance Dam Conflict to Conflict Management

Aslam Khan*

Relations between Ethiopia and Egypt have been fluctuating between harmony and conflict over the years, with the Nile factor defining the relationship between the two African Nations. The Blue Nile flows from Ethiopia into Egypt and supplies almost 80 per cent of the latter's water needs. There is therefore significant concern in Cairo over the construction of the Grand Ethiopian Renaissance Dam (GERD) on the Blue Nile. Egypt fears that it will cut into its water supply, destroying parts of its precious farmland and squeezing its population of 93 million people who already face water shortages.¹

Ethiopia, however, insists the project will not cause significant harm to Egypt or Sudan, the two downstream countries.² But taking advantage of the serious political instability within Ethiopia, Egypt is trying to put pressure over

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1 "Death of the Nile: Egypt fears Ethiopian dam will cut into its water supply", *The Telegraph*, October 2, 2017, <http://www.telegraph.co.uk/news/2017/10/02/death-nile-egypt-fearsethiopian-dam-will-cut-water-supply/>.

2 Ibid.

Ethiopia through various forms of proxies and alliances with neighboring South Sudan and Eritrea.

According to the 1929 Anglo-Egyptian Treaty³ between Britain and its Egyptian colony, no upstream state was allowed to reduce volume of the Nile water flowing into the Sudan and Egypt. The treaty stated that without the consent of the Egyptian government, no irrigation or hydroelectric works could be established on the tributaries of the Nile, if such works can cause a drop-in water levels harmful to Egypt. This gave Egypt an upper hand on the control and utilisation of the Nile waters.

Thirty years later, Egypt and Sudan negotiated and signed the 1959 bilateral Nile water full utilization treaty, which gave them the right to use 100 per cent of the Nile water resource and continued veto-power over any upstream riparian water projects. Most importantly, the agreement was a bilateral pact between Egypt and the Sudan to act together against any act of the upper riparian states of the Nile.

Neither of these two legal documents involved negotiations with upstream states, which were nevertheless barred from using the water that emanated from their soil in any amount. Egypt's foreign policy has always centered on securing uninterrupted flow and continuous utilization of the Nile waters, which means maintaining the *status quo*. Ethiopia, which has had little benefit from the Nile waters so far, regards the previous treaties as outdated, non-binding and irrelevant, which neglect their needs and rights.

Given this background and the lack of a comprehensive framework agreement, the Ethiopian government demonstrated

3 Mwangi S. Kimenyi and John M. Mbaku, "The limits of the new "Nile Agreement"", The Brookings Institution, April 28, 2015, <https://www.brookings.edu/blog/africa-in-focus/2015/04/28/the-limits-of-the-new-nile-agreement/>.

a very strong commitment to meet the country's rapidly growing energy and water demands by starting the GERD project. Ignoring warnings by international financial institutions and reluctance of the World Bank to support the project, Addis Ababa has decided to construct GERD totally from internal resources and finance the project by selling bonds.⁴

In the pursuit of economic development, Ethiopia has prioritised renewable energy production, emphasising development of its hydropower potential, of which the GERD is a critical part. At the same time, it is constantly engaging with Egypt and the Sudan, trying to reassure them that this project would not impact their water security.

But this goes against Egyptians' historical and natural interest of unilateral utilization of the Nile waters, causing much worry and consternation in Cairo.

The GERD project, which has been on the Ethiopian Government's drawing board since the 1960s, but was officially launched in April 2011 is the largest engineering project ever planned in the country. When fully operational, the project could generate more than 6000 megawatts of electricity. Located at Guba, some 20 to 40 kilometres from the border with Sudan and 750 kilometres from Addis Ababa, it will be able to store about 74 BCM. The 1,780-metre-long, 145-metre-high dam will stretch for 246 kilometres and will have a reservoir measuring 1,874 square kilometres. It is expected to increase Ethiopia's actual power generation by 200 per cent.⁵

4 H. Chen and A. Swain, "The Grand Ethiopian Renaissance Dam: Evaluating its sustainability standard and geopolitical significance", *Energy Development Frontier*, Volume 3, Number 1, 2014, p.11.

5 Emeline Wuilbercq, "Ethiopia's Nile dam project signals its intention to become an African power", *The Guardian*, July 14, 2014, <https://www.theguardian.com/global-development/2014/jul/14/ethiopia-grand-renaissance-dam-egypt>.

But Egypt asserts that the dam will reduce the flow of water it receives, and considers the dam as a serious threat to its historical and natural rights. Ethiopia, on the other hand, claims that the dam has a lot to contribute to the downstream riparian states and will facilitate energy-led integration in the region. With the GERD project almost 60 per cent complete, the main bone of contention between Egypt and Ethiopia has been the way of filling the reservoir.

Several earlier attempts to build a common understanding on the use of Nile Waters between the two riparian states have failed, with the two nations unable to achieve mutual trust and confidence.

To tackle the problem, the Nile Tripartite Technical Committee comprising Ethiopia, Egypt and the Sudan was formed in 2012 to examine the benefits and dangers of the project. The Agreement on the Declaration of Principles among the Arab Republic of Egypt, the Federal Democratic Republic of Ethiopia and the Republic of the Sudan on the GERD Project, on March 24, 2015 in Khartoum asserted that the GERD was mostly meant for power generation, which would contribute to economic development, promotion of trans-boundary cooperation and regional integration through generation of sustainable and reliable clean energy supply.⁶

But given the contradictory viewpoints, the GERD project appears to pose significant threats of conflict between Ethiopia and Egypt. This research attempts to critically assess whether Ethio-Egypt relation has been dominated by conflict or cooperation over the utilization of the Nile waters and critically

6 The 2015 Agreement on Declaration of Principles between The Arab Republic of Egypt, The Federal Democratic Republic of Ethiopia And the Republic of the Sudan on the Grand Ethiopian Renaissance Dam Project (GERDP), March 24, 2015, <https://hornaffairs.com/2015/03/25/egypt-ethiopia-sudan-agreement-on-declaration-of-principles-full-text/>.

investigate the previous and current hydro-political challenges and prospect of Ethio-Egypt relations.

CHALLENGES TO ETHIO-EGYPT RELATIONS

Ethiopia and Egypt's contrary allegiances to previous and currently emerging legal regimes over the utilisation of the Nile, their incompatible foreign and water policy orientations and practices, and the historical mistrust between the two nations have always impacted their relations negatively. Increasing pressure over the Nile Water resources due to population and economic growth, and the environmental crisis affecting the quality as well as volume of the Nile water remains one of the major historical and existential challenges to Ethio-Egypt relations.

Fault Lines of Previous Ethio-Egypt Relations over the Nile

Historically, Ethiopia and Egypt have been propounding contradictory water regimes over the utilisation, management and development of the Nile water resource. Egypt strongly supports the 1929 colonial and 1959 bilateral treaties to ensure absolute monopoly over the utilisation of the Nile waters. Ethiopia has been supporting the 2010 Cooperative Framework Agreement (CFA) to challenge the above treaties for an inclusive, equitable, reasonable and fair consumption of the shared resource. The two nations have been unable so far to find common ground to forge binding international treaty governing the use of Nile waters resource or the GERD project. These competing regimes have been posing significant challenges to the political and economic relation between the two countries.⁷

Globally, the continuity of colonial period treaties has been eternal to inter-state relations. In this particular context,

7 G. Amare, "Nile waters-Hydrological cooperation vs. hydro-politics", in Proceedings of the 8th Nile 2000 Conference, Addis Ababa, Ethiopian Ministry of Water Resources, Addis Ababa, June 26-29, 2000, pp.573-580.

the British clearly understood Egypt's strong dependence on the Nile and sought to secure their interest, mainly in the Nile basin waters in order to ensure the production and export of long staple cotton for its industry at home at the expense of the upstream country.⁸ As a result, they planted the idea of prior use or 'historical' or 'natural' right on the use of the shared resources of the Nile water through the 1929 Anglo-Egyptian Agreement, which created enormous differences between them in terms of actual utilisation of the resource.⁹ The 1929 colonial agreement between Britain and Egypt was signed to ensure the natural and historical rights to Egypt over the Nile Water resources.

After independence, without considering the interest and consent of other riparian countries including Ethiopia, Egypt and Sudan had also concluded the 1959 bilateral agreement over the Nile water resources, which in essence still made Egypt the largest beneficiary of the water resources. The main objective of this agreement was directed mainly to the protection and promotion of the downstream interests of Egypt and Sudan, without giving any attention to the interests of the source states, mainly Ethiopia. Moreover, using this agreement, Egypt and Sudan also gave themselves a veto power over the projects planned and implemented by upstream states.¹⁰ Contrary to Egypt's stand, regardless of regime changes in Ethiopia, Addis Ababa has been loudly and clearly consistent in rejecting the

8 A. Zewdie, *Water Resources Development in Ethiopia: An Evaluation of Present Experience and Future Planning Concepts*, Ithaca Press, U.K., 1994, p.106.

9 N. Tedla, "In-Depth Analysis: Past Agreements on the Nile in view of the Law of Treaty And the CFA", Addis Standard, October 11, 2017, <http://addisstandard.com/depth-analysis-past-agreements-nile-view-law-treaty-cfa-2/>.

10 J. Allan and A. Nicol, "Report on the EU cooperation and natural resources conflict in the Horn of Africa", 1998, Safer World, London.

1929 and 1959 treaties as illegal, unilateral, unfair and invalid in the language of international law.¹¹

The legal validity of Ethiopia's position on these two treaties seems justified under the established rules of international law. First of all, Ethiopia had not been contracting parties to those treaties so that they could not have any binding effect on the country as per the Vienna Convention on the Law of Treaties.¹² Moreover, Ethiopia could not be bound to them since its interests and rights over the Nile Water Resources had been totally ignored in both agreements. Finally, the basic objectives of those treaties are contrary to emerging principles and customs governing the manners of utilisation of trans-boundary water resources which include: fair, reasonable, sustainable, and equitable utilization of the resources among riparian states.

Fault Lines of the Current Legal and Diplomatic Initiatives

In a bid to build trust among the Nile Basin countries, the World Bank and the United Nations established the Nile Basin Initiative (NBI) in 1999 to encourage sustainable development in the Nile basin countries. It was designed to develop a new water-sharing agreement that would include the upstream countries. To correct the previous unilateral colonial and post-colonial bilateral legal regimes, Ethiopia played an active role in crafting a new legal regime that deals with fair, equitable, reasonable and sustainable utilisation of the Nile water resources. After years of negotiations, the Nile Basin CFA was issued in May 2010.¹³ Burundi, Ethiopia, Tanzania, Uganda, Rwanda and Kenya signed the CFA in 2010, which

11 Ibid.

12 "The 1969 Vienna Convention on the Law of Treaties", United Nations, http://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf.

13 N. Tedla, op. cit.

could be a turning point in the history of the Nile Basin legal regimes since these upper riparian countries acted together, disregarding the opposition from the traditional powers on the Nile, mainly Egypt.

Unlike previous agreements, the CFA focuses on water-sharing principles and does not outline specific water allocations per country. Egypt, contested Article 14b of the CFA, which states that the Nile Basin States agree not to significantly affect the water security of any other Nile Basin State.¹⁴ For Egypt, this provision could oblige them to compromise on their share of the Nile waters. It therefore, proposed the phrase “not to adversely affect the water security and current uses and rights of any other Nile Basin State”¹⁵, a wording that would maintain their current share. In addition, Egypt claimed that decisions concerning the Nile Basin must be made by consensus and not majority vote, which would make it possible for a single country to veto any decision. In practice, this would give Egypt the possibility to block any upstream projects it perceives as threat. However, upper riparian states, particularly Ethiopia rejected Egypt’s proposals for amendment of these terms of CFA, claiming they would reinstate the basic principles of the 1959 agreement, which had been unfair, unilateral and invalid based on the basic principles, norms and customs of international law. Finally, instead of any common consensus, the new CFA had been seriously contested by Egypt, which even left the negotiating table in 2010.¹⁶

At a time when the stark divides between advocates of the 1959 agreement (Egypt) and proponents of Cooperative

14 Ibid.

15 “DRC seeks Rwanda’s support for the Nile Basin agreement”, *The New Times*, May 13, 2009, <https://www.newtimes.co.rw/section/read/8446>.

16 J. Brunnee, and J. S. Toope, “The changing Nile Basin regime: Does law matter?”, *Harvard International Law Journal*, Volume 43, Number 1, 2002, pp. 105-109.

Framework Agreement (Ethiopia) had not been settled, Ethiopia publicly announced its unilateral decision to build the GERD Project over the Blue Nile River in April 2011. For dispute management, in 2011, Ethiopia, Sudan and Egypt agreed to initiate a Tripartite National Committee (TNC) composed of 12 members, four from each riparian state, to open a trilateral process to deal with the GERD project, to assess the possible impacts of the dam, exchange technical expertise, foster cooperation and ultimately boost regional development.¹⁷

In 2012, as per the recommendation of the TNC, the three countries agreed on the terms of reference and rules of procedures for the establishment of an International Panel of Experts (IPoE), which had been composed of two national experts from each of the three countries and four selected international experts. Finally, in 2013 after more than 43 rounds of discussions, the report was released by addressing several technical issues, including down streamers' concerns over the dam safety, and recommending the need for two additional studies: assessment of trans-boundary environmental and socio-economic impacts, and a new hydrological model study.¹⁸

The reactions of Sudan, Egypt and Ethiopia to the release of the IPoE report were nevertheless divergent. In Sudan, it was followed by numerous official declarations of support by the Sudanese government, downplaying negative impacts and praising the benefits of the GERD for Sudan, namely its potential to regulate flows and contribute to expanding irrigated

17 T. Tekele, "Sudan: Country agrees to tripartite committee over Ethiopia's Nile Dam", *Sudan Tribune*, October 26, 2011, <http://www.sudantribune.com/Sudan-agrees-to-tripartite,40531>.

18 Y. Zhang, et.al., "Filling the GERD: evaluating hydro climatic variability and impoundment strategies for Blue Nile riparian countries", *Water International*, Volume 41, Number 4, 2016, pp. 593-610.

agriculture along the Sudanese Blue Nile.¹⁹ Ethiopia has accepted the report and continued its construction on GERD. But the then President Morsi of Egypt opposed the building of GERD and criticised the IPoE report on the dam and related impacts. Various trilateral meetings at the end of 2013 and till later January 2014 were either postponed or failed to reach any constructive agreement due to Egyptian intransigence.

Productive meetings only resumed when a new government was elected in Cairo, and the new President Al-Sissi agreed to reactivate tripartite meetings regarding the GERD and displayed openness to joint approaches. Egypt's relations with Ethiopia must be based on cooperation, negotiation, love, trust, mutual respect and understanding as a means for solving the issue of the Nile waters in general and GERD in particular, he argued. Therefore, diplomats would be fully involved, and the trilateral meetings would be not only technical but also political and legal. The three countries resumed trilateral meetings in August 2014, and subsequently meet on six occasions until the end of December 2015.²⁰ But despite a level of openness from Egypt to take part in technical talks soon after GERD was announced in 2011, technical cooperation was once again overridden by political considerations.

Nevertheless, the trilateral process did lead to an agreement being signed by the three riparian states, as discussed next. Several rounds of high-level bilateral and trilateral talks at

19 "Sudan downplays negative impact of Ethiopian dam project", *Sudan Tribune*, May 30, 2013, http://www.sudantribune.com/spip.php?iframe&page=imprimable&id_article=46754 and "Sudan reiterates support of Ethiopian dam plans", *Sudan Tribune*, June 9, 2013, <http://www.sudantribune.com/spip.php?article46886>.

20 "Sudan, Egypt and Ethiopia reach agreement on Renaissance Dam", *Sudan Tribune*, December 29, 2015, <http://www.sudantribune.com/spip.php?article57526>.

the beginning of 2015 culminated in a preliminary draft of an agreement on the GERD. The Declaration of Principles for the GERD was signed in Khartoum by the three heads of state on March 23, 2015.²¹ It was considered a historical deal, bringing together for the first time the three Eastern Nile countries around guiding principles on cooperative relations. Among its 10 principles, some are general principles of international water law, such as ‘no significant harm’ and ‘equitable and reasonable utilization’; but they also include principles more related to technical issues such as dam security, dam filling, operations policy and exchange of information.²² In hydro political terms the outcome of these legal instruments cement a new hydro political reality in the Eastern Nile, one that includes the GERD as a fact on the ground recognised by all three Eastern Nile riparian states.²³ This is also a very significant development as it established a different set of norms and processes than had hitherto existed under the NBI negotiations. Moreover, the three countries have successfully reached an agreement at least at the heads-of-state level.

A critical evaluation and analysis of Ethio-Egypt relation over the Nile question after the GERD project indicates both positive and negative developments. The process of bilateral relations between Egypt and Ethiopia over GERD shows that different cooperative norms have been adopted which subsequently brought about key changes in relations. The cooperation among Egypt, Ethiopia and Sudan to form a Tripartite Committee (TC) for the establishment of an IPoE to conduct the possible impacts of GERD is a positive step

21 Op.cit. no. 6.

22 M. A. Salman, “The Grand Ethiopian Renaissance Dam: the road to the declaration of principles and the Khartoum document”, *Water International*, Volume 41, Number 4, 2016, pp. 512-527.

23 Ibid.

to ensure mutual understanding over the project. The fact that the Declaration of Principles for the GERD was signed in Khartoum by the three heads of state could also be seen to justify the political will of these three nations to resolve the Nile politics including GERD through peaceful diplomatic engagement and new normative frameworks. This also contributed to reactivating trilateral relations between Egypt, Ethiopia and Sudan, which was in a stalemate since Egypt and Sudan sanctioned participation in the NBI in mid-2010.

However, despite these positive developments, the legal doctrines that the two countries have been following remain incompatible. Egypt still adheres to the 1959 legal regimes for its historical and natural rights over the Nile water resource, while Ethiopia has been lobbying for the CFA. Nothing has changed to narrow this gap between the views of the two nations even after GERD, since both the TC and the Declaration of Principles are not international norms governing Egypt and Ethiopia which substitutes the previous controversial legal regimes propounded by them.

To win the diplomatic battle against Ethiopia, Egyptian political leaderships from Anwar Sadat to Hosni Mubarak and from Mohammed Morsi to Abdul Fattah El-Sisi have gone to the extent of employing official propaganda warfare as instrument of their foreign policy against Ethiopia. “No one can touch Egypt’s share of Nile water” and the Nile water share is a “matter of life or death,” thundered President Al-Sisi in a news conference at Sharm el-Sheikh in November 2017. He went on to issue a stern warning and a clear military threat, saying, “We are capable of protecting our national security and water to us is a question of national security. Full stop”.²⁴ Egypt has

24 “Egypt’s Sisi Dials Up anti-Ethiopia Dam Rhetoric”, *Nazret*, November 20, 2017, [https://www.nazret.com/2017/11/20/egypts-sisi-dials-up-anti-ethio p-ia-dam-rhetoric/](https://www.nazret.com/2017/11/20/egypts-sisi-dials-up-anti-ethio-p-ia-dam-rhetoric/).

also been accused of sponsoring a series of proxy wars and interventions in the internal affairs of Ethiopia to destabilise and weaken the Ethiopian State.

The implication of having two competing legal agreements, colonial as well as post-colonial legal regimes between Sudan and Egypt on one hand and the New Cooperative Framework Agreement among other riparian countries headed by Ethiopia on the other remains unresolved. This has been affecting amicable diplomatic settlements of the Ethio-Egypt disputes over the Nile water resource utilization, management and development including the GERD.

PROSPECTS OF ETHIO-EGYPT RELATION OVER THE NILE

There are two competing theories of Hydro-politics to critically analyse and understand the future prospect of relationships between or among riparian states sharing trans-boundary water resource: cooperation and conflict models. According to Aaron Wolf's four-stage cooperation model, there is a low possibility of conflicts among riparian states which share common trans-boundary water resource.²⁵ On the contrary, according to Jon-Martin Trondalen²⁶, who is the creator of the ABC-conflict model, there are various causes for the likelihood of future conflicts among riparian states over their shared trans-boundary water resource.

Applying Wolf's parameters (historic argument, strategic interest argument, a shared interest's argument and institutional

25 Aaron T. Wolf, *The Transboundary Freshwater Dispute Resolution: Theory, Practice and Annotated References*, United Nations University Press, 2000.

26 Trondalen, Jon-Martin, "International River Systems in International Environmental Conflict Resolution: The role of the United Nations", in Aaron T. Wolf ed., *Conflict Prevention and Resolution in Water Systems*, Edward Elgar Publishing Inc, Cheltenham, 2002, pp. 114-148.

resiliency)²⁷ to the Nile question or GERD project indicates a high prospect of cooperation over conflict between Ethiopia and Egypt over the issue under discussion. Egypt and Ethiopia do not have any history of wide ranges open, and full-scale violent military confrontations over the Nile water resource, bar Egypt's proxy wars and its interferences in Ethiopia's internal affairs. However, Egypt's hegemonic doctrine of absolute territorial integrity over the Nile water resource to ensure the same volume of water, uninterrupted in quantity and unimpaired in quality, has already been seriously challenged by Ethiopia's diplomatic and practical measures over the Nile Basin. This rift between Ethiopia and Egypt in the past over the utilization of the Nile water resource has not led to any violent armed conflict between the parties. Based on the above historical empirical evidence, conflict between Ethiopia and the Egypt over the Nile water resource will be logically less likely.

Various empirical evidence also partially reflects Wolf's second parameter, strategic interest argument, which questions the plausibility of future conflict between the two states over the Nile, particularly over the GERD Project, Egypt is both a downstream and hegemonic power over the Nile, so it does not qualify one of the premises of Wolf's strategic interest argument. However, the international community is unlikely to allow Egypt to launch a military offensive against Ethiopia considering the extremely volatile nature of the region as well as Ethiopia's growing partnership with the international community on regional, continual and international peace and security concerns, particularly in its fight against international terrorism.

27 Wolf, Aaron T., "Conflict and Cooperation along International Waterways", in Aaron T. Wolf ed., *Conflict prevention and Resolution in Water Systems*, Edward Elgar Publishing Inc, Cheltenham, 2002, pp. 185-200.

Based on the above empirical evidence supporting Wolf's strategic interest argument, future conflict between Ethiopia and Egypt over the Nile water resource and that of GERD will therefore be unlikely because it does not serve Egypt's strategic interest to formally launch a military offensive against Ethiopia. According to Wolf's third argument, mutual interest argument, water should be seen as a source of cooperation instead of conflict. States tend to realise the benefits of cooperation on water, and a dam can be of benefit for both the upstream state as well as the downstream state.²⁸ Presently, there are many indications that the situation of GERD could serve the mutual interest of Egypt and Ethiopia in Hydropower trade, sustainable water flow throughout the year which increases Egypt's agricultural productivity as well as hydro-power generation capacity of its dam, and GERD's future contribution in protecting its dams as well as villages from sedimentation and over flooding during the rainy summer season of Ethiopia. Based on the above empirical evidence for Wolf's mutual interest argument, future conflict between Ethiopia and the Egypt over the Nile water resource and that of GERD will have low possibility as it would not serve the mutual interest of the two neighbouring states.

Wolf's fourth argument, institutional resiliency, asserts that treaties tend to be very resilient over longer time periods once states have finally been established.²⁹ However, the construction of the GERD today has not been part of any treaty or agreement between Ethiopia and Egypt. The recent CFA cannot govern Egypt since it is not contracting parties to it. As a result, Wolf's fourth argument may not fully reflect the prospect of Ethio-Egypt cooperation. But to address misconceptions and to develop

28 Ibid.

29 Ibid.

mutual trust between Egypt and Ethiopia, international panel of experts, a tripartite national committee, has been appointed to examine the pros and cons of the GERD projects. Then there's also been the recent declaration of principles among Sudan, Ethiopia and Egypt regarding the Grand Renaissance Dam stipulating the principles of not causing significant harm, equitable and reasonable utilization of the Nile water resource, cooperation, and regional integration among themselves.³⁰ If all the three states ratify the recent Declaration of Principles, it could open a new chapter on the hydro-political history of the Nile. Consequently, it is significant to keep in mind that the parties have attached great hopes to the recent declaration of the principles. Wolf's fourth argument could therefore be fully brought to bear on this case in defining the future cooperative prospect of Ethio-Egypt relation over the Nile.

In the study of conflict and cooperation regarding common water resources, there is a fairly large literature which focuses on water as a potential conflict creator. Jon Martin Trondalen³¹, posits three parameters representing his arguments for the likelihood of future conflicts among riparian states over common trans-boundary water resources. First of all, unlike Trondalen's first scenario, there are compatible goals between Egypt and Ethiopia regarding various dams already constructed in Ethiopia as well as the ongoing GERD Project. Ethiopia's dams-like the Tekeze Dam, built by Ethiopia on the Tekeze river, a tributary of Nile, have been proved to be less damaging to Egypt since they have been designed predominantly for power generation, not for large-scale irrigation purpose. Also, given the place where GERD has been constructed and the purpose of the dam, which is naturally and predominantly for

30 Op.cit. no. 6.

31 Op.cit. no. 26.

hydroelectric power generation, cannot significantly reduce the flow of the Nile water resource to Egypt. However, the manner of filling the reservoir of the dam is still contentious. Egypt's plain topography will not allow dams, which can reserve much amount of water, so it needs to exploit the topographic potential in Ethiopia, which is conducive to such hydro-power projects. In addition, Ethiopia has little irrigation potential over the Nile, but its huge hydropower potential could be taken as a positive background to Ethio-Egypt bilateral relation. From the above finding, Trondalen's first scenario to justify the possibility of conflict resulting from incompatible goals of riparian states related to the control over and unsustainable use of international river systems do not sufficiently reflect the future prospect of Ethio-Egypt relation over the Nile. To sum up, unlike Trondalen's argument, almost all our data sets and sources clearly indicate that Ethio-Egypt relations over the Nile and that of the GERD project are more likely to be peaceful and in the interest of hydro-diplomacy rather than violent conflict.

FINDING OF THE STUDY

Based on critical evaluation and analysis of the preceding data, the study reveals that Egypt and Ethiopia had been historically at odds with each other over the Nile waters. For Ethiopia, developing the waters of the Nile is an expression of its green economic development strategy to get rid of poverty, drought, famine, and energy insecurity, considered as Ethiopia's existential threats and imperatives for its claims. Egypt continues to assert colonial era and downstream bilateral treaties as a guide for Nile water utilisation, and claims natural and historical rights over the Nile waters. It is also in a serious diplomatic row with Ethiopia over GERD. It tried to hamper GERD's construction by blocking funding and even threatening military action, but in vain. Sudan's support to GERD is also

seen as a diversion from its traditional alignment with Egypt, and poses a diplomatic setback for Cairo. Ethiopia, meanwhile, has been voicing its claim for a new regime which could ensure its equitable and reasonable share of the shared water resource.

However, initiatives like the IPoE, the development of the TNC, and Ethiopia's continued communications of GERD's benefits to Egypt reflects to ease tensions and Egypt's fears indicates a positive movement towards a peaceful framework of conflict management.

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Hearts and Minds & Afghan Reconstruction Teams

Chayanika Saxena*

It has been close to 18 years that the US has found itself dealing with a seemingly unending insurgency in a distant land – Afghanistan. Having entered Afghanistan in 2001 to eliminate al Qaeda, little did it know that it would spend more than a decade and a half in addressing the daunting challenge of nation-building in a strife-torn country.

Changing various hands and shifting goal-posts, the international approach towards Afghanistan has increased awareness of the need to build the will of the people while breaking the will of the enemy. In other words, the policies and practices, on the whole, recognise that the destruction of the armed forces of the enemy can only be a means to an end. The larger objective, or the end-state, is to deny such groups conditions for their growth (or re-growth) and proliferation.

It is this realisation that has informed international efforts concerning Afghanistan to go beyond the task of hunting down the insurgents to creating permissive conditions for a functioning, effective democracy to take hold in the country.

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This understanding took the shape of Provincial Reconstruction Teams (PRTs). A cohort of military and civilian functionaries, the purpose of PRTs was to advance security and development goals in a cohesive, conjoined manner, recognising that one cannot proceed without the other.

Now a terminated project, the rationale behind the implementation of this initiative was to provide counterinsurgency (COIN) in Afghanistan a credible and sustainable basis. In fact, the roots of the concept behind PRTs could be found in other counterinsurgency experiences, which despite their strategic and operational variations, were united in their understanding that it takes more than killing insurgents to thwart an insurgency. One such case has been that of Hearts and Minds that was launched as a COIN measure during the Malayan Emergency (1948-1960).

In moving from *kill-the-enemy* to *preserving-peoples-morale* approach, the COIN operations in the Malayan peninsula demonstrated that to defeat the enemy it was necessary to break its back, which in turn was contingent on building popular faith in the COIN measures. Breaking the will (of the enemy) and building the will (of the people), it was realised, had to be placed in dialogue with each other in such a way that the insurgency could be denied its popular base and bring the conflict to a sustainable end.

More than half a century apart and disparate in many ways, these two examples show that while no two insurgencies and COIN operations are alike, they do exhibit certain common traits. COIN, in particular, seems to subscribe to a common belief that the attrition of the enemy (physically and materiel-wise) can never be enough. At best, it is only a means to the desired end. For COIN to succeed, it must go beyond the physical elimination of the enemy to denying insurgency a political, moral, economic and social base to thrive on.

By looking at how the Malayan Hearts and Minds and Afghan PRTs made use of the development-security paradigm, this paper will highlight its significance to COIN and how it makes COIN useful in the management of conflicts.

WHAT ARE INSURGENCY AND COUNTERINSURGENCY ANYWAY?

Insurgency

Insurgency is an unconventional and irregular war which is different from conventional and regular war in terms of the means it uses and the ends to which it is fought. However, there are two issues that confound this distinction. One, on many occasions, the difference between conventional and unconventional wars is hard to detect, especially if one considers the situation in Afghanistan where what is today a counterinsurgent movement against the Taliban had begun as a war against a transnational, non-state terror outfit. Two, there is nothing unconventional about insurgencies. In fact, as Kilcullen¹ notes, 83 per cent of the wars witnessed between 1816 and the 20th century were civil wars or insurgencies. In addition to this, it is also often difficult to distinguish insurgency from other irregular wars, particularly terrorism, given the propensity with which insurgent movements use terror tactics to meet their goals. Terror groups also work with political goals in mind akin to what the insurgents do. This makes the practical-level differentiation between an insurgency and other variants of war, regular or otherwise, difficult.²

Having said so, there is a doctrinal agreement on what insurgency stands for. According to US Joint Publication

1 David Kilcullen, *Counterinsurgency*, Oxford University Press, New York, 2010.

2 James Kiras. "Irregular Warfare" in Jordan, David, et al. *Understanding Modern Warfare*, Cambridge University Press, Cambridge, 2016. pp. 301-368.

3-24³ (2009), “insurgency is the organized use of subversion and violence to seize, nullify, or challenge political control of a region”. Both the overall context and the ends to which insurgency operates are political in nature, seeking the overthrow of the existing regime often with the intention of installing oneself in power. Yet, despite its political grandstanding, an insurgency remains irregular insofar as those waging insurgencies often lack the formal wherewithal to wage a war. There is, thus, an inherent power asymmetry between the sides leading and fighting an insurgency.

Insurgencies also differ from conventional wars in terms of what they identify as their assets and liabilities⁴, or as their centre of gravity (CoG). Insurgencies, unlike conventional wars which are force-centric in their nature, locate their CoG in the population. Insurgency becomes a population-centric war⁵ as the reasons for its emergence are located in public disenchantment with the prevailing political and/or economic and/or social situation.

Insurgencies are also fluid and flexible in nature.⁶ The fact that their CoG is dispersed and often located among non-combatants makes it difficult to identify and sever their supply lines of cadre and materiel. Also, the means they employ and the objectives to which they are put are flexible and even self-reflexive. Insurgencies not only adapt to the local requirements but they also improvise as they respond to challenges.

3 Joint Publication. “Counterinsurgency: US JP 3-24.” October 5, 2009. *Defense Technical Information Center*; http://www.dtic.mil/doctrine/new_pubs/jp3_24.pdf.

4 David Galula, “Counterinsurgency warfare: Theory and Practice.” Mahnken, Thomas G. and Joseph A. eds., Maiolo. *Strategic Studies: A Reader*. Routledge, New Delhi, 2014, pp. 287-308.

5 David Kilcullen. op.cit. p.6.

6 James Kiras, “Irregular Warfare”, op.cit.

Insurgencies tend to be more protracted than conventional wars, and for one major reason – the insurgents, aware of their conventional inferiority when facing a regular army, often assume a defensive posture.⁷ Familiar with the locales of their operation and with the people who inhabit it, the insurgents have a far greater ability to wait out the opponent, waging a war of attrition in terms of men, materiel and morale against the opposing force.

While local-bound, insurgencies are also impacted by the external support they attract or fail to attract. In cases such as that of Afghanistan, where insurgencies are supported by external actors, controlling and eliminating them becomes a great issue.⁸ Whereas in situations where insurgencies receive little support from outside, like in the Malayan case,⁹ dealing with them becomes relatively easier. In the absence of transnational support, it often becomes difficult for the insurgents to regroup and reinforce outside the national territory, thereby limiting the field of operation to areas within domestic boundaries.

Affected by operational and doctrinal dynamics, dealing with an insurgency becomes a complicated task. Unlike conventional conflicts which are relatively more predictable, insurgencies are replete with surprises and improvisations that make it difficult to develop a set pattern to deal with them. COIN, thus has to evolve itself in a way that keeps pace with how an insurgency unfolds itself. This makes COIN highly context-dependent, making it difficult to arrive at a generic model to deal with insurgents. Nevertheless, there are certain common traits to COIN operations.

7 David Kilcullen, op.cit.

8 Ibid.

9 Richard Stubbs, “From Search and Destroy to Hearts and Minds”, in Martson, Daniel and Carter Malkasian, *Counterinsurgency in Modern Warfare*. Osprey Publishing, Oxford, 2008. pp. 101-118.

Counterinsurgency

Going back to US Joint Publication 3-24¹⁰, COIN “is a comprehensive civilian and military effort designed to simultaneously defeat and contain insurgency and address its root causes”. The struggle against an insurgency is “primarily a political struggle and incorporates a wide range of activities by the host nation government of which security is only one, albeit an important one”.¹¹

One of the fundamental differences between COIN and other conventional warfare strategies is that politics does not take a backseat here. Not that political objectives do not drive conventional warfare; they do but as instruments that tend to appear often at the “beginning and at the end of a war”¹². In contrast, the mandate of COIN is thoroughly political in nature insofar as its objective is to keep (political) power away from the insurgents and wrest away whatever they might already have.

COIN operations are also typically reactions in essence, unlike conventional warfare which can be driven by *suo-moto* initiative. COIN requires an insurgency to be in operation for it to take shape, leaving strategic initiative¹³ in the hands of the insurgents who are particularly adept at waiting the opponent out. Given the reasons for its emergence, it is particularly hard to pre-empt an insurgency entirely. One can thwart its manifestations, so to speak, but since the causes for an insurgency lie much deeper, and these are neither easy to detect nor do they disappear instantly, they are likely to surface in similar or other forms. COIN, in a way, is therefore as good as the insurgency that creates the need for it.

10 Joint Publication. “Counterinsurgency: US JP 3-24”, op.cit.

11 Ibid.

12 David Galula, op.cit.

13 Ibid.

COIN is also as good as the state in which it is taking place. COIN operations mirror the state to the effect that “any state’s approach to counterinsurgency depends to a large extent on the nature of that state, and the word ‘COIN’ can mean entirely different things depending on the character of the government involved”.¹⁴ The techniques employed to deal with insurgencies vary between regimes. However, the existence of a democratic government does not necessarily translate into the use of less oppressive means than say what an autocratic government would use.¹⁵ Also, the nature of COIN is also impacted by who is operating it. Domestic COIN is affected by fewer challenges than an expeditionary COIN¹⁶ which takes place in a third country.

Putting COIN into action requires much more than a “kill them all”¹⁷ approach. As Stubbs¹⁸ notes, “employing a ‘not-lose’ approach virtually guarantees that the counterinsurgents will not defeat well-supported, armed insurgents”. Yes, an insurgency is a form of war, notwithstanding how unconventional or irregular it might be, and a major component in fighting it is to exterminate those causing troubles; but defeating it is what matters, and not the killing of the insurgents alone. And for that, as Kilcullen¹⁹ notes, it is necessary to go local and respect the non-combatants.

Looking at the points mentioned above, the following aspects can be seen as a common thread between COIN operations wherever they unfold:

14 Ibid.

15 Ibid.

16 Ibid.

17 David Kilcullen, *op.cit.*

18 Richard Stubbs, *op.cit.*

19 David Kilcullen, *op.cit.*

1. The aim of the war is to gain the support of the population rather than control of territory.
2. Most of the population will be neutral in the conflict; support of the masses can be obtained with the help of an active friendly minority.
3. Support of the population may be lost. The population must be efficiently protected to allow it to cooperate without fear of retribution by the opposite party.
4. Order enforcement should be done progressively by removing or driving away armed opponents, then gaining support of the population, and eventually strengthening positions by building infrastructure and setting long-term relationships with the population. This must be done area by area, using a pacified territory as a basis of operation to conquer a neighbouring area.²⁰

Thus, where COIN operations have to be devised in a context-specific manner, there is an evident emphasis on winning hearts and minds which appears to be common to them. Demonstrating that there is more to winning than the number of dead on the adversary's side, I turn to two instances – Hearts and Minds in Malaya and Provincial Reconstruction Teams in Afghanistan – which will highlight the centrality of winning over the population in COIN operations.

COIN IN MALAYA AND AFGHANISTAN

Malayan Emergency and Hearts and Minds

According to Stubbs²¹, what began in 1948 in a “haphazard manner” slowly grew into a full-blown insurgency, involving thousands of insurgents. Spanning over more than a decade–

20 David Galula, op.cit.

21 Richard Stubbs, op.cit.

between 1948 and 1960 – the insurgency in the Malayan Peninsula and the British response to it put in place a combination of direct and indirect approaches to not only fight the insurgents but the defeat the insurgency as well.

The roots of the Malayan insurgency laid at the intersections of many factors.²² One, the Malayan Communist's Party's (MCP) armed wing, Malayan Races Liberation Army (MRLA) along with Min Yuen were emboldened by the successes they had achieved in their fight against the Japanese in Malaya. Two, the successes of the Communists in China further bolstered their faith in their capacity to overthrow the British administration. Finally, their attempts to create a social, moral appeal by tapping into insecurities created by unemployment, low wages, etc. and promises of land reforms in return managed to turn people on its side.

The COIN measures taken to deal with Malayan insurgency evolved in response to the changing requirements of the time. Initially, the insurgency was treated as a law and order problem, dictating measures such as violent crackdowns. The character of COIN operations in the first stage was similar to a “search and destroy”²³ operation which produced little in terms of controlling or stemming the insurgency. In fact, the high-handedness of the colonial administration in dealing with an already disaffected group further alienated the ethnic Chinese population, generating more sympathy for the insurgents as a result. As the perceptible support for the insurgency increased, the intensity of crackdowns went up, forcing the C.H Boucher-

22 Herbert A Friedman. “Psychological Warfare of the Malayan Emergency, 1948-1960”, *The Psywar*, March 7, 2006, <https://www.psywar.org/malaya.php>.

23 Richard Stubbs, *op.cit.*, pp. 101-118.

led²⁴ administration into greater depths of trouble. Apart from the ethnic Chinese who were already disaffected, other ethnic communities felt betrayed as the diversion of resources for tackling insurgency left them with little administrative attention and financial support. Unbridled violence against the insurgency, thus, created a double-whammy of sorts for the British administration.

It was in 1950 that COIN operations in Malaya underwent a change. A diversified mandate under Lieutenant General Harold Briggs saw COIN transition from being solely a force-centric operation to one that involved winning over the disaffected side to deny moral and material support to the insurgency. Central to the Briggs' plan was a realisation that the support base of the insurgent movement had to be eroded. The plan thus, undertook the following actions: (i) resettlement of ethnic Chinese population; (ii) strengthening of administration; (iii) greater coordination and interaction between the various civilian and military agencies; (iv) laying down of access roads, and (v) army's full control over the areas cleared of the Chinese settlements.²⁵

However, there were some operational shortcomings such as lack of coordination between agencies; resettlement issues and security concerns around the new settlements. Then came Oliver Lyttelton, who improved upon Briggs's strategy and recommended six steps to deal with the insurgency: Unified command; reorganisation and retraining of the police; compulsory primary education; high protection to the resettlement areas; enlisting Malay-Chinese for ensuring local security, and most importantly create a new narrative that will

24 Ibid, pp.102-103.

25 Ibid, p. 107.

help in countering the Communist propaganda.²⁶ It was also Lyttelton's plan to make someone oversee the entire operation and be accountable to the government in London. That was to be Lieutenant General Gerald Templer.

Where the previous plans did the spadework, it was with Templer that the hearts and minds approach created discernable outcomes. A part of the success of his plan was located in his prioritisation of welfare and development-centric activities over military actions. The other part stemmed from his emphasis on "seeing peacetime activities and COIN as complementary to each other".²⁷ He saw and used development and welfare as guarantees for security, and security as a facilitator of development and welfare.

Apart from getting the civil administration and police force in order, Templer's COIN operations laid emphasis on counter-propaganda and psychological warfare. He not only gave administrative terminology a more empathetic twist but also used air power in an innovative manner. For instance, the settlements were renamed as 'new villages'. The after-care of these settlements was given a more feel-good nomenclature; it was called 'development'. Similarly, where air power was used for conventional purposes, it was also used to drop leaflets, for broadcasting messages, supply drops, and the like to turn the popular tide in COIN's favour psychologically.²⁸ Unlike what we will see in Afghanistan's case, Templer used a local, C.C. – a Malayan Chinese – for devising the counter-propaganda strategy. After all, defeating an enemy requires that we know what it thinks.

26 Ibid, pp. 108-109.

27 Ibid.

28 Ibid, pp. 109-115.

Gathering local intelligence, especially from “surrendered enemy personnel”²⁹ and promoting local governance and accountability were other critical steps taken by Templer to effectively defeat the insurgency. It is also important to note that the little external support that the insurgent movement received also ensured the efficacy of COIN operations by containing it within a defined area of operation.

Insurgency in Afghanistan and Provincial Reconstruction Teams

Almost 50 years apart and a lot different in nature from the insurgency witnessed in Malaya, the insurgency in Afghanistan presents an interesting case of transformation of conflict from one format to another. When the war in Afghanistan began, it was directed against al Qaeda, a non-state transnational actor that was known to have been given safe space by the Taliban that was running this country. But this war eventually evolved into a COIN operation against the insurgency primarily led by the Taliban. Seventeen years into the so-called war, the insurgency has survived and the COIN operations have not yielded much success.³⁰

The Taliban-led insurgency in Afghanistan continues to persist less so because of its attraction. While there are people in Afghanistan who still lend their “support to the movement”³¹,

29 Ibid, p. 112.

30 Ashley Jackson, *The Taliban's Fight for Hearts and Minds*, September 12, 2018, <https://foreignpolicy.com/2018/09/12/the-talibans-fight-for-hearts-and-minds-afghanistan/>.

31 Michael Semple, “Rhetoric, Ideology, and Organizational Structure of the Taliban Movement”, *United States Institute of Peace*, January 5, 2015, <https://www.usip.org/sites/default/files/PW102-Rhetoric-Ideology-and-Organizational-Structure-of-the-Taliban-Movement.pdf>, p. 29.

a great deal of its presence can be attributed to a combination of the following factors: its strong organisational structure; fear of retribution; external support, and lack of trust in the international COIN forces.³² Although not seen as illegitimate, the apparent inefficiency of the present government in Afghanistan inspires little popular confidence. On the other hand, the Taliban is seen as a quicker dispenser of justice and other services.³³

Afghanistan, unlike Malaya, has been a case of an expeditionary COIN. A major focus of this externally directed mandate has been to promote the transition from an in-conflict to a post-conflict scenario. It was thus required that the development of the state and its people go hand-in-hand with re-establishment of order and security. The Provincial Reconstruction Teams (PRTs) were envisaged as a tool in this respect.

The PRTs evolved from the “Coalition Humanitarian Liaison Cells”³⁴ which were established as part of Operation Enduring Freedom. As *United States Institute of Peace* (USIP) notes, these cells were composed of “a dozen Army Civil Affairs (CA) soldiers staffed these small outposts, dubbed “Chiclets,”...having the task to assess humanitarian needs, implement small-scale reconstruction projects, and establish relations with the UN Assistance Mission in Afghanistan (UNAMA) and nongovernmental organizations already in the field”.³⁵

32 Ibid.

33 Ibid.

34 Robert M Perito, “The U.S. Experience with Provincial Reconstruction Teams in Afghanistan: Lessons Identified”, *United States Institute of Peace*, October 2005, https://www.files.ethz.ch/isn/39612/2005_october_sr152.pdf, p. 2.

35 Ibid.

Before PRTs took shape, they were preceded by Joint Regional Teams³⁶ whose mandate was to promote coordination between various external agencies and the domestic leadership for the promotion of sustainable development. The evolution of the preceding models into PRTs corresponded with the stage in which the conflict was in Afghanistan. They were essentially seen as a post-war reconstruction effort which, in turn, impacted its composition and operations. They doubled up as a COIN measure only in due time since the larger aim with which they worked was to hold the territory and the population from falling into the hands of Taliban once again.

PRTs objectives, largely, centred on: (i) development; (ii) extension of central authority; (iii) security; (iv) improved communication and coordination between actors working towards stabilisation and reconstruction of Afghanistan; (v) improved conditions for reconstruction without adverse impact on the safety of humanitarian workers.³⁷ They were neither entirely security-centric nor were they expected to replicate the efforts of other civilian agencies. They could be seen as force multipliers whose aim was to deliver in the short-term so as to promote long-term confidence in the domestic government.

Unlike Malayan COIN operations, which involved offensive and stability operations at the same time, PRTs did not involve active combat. Security factored in either for protecting the PRT affiliates or for training or reform purposes.³⁸ Having said so, most of the PRTs – those led by the US – continued to be

36 Andrea L. Hoshmand, “Provincial Reconstruction Teams in Afghanistan”, 2005, *University of Maryland School of Public Policy*. <http://faculty.publicpolicy.umd.edu/sites/default/files/fetter/files/students/Hoshmand.pdf>.

37 Ibid.

38 Ibid.

dominated by military personnel, creating friction on the one hand between the civilian and military functionaries within PRTs and on the other between PRTs and humanitarian agencies.³⁹

PRTs also witnessed contextual paradoxes as they progressed. At one level, in cases where the provincial leaders were strong, the role of PRTs in extending the central authority to the provinces either ended up alienating the local leaders or the developmental projects ended up beefing them up in a way that allowed them to gain more distance from the central government.⁴⁰ At another level, the military make-up of PRTs combined with their civilian, developmental tasks, exposed the humanitarian agencies to attacks as it became increasingly difficult to distinguish an unprotected NGO worker from the PRT members. Furthermore, since the task of PRTs did not include “active offense”, they could not come to the rescue of “people outside their unit”.⁴¹

PRTs were also hamstrung by structural challenges. To begin with, PRTs did not have one common framework to work with or guidelines to go by. This not only resulted in disaggregated development between regions but it also created friction both within and between PRTs. Governed by their own national mandates, PRTs refused to borrow best-practices from each other.⁴² They were also affected by the military-heavy nature of their composition which often made developmental tasks secondary. Finally, PRTs were not good at projecting their success. There was an evident lack of information about the work of PRTs and what they achieved; part of which was caused by the absence of area experts and linguists on the teams.⁴³

39 Robert M. Perito, *op.cit.*

40 *Ibid.*

41 *Ibid.*, p. 6.

42 *Ibid.*

43 *Ibid.*

Now disbanded, PRTs introduced practices whose aim was to promote greater military-civilian cooperation in expeditionary insurgencies in concrete, formal and institutionalised ways. Building on the experiments of the past, they improved upon the existing templates and perhaps provided the future with another template to learn from.

DIFFERENT CONTEXT SIMILAR OBJECTIVE

The Development-Security Paradigm, COIN and Conflict Management

Comparing the two cases mentioned above show similarities and divergences. Where the Malayan case had inter-agency coordination under a unified command, the Afghan case lacked inter and intra-team harmony. Similarly, despite also being offensive in their nature, the Malayan COIN measures laid greater stress on welfare activities. That could have been the result of leadership. Where Templer believed in the development-security philosophy, PRTs led by the US (which made up the majority) were stacked with military leaders and as a result could not adopt and implement the welfare-first option well. Information and psychological power of the Malayan COIN operations were stronger than that of Afghan PRTs when compared, and this could in part be attributed to greater familiarity of the British leadership to the situation in Malaya as they were the ruling power then.

Though these two models differed on many levels, they nevertheless demonstrated the centrality of the development-security approach in winning the hearts and minds of those affected by insurgency. Taking place in two different contexts and almost 50 years apart, both the Malayan and Afghan cases were united in their belief that it takes more than just killing the enemy to defeat an insurgency. In their own ways, both

hearts and minds and PRTs became crucial tools in managing the conflict in their respective contexts. While they met with different success and had varying operational dimensions, their essence appeared to be the same. The intent and purpose were to move beyond the search and destroy paradigm to an approach that looks at security and development as two sides of the same coin.

Unlike regular warfare, insurgencies are more insidious. The enemy lines are not clearly drawn and its centre of gravity is more people-oriented both of which make any insurgency fluid and amorphous. As the population becomes the fulcrum of insurgencies, the people directly experiencing conflict and those affected by it at some distance have a moral, physical and economic impact on how insurgencies and COIN unfold. At one level, they become the succour of an insurgent movement to which it alludes for support, at another level population is also made into a literal and metaphorical shield for insurgencies.

The case of Afghanistan has demonstrated the varying uses to which population has been put. The appeal to and use of the domestic population have been central to the sustenance of insurgent operations. In a similar vein, the exasperation of the American audience with what looks like an unyielding war has psychological and material implications for the US-led international efforts against the Taliban. The fact that the American population⁴⁴, at large, is tired of financing the war with men, materiel and money has allowed the Taliban to sit and wait for the expeditionary forces to exit. After all, in the operational universe of insurgencies, to not to make a move and wait out the counter-insurgents is perhaps more yielding than meeting the superior enemy on the battlefield.

44 Max Fisher, "15 Years Into Afghan War, Americans Would Rather Not Talk About It", *The New York Times*, September 20, 2016, <https://www.nytimes.com/2016/09/21/world/asia/afghanistan-war-15-years-americans.html>.

Both the cases have also demonstrated that the operationalisation of the development-security model is more than just military or strategic operations. Since insurgencies, and consequently COIN, are political in their nature, both hearts and minds and PRTs could be effectively read as tools of conflict management. Conflict management, unlike conflict transformation, is not directed towards ending a conflict. Rather, the mandate of conflict management is akin to damage control or troubleshooting, where the emphasis is on controlling the spiralling of violence by creating a more enabling, positive environment for reconciliation. In dealing with conflicts in negative and positive ways, the purpose of conflict management is to mitigate the occurrence of violence through the elimination of its sources and by introducing and reinforcing factors that promote peace. Thus, put this way, the focus is both on getting rid of the roadblocks as well creating and enabling circumstance with the overall purpose of helping in the restoration (and consequently sustenance) of peace.

The steps taken towards conflict management emerge from a unique understanding of the conflict. The essence of conflict management lies in giving a constructive discursive twist to how a situation is understood. “The problem is not the conflicts per se” as Ropers notes, “but the way in which they are managed and resolved”⁴⁵ He further adds, “if we use the terminology of peace in place of the terminology of conflict, then the goal here could be reformulated as the pursuit of a state of “positive peace” in which the absence of violence (“negative peace”) is supplemented by the promotion of social justice, and

45 Norbert Ropers, “Peace-Building, Crisis Prevention and Conflict Management: Technical Cooperation in the Context of Crises, Conflicts and Disasters”, 2002. *Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) GmbH*, <https://reliefweb.int/sites/reliefweb.int/files/resources/4DB1BE036A238660C1256C9C003C442E-gtz-peace-02.pdf>, p. 11.

thus placed on a sustainable and legitimate footing”.⁴⁶ As we can see, the element of reinforcement of positive psychology is important in mitigating a conflict both in its intensity and reach. This, in turn, aligns the priorities of campaigns such as hearts and minds and PRTs with the template of conflict management, making such campaigns potentially effective tools in the management of conflicts.

Going back to the hearts and minds campaign and PRTs, while they alone did not⁴⁷ and cannot⁴⁸ bring about an end to the conflict, both these crucial in their respective environments to *hold* the *cleared* territory in a more sustainable and enduring manner. For instance, in case of the Malayan Emergency, which can be evaluated with the benefit of hindsight, an evident decline was witnessed in the support to MRLA as the COIN operations transited from “counter-terror to clear and hold to optimisation”⁴⁹. According to Hack⁵⁰, “average insurgent strength slumped from 7,292 in 1951 to 5,765 in 1952, while the ratio of insurgent to security force casualties climbed from 3:1 in 1951 to 6:1 in 1952”. The bell-curve of terrorist incidents⁵¹ which had reached its maximum in 1951, corresponding as it was with a substantial increase in the strength of insurgents, came down with the adoption and implementation of COIN

46 Ibid.

47 James Flint, “Assessing the British Counter-Insurgency Effort in Malaya.” *E-International Relations Students*, February 11, 2015, <http://www.e-ir.info/2015/02/11/assessing-the-british-counter-insurgency-effort-in-malaya/>.

48 Peter Viggo Jakobsen, “PRTs in Afghanistan: Successful but not Sufficient”, *Danish Institute of International Studies*, 2005, https://www.files.ethz.ch/isn/19253/PRTs_Afghanistan.pdf.

49 Karl Hack, “Extracting Counterinsurgency lessons: The Malayan Emergency and Afghanistan”, *Open Research Online - The Open University*, 2009, <http://oro.open.ac.uk/19073/2/FD7907A1.pdf>, p. 2.

50 Ibid.

51 James Flint, op.cit.

operations that were equipped to handle both security and development related concerns.

Assessing PRTs in a similar manner is rather difficult, and for many reasons. One, unlike the Malayan case, the conflict in Afghanistan is yet to end. Two, PRTs lacked a pre-identified end-state and which meant that they never had a clear blueprint about who would have followed them as regular development teams once they wrapped up. For all intents and purposes, PRTs were disbanded with no effective, pan-Afghanistan replacement. Three, a clear lack of consensus on the mandate of PRTs meant that there was no common yardstick against which its successes and shortcomings could be judged. The absence of a grand narrative and inter-agency coordination meant that PRTs, at best, created bracketed results, if any. The disaggregated nature of PRTs meant that each donor country could model its PRT the way it liked, and which was often more in sync with the donor nation's priorities than that of Afghanistan. As a result, it became extremely difficult to map out what the PRTs had managed to achieve or not managed to achieve in a comprehensive manner. In fact, given their variegated nature and an absent inter-agency strategic plan, one can still not say with certainty if they, overall, assisted the central government of Afghanistan to extend its authority across the country. Four, it is interesting to note that while PRTs were introduced as part of the larger post-conflict strategy⁵², the basic question about what it was is still not settled. As Luehrs⁵³

52 Nima Asbazzadeh et. al., "Provincial Reconstruction Team: Lessons and Recommendations", *Woodrow Wilson School of Public and International Affairs*, January, 2008, <http://www.princeton.edu/news-and-events/news/item/prts-iraq-and-afghanistan-best-practices-and-lesson-learned-0>.

53 Christoff Luehrs, "Provincial Reconstruction Teams: A Literature Review", Center for Complex Operations, National Defence University, 2009, http://cco.ndu.edu/Portals/96/Documents/prism/prism_1-1/10_Prism_95-102_Luehrs.pdf, p. 96.

notes, the literature on PRTs (both in Afghanistan and Iraq) has shown that the “basic questions concerning PRTs”, such as what they were, what they were meant to do, etc. have thrown up varying results. There is an entire spectrum of responses that these questions have generated essentially because PRTs appeared to work on the principle of each according to its own.

Some authors stress that PRTs should be focused on security (security sector reform, intelligence, force protection), only conduct limited reconstruction, and avoid governance... On the other hand, the International Security Assistance Force has identified discrete lines of operation for PRTs: security, governance, enabling reconstruction, and coordinating with other actors. Beyond such broad mission statements, there is no agreement within the US Government (or between the government and its allies) on how PRTs should be organised, how they should conduct operations, or what specifically they should accomplish.⁵⁴

Finally, since PRTs were put in place in those areas where it was still hostile for humanitarian agencies to operate, independent assessment of the impact of such efforts, proved to be a difficult task. The volatility of the environments in which they worked not only demanded quick fixes – whose impact potential was both limited and ran out faster than large projects but, also that the implementation of bigger developmental efforts could not happen given the brevity of PRTs own lifespan.

Nevertheless, the impact of PRTs was reported from each of their zones in positive and negative terms. “PRTs record inputs such as the numbers and types of staff, and some outputs, such as kilometers of road commissioned and numbers of trainings

54 Ibid.

conducted”.⁵⁵ While still dispersed in their nature to present a clear, big picture, it has been concluded that PRTs have not been impact-less, especially in a positive way. However, limited it might have been, PRTs have managed to “extend the authority of the Afghan government beyond Kabul, facilitated reconstruction and dampened violence.”⁵⁶ In fact, “despite the absence of a consistent set of outcome-based metrics, PRT staff report a positive effect on the environments in which they work. In each capital visited for this research, returned staff suggested that they are able to contribute to both development and security improvements”.⁵⁷

Despite their military-heavy nature, “the primary purpose of creating these outposts was political, but PRTs were also seen as a means for dealing with the causes of Afghanistan’s instability: terrorism, warlords, unemployment, and grinding poverty”.⁵⁸ For instance, “in Nangarhar Province, PRT’s visibility and provision of alternative livelihood programs helped the provincial governor obtain an 83 per cent voluntary reduction in opium cultivation in 2005”.⁵⁹

PRTs were also relatively successful in settling conflicts of interest between the local stakeholders in Afghanistan. Composed of external actors who were believed to have no ethnic or tribal interests and favourites, PRTs were approached for their perceived “bipartisan nature for the settling of disputes”.⁶⁰ A major example in this regard was the settling

55 Nima Asbabzadeh, *op.cit.*, p. 16.

56 Peter Viggo Jakobsen, “PRTs in Afghanistan: Successful but not Sufficient”, Danish Institute of International Studies, 2005, https://www.files.ethz.ch/isn/19253/PRTs_Afghanistan.pdf, p. 4.

57 Nima Asbabzadeh, *op.cit.*, p. 16.

58 Robert M. Perito, *op.cit.*, p. 2.

59 *Ibid.*, p. 6.

60 *Ibid.*

of conflict between two warlords – Mohammad Ata Noor and Abdul Rashid Dostum in 2003.⁶¹ On the welfare front, the role of PRTs is building quick impact development projects managed to create confidence in the local population towards the domestic government as well as the foreign forces undertaking these measures.⁶²

COMPLEX PARADIGMS

The purpose with which this paper began was not to arrive at a general template for COIN operations. While it is hard to miss parallels between COIN operations as they unfold and continue to take shape in different parts of the world, these are not sufficient to put in place a one-size-fits-all model for dealing with insurgency. The cases of hearts and minds in Malayan Emergency and PRTs in Afghanistan demonstrated this.

Taking place in different eras, the challenges faced by the British forces in Malaya and those that were in front of the America-led expeditionary forces in Afghanistan could have been the same in kind but differed massively in degrees. Yes, the purpose was (and is) the same, and which was/is to wrest power away from the insurgents. But this is where the similarities end. Put negatively – not as in bad light – the essence of any COIN operation is to rid the host nation of the insurgency. Like a massive boulder (or boulders) blocking a road, the insurgents are seen as impediments to the attainment of a political end-state; one in which they are either effectively reconciled into the mainstream or are eliminated. How one goes about removing those boulders is determined by a lot of varying environmental factors.

61 Andrea L. Hoshmand, *op.cit.*

62 Robert M. Perito, *op.cit.*

COIN operations are spatially and temporally sensitive. What might have worked in one country need not necessarily, and in fact, most often, do not work in another context. Similarly, what worked in one phase of COIN operations might not have the same level of operability in another phase. These operations are affected by political, economic and social circumstances that are both domestic and external to the host nation. The internal geography of the country as well as its external location have a credible impact on insurgencies, and consequently, on COIN operations. International support to the insurgents, or the lack of it, is of relevance in determining the intensity and the life-span of any insurgency. COIN operations too are impeded or aided by the presence of hostile or friendly neighbours.

While interoperable in some ways, transposing a supposedly successful COIN operation in a context that is qualitatively different from the original case has usually failed. However, this should not limit us from drawing experiential lessons which can refine, if not define, COIN operations. The cases of hearts and minds and PRTs demonstrated this as well.

At the centre of both these COIN operations was an understanding that defeating insurgency takes more than just an attrition in the number of insurgents. Psychological, social, political and economic depletion of strength of the insurgents is equally important, or perhaps more. It is necessary to drain the swamp so as to deny the fish a conducive environment in which they can swim. This can happen when security is understood not in the strategic sense alone. For an insurgency to be defeated, it is necessary to understand and approach security from the vantage points of politics, economics and social equations. The development-security paradigm can, therefore, be understood

as the central tenet, if you may, of COIN operations and the overall objective with which it proceeds.

The importance of this paradigm, as noted above, is also found in the role it can play in the management of conflicts. Since the overall purpose of COIN is to create an environment that insurgents cannot derive material and moral succour from, operations such as hearts and minds and PRTs can help in the containment of the negatives of a conflict and promote positive peace. Psychological persuasion and the creation of an alternative social-economic system are at the heart of such operations, which help in weaning the population off the insurgents who they were dependent on by force or choice.

The potential role that this paradigm can play in mitigating the ills of any conflict lies in the recognition of the complementary roles of development and security. To divorce one from another in the name of strategy has proven to be deficient as we have seen in Afghanistan. The political accents of an insurgency, and therefore of COIN, cannot be ignored for the simple reason that the end-state is the political victory of either side. Therefore, while it is necessary to eliminate insurgencies in its actual number through attrition, this approach is partial and ultimately only a means to the desired end.