

The Kennedy School Review

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COMPREHENSIVE SECURITY: STRATEGIC IMPERATIVES FOR POLICY AND PRACTICE

Human Rights Litigation and Political Intervention
by the Bush Administration
Andrew Kline

The Foreign Intelligence Surveillance Act of 1978 (FISA):
A Tool for Security?
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COMPREHENSIVE SECURITY:

STRATEGIC IMPERATIVES FOR POLICY AND PRACTICE

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EDITORIAL INTRODUCTION

Comprehensive Security: Imperatives for Policy and Practice

When the last volume of the *Kennedy School Review* was published in 2002, the United States was still coming to grips with the impact of terrorism and counter-terrorism. The contributors to the journal acknowledged the shift away from a bipolar and a 'stable' world order. They tried to understand the unipolar but dangerously unstable environment that replaced it. The issue was aptly titled, "Implications of the New World Order." Since then, the context has not changed significantly, but our understanding has. The issue of security, forcefully thrust into prominence upon the world, is still the primary concern of the global community. However, the policy debates are shifting from deliberating simple responses to more nuanced interventions. It is in this spirit that the theme for this volume was selected.

"Comprehensive Security" is meant to reflect the complex relationships that make up the security equation. By defining security in this manner, we attempt to be both inclusive as well as gain analytic purchase. Conceived this way, security is not merely confined to a narrow military definition of threats, but also encompasses the broader concepts of development and human rights as security. We recognize that short-term counter-tactics and rushed responses may have adverse long-term implications. Comprehensive security is a collective effort – no one country or person can be safe unless the rest of the world is secure as well.

This publication brings together the works of selected students at Harvard University's John F. Kennedy School of Government on the subject of comprehensive security. In keeping with the spirit of the theme, the specific topics range from American public opinion to local governance in Indonesia. All of the articles are directly linked to ensuring security at the local and/or international levels.

Terrorism still ranks as a primary threat to international security. Any policy response to this threat requires a clear understanding of the strategies, structures, and operations of the many terrorist organizations. Three articles in this volume analyze various groups that engage in terror tactics – Hurkat-ul-Mujahideen in Pakistan, FARC in Colombia, and the Army of God in the United States. Two articles address timely topics in human rights – the pending case of *John Doe v. ExxonMobil Corporation*, and the US Patriot Act. Two contributors explore the role of public opinion with respect to sending US troops abroad and the importance of strategic adeptness when campaigning for public policy change. The last two articles explore the policy options available in solving intractable conflict issues in the Middle East and in Indonesia.

These articles are not conclusive statements. Instead they are attempts at exploring different aspects of the complex issue of security. Taken together, they point us towards the need for an inclusive definition of security and an incisive analysis to be useful for practical policy recommendations.

ACKNOWLEDGEMENTS

Publishing a journal, like many other activities, involves a joint effort of a number of individuals. To do it at Kennedy School we found was a rewarding experience. It may be impossible to thank by name everyone who has contributed to bringing this issue out successfully. So what we attempt here is, at best incomplete.

A journal is defined by the quality of its content, and as in the past, the Kennedy School students more than lived up to their expectations. Not only those selected, but all those who submitted papers deserve a special mention for enriching the selection process.

We were very fortunate to have three former editors, Andrew Leigh, Catherine Riordan and Jarrett Taubman, who not only handed us a well-oiled machine but also assisted us throughout the process this year.

Maxine Isaacs and Jessica Stern from the faculty and Sheryl Walter, a graduating student, undertook the critical task of reviewing articles in the midst of their busy end of the year schedule. Their comments and inputs were immensely useful in ensuring the quality of the journal.

Balachandiran Gowthaman

Adriana Paasche Dakin

Editors-in-Chief

**HUMAN RIGHTS LITIGATION AND POLITICAL INTERVENTION
BY THE BUSH ADMINISTRATION
ANDREW KLINE**

An Examination of the Pending Case of
Doe et. al. v. ExxonMobil, et. al.
No. 01-CV-1357 (DDC)

This article examines political intervention by the Executive Branch in the pending case of John Doe v. ExxonMobil Corporation. This human rights litigation alleged that ExxonMobil aided and abetted the Indonesian military in the torture, rape and murder of indigenous persons in Aceh, Indonesia. During the course of the litigation, the Bush Administration requested that the federal judge handling the human rights case dismiss the lawsuit for U.S. national security interests. This paper examines whether the stated concerns regarding the course of this lawsuit were in fact critical to the national security interests of the United States. It also brings into question why the Administration became concerned about offending the government of Indonesia. Finally, this paper examines whether the Bush Administration more generally subordinates human rights concerns to commercial interests.

“The Bush Administration, promiscuously invoking the war against terrorism, is using its influence inappropriately to assist an American oil company that has been sued for misconduct overseas. The intervention reinforces the impression that the Administration is too cozy with the oil industry.”

New York Times Editorial Page
August 19, 2002

“It is the height of hypocrisy for the State Department to publicly promote human rights principles for the oil and gas industry and tell a judge that scrutiny of an oil company’s human rights record runs counter to foreign policy.”

Kenneth Roth, Executive Director, Human Rights Watch
August 7, 2002

Human Rights Litigation And The Alien Torts Claim Act

Human rights litigation in the business context has largely focused on corporate social responsibility. While there is probably no one definition of corporate social responsibility, it is commonly understood to mean “business decision-making linked to ethical values, compliance with legal requirements, and respect for people, communities and the environment.”¹ Over the past few years, many corporations have recognized the benefits of conducting a socially responsible business – some have not. In an era of global business, many international companies still argue that they do not bear responsibility for human rights abuses committed on their watch.² Nonetheless, the human rights

community is steadfast in its quest to hold corporations accountable for socially irresponsible business practices.

Litigants alleging international human rights violations have faced significant hurdles in terms of the available legal statutes upon which to rely. In the absence of better guidance from Congress, claimants have largely utilized the Alien Torts Claims Act (hereinafter, the "ATCA") to pursue their causes of action. The ATCA, which was drafted in 1789, gives foreign nationals the right to file civil suits in U.S. courts for injuries caused by a violation of the "law of nations" or a treaty of the United States.³ The first case of international human rights litigation utilizing the ATCA was decided in 1980 by the Second Circuit in *Filartiga v. Pena-Irala*.⁴ Since the *Filartiga* decision, a significant number of lawsuits have been litigated in U.S. courts under the ATCA "alleging international human rights abuses around the world, ranging from political oppression in Ethiopia, to genocide and war crimes in Bosnia, to violence by the Guatemalan military."⁵ Recognizing the need for more specific legislation, Congress passed the Torture Victim's Protection Act (hereinafter, the "TVPA") in 1992. However, that statute is more restrictive than the ATCA. To make a claim under the TVPA, a plaintiff must prove that there was "state action." Moreover, the TVPA is restricted to claims of torture and extra judicial killings, and has a ten-year statute of limitations.⁶ Because these legal standards are sometimes difficult to meet, plaintiffs have continued to file suit under the ATCA.

While the ATCA has been the primary vehicle for bringing legal action in these cases, some have argued that the domestic and international "costs" of this new breed of litigation warrants more specific authorization by Congress. International law expert, Curtis Bradley, argues: "the most significant cost of international human rights litigation is that it shifts responsibility for official condemnation and sanction of foreign governments away from political officials to private plaintiffs and their representatives."⁷ Federal courts have long defined this analysis as the "political question doctrine." This argument has been utilized by defendants in many ATCA cases and has been a fairly effective mechanism by which to seek dismissal.

Another argument against allowing the expansion of international human rights litigation that has been articulated is the danger that U.S. personnel might then be subject to similar lawsuits overseas. (This is one of the reasons that the Department of Justice has been opposed to ceding to the jurisdiction of the newly established international criminal court.) As Thomas Niles of the *Financial Times* has stated,

Consider the death penalty, which is . . . viewed as a serious human rights violation in much of the rest of the world. Suppose a governor from a state that permits capital punishment – or a judge who presided over a case resulting in an execution, or a member of a jury that voted to convict – traveled to a country that asserted jurisdiction over alleged human rights violations abroad. . . . Under the expansive view of such laws now being promoted in U.S. courts, it is entirely possible that such people could be sued . . . and forced to provide restitution.⁸

Notwithstanding some criticism, courts have still allowed limited expansion of the ATCA. On September 18, 2002, the United States Court of Appeals for the Ninth Circuit in California examined the confines of the ATCA in the case of *John Roe v. Unocal*. In that case, Unocal was sued under the ATCA and was accused of aiding and abetting in the utilization of forced labor, rape and murder in the construction of a natural gas pipeline in Burma (Myanmar). Last year, Unocal moved to dismiss the case because it could not be proven that Unocal had “actual knowledge” of the human rights abuses being perpetrated by their employees – soldiers of the Burmese military – who were hired to secure the pipeline. The recent ruling by the Ninth Circuit held that active participation, or even actual knowledge, was not necessary to impose liability. Instead, the Court held that the standard for aiding and abetting under the ATCA is merely “knowing practical assistance or encouragement that has a substantial effect on the perpetration of the crime.”⁹

But, that is not the end of the Unocal story. Interestingly, just prior to the ruling by the Court of Appeals, Unocal sought and obtained a deferral of its trial for the purpose of obtaining an opinion from the Bush State Department as to whether this lawsuit should be dismissed because it would affect U.S. national security interests. What makes this particularly suspect is that this is the second opinion sought by Unocal in this case, as the Clinton State Department already opined that it would *not* affect American foreign policy.¹⁰ One might wonder why the defendants in that case had reason to believe that the State Department under this Administration might have changed its mind. Significantly, a District Court judge in California recently solicited a similar opinion from the Bush State Department in the case of *Sarei v. Rio Tinto*. In that case, Papua New Guinea residents had brought a claim under the ATCA against an international mining group alleging that they aided and abetted the actions of the local military who implemented and maintained a medical blockade, tortured and murdered innocent civilians, bombed civilian targets, and engaged in wanton killings and acts of cruelty. On July 9, 2002, after the Bush State Department opined that adjudication of the claim would negatively impact U.S. foreign relations, the federal judge dismissed the case holding that the “political question doctrine” barred all claims.¹¹

This paper outlines an ATCA case pending in the United States District Court for the District of Columbia alleging human rights abuses committed by persons paid to provide security for the ExxonMobil Corporation. In *Doe et al v. ExxonMobil*, the defendant is being accused of looking the other way while their Indonesian employees conducted systematic and brutal human rights abuses including rape, torture, genocide, and murder.¹² In this case, the Bush State Department has once again asked that a civil suit based on allegations of human rights abuses be dismissed based on the political question doctrine – arguing that this litigation would impact national security.

Although the recent Ninth Circuit decision bodes well for the substantive claims of the plaintiffs in this case, a ruling by Judge Oberdorfer on the State

Department's request is expected imminently, and could result in a dismissal of the case.

Ongoing Human Rights Abuses in Indonesia and U.S. Government Response

Aceh is a small province of Indonesia and has a population of approximately four million people. Although it is largely under-developed, Aceh has extensive natural resources and is responsible for a considerable amount of Indonesian exports. Over the years, factions in the province have tried to obtain independence from Indonesia to be free from what has been perceived as historical oppression by the Indonesian Government.¹³ Beginning in 1989 and ending in August 1998, the Indonesian government, then under the rule of General Suharto, designated Aceh as a "military operations area" and ordered the military to occupy the province. Although separatist movements had been estimated at about 2,000 people, the military presence there exceeded 30,000 troops. During this nine-year period, numerous egregious human rights abuses by the Indonesian military were well documented, including genocide, torture, rape, murder, and the kidnapping of thousands of civilian villagers who were not connected to the separatist movement.¹⁴

The United States government has hardly been deaf to these claims. For the last decade, Congress has placed restrictions on military assistance to the Indonesian military in the Foreign Operations Appropriations Bill because of documented human rights abuses. In addition, language demanding a demonstrated commitment to accountability by members of the armed forces responsible for human rights violations in Indonesia has been routinely included in that bill.¹⁵

Moreover, numerous high-ranking U.S. government officials in the Legislative and Executive Branch have been critical of Indonesia's progress toward reform. Last year, the Bush Administration's Ambassador-nominee to Indonesia said, "[w]e cannot ignore the human rights abuses by many TNI [Tentara Nasional Indonesia, the national armed forces] members and the lack of accountability for those abuses. Legislative restrictions on U.S. interaction with the Indonesian military are an important reminder to Indonesian leaders and its military of the importance of human rights issues to the world in general and to the United States in particular."¹⁶ Similarly, in written testimony to the House of Representatives in June 2001, James Kelly, Assistant Secretary of State for East Asia, reiterated the Administration's hard-lined position stating, "[t]o date, the government of Indonesia has not met the requirements ... in pursuing accountability for human rights abuses ... [w]e will continue to make clear to the [Indonesian military and government] that a return to normal mil[itary] to mil[itary] relations would require meeting th[ose] conditions."¹⁷ In remarks during a Senate Appropriations markup of this year's Indonesian Foreign Operations Bill, Senator Leahy voiced his opposition to amending the bill's restrictions, stating: "If the Indonesian army shows that it wants to reform – which even the Pentagon concedes it has not done – then it will be time to pass this amendment. Until then, we are kidding ourselves the way that we did for 47 years."¹⁸

With members of Congress and the Bush Administration both denouncing the Indonesian military's human rights record, it has been clear that it is the stated policy of the United States Government to directly and forcefully address Indonesia's human rights abuses – notwithstanding the possibility of any national security implications.

Doe v. ExxonMobil and Political Intervention by the Bush Administration

ExxonMobil is in the business of exploring and developing oil and natural gas in Aceh, Indonesia.¹⁹ Upon discovering the natural gas field in 1971, then-Mobil Oil contracted with the Indonesian Government, which at that time was controlled by the brutal military regime headed by General Suharto, to obtain exclusive rights to explore for and produce natural gas in Aceh in exchange for providing the Suharto family with shares of stock, as well as other forms of payment.²⁰

On June 11, 2001, the International Labor Rights Fund filed a lawsuit on behalf of eleven villagers in the Indonesian Province of Aceh. The suit was filed in the District Court for the District of Columbia against the ExxonMobil Corporation. In their complaint, plaintiffs allege that ExxonMobil paid and directed Indonesian security forces to guard their complex and that those forces committed serious human rights abuses including genocide, murder, torture, crimes against humanity, sexual violence, and kidnapping in the course of protecting ExxonMobil's operations. Among other things, it has been alleged that ExxonMobil constructed military barracks located near the natural gas extraction facilities that were used by Indonesian military forces to interrogate, torture, and murder civilians suspected of engaging in separatist activities.²¹

The plaintiffs' claims are based on violations of the ATCA, the TVPA, various international human rights laws, and the statutory and common tort law of the District of Columbia.²² Each plaintiff is a citizen of Aceh and their identities have been withheld to protect their safety. It is alleged that one plaintiff was beaten severely about the head and body by soldiers assigned to protect ExxonMobil. The soldiers then tied his hands behind his back, blindfolded him, and took him to the barracks built by ExxonMobil. There, the soldiers tortured him (while blindfolded) for three months. After they released him, they showed him a pit of human skulls and threatened to add his head to the pile. They then burnt down his house. Another plaintiff asserts that he was riding to a refugee camp which houses people who have been displaced by the destruction of their homes by the ExxonMobil security forces. As he approached the camp, ExxonMobil guards shot him in three places. The soldiers then took him to a military camp where they tortured him for approximately one month – breaking his kneecap, smashing his skull, and burning him with cigarettes. The remaining plaintiffs have similar horrific stories of murder, torture, genocide, and rape.²³

On May 10, 2002, after the defendants filed a motion to dismiss the lawsuit based, in part, on the political question doctrine, Judge Luis Oberdorfer asked the State Department to comment on whether they had a non-binding opinion as to whether adjudication of the case would impact adversely on interests

of the United States. On July 29, 2002, the State Department's Legal Advisor, William Taft, replied to Judge Oberdorfer and argued that the adjudication of the lawsuit would risk an adverse impact on significant interests of the United States. William Taft asserted in pertinent part:

Indonesia react[s] most negatively to any perceived intrusion into areas of ... sovereignty. We anticipate that adjudication of this case will be perceived ... as a U.S. court trying the GOI for its conduct of a civil war in Aceh. All of the human rights abuses ... refer to conduct claimed to have been committed by the military and police forces of the GOI. This issue presents special sensitivities for Indonesia because it is deeply concerned about maintaining national cohesion in the face of strong anti-government secessionist movements. ... The Indonesian response ... could impair cooperation with the U.S. across the full spectrum of diplomatic initiatives, including counter-terrorism, military and police reform, and economic and judicial reform.²⁴

This political intervention by the Bush State Department presents two questions. The first is whether Legal Advisor Taft's stated concerns regarding the course of this litigation are vital or merely peripheral to the national security of the United States. While it would be difficult to dispute that it is important to our national security interests to maintain diplomatic relations with Indonesia, it is hard to believe that this lawsuit could affect the national security of the United States in a profound way.

But the larger question is why the Administration is so suddenly concerned about offending the government of Indonesia. First, the Suharto government, which perpetuated the challenged actions, is no longer in existence. Moreover, since September 11, 2001, U.S. courts have continued to hear claims involving the government of Indonesia, including litigation against Indonesia's state-owned oil and gas company, without intervention by the State Department.²⁵ Similarly, in one recently decided case involving human rights abuses in Indonesia, a default judgment was entered pursuant to the ATCA against an officer of the Indonesian military – without State Department intervention.²⁶

ExxonMobil asserts that in the past “wholly unjustified criticisms in the United States Congress of Indonesia's record on human rights abuses has resulted in both cancellation of F16 fighters and withdrawal from U.S. military training programs.”²⁷ But, the Supreme Court has ruled that, “the fact that the issues before us arise in a politically charged context does not convert what is essentially an ordinary tort suit into a non-justiciable political question.”²⁸ The Court has held that in order to determine whether a claim raises a political question, courts should consider the following factors: 1) the existence of any demonstrable constitutional commitment of the issue to a political department; 2) a lack of judicially discoverable and manageable standard for resolving the claim; 3) the impossibility of deciding without an initial, non-judicial, policy determination; 4) the impossibility of a court's undertaking independent resolution without expressing lack of respect for the coordinate branches of government; 5) an unusual need for

unquestioning adherence to a political decision already made; and 6) the potentiality of embarrassment from multifarious pronouncements by various departments on one question.²⁹ Applying this test, it is difficult to imagine a scenario by which ExxonMobil could plausibly argue that they have rationally established that a non-justiciable political question exists.

As Kenneth Roth, Executive Director of Human Rights Watch stated: “In its annual Country Reports on Human Rights Practices, the State Department for years has reported on serious and widespread abuses by the Indonesian security forces in Aceh. Consistent with the central role that promoting human rights has long played in U.S. foreign policy, we believe that judicial inquiries into recognized abuses in Aceh, and whether ExxonMobil was complicit in them, are in no way inconsistent with U.S. policy interests.”³⁰

On December 1, 2002, the *New York Times* reported that an Indonesian human rights court acquitted four former security officials on charges of crimes against humanity in East Timor. The report indicates that the Bush Administration had pressed Indonesia for convictions that would hold the military accountable, and that Administration officials have said that the United States will not resume full military ties to Indonesia until the military shows some progress toward reform.³¹

Given that the United States Congress and the Bush Administration have already forcibly demanded that Indonesia hold its military accountable for the human rights abuses that have plagued that country, and the Bush Administration has not intervened with other similarly situated cases, it is difficult to understand how it is that the United States’ national security interests would be profoundly affected by the outcome of this lawsuit. For these reasons, one cannot help but wonder whether the Bush Administration is intervening to help ExxonMobil because they were second only to Enron in campaign contributions in the last election cycle, or perhaps because ExxonMobil donated \$100,000 to President Bush’s Inaugural Fund.³² Whatever the reason, it is hypocritical for this Administration to suggest that human rights atrocities – which paid employees of an American corporation are known to have conducted – should be ignored under the guise of “national security” and “economic reform.” This country was founded on principles and the rights of the individual, and we cannot ignore human rights abuses – whether they are being committed under the watchful eye of an American corporation, or by a government whose practices we so proudly profess to abhor.

Responses From the Human Rights Community

Does this Administration subordinate human rights concerns to commercial oil interests? In an August 26, 2002 letter to Secretary Powell by a conglomerate of human rights groups, concern over the State Department’s intervention was strongly articulated. In that letter, the groups collectively asserted that it was “particularly stunning to read the State Department’s bold assertion that the lawsuit would actually ‘diminish’ the ability of the U.S. to ‘promote human rights’ in that country, and would hinder our efforts against

terrorism. . . . [we] view such a response from the State Department as an act that clearly subordinates human rights concerns to commercial interests.”³³ Their concerns appear to be well founded. Last month alone, the Bush Administration took steps to curb air pollution regulations on industry, opened a national park in Texas to natural gas drilling, and continued in its lobbying effort to open the Arctic National Wildlife Refuge to oil drilling – marking the beginning of a new era of environmental degradation.

Director of Business and Human Rights for Human Rights Watch, Arvind Ganesan, weighed in and stated that the State Department’s intervention had “no basis in fact.” He opined that the State Department should have taken a neutral position, and predicts that the outcome probably won’t be good for human rights advocates. He also aptly pointed out that the position taken by the State Department is “inherently contradictory,” because a dismissal of this sort would never stand in a court of American public opinion if the human rights atrocities had occurred in the United States.³⁴

ExxonMobil’s Response

It is significant to note that on February 20, 2001 the U.S. State Department issued the “Voluntary Principles on Security and Human Rights.”³⁵ These principles were developed along with the United Kingdom, companies in the extractive and energy sectors, and human rights organizations. The principles were designed to guide companies in maintaining the safety and security of their operations within an operating framework that ensures respect for human rights and fundamental freedoms. ExxonMobil waited until June 2002 to sign these principles.

ExxonMobil continues to fight the legal battle on all fronts. In a press release dated August 13, 2002, the oil giant argues that “there is no claim of direct wrongdoing by ExxonMobil,” and that “the case should be dismissed under well established precedent which recognizes the constitutional principle that matters of foreign affairs should be handled by the political branches of government.”³⁶ Interestingly, in the same press release, ExxonMobil admits having knowledge of the violence in Aceh. In a subsequent telephone interview with ExxonMobil legal counsel, Paul Wright, he reiterated the company line.³⁷ However, Wright did acknowledge that the recent Ninth Circuit decision dilutes ExxonMobil’s argument that there was no “direct wrongdoing” on the part of ExxonMobil. The question remains whether plaintiffs can prove that ExxonMobil knowingly assisted or encouraged the Indonesian military, and that those actions had a substantial effect on the perpetration of the crimes alleged. Of course, that question will be moot if the case is dismissed pursuant to the political question doctrine.

Policy Prescriptions

It is time for Congress to consider passing a law that would allow foreign nationals to file suit in U.S. courts without the confines of the TVPA, or the ambiguities of the ATCA. To date, Congress has not enacted specific legislation authorizing suits to enforce the International Covenant on Civil and Political Rights – enacting such legislation would be a good start. The new statute should eliminate any statute of limitations for murder or genocide, as there is no such statute of limitations for such crimes in this country. Until that time, human rights advocates must be resourceful and remain vigilant in their quest for justice utilizing the ATCA. It may also be a good time for the Supreme Court to review the line of cases that have relied on the ATCA, including the Ninth Circuit's decision in the Unocal case. In addition to examining the legal requirements of "aiding and abetting" presented in that case, the Supreme Court could clarify whether the ATCA is being utilized as Congress originally intended.

It is time for ExxonMobil to abide by the Voluntary Principles on Security and Human Rights. They should begin by employing private security firms in regions where human rights abuses by the military have been documented. *Armorgroup* is a good example of a security firm that specializes in protecting large assets in dangerous regions worldwide. Armorgroup also supports the Voluntary Principles on Security and Human Rights, subscribes to the Code of Conduct of the International Red Cross and Red Crescent Movement, and is a United Nations approved supplier.³⁸ ExxonMobil should make certain that whatever firm that they decide to hire adheres to international standards of decency regarding ethical conduct and human rights, as well as the laws and professional standards of the country in which they operate. ExxonMobil should also do more to ensure that they are conducting socially responsible business practices in general. They could start by hiring a team of inspectors who will be responsible for investigating human rights complaints at their installations worldwide. These investigators could be comprised of ExxonMobil employees, but would need to work with human rights NGOs and representatives of the host government to ensure that everyone's interests are met.

And, it is time for the Bush Administration to start speaking with one voice. If this Administration truly believes that suits like *Doe v. ExxonMobil* will profoundly affect the national security interests of the United States, then they should not publicly condemn the Indonesian government for the same actions as those alleged in plaintiffs' complaint. If the Administration believes that the documented human rights abuses are inexcusable, then they should continue with their public condemnation and allow the courts of the United States to do their job without political interference.

¹ "Introduction to Corporate Social Responsibility," *Business for Social Responsibility*, [online: web] cited 11 Nov 2002.

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- ² Arvind Ganesan, "Business and Human Rights – The Bottom Line," Human Rights Watch, [online: web] cited 12 Nov 2002.
URL: <http://hrw.org/advocacy/corporations/commentary.htm>.
- ³ Judiciary Act of 1789, ch. 20, Section 9(b), 1 Stat. 73, 77 (1789).
- ⁴ *Filartiga v. Pena-Irala*, 630 F.2d 876, 2d Cir. 1980.
- ⁵ Curtis Bradley, "The Costs of International Human Rights Litigation," *Chicago Journal of International Law*, 2 Ch. J. Int'l. L. 457 (Fall 2001).
- ⁶ Torture Victim Protection Act of 1991, codified at 28 U.S.C. Section 1350 (1994).
- ⁷ Bradley, *ibid*.
- ⁸ Thomas Niles, "The Very Long Arm of American Law," *Financial Times* 5 November 2002, [online: web] cited 25 Nov 2002.
URL: <http://www.globalpolicy.org/intljustice/atca/2002/1105arm.htm>
- ⁹ *John Roe v. Unocal*, D.C. No. CV-96-06112, 18 Sep 2002.
- ¹⁰ Bruce Zagaris, "U.S. asks US Court to Stop Human Rights Suit by Indonesian Villagers Against Exxon Mobil for Counter-Terrorism Purposes," *International Enforcement Law Reporter*, Oct 2002, cited 13 Nov 2002 URL: <http://www.globalpolicy.org/wtc/analysis/2002/1000exxon.htm>
- ¹¹ *Sarei v. Rio Tinto*, 221 F.Supp.2d 1116 (C.D. CA 2002).
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- ¹³ Plaintiff's Complaint, filed 11 Jun 2002 by the International Labor Rights Fund, [online: web] cited 19 Nov 2002. URL: <http://www.laborrights.org>
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URL: <http://www.hrw.org/backgrounder/asia/indo-bck-sept0.htm>.
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URL: <http://leahy.senate.gov/press/200207/071802a.html>
- ¹⁹ Plaintiff's Complaint, *ibid*.
- ²⁰ Plaintiff's Complaint, *ibid*.
- ²¹ Plaintiff's Complaint, *ibid*.
- ²² Zagaris, *ibid*.
- ²³ Plaintiff's Complaint, *ibid*.
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THE FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978 (FISA): A TOOL FOR SECURITY? MATTHEW WHITEHEAD

Throughout history there is a struggle between the duty of the government to 'provide for the common defense' and 'protect individual civil rights' in the pursuit of national security. One change made to the Foreign Intelligence Surveillance Act by the USA Patriot Act is a continuation in the struggle between a State's duties and the individual's rights. The story of the change to the FISA act is an excellent example of this struggle to rectify the balance between duties and rights in a collective society.

A part of the fallout from the September 11th terrorist attacks has been a renewed debate on the balance between individual rights and the needs of collective security. Significant changes in how the government fulfills its duty of providing security to the public have been made over the past year. A significant portion of those changes are embodied in the USA Patriot Act, passed and signed into law on October 26, 2001 by President Bush. The USA Patriot Act was a large piece of legislation that impacted many governmental functions. One impact, covered in Section 218 of the Act¹, amended one portion of the Foreign Intelligence Surveillance Act (FISA) of 1978.

Although the Patriot Act made other changes to the FISA act, it was Section 218 that has proved to be the most controversial. Section 218 changed the requirement for a FISA warrant; prior to the change "the purpose" of the warrant had to be about intelligence gathering, now only "a significant purpose" would be sufficient. The change impacted the Fourth Amendment to the Constitution of the United States, dealing with unreasonable search and seizure. Since the FISA was enacted as a response to gross civil rights abuses, any understanding of the present civil rights debate must begin with an understanding of the original debate, what the FISA act has accomplished over the years and the shortcomings in its implementation.

The Foreign Intelligence Surveillance Act of 1978 (FISA)

Origins

The origins of FISA date back to the early part of the Cold War during the 1950's "Red Scare". Citizens of the United States became the subject of surveillance from the Federal Bureau of Investigation (FBI) and the Central Intelligence Agency (CIA) for suspicion of being communist subversives. The surveillance was conducted in the name of national security and not criminal investigation; therefore court orders were not needed to conduct the surveillance under the law that existed at the time.²

The surveillance expanded during the 1960's under J. Edgar Hoover, then director of the FBI. Files on millions of Americans, including prominent members of the civil rights movement, were kept. Information gained was

sometimes used to “smear” political adversaries of the government’s policies. The abuses continued into the 1970’s, during the Watergate investigation, when the Nixon Administration illegally used the government’s surveillance powers against its political opponents.³

The Senate’s Church Committee, led by Senator Frank Church of Idaho, investigated the excesses and abuses of the intelligence community during the 1950’s and 60’s.⁴ The Church Committee made two important recommendations that governed the surveillance of American citizens for reasons of national security: the establishment of the Office of Intelligence Policy and Review (OIPR) in the U.S. Department of Justice (DOJ) and enactment of the FISA under which the Foreign Intelligence Surveillance Court (FISC) was created.⁵ It was sponsored by Senator Edward Kennedy of Massachusetts, and signed into law by President Jimmy Carter on October 25, 1978. The intent of the FISA act was to place limits upon domestic surveillance conducted in the name of national security, including the requirement that court orders be issued before such surveillance could be conducted (Note: FISA applies only to domestic surveillance and not to overseas activities).

The Foreign Intelligence Surveillance Court

The FISC was originally a seven-member court (expanded under the Patriot Act to eleven members). The members are federal judges who serve on a rotating basis, and are appointed by the Chief Justice of the Supreme Court to a non-renewable seven-year term.⁶ The FISA appeals court has three members, also appointed by the Chief Justice. The court meets in a secret, secure courtroom on the top floor of the Department of Justice.⁷ All proceedings and judgments are secret, although the court can decide to make any findings public. It is therefore a non-adversarial court. Only the government appears before the court. The court’s rulings and information gained from the surveillance are not required to be disclosed to the suspect, even in a criminal court.

The FISA act requires that all surveillance conducted by intelligence gathering agencies of the government inside of the United States for the purposes of national security be court-ordered. Put simply, the intelligence community now had to get a “warrant” to conduct surveillance inside of the United States, and the court was responsible for regulating government’s power to spy domestically.⁸

In order to get court approval, two criteria were established in the FISA act: first that there was “probable cause” to believe that:

The target of the electronic surveillance is a foreign power or an agent of a foreign power: Provided, That no United States person may be considered a foreign power or an agent of a foreign power solely upon the basis of activities protected by the first amendment to the Constitution of the United States.⁹

And second that the “purpose of the surveillance be to obtain foreign intelligence information”.¹⁰

These two criteria protect citizens in several important ways. First, the court demands a standard of evidence, “probable cause” that the subject of the surveillance is an “agent of a foreign power” (governments, terrorists groups, etc...) ¹¹. The government cannot conduct surveillance just because it wants to; it must show evidence supporting the claim that the person is “an agent”. What is significant is what the government does not have to show: criminal intent or activity. Under a normal Title III search warrant used in criminal courts, the government must show “probable cause” that the suspect has conducted criminal activity or has criminal intent; it is not enough to suspect that they are likely to be criminal. The FISC does not require this higher standard because the surveillance is being conducted solely for intelligence purposes, not for criminal prosecution. Additionally, when writing the FISA, lawmakers acknowledged the differences and difficulties posed in spying on spies. ¹²

The second significant protection for “United States person[s]” ¹³ (note: it is not limited to only US citizens) is that the government cannot seek a court order solely based upon a person’s activities protected by the First Amendment. This protection was written in direct response to government surveillance of anti-war activists and civil rights activists during the 1960’s and 70’s. It protects persons from government surveillance despite any controversial statements they might make. It is the last limitation on the government’s power that has been the root of controversies, failures and subject of amendment under the USA Patriot Act of the original FISA act. Prior to the change, the DOJ had interpreted that “the purpose” (as written in the original FISA act) of FISC warrant had to be the “primary purpose” (as interpreted by the DOJ), a more restrictive interpretation than “a significant purpose” (as written in the Patriot Act). The concern is that with the change made from “the purpose” to “a significant purpose” the government can once again use its considerable intelligence gathering capabilities for purposes mostly unrelated to intelligence gathering.

The FISA act limits the reasons for surveillance. It can be invoked only for “the purpose...to obtain foreign intelligence information.” This prohibits the government getting a court order under the FISA for reasons primarily relating to a criminal investigation or prosecution (although information gained from a FISC warrant can be used in prosecution, the initial purpose could not be for criminal prosecution). This has been subsequently interpreted by the FISC and the OIPR to mean that any information flowing from the intelligence community to the criminal community must be approved by the OIPR (note: the FBI contains both intelligence and criminal divisions). Conversely, it prohibits prosecutors and criminal investigators from talking to intelligence agents to suggest, direct or control FISA surveillance. This restriction holds true even if during a legal criminal investigation foreign intelligence information is uncovered; criminal investigators are barred from passing this information to the intelligence community. This limitation on government power is often referred to as “the wall” or “the bright line” between the criminal and intelligence communities. ¹⁴

The reason for “the wall” is that the standard of evidence used to grant a FISA surveillance is lower than that needed for a normal Title III search warrant or wire tap used by criminal prosecutors and investigators. ¹⁵ The FISA law was

specifically designed not to allow criminal prosecutors from getting the easier to obtain FISA order in a criminal case and thereby bypassing the protections under the Fourth Amendment.¹⁶

The Office of Intelligence and Policy Review

If the FISC is secretive and less known, the Office of Intelligence and Policy Review (OIPR) is even more obscure. Created in 1978 along with the FISC, OIPR is a part of the Department of Justice (DOJ). It was created, along with the FISC, to help prevent excesses in government surveillance.¹⁷ The office serves two major functions. First, it provides guidance and advice to the DOJ and FBI regarding FISC surveillance requests. The office is to facilitate field investigator's efforts to get a FISC order, and provide advice and direction to that end.

Its second function is to act as a scrupulous "gatekeeper" for all FISC requests. The office is charged with ensuring that such requests meet the standards of the FISC to an exacting degree.¹⁸ The purpose for this high bar is two fold. The first reason is to maintain credibility with the FISC. The second reason is more obtuse, yet very critical. Its job is to be the "brake on the system" in a non-adversarial court like the FISC. According to Steven Aftergood, an intelligence expert with the Federation of American Scientists, "In the absence of any adversarial process, it is important OIPR be as scrupulous as it can be. The idea that they should simply serve as a conduit to the court is unsatisfactory."¹⁹ Kenneth Bass, a former head of OIPR further explains this role of the office, "Is OIPR a brake on the wheel? Yes. Is it supposed to be? Yes. When you are a prosecutor or an investigator zealously doing your job, it's easy to get a narrow view of the world. OIPR is part of a system of checks and balances."²⁰

Trouble with "The Wall"

Four cases, and the troubles associated with those cases help one to fully understand the rationale for the changes to the FISA act made by the USA Patriot Act.

Aldrich Ames

Aldrich Ames was a CIA agent, who in 1994 was arrested and later convicted of spying for Russia and the Soviet Union. His arrest and prosecution was in part due to contact between the intelligence community and the DOJ Criminal Division. In 1995, Richard Scruggs, the then-director of OIPR, contacted the then Attorney General Janet Reno. He was concerned about what he considered to be improper contacts between the FBI and prosecutors. "Word" got out to field agents that there would be no further contacts between prosecutors and FBI agents dealing with foreign intelligence information without explicit OIPR permission.²¹

The fallout in the FBI was significant. According to Steven Aftergood, "One of the major criticisms of OIPR is that it is too demanding in its review of applications. Some FBI agents don't bother trying to submit applications to OIPR because they don't believe OIPR will forward them to the court." During recent Congressional hearings about the September 11th attacks, one FBI agent testified that "...past criticism of some FBI warrant applications as inaccurate has had a "chilling effect," discouraging others from seeking warrants."²² Even more troubling, "according to career Justice Department official Marc Richard, FBI agents were warned that it was a "career stopper if you're wrong" about contacting the Criminal Division."²³ The fall out of the case was that communication between the intelligence community and the criminal division had begun to break down.

Wen Ho-Lee

The high profile espionage case against Wen Ho-Lee, and the subsequent FBI and DOJ mishandling of the case, further illustrated some of the problems with the FISC and OIPR system. The report on the failures involving the case, known as the Bellows report (written in 2000), highlighted the problems between OIPR, the DOJ criminal division and the FBI intelligence division. The report stated that the relationship was "Dysfunctional . . . broken . . . [and] strained."²⁴ OIPR had prevented information gained by FBI agents from being passed along to prosecutors. This breakdown in communication was one of the proximate causes of the mishandling of the case. The report stated that, "Unfortunately, the practice of excluding the Criminal Division . . . was not an isolated event confined to the Wen Ho Lee matter. It has been a way of doing business for OIPR."²⁵

Khalid al-Midhar

Testifying before Congress, a New York based FBI agent explained how he had been ordered by FBI headquarters in Washington not to track a man named Khalid al-Midhar. The reason cited for not tracking al-Midhar was that the CIA had told the FBI that he was an al-Qaeda operative. The agent was forbidden from launching a criminal investigation based upon information gained through foreign intelligence, even though there is nothing in the FISA act that would have prohibited it (but the culture was to not test "the wall"). So the FBI agent did not track al-Midhar. Thirteen days later, on September 11th, al-Midhar helped ram a jet liner into the Pentagon.²⁶

Zacarias Moussaoui

Zacarias Moussaoui, the alleged 20th hijacker, was detained in Minnesota weeks prior to the September 11th attacks while trying to get flying lessons. The FBI had been alerted by French intelligence that he was a terrorist who had been living in Paris recruiting for Chechen terrorist organizations, in addition to a warning from a flight school that was suspicious of Moussaoui's

activities. When Minnesota field agents requested that FBI Headquarters ask OIPR to apply to the FISC for a FISA warrant to search Moussaoui's personal belongings, FBI headquarters denied the request. They maintained that there was not enough evidence that Moussaoui was an "agent of a foreign power" (terrorist organizations are considered foreign powers under FISA²⁷). One difficulty cited with proving Moussaoui's status was because the State Department had not listed Chechen separatists as an official terrorist organization, along with doubts about the FBI's ability to prove that he was "an agent of a foreign power". Minnesota agents tried for weeks to prove that Chechen separatists were linked to al-Qaeda, an effort one agent called "a wild goose chase."²⁸ The FBI supervisor in Minnesota pressed the case because he was concerned that Moussaoui would "take control of a plane and fly it into the World Trade Center."²⁹

What is important to note about the Moussaoui case, is that it was not OIPR or the FISC that turned down the Minnesota request, it was FBI headquarters. Apparently, attorneys at the FBI believed that it was a FISA requirement that terrorist organizations must be officially recognized by the State Department to qualify as a "foreign power" under FISA (it is one way, but not the only means to show "foreign power"). No such requirement exists. However, there was also a cultural problem. "While technically it was FBI headquarters, not OIPR, that refused to seek a FISA warrant for Moussaoui, the presumption is that the FBI did not bother trying because OIPR has set the bar for seeking surveillance too high."³⁰

September 11th Fallout

The USA Patriot Act

Over the decades since the passage of the FISA act, the FISC continually defined and interpreted the requirements of the FISA act and the activities it regulated more and more narrowly. Following the court's lead, the DOJ, FBI and OIPR raised the bar on applying for a warrant to the court; the corporate culture was changing. More deference was given to OIPR's duty as the "watch dog" and as the "brake on the system". This was not wholly unwarranted, given the government's past history of excess and abuse and the purposes for which the FISA act was enacted. Given what was learned in the post September 11th hearings and the Bellows Report, Congress decided that the pendulum had swung too far, and the wall had been constructed too high. It was the above chain of events and the September 11th attacks that prompted the White House, DOJ and Congress to work together and amend the FISA act under The USA-Patriot Act.

The changes made in the USA Patriot Act under Section 218 are very simple. 1804(a)(7)(B) of the FISA act was changed from "the purpose" to "a significant purpose".³¹ The change now allows for the primary purpose of a FISC warrant to be something other than intelligence gathering, meaning it could include criminal purposes. The change makes it easier for FISC searches and surveillances to have multiple purposes, allowing for intelligence and criminal investigators to cooperate, share information, and help direct each other's efforts.

To limit the government's power outside of the present emergency, Congress put a sunset clause on Section 218 for four years. In four years, the change can be reviewed to see how it has worked before the changes are made permanent.

In written statements for the record in Congress, several Senators spelled out the rationale for the changes.³² First, that the modern terrorist threat was inherently both a threat of a foreign power and a criminal threat. Second, because of the nature of the new threat and the narrow interpretation of the FISA act, intelligence and criminal investigators needed to work more closely together.

It was apparent that the existing court interpretation of the FISA requirement of "primary purpose" impeded the sharing and coordination of information between criminal and intelligence investigators on foreign terrorists... Congress chose the word "significant" purpose to replace the existing FISA requirement of a "primary" purpose. By this we intended that the purpose to gather intelligence could be less than the main or dominant purpose, but nonetheless important and not de minimis. Because a significant purpose of gathering foreign intelligence was not the primary or dominant purpose, it was clear to us that in a FISA search or surveillance involving multiple purposes, gathering criminal evidence could be the primary purpose as long as gathering foreign intelligence was a significant purpose in the investigation.³³

Lastly, due to the decentralized, leaderless network of modern terrorism, terrorists were more difficult to identify as "agents of a foreign power". In effect, Congress was saying that the wall needed to be lowered. One word deleted, two words added; a small change in words that has carried with it huge legal ramifications.

Department of Justice's "Intelligence Sharing Procedures"

On March 6, 2002, Attorney General John Ashcroft submitted the DOJ's new "Intelligence Sharing Procedures".³⁴ This guidance outlined new DOJ's policies concerning the communication, information flow and control of surveillance operations between the intelligence and criminal investigators. The procedures embodied the new powers granted under the USA Patriot Act. The procedures were submitted to OIPR and forwarded to the FISC.

In secret hearings later that spring, the FISC ruled that the new DOJ procedures were illegal.³⁵ The court said,

Law enforcement officials shall not make recommendations to intelligence officials concerning the initiation, operation, continuation or expansion of FISA searches or surveillances. Additionally, the F.B.I. and the Criminal Division of the Department of Justice shall ensure that law enforcement officials do not direct or control the use of the FISA procedures to enhance criminal prosecution, and that advice intended to preserve the option of a criminal prosecution does not inadvertently

result in the Criminal Division's directing or controlling the investigation using FISA searches and surveillances toward law enforcement objectives.³⁶

The court further mandated that all meetings between the FBI and members of the Criminal Division of the DOJ be chaperoned by OIPR. In essence, the court upheld the narrow interpretation of the FISA act and the high wall erected over the past two decades.

In August 2002, The Department of Justice appealed the FISC decision in the first ever hearing of the FISC Review Court. Their ruling was released on November 18, 2002. The Review Court sided with the Department of Justice. The court criticized the lower court, stating:

The "wall" emerges from the court's *implicit interpretation of FISA*. The court apparently believes it can approve applications for electronic surveillance only if the government's objective is not primarily directed toward criminal prosecution of the foreign agents for their foreign intelligence activity. But the court *neither refers to any FISA language supporting that view, nor does it reference the Patriot Act amendments*, which the government contends specifically altered FISA to make clear that an application could be obtained even if criminal prosecution is the primary counter mechanism. . .³⁷

The Review Court points out that the FISA law states that the purpose of a FISA warrant must be for "foreign intelligence information", but FISA does not exclude criminal prosecutor's involvement when prosecuting foreign agents for their illegal foreign intelligence activities. In essence, the FISC and OIPR, following the FISC lead, had erected a high wall where one was never explicitly stated, nor where one was intended to be. Furthermore, they found the lower court had ignored the changes made in the USA Patriot Act.

The Review court also criticized the OIPR and the Department of Justice for its narrow interpretation,

It is quite puzzling that the Justice Department, at some point during the 1980's, *began to read the statute as limiting the Department's ability to obtain FISA orders if it intended to prosecute the targeted agents-even for foreign intelligence crimes...* Indeed, it is virtually impossible to read the 1978 FISA to exclude from its purpose the prosecution of foreign intelligence crimes, most importantly because, as we have noted, *the definition of an agent of a foreign power – if he or she is a U.S. person – is grounded on criminal conduct. . .*³⁸

Civil Rights Implications

*The Fourth Amendment "End Run" or "The Blurred Line"*³⁹

Problem: The primary concern with the changes made to the FISA act concern the Fourth Amendment's protection against unreasonable search and seizure. FISA warrants have a lower threshold of evidence needed to secure a warrant; civil rights organizations are concerned that prosecutors will seek FISA warrants when they are unable to get Title III criminal warrants for criminal cases. They are concerned that under the changes made in the USA Patriot Act, and the FISC Review court's decision, prosecutors would be able to direct FISC surveillances, and could therefore avoid the higher standards of proof needed for a normal search or surveillance order.

A corollary of this argument is that once a matter moves from being solely about foreign intelligence gathering and into a criminal investigation enterprise, the current court system is more than able to handle such cases. This view is best expressed by the ACLU:

Once surveillance becomes primarily a criminal investigation, the courts are entirely competent to make the usual probable cause determination, and because, importantly, individual privacy interests come to the fore and government foreign policy concerns recede when the government is primarily attempting to form the basis for a criminal prosecution.⁴⁰

Solution: Criminal prosecutors cannot use the FISC solely to investigate any crime just because they cannot get a normal search warrant. They are still confined by the FISA limitations: the person must be an "agent of a foreign power", and the purpose of the investigation must still have "a significant purpose" for foreign intelligence information; therefore, purely domestic crimes cannot be pursued under FISC warrants.

The corollary carries with it one very important and very controversial assumption: that criminal prosecution is able to adequately protect the public from international terrorism. The Executive Branch, the legislative branch (the Patriot Act), and the judicial branch (represented by the FISC and the FISC Review Court) and a great deal of the American public disagree with this assumption. Without getting into this debate, it is important to note that the Senate and the Review Court have pointed out that modern terrorist activity is inherently criminal in nature while at the same time being a foreign threat. It is this dual nature that makes a national response involving only law enforcement difficult.⁴¹

Recommendation: Trust the FISC to do its job, but increase Congressional oversight to ensure that no abuse occurs.

Non-adversarial Court⁴²

Problem: Since the FISC hearings are secret, only the government gets to present its case. This is inherently unfair, unbalanced, and a violation of due process.

Solution: This problem was acknowledged when the court was created; the OIPR was seen as an answer to this problem. Its job as a “watch dog” was intended as a check and balance in the system. In effect, it was suppose to be the “defense attorney” for the subject of the surveillance order. However, the OIPR was also supposed to provide guidance and advice to the DOJ on how to best obtain FISC orders. There is an inherent conflict of interest. From 1978 to September 11th, 2001, the OIPR acted more as the “watch dog” (and it’s advisory role suffered as a consequence); there are legitimate concerns that this will now sway in the other direction.

Recommendation: Divide the OIPR office into two separate offices, structured along the lines of the office’s two separate functions. This would eliminate the built-in conflict of interest, provide better FISC advice to FBI field agents, and maintain the integrity of the “watch dog” in the absence of an adversarial system.

Protection of First Amendment Rights⁴³

Problem: The government allegedly now has the power to listen in on any American in the name of national security under a FISC warrant.

Solution: Unfortunately, this argument is often expressed as a problem with the changes made to the FISC. This position is based upon a fundamental misunderstanding of what the FISA act says and what the FISC does. The FISA act explicitly states that activities protected by the First Amendment are not reasons alone for a FISC warrant. Additionally, the FISC still requires evidence that supports the “probable cause” that the subject of the surveillance is an “agent of a foreign power”. The government is still required to present evidence before a court to obtain a warrant.

Recommendations: Better educate the public about the FISA laws and court.

Sixth Amendment Problems: Unable to Confront Your Accuser⁴⁴

Problem: When FISC evidence is introduced into courts, the defendant cannot see the evidence since it is secret. How can one defend against what you do not know?

Solution: This is a problem with secret state evidence. The state has a duty not to compromise methods and sources of information. If a person disagrees with the assumption that there are some activities that a government must keep secret, there is no way to convince that person of the need for secret evidence. However, evidence still must pass all requirements for admission into a criminal

court. Secret evidence is still subject to judicial review. This is a classic example of surrendering rights in the name of collective security.

Recommendation: Continue to rely upon the independence and high standards of judicial review. Seek Supreme Court clarification on the Constitutionality of secret state evidence.

FISC is not independent of the DOJ, it never turns down a request⁴⁵

Problem: Since it was created in 1978, the FISC has never turned down a FISA warrant request in over 10,000 cases. Clearly the court is not independent of the DOJ.

Solution: As described earlier, there are many cultural and institutional reasons for this. Essentially, the OIPR standards were so high that any request that it forwarded to the court was sure to be granted. Second, the FBI culture changed so that it would not even send a request to the OIPR unless it exceeded OIPR standards. Lastly, the actual FISA standards became grossly misunderstood within the FBI and DOJ that a higher standard than ever envisioned by the writers of the FISA act became the accepted norm.

Recommendation: Better educate the public about the role of OIPR. Split OIPR into two offices to eliminate the conflict of interest and insure that the DOJ and FBI get better advice from the new office about obtaining a FISC warrant.

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⁴³ Poole.

⁴⁴ Rachel King, "Symposium: Q: Is Congress giving too much surveillance power to federal law enforcement? YES: The courts are being treated as inconvenient obstacles to executive action.", *Insight* 14 Jan 2002: 2, [online database] Lexis-Nexis: General News: Major Papers, Search: Foreign Intelligence Surveillance Act.

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INSIDE THE REVOLUTIONARY ARMED FORCES OF COLOMBIA (FARC)

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Prior to September 11th, 2001, arguably the most formidable and vicious international terrorist organization was based neither in the Middle East nor in Asia. Surprisingly, these terrorists dwelt in our own backyard, the Americas. Fueled by Colombia's booming drug trade, the Revolutionary Armed Forces of Colombia (FARC) have waged war against an ineffectual Colombian government for over fifty years; killing scores of innocent civilians in their crossfire. To put this tragedy into perspective, imagine suffering the death toll of September 11th, 2001 six times a year, every year, for the last fifteen years. Such a loss of life would still not equal the carnage taking place in Colombia today. Currently, the United States is spending just over one million dollars in support of President Uribe's anti-drug/anti-FARC initiatives in order to combat a half-billion dollar industry that is continuing to expand each year. Unless we are willing to give substantial support to the Colombian government to rid the country of terrorism, the FARC will continue to grow, increasingly threatening both regional and global security. We can ill afford to allow a terrorist organization with such limitless potential to remain unchecked in our own backyard. Failure to act today will only present us with a greater threat tomorrow.

The Colombian Dilemma

Prior to September 11, 2001, arguably the most formidable and vicious international terrorist organization was based neither in the Middle East nor in Asia. Surprisingly, these terrorists dwelt in our own backyard, the Americas. Fueled by Colombia's booming drug trade, the Revolutionary Armed Forces of Colombia, better known by their Spanish acronym *Fuerzas Armadas Revolucionarias de Colombia* or FARC¹, have waged war against an ineffectual Colombian government for over fifty years; killing scores of innocent civilians in their crossfire.

In the July/August 2000 edition of *Foreign Affairs*, former Colombian Defense Minister Rafael Pardo wrote,

In the last 15 years, 200 bombs (half of them as large as the one used in Oklahoma City) have blown up in Colombia's cities; an entire democratic leftist political party was eliminated by right-wing paramilitaries; 4 presidential candidates, 200 judges and investigators, half the Supreme Court's justices, 1,200 police officers, 151 journalists, and more than 300,000 ordinary Colombians have been murdered.²

To put this tragedy into perspective, imagine suffering the death toll of September 11th, 2001 six times a year, every year, for the last fifteen years. Such a loss of life would still not equal the carnage taking place in Colombia today.

On average, a person is kidnapped every six hours³, earning Colombia the title of “kidnap capital of the world”.⁴ No one in Colombia is safe from terrorism; not tourists, not rural farmers, not urban businessmen, not members of the clergy, not doctors, and especially not labor unionists or government officials.

On several occasions guerrillas...have stopped ambulances to kill the patients inside. In one of the most notorious cases...guerrillas dynamited a bridge...just as an ambulance was passing over it. The vehicle fell into a river below, killing a 23-year-old woman who was in labour, her sister, a nurse, and the driver.⁵

Neighboring countries have come to fear that the escalating violence may one day spill across the borders and destabilize the region.⁶

Nothing has worked to stem the hostility and bring about a lasting peace to the region. The US' attempts to buttress the Colombian government by providing aid for its controversial “Plan Colombia” have proven fruitless; succumbing, in no small part to Colombia's corruption-riddled political system. Just days before his election as Colombia's President in 1998, Andres Pastrana was photographed with FARC leader Manuel “Sureshot” Marulanda Velez.⁷ Under the “watchful” eye of President Ernesto Samper Pizano (1994-1998), FARC membership grew from 7,000 to 18,000 soldiers (257 percent) while cultivation of coca jumped from 44,700 to 122,500 hectares (274 percent).⁸

So who are these terrorists? How do they operate? What do they want? And how do we stop them? This paper will attempt to break the FARC down into its components, revealing the history, nature, and capabilities of the organization. Furthermore, an examination of the FARC's enemies and allies will help shed light upon the organization's future and provide a foundation for exploring policy prescriptions to answer Colombia's seemingly endless onslaught of terror.

The Creation of a Monster

At the conclusion of World War II, the international community's focus shifted toward rebuilding those nations which had been decimated by European fascism and Asian imperialism. Hardly noticeable to the world amongst the post-war reconstruction efforts, Colombia was embarking on a political course that would generate uninterrupted bloodshed into the next millennium. It began “in the countryside between followers of a Conservative Party oligarchy seeking to reclaim ancestral lands and followers of the reformist Liberal Party, seeking to defend its land reforms of the previous two decades”.⁹

The period know as “*La Violencia*,” which lasted for ten years between 1948 and 1958, was sparked by the April 9th assassination of the Liberal Party populist leader, Jorge Eliecer Gaitan. During this time, 300,000 people were killed in the fight between Liberal and Conservative factions. From these ashes grew a peasant movement in 1951. The peasant groups were formed as ad hoc self-defense forces, designed to protect rural farmers against conservatives who were murdering them for their land.

In 1964, Pedro Antonio Marin, a peasant leader who later changed his name to Manuel Marulanda Velez, allied his Marxist guerillas with another liberal faction to create the FARC. Velez, more commonly known as "Tirofijo" or "Sureshot" by his men, saw Marxist-Leninism as the ideal solution to Colombia's social inequities. While the FARC eventually surfaced as the dominant leftist faction within Colombia, other significant peasant groups also emerged during this period, including the Cuban-style National Liberation Army (ELN) and the Maoist Popular Liberation Army (EPL).¹⁰

From the end of "La Violencia" to today, the FARC has evolved from a grass-roots peasant organization into a dominant military force, capable of influencing both Colombian and international politics. During the 1970s, Colombia became the world leader in marijuana production and exports. This illegal market served as a major source of revenue for the FARC in their war against the Colombian government and helped solidify their support amongst struggling farmers. Under the FARC's protection, farmers could prosper from this newly cultivated cash crop. Recent diversification into coca and opium poppies has only helped increase this symbiosis, generating greater and greater profits for both the FARC and Colombia's illicit drug farmers.

Colombia's first free election took place in 1974 and by 1985 the FARC had created its own political arm, the Patriotic Union (UP). However, within a month of the UP winning fourteen seats in the 1986 elections, three of its legislators were assassinated.¹¹ Over the next decade, 3,000 UP supporters were killed "including the UP's 1990 presidential candidate, Bernardo Jaramillo Ossa", nearly eliminating the party.¹²

In 1989, President Virgilio Barco Vargas, recognizing that drug money was financing the leftist guerillas' antigovernment campaigns, declared a "war on drugs." His actions were countered by a fierce terrorist offensive unleashed by Medellin drug cartel leader and FARC ally Pablo Escobar. It would not be until December of 1993 that an elite armed unit connected to the rival Cali drug cartel would eventually kill Escobar, marking the beginning of the end for Colombia's large drug cartels.

What had originally been viewed as a positive step toward controlling Colombia's internal violence quickly deteriorated. Pablo Escobar's death generated uncertainty within Colombia's drug underworld. Believing that the nation's drug problem had subsided, President Ernesto Samper Pizano (1994-1998) failed to reclaim lands previously owned by the cartels, allowing smaller, independent groups to subdivide the land and continue the coca production virtually uninterrupted. Today, Colombia's drug traffickers differ greatly in organizational structure from the days of the infamous Medellin and Cali cartels. While necessity has forced them to become smaller, and less hierarchical, their symbiotic relationship with the guerrillas or the paramilitaries has remained unchanged. It is a vicious circle within the war-torn nation that has endured. Drugs fund the violence, while the violence preserves the drugs. In 1995, over 25,000 homicides took place in Colombia. The factional fighting throughout the 1990's also took a heavy toll on the rural population. During this time,

“displacement of civilian populations in the countryside increase[d] sharply”, resulting in severe urban overpopulation.¹³

Lack of government intervention into feuding drug, paramilitary, and guerilla factions also resulted in a precipitous increase in the number of heavily armed coalitions operating throughout the country. By 1998, the violent conflict had spun out of control. In an attempt to reach a peaceful solution to the crisis, President Pastrana conceded to the FARC ownership of 42,000 square kilometers of land in Southern Colombia. While the gesture did bring the FARC to the bargaining table, the Colombian government had essentially established a state within a state, allowing the FARC free reign within the controlled region. The concession later jokingly became known as “FARClandia”.¹⁴

The twentieth century closed with fierce competition between the FARC, paramilitaries, and drug traffickers over the control of critical coca and opium poppy fields. Although dialogue between the Colombian government and the FARC has recently shown some promise, murder and mayhem remain Colombia’s tragic motif.

Mission / Ideology / Objective / Justification

The FARC differs from several other international terrorist organizations in that they are not fighting a religious conflict (more than 95 percent of the population of Colombia has been baptized in the Catholic Church¹⁵). In essence, they believe in a communist economic philosophy whose ultimate objective is to overthrow the current democratic Colombian government and replace it with their own Marxist regime.¹⁶ Although their ideology does not condone the production, sale, and distribution of narcotics, they view their drug ties as a temporary, but necessary evil that must be exploited in order to bring about the overthrow of the Colombian government.

Resembling other international terrorist organizations, the FARC has identified “humiliation” as a key justification for their actions. Originally, peasants from the countryside banded together more than fifty years ago in order to protect themselves and their livelihood against rival conservative groups. Being slaughtered by the thousands and forced to abandon their ancestral lands, these peasants of the 1940s and 50s felt cheated and disgraced. With no place to go, many took up arms and returned to their homelands, fighting for what they believed was rightfully theirs. These feelings have been passed down from generation to generation. While the FARC controls a sizeable portion of the country, they remain committed to their ideological cause of establishing a Marxist political and economic system throughout Colombia.

More recently, however, paramilitary groups, such as the AUC, have given the FARC a new recruiting angle. By labeling coca farmers and citizens who contribute to the FARC as military targets, the AUC has driven many inhabitants closer to the guerrilla organization.¹⁷ This new tactic has enabled the FARC to emit a Robin Hood type aura toward those it protects. The paramilitaries hard-line position has enabled the FARC to win over the hearts and minds of

several rural communities. This increase in popular support is likely to lead to an increase in the organization's resources, both in human and financial terms.

Resources: People, Knowledge, Weapons, & Money

In 1985 the FARC had 3,600 soldiers stationed on 32 fronts. Within nine years, the FARC increased their numbers 194 percent to 7,000 soldiers on 60 fronts.¹⁸ By 1999, FARC enrollment had increased by 257 percent to 18,000 on 85 fronts. In total, the FARC experienced a 500 percent growth in membership over the 14-year period. The war on drugs waged by the Colombian government with the assistance of the international community has driven jobless and desperate young recruits directly to the FARC's employment office.

Given the lack of legal employment opportunities in rural colonization areas, coca eradication ultimately provides the guerrillas with an army of unemployed youth who have no prospects of future employment. This is partly responsible for the increasing numbers of recruits to the FARC since its founding in 1964. In fact, the FARC has developed a plan to double the size of its military force by the year 2000 by targeting unemployed youth in colonization areas and other poor rural areas.¹⁹

The international focus on coca eradication has led to increased unemployment among Colombia's young male population, especially in rural areas. To many, the FARC is seen as an opportunity; one that provides stable employment, warm clothing and food, and a sense of community. Often, the youths are employed in defense of the remaining coca crops, making the eradication of illegal drug crops highly implausible.

The FARC has also acted as an equal opportunity employer. Young women have increasingly become involved in the conflict. "Some girls are actively recruited, many are abducted or 'gang pressed' into serving, and a few join voluntarily...Girls are sometimes given by their parents into armed service as a form of 'tax payment.'"²⁰ But these girls are not being recruited for the purpose of fostering the next generation of guerrilla fighters. The FARC is reported to have fit young female soldiers with "intra-uterine devices or give[n] them contraceptive injections because pregnancy is considered a liability." In other regions of the world, "pregnant girls in armed opposition groups were given the choice to abort or give their babies to peasants, who would raise them until they reach fighting age, when the forces reclaim them."²¹ While there is no direct evidence of this practice being used by the FARC, its possibility would not be inconceivable.

Moreover, the FARC's generosity at times extends indirectly to the local populace. Steven Dudley's report "War in Colombia's oilfields" reveals that many ordinary citizens benefit greatly when the FARC attacks its targets. A prime example is the nation's oil industry. Colombia's major oil pipeline has been bombed nearly 1,000 times over the last fifteen years, causing more than 2 million gallons of oil to pollute the countryside. Dudley writes,

There are also economic benefits for those involved in reconstruction; a virtual food chain has materialized. Construction and metal workers, engineers and technicians are all needed to fix the line. The head engineer where I saw the repairs told me that at least thirty-five workers will repair an attack site. Added to the bill are overtime rates, rental fees for the backhoes and bulldozers, and the cost of gasoline and jet fuel. In addition, the farmers near attack sites get indemnities for damaged crops. My pipeline bomber friend Daniel said that sometimes the peasant landowners help the rebels dig the holes.²²

Attacks of this kind not only challenge the Colombian government, they also build legitimacy for the FARC with the repair workers and local farmers who rely on this income. Traditionally, support from the local populace has been a staple of FARC operations. FARC sympathizers have helped the organization to become the effective fighting force that it is today.

Unlike part-time peasant sympathizers, rank and file members of the FARC receive some of the best military training money can buy. On April 24, 2002, the U.S. House of Representatives Committee on International Relations published its "Investigative Findings on the Activities of the Irish Republican Army (IRA) in Colombia." The report details the arrest of two Irish Republican Army (IRA) members and one representative of Sinn Fein, exactly one month prior to the September 11, 2001 terrorist attacks. "The three men were carrying false identification documents (passports) and were found to have traces of explosives on their clothing and on items in their luggage. Of the two IRA members, one was the IRA's leading explosives engineer and the other a mortar expert." The three were charged with "training FARC terrorists in explosives and using false passports to cover their true identities while in Colombia... In addition to having positive forensic trace evidence of explosives on their belongings, the three Irish nationals have been identified by a FARC defector... as the same individuals from whom he received explosives training."²³ These arrests likely signal a new era for the FARC; one in which they can internationally buy, sell, and exchange weapons, technology, and expertise all within the safe confines of Colombia's borders.

The FARC's ability to operate effectively as an independent military force can be directly linked to its vast resource base. Compared to most terrorist organizations, it possesses a seemingly inexhaustible pocketbook. In 2001, President Pastrana described the Colombian narcotics industry as being worth \$500 billion. He went on to say that in addition to increased demand from the United States, the drug traffickers were diversifying, seeking out new markets in both Europe and the former Soviet Union.²⁴ The FARC heavily "taxes" this billion dollar industry at every phase of the production and distribution process, extracting ample funds to finance its on-going struggle against the Colombian government.

As income supplemental to the aforementioned tax, kidnapping and extortion have become lucrative businesses for the FARC. As previously

mentioned, a person is kidnapped, on average, every six hours²⁵, earning Colombia the title of “kidnap capital of the world”.²⁶ Kidnapping has become a prolific enterprise; “one in which kidnapers adapt their business models in response to market conditions and carefully balance the risks of operating against the rewards.”²⁷ The FARC has elevated the business of kidnapping to a new level, supplementing its already vast drug coffers with millions of dollars worth in ransom payments.

Rachel Briggs, in her recent article “Hostage, Inc.,” describes a “profit-driven profile” that is common among kidnappings. She concludes that “kidnapping doesn’t happen where risk is low, as is the case in failed states, where the rewards are unlikely to make the effort worthwhile.” Kidnappers need, in her view, “networks to sustain their activities over the long term...[and] significant financial reward.” However, most importantly, “kidnappers must balance the risks against the rewards [because] in rich countries, where the returns are highest, tough standards of law enforcement carry the highest risk and thus ward off kidnappers.” Briggs estimates the FARC is averaging nearly 3,000 kidnappings annually, earning it between “\$150 million to \$500 million per year. The U.S. Senate Foreign Relations Committee reported that 40 percent of the FARC’s budget is generated from kidnapping, with the rest coming from the drug trade and extortion.”²⁸

Media Relations

If there is one area the FARC has not fully exploited it is the media. Members of the press have been targeted as enemies of the revolution, not unlike government officials. In the last twenty years, 152 journalists have been assassinated. Some, having had their lives spared, have paid a price almost as large. Ignacio Gomez wrote a story for the July/August 2000 edition of *NACLA Report on the Americas* in which he reported “On May 25 [2000], Colombian journalist Jineth Bedoya was kidnapped, beaten, and raped.” Gomez concludes that what happened to Bedoya, “was intended as a message to all Colombian journalists: Any journalist who dares to talk about human rights will become the subject of a story even more horrific than the one he or she may be investigating.”²⁹ Bedoya, in her own story for the March/April 2001 edition of the same journal, stated “working as a reporter in Colombia and trying to defend and fight for the truth has become a kind of potential suicide as many reporters have been murdered in the wake of the country’s guerrilla warfare and the government’s indifference.”³⁰ While the FARC has historically targeted members of the media, the organization has tried to use media coverage of recent cease-fire negotiations and international human rights agency visits to portray itself as a legitimate alternative to the Colombian government.

Paramilitary Self-Defense Forces: The FARC’s Worst Enemy

The guerrillas are not the only faction in Colombia that uses force as a means to achieve its ends. The *autodefensas*, meaning self-defense forces,

comprise the third party in what has become a three-sided conflict in Colombia. While Colombia's history has condoned and, at times, supported the formation of local defense groups, the current brand of paramilitaries present an ever increasing security concern for the Colombian government as it seeks to resolve its 50 year old civil war. Their rise and increasing support is representative of a much larger problem in Colombian society: the central government's lack of authority, continued economic decline, and a collapsing social structure.

Origins of the Illegal Self-Defense Groups

The notion of the self-defense forces or militias also dates back to the period of *la violencia*, or the violence. It was then that many rural villages began to form their own armed militias in an attempt to protect themselves against local bandits and political gangs. As is also the case with later civil defense movements, their existence stemmed from a legitimate social need that the government failed to address.

In the current conflict, modern self-defense forces emerged as a direct response to the guerrillas in rural areas where the government lacked the ability to protect the local population. Many of these groups initially received their mandate directly from the Colombian government. In 1964, Colombia passed a civil defense law permitting the creation of civil defense units in an effort to bolster their counter-insurgency efforts against the FARC.³¹ These organizations grew out of necessity during the 1960s and 1970s; although their original nature and purpose were often corrupted to suit other means. Some became private security organizations funded by wealthy landowners and businessmen. Others were hired to work as bodyguards for drug traffickers, smugglers, and other criminal elements. During the 1980s, the lure of drug money began to increasingly entice elements of the self-defense forces toward the drug trafficking networks. The Colombian government became deeply concerned over this trend. It was becoming progressively more difficult to distinguish the actions of some of the self-defense forces from those of the criminal narcotics organizations. In 1987, the central government changed its position regarding the defense forces, eventually outlawing their existence.³²

It was not until the early 1990s that the government again attempted to establish another model of the self-defense force. The governmentally sanctioned *Convivir*, which began in Antioquia, was designed as a kind of neighborhood watch group, designed to provide the military with intelligence on guerrilla activities while avoiding any resemblance to the outlawed paramilitary organizations.³³ The goal was to directly involve the people in the fight against the guerrillas while maintaining a strong degree of control over their actions. Because of the desire to restrict the *Convivir's* ability to act independently, the organizations were not allowed to carry weapons larger than pistols. The restrictions only made the members of the organization prime targets for guerrilla attacks. Soon, the *Convivir* began to unlawfully arm themselves, providing for their own protection. By the mid-1990s, the Colombian government had come full circle, claiming that the *Convivir* had transformed into an illegal self-defense

group. Subsequently, the central government declared the organizations to be illegal.³⁴

Auto defensas Unificados de Colombia (AUC): The Anti-FARC

Although Colombia has a history of political violence dating back to 1948, the largest destabilizing element over the last 30 years has been the leftist guerrilla organizations. Since 1982, when the FARC decided to fully exploit the drug trade for its own political agenda, violence in Colombia has grown exponentially. The vast resources obtained from the drug trade allowed the FARC to reach new levels. These funds, combined with their prosperous ventures into smuggling, kidnapping, extortion, theft, and arms dealing, resulted in hundreds of millions of dollars in revenue. By increasing their resource base, the guerrillas became a formidable military force; capable of conducting mobile warfare operations and defeating the Colombian Army in open combat.³⁵ It is no coincidence that the last 20 years of conflict have been particularly severe; rising in ferocity as the FARC has risen in strength.

It is precisely the escalation in guerrilla capabilities over the last decade that has fueled a parallel growth in paramilitary movements. The easiest way to understand the growth of these organizations is to examine the life of its most notorious leader, Carlos Castano. Castano's story is not unlike that of many who join the paramilitary organizations. He was raised in Antioquia, not far from Medellin. At the age of 15, his father was kidnapped and held for ransom by the FARC.³⁶ When his family could only raise enough money to pay a portion of the ransom, the FARC executed his father. Later, Castano and his three brothers entered the Army and served as guides in support of the government's counter-insurgencies operations. While the brothers did achieve some success, they quickly became frustrated over watching captured FARC guerrillas released by the courts for lack of evidence. Moreover, the Colombian army had never cemented its control over the rural areas. Once the soldiers had moved on, the guerrillas were free to return, seeking revenue and retribution from the vacated communities.

Frustration over the government's inability to effectively respond to the FARC drove Castano and others to take matters into their own hands. Initially, the self-defense groups tried to confront the guerrillas head on. This resulted in heavy losses. It was quickly evident that the FARC were better armed, trained, and equipped. So the paramilitaries began to adopt guerrilla tactics. They focused on attacking the FARC's infrastructure, targeting "their non-combat administrators, supply lines, communications, and those fighters who came into the towns for rest and relaxation."³⁷ This change in tactics was effective in several ways. First, it put the FARC on the defensive, causing them to have to react to an opponent that utilized similar brutal and indiscriminate methods of engaging both combatants and non-combatants alike. Second, it won the support of the local populace. Many villages that had paid protection money to the guerrillas began to now funnel their support to the paramilitaries.³⁸ Third, as the movement began to spread and gain momentum, a number of Colombian army officers began to provide them with

provisions, intelligence, and training.³⁹ The encouragement on the part of the military was due to the fact that the paramilitaries shared a common objective with the military, namely defeating the FARC, and had made the job of providing public security in outlying regions easier. Eventually, the paramilitaries, like the FARC, saw the drug trade as an industry that would provide an abundance of resources. In a recent interview, Castano admitted that close to 70 percent of the paramilitaries' funding came from illicit narcotics trade.⁴⁰ While government's defacto sponsorship has all but ceased for the self-defense forces, the funds produced from their association with the drug trade have become a vital necessity. Often, the most heated engagements between the FARC and the paramilitaries have taken place over control of this source of revenue.

In 1997, the leaders of the regional paramilitary groups met and formed a national coalition; the Alliance for the Unity of Colombia (AUC). Each member organization maintains its autonomy and remains responsible for its own finances and operations. All members contribute to a central war reserve that is maintained at the national level. This transformation has allowed the paramilitaries to become a sophisticated organization; one capable of executing successful direct attacks against the FARC and rapidly shifting men and equipment from one theater of operations to another. Their newfound capabilities became immediately evident in July and August of 1997 when the AUC launched a two-tiered assault against the FARC in the town of Mapiripan, a long-standing strategic stronghold for the FARC on the Guaviare River. Their strategy was simple; disrupt the guerrilla's infrastructure and then attack their reinforcements as they arrived. In a six day battle, the AUC drove the FARC from the area, killing 49 FARC regulars and 30 alleged guerrilla informants in addition to capturing 47 weapons.⁴¹ Over the last 5 years, the AUC has become the FARC's worst enemy; becoming feared more than the government itself. Their tactics are brutal and often indiscriminate in nature, targeting civilians and peasants if they are believed to be connected with the FARC. Although they have arisen in an effort to address a legitimate social need, their ruthless and vigilante-style tactics have made them another menacing faction in what is Colombia's Trinity of Conflict: the guerillas, the self-defense forces, and the government.

Managing Competition: Playing the Government Against the Paramilitaries

While the increased military capability of the self-defense forces have become a growing concern for the FARC, the guerrillas have increasingly been successful at leveraging the government against this threat. A key factor in the FARC agreeing to negotiations with the government was a steadfast commitment by the Pastrana administration to exclude the AUC from the bargaining table. Moreover, in an effort to show its even-handedness, the government began to crack down on the illegal self-defense forces. Given the AUC's pro-government ideology, the organization did little to resist the government's campaign. Castano himself chastised and later expelled a paramilitary faction from the AUC for ambushing a small police contingent.⁴² The peace talks also allowed the FARC to secure from the government its 42,000 square kilometer "demilitarized zone"

located in its historic stronghold of south-central Colombia. This act, meant as a good faith initiative by the government in its attempt to reach a peaceful resolution to the ongoing conflict, effectively generated a "state within a state," providing the FARC with a strategic sanctuary from which to plan and launch its operations.⁴³

Throughout the four-year peace process, the FARC made no real attempt to grant any significant concessions to the central government. While a partial cessation of hostilities did occur, it is likely to have resulted more from the FARC's efforts to rearm, refit, and reposition its forces than from its desire to reach a lasting peace agreement. Even though the bargaining table brought the FARC substantial gains in the form of government concessions and military crackdowns on the AUC, the organization had more to gain by continuing the conflict. The FARC simply used the peace talks as a means to strengthen its position, weaken its competition, and yet again demonstrate the failures of the central government. Last February, with the four-year long negotiations reaching a standstill and President Pastrana facing an uphill re-election bid, the peace talks fell apart.⁴⁴

Colombia's Afghanistan Syndrome: At the Crossroads of Global Terrorism

Today, the FARC's successes at the bargaining table and on the battlefield have left the terrorist organization in control of close to forty percent of the country.⁴⁵ This vast span of control has created a kind of terrorist safe-haven within Colombia similar to that of the former Afghanistan. Colombia's rapidly deteriorating internal stability may soon generate international repercussions. Its relative volatility and formative resources have made it, and the FARC, an attractive refuge for other international terrorist and criminal elements.

Notable among the growing list of FARC associates is the Irish Republican Army (IRA). This mature terrorist organization has traded their knowledge and expertise to the guerrillas in exchange for funding and sanctuary. The House International Relations Committee recently reported that at least fifteen members of the IRA have been actively engaged with the FARC. Additionally, the Colombian government is holding three members of the IRA on the charges of training the guerrillas in explosives and urban terrorism.⁴⁶ Their trial has been postponed until this coming February in hopes that the prosecution can locate its missing key witnesses; two former FARC members who claimed to have been trained by the men.

Another angle being investigated by British intelligence is that the Provisional IRA, "have been using Colombia as a training ground to carry out tests with their engineering department as they are no longer able to use the Irish Republic due to the current political climate," which, according to a report, is allowing the IRA "free range to explore the new prototype of devices."⁴⁷ The FARC is most assuredly acquiring new materials and learning some new tricks in the process. In July 9, 2002 story in the *Washington Times*, Jerry Seper reported that Colombian, British, and American officials believe the most recent meetings

between IRA members and the FARC “were part of an effort by the FARC to upgrade its weaponry and escalate its ability to wage urban terrorism.”⁴⁸

Other recent events have tended to support the governments’ asserted links between the IRA and the FARC. The Colombian government was able to capture a terrorist manual from the FARC’s *Teofilo Forero* battalion. The manual, remarkably similar to an English-language book entitled *The Weapons of Terror, International Terrorism at Work*, provides detailed instructions on how to build mortars and bombs from gas cylinders and how to employ various explosives.⁴⁹ Both the book and the gas cylinder mortar design have been IRA trademarks. Additionally, the FARC have increasingly moved away from rural combat to attack the government’s urban base in the months since the collapse of the peace process. Their level of effectiveness and sophistication would suggest outside support from an organization that is well trained in urban terrorism; a role ideally suited to the IRA.

The tactics, techniques, and procedures used by the FARC as a part of its new urban offensive have been uncharacteristically mature for the organization. On August 7, 2002, the FARC executed a successful mortar rocket attack in Bogotá, targeting the presidential palace and other key areas in an attempt to disrupt President Uribe’s inauguration and send the message that his hard-line campaign platform against the guerrillas was unacceptable. All told, the skillfully synchronized assaults killed 21 people and wounded 50 others; demonstrating the FARC’s newfound ability to execute complicated assaults in developed areas.⁵⁰ On December 11, 2002, the Colombian authorities were able to thwart another potentially devastating attack on the capital city. Five remote-controlled car bombs, each packed with up to 250 kilograms of explosives, were captured across the city through the cooperative effort of the authorities and local citizens. Each car contained enough destructive power to level a large portion of a city block. Rigged with a sophisticated system of hydraulic belts, pumps, and a miniature camera, the cars were designed so that a driver up to a kilometer away could control with a remote their speed, direction, and eventual detonation.⁵¹ This dramatic increase in technological expertise and tactical employment is an unlikely byproduct of internal development. It is far more plausible that the impetus for this change has come from outside assistance.

The FARC’s ties have extended far beyond that of the IRA. The House Committee on Foreign Relations also reported that members of the ETA Basque separatist movement, the Lebanese Hezbollah, and Iranian and Cuban intelligence operatives have all met with the FARC.⁵² Of additional concern is the possible growing link between Al Qaeda and Colombia’s Marxist movement. In testimony before the House Appropriations Committee on April 18, 2002, Deputy Secretary of State Richard Armitage stated that Al Qaeda supporters have been active in the tri-border area of Colombia, Peru, and Ecuador, citing intelligence reports as the basis for his allegations. This claim, though consistent with Al Qaeda’s *modus operandi*, has been contested by some in the intelligence community; arguing that there has been no definitive link established between the FARC and global terrorist networks like Al Qaeda or Hezbollah.⁵³ Regardless of the debate within

the intelligence community, close ties are liable to exist between the international drug trade and global terrorism.

The FARC's Role on the Global Stage

While the FARC has not demonstrated a global reach comparable to that of an Al Qaeda, they are nevertheless a terrorist organization with significant international ties and influence. The FARC and other rebel groups are responsible for supplying 90 percent of the cocaine and 70 percent of the heroin sold on American streets.⁵⁴ This inflow of illegal drugs arguably kills Americans every day. Additionally, the FARC, ELN, and AUC collectively execute over 90 percent of the terrorist incidents that occur in Western Hemisphere, earning the nation the honor of being the world's most terrorist afflicted nation.⁵⁵

While the violence generated by the FARC has been largely contained within Colombia's borders, it threatens to destabilize the region and potentially grow into a formidable transnational threat. In 2001, 55 percent of all terrorist attacks on US interests in the world occurred in Colombia. The nation maintained the notorious distinction of being the kidnapping capital of the world, outpacing the rest of the world's reported terrorist abductions combined. Of these, five were U.S. citizens, adding to the more than 70 U.S. citizens kidnapped over the last decade. Last August, high-ranking FARC leader Jorge Suarez, also known as "*Mono Jojoy*," openly approved the targeting of U.S. citizens residing in Colombia.⁵⁶

The FARC has also threatened the region's economic and ecological stability by attacking critical industrial bases and key components of the national infrastructure. The *Cano Limon* oil pipeline in Northern Colombia illustrates the FARC's ability to disrupt commerce and poison the environment all-in-one. In 2001 alone, the pipeline was attacked 170 times, bringing the total to 918 bombings on the structure since 1986. The result of these attacks has been the spilling of over 300 million barrels of oil, 11 times the amount of the Exxon Valdez disaster, costing the Colombian government an estimated \$500 million in oil revenues a year.⁵⁷

While these statistics are staggering, they pale in comparison to the FARC's seemingly limitless potential as a terrorist organization. Their endless resource base, relative sanctuary, and new found friends paint a disturbing picture of a potential Al Qaeda in the making.

A Policy Prescription: Transform the War on Drugs to the War on Terror

While the U.S. State Department formally declared the FARC a foreign terrorist organization in 1997, our policy toward Colombia has primarily been one in support of counter-drug operations. While the success of our counter-drug policies are debatable, our limited focus upon coca eradication has done little to stem the growth within the industry. Moreover, the United States has remained relatively distant in providing the Colombian government assistance to shore-up its weak and ineffectual central government. While the nation is not a failed state,

it is teetering on the precipice of collapse. Although recent strides by the central authorities to curtail the FARC have been successful, their victories have been limited in scope and confined primarily to the vicinity of the capital city.

While cocaine and heroin production are justifiably an important concern for U.S. policy makers, they are a byproduct of a much larger issue. Political debates over supply and demand-side policies deserve a paper all their own if the subject is to be given justice. While there is insufficient time to discuss those arguments in detail here, suffice it to say that there is ample data showing merits on both sides. Regrettably, the debate over the proper course of action in the war on drugs is likely to be discussed for years to come.

Unfortunately, it is precisely this debate that has detracted from Colombia's greatest issue. While the Colombian government resembles the United States in structure, its ability to provide for the rule of law is inadequate, especially in outlying regions of the country. Any policy prescription that does not address the shortcomings of the central government will continue to treat only the symptoms of a greater disease.

For Colombia, this means continuing its hard-line position against the FARC. In the past, government brokered concessions and cease-fires have only enhanced the FARC's standing. Increased foreign assistance has helped move the government back into a position where they can challenge the FARC. Returning to the concessionary policies of the past would only cause the Uribe administration to lose the precious momentum it has gained.

While such policies would address the grievances of the AUC, it will do little to bring this faction back into a law-abiding social structure. What is needed is a kind of incorporation of the self-defense forces, similar to what worked in El Salvador.⁵⁸ By transforming the already established AUC into a national guard force under the control of the central government, their operations would be far easier to manage, providing a system of checking human rights abuses by the self-defense forces. Additionally, a newly federalized AUC would provide the military with a valuable ally in the war against the FARC. While elements of the AUC would likely resist incorporation in favor of maintaining independent ties to the drug trade, it is likely that most could be persuaded to support the government in a war against the FARC. The larger issue lies in the government's ability to demonstrate its commitment toward providing for the long-term security of the rural population. Until the issues of the self-defense forces have been adequately addressed and the rural population is protected, Colombia will continue to face a three front war.

All of these programs will require increased funding, likely from abroad. Given the United State's vested interest in the welfare of Colombia, we should increase our support for initiatives that help strengthen the nation's democratically elected government. This will involve shifting our approach toward Colombia from the war on drugs to incorporating it into the much larger war on terror.

Currently, the United States is spending just over one million dollars in support of President Uribe's anti-drug/anti-FARC initiatives. While at first this amount seems significant, we must remember that it is combating a half-billion dollar industry that is continuing to expand each year. Unless we are willing to

support significantly the Colombian government in its efforts to rid itself of terrorism, the FARC will continue to grow, increasingly threatening both regional and global security. We can ill afford to allow a terrorist organization with such limitless potential to remain unchecked in our own backyard. Failure to act today will only present us with a greater threat tomorrow.

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HARKAT UL-MUJAHIDEEN: PROFILE AND POLICY OPTIONS

JEFF KAPLOW

Harkat ul-Mujahideen (HUM) is a militant organization based in Pakistan and active throughout South Asia. This article assesses the threat posed by HUM and highlights several aspects of HUM's operations, including its history, recruitment, training, and financing. The article addresses the aspects of HUM that make it particularly dangerous, including HUM's links to al Qaeda, other terrorist groups, and Pakistani political parties. Finally, the article suggests three policy options – educational support, new militant group analytics, and Kashmir mediation – to counter the HUM threat.

Threat assessment

Some analysts, noting the loss of several prominent leaders of the Harkat ul-Mujahideen (HUM) to other Pakistan- and Kashmir-based militant groups, have said that HUM no longer represents a significant terrorist threat.¹ Since these assessments, Pakistan's crackdown on Islamic militant groups has closed HUM offices and frozen HUM bank accounts.² Pakistan's intelligence agency, the Inter-services Intelligence Directorate (ISI), has scaled down its support of militant groups operating in Kashmir, including HUM.³ Since September 2002, Pakistani officials have arrested several members of HUM and its splinter groups, further weakening HUM's ability to conduct terrorist operations.⁴ Still, HUM's relationship with al Qaeda, ties to other Islamic terrorist groups, and political support from religious parties in Pakistan may allow it to rebound quickly and threaten targets throughout South Asia.

HUM, because of strong links to al Qaeda, has the potential to assist in large-scale al Qaeda-run terrorist operations. HUM has been accused by some analysts of harboring Osama bin Laden and other high-level al Qaeda leaders. HUM may also have carried messages for al Qaeda and assisted in weapons smuggling operations.⁵

The lines between several Pakistan-based terrorist organizations have become blurred, and HUM members may represent a significant threat when conducting joint operations with other groups. The bombing of the U.S. consulate in Karachi and the killing of seven employees of a Christian charity have been linked to new sub-groups of HUM and involved HUM members.⁶ HUM members are also associated with two failed attempts to assassinate Pakistani President Musharraf.⁷ In the midst of Pakistan's crackdown on militants, HUM members may increasingly join with members of other groups in ad hoc arrangements to conduct terrorist acts. Though militant groups have had their differences, the tight-knit community of terrorist organizations in Pakistan and Kashmir may be particularly suited to such multi-group operations.

HUM boasts significant political connections in Pakistan. In addition to links with the military and ISI,⁸ HUM is affiliated with the Fazlur Rehman faction of the Jamiat-e-Ulema-e-Islami (JUI-F).⁹ Though marginalized in the past, the JUI-F and other religious parties have capitalized on the increase in anti-American sentiment, and performed well in recent elections as part of an Islamic party

coalition. With limited parliamentary power, Musharraf will be forced to cooperate with religious parties to move his agenda forward.¹⁰ These political links might help protect HUM from future crackdowns on militant groups.

The changing external environment also points to an increased danger of HUM attacks. Continued Pakistani-US cooperation in arresting suspected al Qaeda members builds public support for the anti-American message of militant groups. Anti-American sentiment likely will grow with recent military operations in the Persian Gulf. These events assist HUM in its mobilization and recruitment efforts, and spur attacks against Pakistani targets in particular. Because the group has trans-national links, HUM members are capable of assisting in operations beyond South Asia.

There is also some small risk of HUM members gaining access to nuclear weapons. Though Pakistan has taken steps to secure its nuclear weapons and materials,¹¹ several analysts are concerned about potential terrorist access to nuclear weapons in the event of a coup.¹² These analysts point to links between militant groups such as HUM and Pakistan's nuclear/military establishment. Two high-level Pakistani nuclear scientists have been identified as having had some connection to Taliban officials.¹³ The Pakistani army seems to be sympathetic to the message of Islamic fundamentalist groups.¹⁴ Two prominent officials in Pakistan's nuclear program may have been active in the Tablighi Jamaat (TJ), a South Asian religious movement and charitable organization with possible links to HUM.¹⁵ These connections, coupled with the possibility that HUM members had planned two attempts on Musharraf's life, indicate that acquisition of nuclear weapons is at least a remote possibility.

History and evolution

HUM was founded in 1985 to fight against Soviet forces in Afghanistan. It was originally a splinter group of Harkat ul-Jihad-i-Islami (HUJI), and most of its early membership came from HUJI.¹⁶ During the 1980s, HUM recruited about 5,000 volunteers from Pakistan and Kashmir to join mujahideen groups in Afghanistan. Additional troops joined HUM from Algeria, Egypt, Tunisia, Jordan, Saudi Arabia, Bangladesh, Myanmar, and the Philippines.¹⁷ After Soviet forces pulled out of Afghanistan, the ISI, Pakistan's intelligence agency, reorganized Afghan militant groups, merging HUM and HUJI into a new group, Harkat ul-Ansar (HUA). HUA turned its efforts to the Kashmir insurgency, fighting for a pan-Islamic state that would include Kashmir and be ruled from Islamabad. Through the 1990s, HUA infiltrated its members into Kashmir and India, attacking Indian military and government targets.¹⁸ HUA also supported Muslim struggles worldwide, sending fighters to Egypt, Tunisia, Algeria, Bosnia, Chechnya, Tajikistan, Myanmar, and the Philippines.¹⁹ Maulana Saadatullah Khan, Maulana Masood Azhar, and Fazlur Rehman Khalil held leadership positions in HUA during this time period.²⁰

In 1997, the U.S. added HUA to its list of foreign terrorist organizations. This made it politically difficult for HUA to operate in Pakistan, and may have hurt HUA fundraising efforts worldwide. In response, Harkat ul-Ansar changed its

name to Harkat ul-Mujahideen and continued operations as before.²¹ In the late 1990's, operating under the name Al Faran, HUM staged several kidnappings of Western civilians and hijacked an Indian Airlines flight. In 2000, Maulana Masood Azhar formed a new militant group, Jaish-e-Muhammad, and drew much of the leadership away from HUM. In mid-February 2000, Fazlur Rehman Khalil stepped down as leader and was replaced by Farooq Kashmiri Khalil. Fazlur Rehman Khalil remained active in the organization.²²

After the September 11 attacks, the U.S. added HUM to its list of foreign terrorist organizations and put pressure on Musharraf to crack down on terrorist groups. In a speech on January 12, 2002, Musharraf publicly banned five militant groups but did not mention HUM.²³ Still, Pakistan quietly closed HUM offices,²⁴ froze HUM assets,²⁵ and eventually banned the group.²⁶ Prominent HUM leaders, including Fazlur Rehman Khalil, were forced into hiding, and police arrested dozens of HUM activists.²⁷ In the wake of Pakistan's crackdown on militant groups, an HUM sub-group, Harkat ul-Mujahideen al-Alami, has been accused of several terrorist attacks within Pakistan, including the car bombing of the U.S. consulate in Karachi and the attempted assassination of Musharraf.²⁸

Mobilization and recruitment

HUM has two primary missions that aid in recruitment. The first is to free Kashmir from Indian rule, making it a part of a larger Islamic nation joined to Pakistan.²⁹ The Kashmir mission helps to recruit young Pakistani men to join the insurgency. This mission also underlies fund-raising from the Persian Gulf, Kashmir, and the Kashmiri Diaspora.³⁰

Some analysts have questioned the legitimacy of this mission, criticizing HUM and other groups because relatively few Kashmiris are involved in their struggle. In response, HUM has sought to bolster its credibility in the Kashmir conflict. HUM members, operating under a front organization called Al Faran, hijacked an Indian Airlines plane and demanded that a prominent Kashmiri leader, along with jailed HUM leaders, be released from Indian prison.³¹ The Kashmiri leader had had no relationship with HUM, but HUM members may have requested his release to placate their Kashmiri constituency. Some analysts also believe that Farooq Kashmiri Khalil, a native of Kashmir, assumed leadership of HUM in 2000 to improve HUM's credibility in Kashmir.³²

HUM has increasingly used a second mission, jihad against the U.S. and U.S. interests, to mobilize support. Just after September 11, HUM used the U.S. military action against the Taliban as a rallying cry, recruiting volunteers to fight with the Taliban and al Qaeda in Afghanistan.³³ Increased Pakistani cooperation with the U.S. has angered many Pakistanis and bolstered HUM mobilization efforts.³⁴ Musharraf's support for U.S. action in Afghanistan may have helped HUM mobilize for attacks against targets in Pakistan itself.

HUM offers several incentives to help mobilize its volunteers for action. Certainly, HUM members respond to the intrinsic incentives offered by terrorist operations and truly believe in the rightness of their cause.³⁵ Extrinsic incentives, such as increased social status, also come with HUM membership. These benefits

sometimes accrue after martyrdom; funerals for fallen militants draw thousands, and the families of the deceased are often treated as celebrities.³⁶ HUM can offer a sense of belonging for some young men. The desire to belong apparently led John Walker Lindh and Hiram Torres, both American citizens, to join HUM.³⁷ Financial incentives, in life and martyrdom, are also significant in mobilizing participation in HUM. Soldiers in militant groups earn about 5,000 to 10,000 per month, significantly more than most Pakistanis.³⁸ Financial incentives encourage parents to donate their sons to the cause; funds exist to support the families of martyred militants.³⁹

HUM mobilization and recruitment efforts are tied to a network of madrassahs in Pakistan. HUM draws, in particular, from religious schools affiliated with the Deoband sect, with beliefs similar to the Wahabism of Saudi Arabia. Many of these madrassahs are run by JUI, the political party associated with HUM.⁴⁰ These madrassahs engage in a kind of brainwashing, inculcating students in what one analyst described as a "jihadi culture," while avoiding secular subjects such as science or math.⁴¹ Madrassahs provide a steady stream of recruits for militant organizations like HUM. In the past, many madrassahs have closed to allow their students to join Taliban and al Qaeda fighters and participate in the conflict in Afghanistan.⁴²

HUM also recruits using traditional public relations tools. Until the recent crackdown on Islamic groups in Pakistan, HUM ran seven offices in Pakistan and Kashmir.⁴³ The group's spokesmen interacted with local and international media.⁴⁴ HUM published two newsletters, the monthly *Sada-e-Mujahid* and the weekly *al-Hilal* in Urdu. These publications are sent to families of martyrs free of charge.⁴⁵ The newsletters may now be published under different names to avoid Pakistani legal restrictions.

HUM has had success recruiting abroad. In 1995, HUM officials said that they had several hundred foreign recruits, including 16 Americans.⁴⁶ This success may be due partly to HUM's relationship with the Tablighi Jamaat (TJ). TJ is often thought of as a non-violent religious movement, which has spread from its original home in South Asia to become one of the most active Islamic organizations in the world. But some analysts, particularly in India, believe that TJ's Pakistani chapter has links to militant groups. These analysts allege that HUM members pose as traveling TJ preachers and recruit volunteers from the U.S., Western Europe, Thailand, Malaysia, Singapore, and Indonesia. TJ may provide financial support, assist in militant training, and even be used as a cover to pass messages to al Qaeda cells. Indian analysts believe that several high-level ISI and military officials have held prominent positions in the TJ organization.⁴⁷

While these reports could not be verified, there is some independent support for these views. TJ does have links to the same Deobandi ideology as HUM and, despite officially shunning politics, may have some relationship with the JUI political party.⁴⁸ John Walker Lindh joined the Tablighi movement before signing on with HUM, and several other terrorists recruited from the U.S. and Western Europe are associated with TJ.⁴⁹

HUM may face difficulties in mobilizing and recruiting supporters in the future. While U.S. military action in Iraq and continued cooperation with Pakistan

will help draw volunteers to HUM's anti-American message, legal restrictions on the organization make it difficult to recruit openly. HUM may be looking for a way to hold on to its valuable name despite Pakistan's ban on the organization – recent terrorist attacks have been attributed to a HUM sub-group, Harkat ul-Mujahideen al-Alami.⁵⁰ The name is similar enough to HUM to maintain its recruitment value.

Training

New HUM recruits undergo an extensive training program of at least 40 days, with extended training for those recruits identified as particularly promising.⁵¹ Training focuses on weapons handling, demolitions, and urban sabotage operations, but may also include heavy arms, reconnaissance, and sniper assault.⁵² HUM runs a network of training camps in Kashmir, Afghanistan, and possibly Bangladesh.⁵³ Its Afghan training facilities were destroyed in U.S. air strikes in 1998 and 2001, with extensive casualties.⁵⁴

Before U.S. military action against the Taliban, most recruits would train in Afghan camps before being sent to Kashmir to participate in the insurgency.⁵⁵ Training was supported by the ISI, with off-duty military personnel providing instruction.⁵⁶ Weapons and expertise were also provided by al Qaeda, which may have been paid by HUM and the ISI for the use of their training facilities.⁵⁷ Training may also have been supported by TJ funds, though this link could not be verified.⁵⁸

It is not yet clear how HUM has changed its training procedures in response to U.S. action in Afghanistan. The group may be relying more on cooperative relationships with other Jihadi groups in Kashmir. Some 91 training camps run by militant groups have been located in Kashmir.⁵⁹ These camps were supported by the ISI and are now likely run by the militant groups for joint training. It is also possible that HUM's shift to domestic terrorist operations, such as car-bombings and shootings, does not require the same type of training as its Kashmir insurgency operations, reducing the need for dedicated training facilities.

Financing

In the past, HUM has relied on state sponsorship for the majority of its financing. The ISI funneled money, weapons, and expertise to HUM, even helping to infiltrate fighters across the Line of Control.⁶⁰ Annual ISI support to militant organizations, including HUM, amounted to between \$125 and \$250 million per year. These funds were used for fighter's salaries, support for the families of martyrs, bonuses for high-risk operations, and payments to contacts that could provide valuable intelligence.⁶¹ The Taliban also provided essential funding and support.⁶² HUM may also have drawn on financial support from Islamic political parties in Pakistan that have strong links to the group.

Al Qaeda may have been active in providing financial support to HUM, possibly on a project basis. HUM may have benefited financially by smuggling weapons for al Qaeda and delivering messages to al Qaeda cells.⁶³ There are

allegations that TJ, along with other charitable organizations, funneled money to HUM and other Pakistani militant groups.⁶⁴

Donations from supporters also provide significant funding. HUM actively collected donations from Pakistani and Kashmiri expatriates in the U.S. When the U.S. placed Harkat ul-Ansar on its list of foreign terrorist organizations, effectively cutting off donations from the U.S., HUA quickly changed its name to Harkat ul-Mujahideen to preserve its U.S. financing.⁶⁵ HUM also drew donations from the Persian Gulf, Europe, and the Middle East.⁶⁶

HUM actively collected donations from Pakistani citizens. Though Pakistan has banned HUM, ubiquitous collection plates continue to raise money for insurgent operations in Kashmir.⁶⁷ ISI officials probably alerted HUM before its assets were frozen following the September 11 attacks. HUM had time to transfer its assets to legitimate business interests; the frozen accounts totaled only 5,000 rupees.⁶⁸

The fund-raising picture has changed substantially for HUM following the September 11 attacks and resulting crackdown by Pakistani officials. Funding from the ISI has become politically difficult for Musharraf, though some financial support may still continue. Taliban support has likely ceased, and al Qaeda may find it more difficult to transfer money to HUM because of heightened U.S. awareness. Domestic fundraising by HUM is now illegal.

HUM may have taken several steps to respond to these challenges. First, there is some evidence that HUM is operating under other names;⁶⁹ this might help it to avoid the ban on fundraising in Pakistan. Second, HUM may be increasing its collaboration with other Pakistani militant groups.⁷⁰ By pooling resources, these banned groups can make better use of limited funds. Third, HUM may have shifted its attention to domestic terrorism targeting the Musharraf regime.⁷¹ These operations have a dramatically different cost structure than extended insurgent operations in Kashmir. HUM may be able to save money on military gear, supplies, and training by funding smaller-scale bombings and shootings. There is no evidence to suggest that HUM has engaged in any type of organized crime to raise funds.

Danger Signs

HUM represents a continued terrorist threat because of its links to al Qaeda, other jihadi groups, and Pakistani political parties.

Al Qaeda links

Osama bin Laden was an early supporter of HUM, helping to fund the group's activities in Afghanistan in the 1980's.⁷² The two groups only grew closer in the 1990's, sharing training and funding arrangements. In 1998, HUM suffered casualties in a U.S. attack on bin Laden's training camps in Afghanistan.⁷³ HUM is part of Osama bin Laden's "World Islamic Front for the Jihad Against the Jews and the Crusaders" and HUM's leader, Fazlur Rehman Khalil, signed bin Laden's 1998 fatwa declaring jihad against the U.S.⁷⁴

Operational links between al Qaeda and HUM were complex. Al Qaeda may have raised money by renting training facilities in Afghanistan to HUM.⁷⁵ Al Qaeda also funded HUM operations, and may have used HUM assets to deliver messages and smuggle weapons to other terrorist groups, including the Abu Sayyaf Group in the Philippines.⁷⁶

Today, some Indian intelligence officials believe that HUM continues to support the al Qaeda network. HUM, which has strong support in Pakistan's North West Frontier Province, adjacent to Afghanistan, may have helped to smuggle al Qaeda fighters into Pakistan. Once in Pakistan, al Qaeda operatives may have used HUM forces as cover and protection.⁷⁷ Indian sources point out that a Pakistani airlift designed to extract Pakistani soldiers from Afghanistan may also have been used to smuggle out large numbers of al Qaeda operatives.⁷⁸ Some Indian officials speculate that bin Laden may be residing with HUM members within Pakistan.⁷⁹ It should be noted here that India has a strong geopolitical incentive to link bin Laden and al Qaeda to HUM. A proven al Qaeda presence in Kashmir would lend new international support to India's fight against militant groups such as HUM, and would give political cover to increased aggressiveness by Indian forces on the Line of Control.

Even if bin Laden is not currently residing with HUM, past al Qaeda links suggest that HUM is capable of assisting al Qaeda operatives in large-scale trans-national operations. Because al Qaeda can no longer rely on Afghanistan as a safe haven, its members may have more incentive to spread operational responsibility to other terrorist groups. HUM, with its Islamist connections in Pakistan and access to territory in Kashmir, is well positioned to act as a bridge between al Qaeda's affiliate groups.

Links to other terrorist groups

HUM is a long-standing member of the United Jihad Council, an organization established by the ISI to coordinate insurgent activity in Kashmir.⁸⁰ Through this coordinating body and experience in the field, HUM has developed close links to other jihadi groups. The recent crackdown by Pakistani authorities may have created a sense of solidarity among militant groups with similar ideological backgrounds.

There is some evidence that the new terrorist sub-groups formed after the September 11 attacks include members of multiple terrorist groups active in Pakistan.⁸¹ The blurring of group lines is a force-multiplier for militant organizations; even if one group suffers a series of arrests, as HUM has, the remaining group affiliates can easily transition to other organizations. Operations can be completed by ad hoc formations of militants from several groups. These ad hoc groupings are no doubt occurring and may explain the sudden appearance of splinter groups and sub-groups that had not been previously observed. Police officials, concerned with classifying and cracking down on specific organizations, may be categorizing groups rather than recognizing these unstructured associations.

Links to Pakistani political parties

Islamic parties historically have played a small role in Pakistani politics.⁸² Only recently, with anti-American sentiment running high, have Islamic parties won significant influence in Pakistan's parliament.⁸³ The leadership of JUI-F has strong links to HUM and has a powerful role in the newly elected coalition of Islamic parties. One intelligence analyst described HUA, HUM's predecessor organization, as "essentially the armed wing of the JUI."⁸⁴

The Musharraf government has avoided forming a coalition with the Islamic parties, but has gained only a narrow margin in the parliament. The success of HUM's political allies raises concerns about Pakistan's ability to continue a policy of banning militant groups. Should Islamic parties gain even more power, analysts worry that terrorist groups like HUM could gain access to military support or nuclear weapons.⁸⁵ Even without nuclear weapons, strong political advocacy provides militant groups with new means of recruiting volunteers and gaining financial support. These benefits could free HUM from existing limitations and increase the range of potential terrorist actions.

Policy Options

This profile of HUM suggests several potential counterterrorism policies to constrain HUM operations.

Providing educational support

Former Pakistani Prime Minister Benazir Bhutto removed most public funding for education in Pakistan, effectively forcing parents to choose madrassahs for their children.⁸⁶ These madrassahs now provide a steady stream of recruits for militant organizations such as HUM.⁸⁷ Cutting off this source of recruits should be a primary goal of U.S. counter-terrorism policy.⁸⁸

Musharraf has taken the first step toward addressing the problem by reasserting control over Pakistan's religious schools.⁸⁹ U.S. funding and expertise, perhaps through grants to education-focused NGOs, could support Musharraf's efforts to create a viable public school system in Pakistan.

In addition, the U.S. should focus intelligence operations on prominent madrassahs. The enrollment lists of some schools provide an accurate roster of tomorrow's terrorist leaders. These madrassahs make appealing intelligence targets – they have not yet embraced the secrecy of terrorist groups. Several Pakistani schools seem eager to take American students. A small human intelligence investment now could yield important intelligence for the future.

Avoiding group analytics

Intelligence analysts, like police officials, are comfortable categorizing terrorist threats in cohesive groups. But as the U.S. is discovering in its war on terror, the most interesting intelligence breakthroughs can be found in

investigating the links between groups. HUM as a cohesive entity is disappearing, to be replaced by ad hoc coalitions of HUM members and members of other militant organizations. Intelligence analysts who focus too much on group structures and leadership will miss the fluid nature of terrorist interactions as Pakistan continues its crackdown on militants.

Ad hoc operations offer significant benefits for the terrorists, but also for the intelligence community. As inter-group linkages increase, operational security breaks down. Terrorists who once operated in isolated cells now know every other terrorist in town. The potential for a domino effect is great – when one terrorist is caught, he can reveal the names of more fellow terrorists than in the past. Intelligence analysts can capitalize on this phenomenon by tracking the linkages between various groups closely, and avoiding the temptation to classify terrorist groups along neat divisions.

Mediating Kashmir

With the loss of Afghanistan as a safe haven, Kashmir ranks as a top terrorist destination. The lack of any significant state power has led to the proliferation of terrorist training camps and staging areas. The U.S. has a powerful interest in resolving the Kashmir conflict and bringing some structure to what is essentially a failed state.

The U.S., which has been reluctant to involve itself in such a contentious dispute, should offer its services as a mediator. India has been reluctant to internationalize the issue, but may accede to U.S. involvement if compensated through other means, such as military cooperation. Even if a final settlement is unlikely, U.S. mediation could lead to confidence-building measures along the Line of Control, reducing tension and the need for armed insurgents.

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**THE ARMY OF GOD MANUAL:
PERSUADING ANTI-ABORTION ACTIVISTS TO VIOLENCE**
NICOLE SIMON-KIRKWOOD

Understanding what motivates people to violence is a key component to the war on terrorism – particularly as analysts and strategists attempt to understand how religiously devout individuals could commit acts of violence otherwise prohibited by the religion they profess. Such individuals need not be brainwashed or mentally unbalanced. Rather, they can be influenced through the careful application of well-established persuasive techniques. This paper examines a Christian, U.S. based anti-abortion group that has been linked to a variety of violent, criminal acts throughout the past few decades. It explores how their violence-promoting guide, the Army of God Manual, strategically uses the principles of scarcity, commitment, and authority to motivate Christians to commit bombings, arson, kidnapping, and murder. The paper concludes that such subtle techniques become dangerous – and must be countered carefully – when used to motivate like-minded, devout individuals.

Introduction

It cannot be overstated that the terrorist acts of September 11, 2001 have changed fundamentally the domestic and foreign policy goals and organization of the United States. Reorganizing domestic agencies into a Department of Homeland Security, targeting foreign aid and investment, as well as coordinating with Defense Departments throughout the world are only a few of the recent U.S. actions taken to protect the United States against global terrorism.

Yet, despite all of such organizational necessity, such reactive steps are only one part of addressing terrorism and other acts of violence. In order to prevent terrorism and reduce the number of terrorists we must explore the origins of terrorism. What motivates someone to commit violence to further a political or religious agenda? How can terrorists so committed to religious tenets participate in brutal acts seemingly antithetical to the values they espouse? Moreover, how are political or religious sensitivities stoked or manipulated in order to provoke a violent reaction?

Some scholars and analysts have argued that Al Qaeda and others use brainwashing techniques or prey upon those with little money or hope.¹ However, such clear-cut explanations seem incomplete. If an organization trying to get a person who shares similar interests to commit acts of violence, brainwashing or economic manipulation may not be necessary – a healthy dose of persuasion may be all that is required. This paper explores the role that persuasion may play in motivating deeply religious individuals – in this case a domestic organization – to commit acts of violence. If one can extrapolate what the Army of God does to the actions and strategies of groups like Al Qaeda, there are some powerful lessons to be learned.

Such an analysis has varied implications for the war on terrorism as it suggests that those who commit acts of violence or terror are not crazy or mentally

unbalanced, as many tend to characterize them. Rather, through scarcity, commitment, authority, and other well established principles of persuasion, they have come to see a situation a certain way – a way that can only be responded through violence.² If this is truly the case, then policies that focus solely on war and killing a few select henchmen as a solution to terrorism will be sorely incomplete.

A Caveat

It is impossible to study any aspect of the abortion debate in America without acknowledging the intense emotions involved. Although I try to avoid the charged political questions, I am well aware that using the term “*violence*” to describe the actions advocated in *The Army of God Manual* is in and of itself a political statement.³ I ask only that readers indulge my attempt at an academic analysis of persuasion techniques, which means I must accept some standard for evaluation. Throughout this paper I use the definition of violence as provided by the Freedom of Access to Clinic Entrances Act (FACE) and Federal Law 18 U.S.C. 844(i).⁴

Background

Brief History of Abortion

Abortion in the United States is not a new political topic. Practiced as far back as America’s colonial days, abortion was fiercely debated when it was originally outlawed by Connecticut in 1821.⁵ However, since the 1973 *Roe v. Wade* decision that legalized abortion, the modern debate has increasingly been marred by violence committed against abortion clinics, providers, women and the families who seek abortions, as well as politicians and spokespeople for abortion-rights.

Abortion Clinic Violence

Since 1977, when the National Abortion Federation began compiling statistics on violence against abortion clinics as well as their providers, there have been over a thousand incidents of vandalism, six-hundred anthrax threats, over two-three hundred bomb or arson attempts, and over one hundred butyric acid attacks against clinics.⁶

In those same years abortion providers, their staff, and their families have faced threats including stalking, assault, kidnapping, stabbings, and shootings. June Barrett, the wife of murdered abortion provider James Barrett, “later recalled the horror of getting out of the truck and having to step over her husband’s dead body crumpled on the ground. ‘I knew he was dead.’”⁷

Given the historical significance of non-violence in the anti-abortion movement as well as the religious overtones of the many peaceful protestors, it was assumed early on that much of the violence was isolated and committed by a

few mentally unbalanced individuals.⁸ Since 1982, however increasing evidence has shown that a distinct community – organized or not – has emerged around a commitment to conduct acts of violence against abortion clinics as well as the people who run them.

The Army of God

The Army of God (AOG) first surfaced nationally in 1982 when three men claiming to be members of the group kidnapped an abortion provider and his wife in Illinois.⁹ The three men were later convicted of bombing three clinics in Virginia and Florida as well.¹⁰ Two years later, the letters “AOG” were discovered written near seven pipe bombs that had been placed on the outside of a clinic.¹¹ Since that time, clinic bombings, arsons, acid attacks, letters claiming to be laced with anthrax, kidnappings, and murders have all been attributed to the group.

The group encourages and commends those who commit acts of violence against abortion providers and has publicly praised Paul Hill and James Kopp, both accused in the shooting deaths of abortion providers. When asked about the person who sent letters to abortion clinics claiming to be laced with anthrax, Reverend Donald Spitz offered, “I consider the person who did send those letters to be a hero, that he did a great thing. He did a wonderful thing. He saved the lives of many, many innocent children.”¹²

Whether or not the Army of God is a genuine organization using methods of leaderless resistance or rather serves as a rallying cry for like-minded lone anti-abortion militants is debatable.¹³ The group itself claims that “it is a real army” but “the soldiers....do not usually communicate with one another.”¹⁴ However, despite the claims of the website and the *Army of God Manual*, federal officials have been “unable to prove there was a national conspiracy behind the violence.”¹⁵

There is little way to prove whether or not the group is a classic organization with a defined membership and hierarchy. Because the activities they praise, advocate, and claim responsibility for are illegal – from bombings in Atlanta, to butyric acid attacks on the west coast, to the murder of abortion doctors – the group remains secretive and underground.¹⁶

However, there are those who claim publicly to be associated with the Army of God. Ordained Pentecostal minister Rev. Spitz updates the AOG website that hosts the web publication of the *Army of God Manual*.¹⁷ In an interview with ABC News, Spitz publicly admitted his support of violence and killing abortion providers. He said, “If I had to choose between live babies and live abortionists, I’d choose live babies.”¹⁸ Denying his statements were threats, he added “I’m not saying I would murder that abortionist...I’m saying I prefer live babies to live abortionists.”¹⁹

Michael Bray, who wrote “AOG” on the wall of an abortion clinic in 1984, is another supporter of the Army of God.²⁰ Known as the “father of violence” among those who study the anti-abortion movement, he hosts the “White Rose Banquet” held annually “in Arlington, Virginia to honor comrades

imprisoned for committing clinic violence.”²¹ The individuals who attend the banquet often refer to themselves as “officers in the Army of God.”²²

Army of God Manual

The *Army of God Manual* was discovered in 1993 buried in Rachelle “Shelley” Shannon’s backyard. Authorities, however, suspect that the *Manual* was circulated among anti-abortion activists much earlier than that as “its methods were clearly employed long before the manual was discovered.”²³ Investigators believe that the *Manual* “first surfaced within activist circles during the ‘Summer of Mercy’ in Wichita” in 1991.

Written anonymously and in its third edition, no one is sure when it was written or by whom. The authors are believed to have come from among the prisoners held in an Atlanta jail in 1988 when anti-abortion activists committing acts of civil disobedience were jailed but refused to reveal their names.²⁴ The nicknames that the activists called one another in Atlanta appear in the “Special Thanks” section in the *Manual*’s Editor’s Preface.

The *Manual* runs over 100 pages and “describes dozens of illegal activities ranging from how to obtain and use butyric acid to vandalize clinics to how to make and detonate bombs.”²⁵ It encourages misdemeanors, such as using glue to prevent door locks from being opened to federal crimes such as “the direct sabotage of clinics” to “the outright execution of abortion personnel.”²⁶ In addition, the manual’s appendices purportedly offer “step-by-step advice for making one’s own C-4 plastic bombs and using chemicals such as ammonium nitrate and nitromethane.”²⁷

No one knows definitively how many of the arsons, bombings, acid attacks, and murders have been directly implemented thanks to the *Manual*. However, thanks to the diary kept by Shelly Shannon, her attempts at finessing arson and butyric acid attacks based on the advice in the *Manual* have been well documented. Shannon found both instruction and inspiration from the *Manual*.²⁸ She wrote explicitly in her diaries about how she followed the step-by-step instructions in the *Manual* to commit arson as well as locate, buy, and commit effective butyric acid attacks at clinics.²⁹

Additionally, there is strong suspicion that many other attacks against clinics around the country were inspired by the creative methods described in the *Manual*. For instance, in 1993 the Woman’s Pavilion in South Bend, Indiana was closed for 7 weeks after it was attacked in a method identically resembling the *Manual*’s recommendations “H” and “N” or “Project Noah – The Waters Below” and “Avon Calling.”³⁰ An activist fed a hose through the clinic’s mail slot “flooding the clinic’s entry room. The person or persons then poured in butyric acid, a nearly indelible substance that smells like feces and vomit and becomes more potent in water.”³¹

The Actors

The key players in the persuasion process all identify themselves as anti-abortion. However, those who are the persuaders have already committed to acts of violence while those being persuaded are still committed to non-violent acts to prevent abortion. Those being persuaded likely participate in some means to stop abortion whether joining protests or sidewalk counseling or having once participated in the civil disobedience conducted during the heyday of Operation Rescue.

The actors doing the persuading are those already committed to acts of violence, "covert activists" or "termites" according to the Army of God website.³² These actors are either promote or engage in any of the "99 Covert Ways to Stop Abortion" listed on the website.³³ Donald Spitz, Michael Bray, James Kopp, and Shelley Shannon are just a few of the individuals already identified with the Army of God and the *Manual*. In the *Special Thanks* section of the Editor's Preface, the long list of nicknames suggests a greater number of individuals who have been influenced by the *Manual* and "have been moved by the Holy Spirit to take up the cause of the babies."³⁴

Individuals who are anti-abortion but have not yet bought into the philosophy of violence are the targets of the persuasion effort. Although they share the same conviction that abortion is not only wrong but potentially evil, something prevents them from moving to violent action either against clinics or those who run them. Those people being persuaded may have not yet acted because they do not believe violence is consistent with their religious beliefs, because they do not want to get caught, go to jail, or be killed, or perhaps they have not yet sensed the urgency of the situation of abortion in America.

The *Manual* primarily works to move those who hate abortion – but have not yet taken violent action – to activate for the cause. Through a variety of techniques, the *Manual* argues that those who do not act immediately contribute to the killing of innocents, contribute to the decline of western thought, and are not true Christians.³⁵ Moreover, the *Manual* imparts a sense of urgency to taking action as soon as possible as we are living in a "dying culture."³⁶

Shelley Shannon, a self-described soldier in the Army of God serves as a case about the need to be persuaded to commit acts of violence. Beginning 1988, Shelly was an active member in Operation Rescue, committing acts of civil disobedience that resulted in just under a hundred days in jail³⁷. However, starting in 1991 after reading the *Army of God Manual* and Michael Bray's *When Bricks Bleed, I'll Cry*, she "underwent a transformation from civil disobedience to violence" and was later charged with attempted murder, eight counts of arson, and two acid attacks at many clinics throughout the northwest United States.³⁸

From Protests to Violence

The actors initially disagree about the methods to stop abortion. Those doing the persuading believe that violent action – direct intervention – is needed immediately to prevent abortion. However, those who are being persuaded have

not yet been convinced that violence is necessary or that God would permit violence against others to stop abortion. The *Army of God Manual* captures the sentiment that usually overwhelms the movement: “we have all been taught that a good pro-lifer is a peaceful pro-lifer.”³⁹

Many anti-abortion movement groups condemn the violence perpetrated by the Army of God. After a fatal 1998 clinic bombing claimed by the Army of God, The National Right to Life Committee issued a statement unequivocally condemning the action.⁴⁰ They stated:

“The National Right to Life Committee unequivocally condemns any such acts of violence used by individuals regardless of their motivation. No person who is truly pro-life could commit such an act of violence in the name of protecting unborn children. The pro-life movement works to protect the right to life and to restore respect for human life. Violence opposes that goal.”⁴¹

The Christian conception of God and the Bible serve as one of the definitive reasons for agreeing or disagreeing with using violent ends to achieve the means of stopping – what anti-abortion groups consider – the violent action of abortion. The *Army of God Manual* argues that “Lord God requires that whosoever sheds man’s blood, by man shall his blood be shed.”⁴² Further calls to violence are backed up with equally compelling biblical passages that portray God as angry and demanding his followers commit violent acts to prove their faithfulness.⁴³

In contrast, other groups such as the Pro-Lifers Against Clinic Violence counter that God will not support those who commit acts of violence and that violence is in opposition to the goals of the anti-abortion movement.⁴⁴ One anti-abortion website argued against justifying actions by appealing to God because “Scripturally, you have nothing to protect yourself. Your actions are sin, and we all know who is behind that kind of activity.”⁴⁵

Shelley Shannon struggled with the strengths and weaknesses of both arguments. Although she desperately wanted “to stop the killing too” she was frustrated not only with the pace of the movement but also with spending time in jail for actions that did not seem to stop abortion permanently.⁴⁶ She wrote in her diary, “If you are going to get 5 years for just blocking the doors, you might as well do much more drastic measures.”⁴⁷ However, her religious convictions made a compelling case for not taking violent action. She also wrote in her diary that “The biggest hurdle was being willing to even consider that God could indeed require this work of anyone. Christians don’t do that kind of thing, do they?”⁴⁸

In many ways, John O’Keefe, widely considered to be the father of rescue in the anti-abortion movement, embodied the ends versus the means conflict.⁴⁹ Influenced by Gandhi and Reverend Martin Luther King, Jr., O’Keefe argued passionately for using non-violence but would later become disenchanted with the slow pace of progress. In a letter he wrote that he believed that “non-violence is an urgent necessity” but that he would no longer criticize others for not condemning violence publicly.⁵⁰

The *Army of God Manual* as Persuasion

A lengthy document, the *Manual* is rich with different persuasion techniques – the primary type of influence employed – aimed at activating the anti-abortion protestor towards violence. From framing to repetition to logos, almost every paragraph is laden with persuasive content. However, in order to simplify the analysis, I will focus on three techniques used particularly well: the scarcity principle, the commitment/consistency principle and the authority/conviction principle.

Scarcity

The Army of God pushes people to action by employing the scarcity principle. By playing off the idea that the time to take action and save lives “is running out,” the *Manual* taps into what Robert Cialdini describes as the “deadline tactic.”⁵¹ Comparing abortions to the fast-paced movement of war, AOG can legitimately claim that time is short, or scarce. By setting up this deadline, AOG can then frame its defense as “the only rational way to respond to the knowledge of an imminent and brutal murder is direct action.”⁵² Conversely, the *Manual* can frame any violent action as necessary “to save babies’ lives.”⁵³

The *Manual* emphasizes time is short through several passages. At one point, the *Manual* suggests that “the information herein is hard currency in itself, currency to buy time for the babies.”⁵⁴ Another passage that advocates squirting super glue into the locks of abortion clinics says that the person who takes that action “has therefore bought precious time for the counselors...to speak to the mothers and/or couples seeking an abortion.”⁵⁵

The group also evokes the idea that time is short by comparing abortions to war, murder, and the evil of Satan. The Army of God conjures up images of war and evil by referencing World War II and calling the current situation the “New Holocaust.”⁵⁶ AOG is specifically referred to as the “American Holocaust Resistance Movement.”⁵⁷ Additionally, in their dedication, AOG specifically dedicates the *Manual* “to the victims and casualties of the World War.”⁵⁸ The name of the organization – the Army of God – further conjures the image of war as does the naming of activists as “soldiers.”⁵⁹

Moreover, AOG makes references to their war as one that transcends the fight against abortion clinics to a war against “the devil and all the evil he can muster among flesh and blood to fight at his side.”⁶⁰ It stresses the immediacy of this problem by suggesting that “this is, indeed, a life and death struggle” and “there is no alternative left open to us.”⁶¹

The *Manual* reinforces the idea that only immediate *action*, and not words, can save lives through a passage that buttresses the idea that war requires force rather than dialogue. They suggest letting “those who would argue and attempt to persuade continue to do so, and may God bless their efforts, just as in any war the diplomats seek their solutions by words and persuasion, while in the trenches the stink of death rises to heaven with the cry of the blood of the innocent

victims who perish while words are exchanged.”⁶² The powerful metaphor leaves little doubt about the necessity of immediate action.

Commitment/Consistency

The Army of God utilizes the commitment/consistency principle to remind potential activists that only by joining this small, select group of people will they be the most religiously devout – the most pure members of the anti-abortion movement. In other words, the AOG is able to persuade others that violence is necessary in order “to be (and look) consistent” in their faith and in their opposition to abortion.⁶³

This principle helps explain what appears to some as the contradiction between the Army of God’s commitment to religion *and* violence. Researchers note that this particular principle causes “us to act in ways that are clearly contrary to our own best interest.”⁶⁴ This occurs, in part, because social norms reinforce the idea that “inconsistency is commonly thought to be an undesirable personality trait.”⁶⁵

One way the *Manual* does this is by stressing their struggle is similar to that of Jesus Christ. In the Editor’s Preface, the *Manual* compares those who join the Army of God with “those countless souls who, for the sake of their commitment to Jesus Christ, gave up their very lives over a period of nearly two thousand years.”⁶⁶ They compare the ridicule that the followers of Jesus face with the ridicule they face from “picketing, prayer, sidewalk counseling, prayer, rescue, prayer, covert activity, prayer”⁶⁷ Moreover, they suggest that those activities are the “fruits of that true and lively faith our Lord requires of those who would call Him ‘Lord.’”⁶⁸

Secondly, the *Manual* applauds those who take action as being *truly* pro-life by suggesting that those who do not take direct action are not truly committed to the cause. The opening to the interview with the Army of God asks that “only those who are Pro-Life, as opposed to those who talk or, maybe think, Pro-Life, need bother turning another page.”⁶⁹ Moreover, during the interview, AOG suggests that “inactivity is negative” and their only activity is a sign of conformity to the anti-abortion cause.⁷⁰ The idea of a small, select group of individuals truly committed to the cause was reinforced during an interview with Michael Bray where he noted that “not everyone is called to be a missionary. The work entails sacrifice.”⁷¹

Third, the *Manual* uses terminology, nicknames, and a declaration to foster a sense of belonging and commitment to a tightly-knit community. Terminology throughout the *Manual* is unique, indicating a sense of belonging. Abortion rights activists are called Pro-Abortions.⁷² Clinics are referred to as “abortionarys” and covert activists are called “termites.”⁷³ Many of the recommended covert action methods also have a special terminology such as “Catacombs for Life” or “The Glory of Glue.”⁷⁴

Moreover, soldiers in the Army of God are not only given nicknames but are given special thanks and mention in the *Manual*.⁷⁵ Reinforcing a sense of commitment and conformity, celebrity status is given to a number of activists in

the *Manual* as Shelly Shannon is referred to as Shaggy West, and James Kopp – the person charged in the murder of doctor Barnett Slepian – is nicknamed Atomic Dog.⁷⁶

A sense that activists are members of an exclusive club devoted to an exclusive cause is conveyed throughout the *Manual* in order to emphasize the need for additional recruits as well as show that there is a strong sense of belonging “in solidarity with the resistance effort.”⁷⁷ This methodology blends the techniques of scarcity – there are only a few members who can make the necessary sacrifices to belong – as well as the techniques associated with commitment and consistency. The declaration at the end of the *Manual* serves to reinforce membership in a community committed to anti-abortion activism.⁷⁸

Authority/Conviction

The Army of God further bolsters their argument by using God as well as “the babies” who could be aborted to evoke the authority/conviction principle. The *Manual* uses Christianity as a mark of authority that all people, including anti-abortion activists as well as those who perform abortions, are subjects of it. Those being persuaded are more likely to respond to this use of the principle because they already perceive God and the babies as both knowledgeable and trustworthy.⁷⁹

God is used as an overarching authority throughout the *Manual*. Thanks are given to God for producing new tactics that could be used to prevent abortion.⁸⁰ However, another section asks “Lord Jesus Christ, Son of God, have mercy on me, a sinner.”⁸¹ Also, quotes from the Bible reinforce God as an angry authority. Hebrews 12:29, “For our God is a consuming fire” is quoted frequently throughout the *Manual*.⁸²

The *Manual* also uses God explicitly to call the “termites” to action. God is used as an authority who demands that his believers take action and as Christians for them to know that “they could not be silent, could not refuse – let alone neglect to live their faith.” Furthermore, the Declaration states that “Our Most Dread Sovereign Lord God requires that whosoever sheds man’s blood, by man shall his blood be shed.”⁸³ Furthermore, “a Pro-lifer who is not active...has cut him or herself off from the Church, and therefore, from Christ.”⁸⁴

Additionally, God is used as an authority who can justify any act of violence that an activist commits. Those who take the declaration are referred to as “God-fearing men and women” who pray, fast, and make supplication to God.⁸⁵ In an interview in the *Manual*, Jesus Christ is directly cited as a proponent of violence. The Army of God suggests that “Jesus Christ was never a pacifist except in His role as the Suffering Servant.”⁸⁶ AOG also suggests that “Most genuine Pro-Lifers praise and worship God when an abortuary is destroyed.”⁸⁷ Moreover, taking action against an abortion doctors is seen “as an act of mercy towards all concerned (not the least of those being the abortionist).”⁸⁸

The *Manual* also persuades using the authority principle by writing from the perspective of “the babies” – in other words from the perspective of babies who could potentially be aborted. Somewhat counter intuitively, this serves as

another use of the authority principle. Because babies are innocent, and thus trustworthy, and face the threat of abortion, and are thus knowledgeable, they are an authority on abortion. Using this authority, the *Manual* credits that “these ideas – although creative – are nonetheless obviously the ideas of little babies.”⁸⁹ For instance, it is the babies who will “accelerate the natural process of the decay of roofs by drilling holes into the low points of flat roofs.”⁹⁰ Moreover, the babies will not “have great moral qualms” about “obstructing services to more than one occupant of a multi-tenant building” by using concrete to back up sewer systems.⁹¹

Success and Failure

It is difficult to evaluate whether or not the *Army of God Manual* has been successful because it is difficult to know how AOG would measure its own success. In persuading others to join their organization and raise the cost to abortion clinics and doctors, they have been extremely successful. However, in mobilizing broad-based support as well as persuading others to end the practice of abortion, they have been less successful.

The Army of God has successfully recruited members to help raise the cost of conducting abortions as well as shut down a number of abortion clinics. On its website, AOG triumphantly claims to have closed “more than 250 killing centers...most by torching, some by bombing, and a few by other means.”⁹² The statistics claimed by AOG were difficult to verify; however, action taken by the group has led abortion clinics and their providers to take expensive actions to protect themselves.

For instance, a Rochester, New York doctor who performs abortions estimated that with the handgun, “steel-reinforced concrete, bulletproof windows and a network of cameras that provide 24-hour surveillance,” he had spent about \$100,000 on security measures in one year alone.⁹³ One clinic in Alabama that was attacked by an arsonist was relieved to find an insurance company that would insure the newly rebuilt building – even though their premiums increased from \$2,000 to \$5,000 a year.⁹⁴ The manager of a clinic in South Dakota also reported about the emotional toll the violence has on those associated with abortion clinics: “It’s not the amount of damage that is of importance here. ... It’s the intimidation, the threats, the attempt to provoke fear among clinic staff, among patients.”⁹⁵

It is a credit to its staying power as an organization that AOG has continued to act as a group. The group continues to carry out violent acts without significant pressure from authorities to disband. Although Michael Bray and Rev. Spitz continue to operate publicly, whether in hosting the “White Rose” Banquet or updating the AOG website, the Department of Justice has remarkably poor success proving a conspiracy and thus acting against those who support or run the website or the *Manual*. The lead investigator in the Shelley Shannon case noted that “There’s a difference between having a common purpose and having an actual criminal conspiracy.”⁹⁶

Still many others would argue that the overall success of the Army of God has been extremely limited. Because its message is so violent, it will never be

able to recruit enough members to permanently end abortion in America. There is some evidence to support this.

Abortion remains legal in the United States and public opinion consistently supports keeping it legal at least in some circumstances. A study from Gallup showed that the public's answer to "Do you think abortions should be legal under any circumstances, legal only under certain circumstances, or illegal in all circumstances?" has remained stable since 1975.⁹⁷ The majority of Americans support abortion to some extent such that a 2001 Gallup poll found that 58% of Americans believe abortion should be legal only in some circumstances while an additional 26% believed it should be legal in all circumstances.⁹⁸ Only 15% supported making abortion illegal in all cases.⁹⁹

Additionally, the violence advocated by the Army of God contributed to a major legal backlash against all anti-abortion protestors. In response to increased violence, the anti-abortion movement suffered several major setbacks by the end of 1993. Congress passed the Freedom of Access to Clinic Entrances Act and the Supreme Court gave the green light to press racketeering charges against anti-abortion groups as well as established the right to "buffer zones" around clinics.¹⁰⁰

By inviting backlash against the anti-abortion movement, the Army of God has garnered sympathy for those who provide abortions as well as alienated those who are otherwise anti-abortion. For instance, after the 1994 murder of Jim Barrett and John Britton, the spokesperson for Operation Rescue noted that "Nothing could be worse for the pro-life movement."¹⁰¹ O'Keefe further added during one interview, "The direction of the movement? I think it is a disaster."¹⁰²

Manual Ethics?

The most striking ethical dilemma presented is whether or not it is okay for the *Manual* to encourage violence and present a step-by-step guide to committing illegal acts. In addition to the argument based on the First Amendment, AOG has produced two arguments justifying the violent rhetoric in the *Manual*.¹⁰³

First, AOG argues that abortion is an act of violence – an act of murder – and that not only justifies but demands that force be used to prevent it. They point out that "protection often means the use of force, even deadly force, against the criminal."¹⁰⁴

AOG additionally justifies the ethics of their actions by suggestions that they are not "truly violent" because they ultimately prevent violence. In other words, their ends justify their means.

The counter arguments to AOG are fairly evident. First there is a question on whether or not abortion is indeed violence. As there is considerable disagreement about when "life" begins, many would argue that abortion is not murder. Another argument focuses on whether violence is ever justified. Again, some would argue it is not. The ethical merits of the *Manual* thus becomes lost in personal, moral beliefs.

Another way to assess the ethics of the *Manual* is to see whether it passes the four standards of ethical persuasion – as set forth by Gary Orren.¹⁰⁵ One could evaluate whether the *Manual* is truthful, relevant, civil, and whether those who are being persuaded are autonomous and have the freedom of choice.¹⁰⁶

The final characteristic, whether or not people have the freedom of choice to make their own decisions, seems to have been met. One might argue that because the *Manual* suggests that those who do not take action are not *true* Christians, there is little choice for those who want to maintain their religious identification. This argument is weak. There are many competing sources and voices who argue that to be a *true* Christian, one should not commit violence. As the Army of God is not the primary source, voice, or authority on what makes a Christian, one can assume that a US citizen has the choice whether or not to believe their rhetoric.

The other three characteristics are more difficult to evaluate. If one does not believe that abortion is murder, then what the *Manual* advocates fails the truthfulness, relevance, and civility test. However, if one believes that abortion is murder, then what the *Manual* advocates is honest. Moreover, if one believes there is a moral imperative to prevent someone from committing murder then the *Manual* is relevant as well.

Whether or not the *Manual* is civil is the only ethical standard that is potentially problematic for those who believe abortion is murder. The *Manual* itself seems to argue that it is not civil when it says “Our life for yours – a simple equation. Dreadful. Sad. Reality, nonetheless.”¹⁰⁷ The only logic AOG offers to counter the idea that the *Manual* is uncivil is that society itself has become uncivil. However, the argument that they must be uncivil to counter uncivil society is inconsistent with the premise that AOG members are a holy, spiritual group above reproach and committed to acts of good.

Final Thoughts

Persuasion-wise, the Army of God and their *Manual* remind one most clearly of Hitler and the Nazis. Perhaps it is somewhat ironic that they would call themselves resisters against the Nazis when many perceive them as using the same persuasive techniques that Hitler did to achieve similar morally repugnant ends.

Like the example of Hitler and the Nazis, this case highlights the ethical dilemmas of persuasion. In this particular case, there seems to be some element of dishonesty in persuasion – perhaps not in the techniques themselves but in the way these techniques are carefully selected and conveniently applied to achieve a morally questionable end. Again, this may not be in and of itself dishonest. However, when the end result is that people are persuaded to bomb a building or shoot a doctor, this raises a difficult quandary that must be addressed rather than excused away as the fault of the person doing the persuading.

The techniques of persuasion are insidiously powerful. At the hands of those with a clear cause, or better yet at the hands of those with a clear cause and a knack for clever manipulation, persuasion can become extremely dangerous.

¹ There is an abundant literature on the root causes of terrorism. See for example, Walter Reich, "Strategy or psychology? Origins of terrorist behavior," ed. Walter Reich, *Origins of Terrorism: Psychologies, Ideologies, Theologies, States of Mind* (Washington: Wilson Center Press, 1998); Jerrold Post et al, "The Radical Group in Context: 1" and "The Radical Group in Context: 2," *Studies in Conflict and Terrorism* 25.3 (May-June 2002): 73-126; Michael Ignatieff, "Intervention and State Failure," *Dissent* (Winter 2002): 115-123; and Alan Krueger and Jitka Maletkova, "Education, Poverty, Political Violence, and Terrorism: Is there a Causal Connection?" National Bureau of Economic Research Working Paper 9074 (July 2002).

² Some powerful and fundamental principles of persuasion have been studied and identified. Two excellent sources are Robert B. Cialdini, *Influence: Science and Practice* (New York: Allyn and Bacon, 2001); and Philip G. Zimbardo and Michael R. Leippe, *The Psychology of Attitude Change and Social Influence* (New York: McGraw Hill, 1991).

³ In the tradition of James Risen and Judy Thomas in their book *Wrath of Angels*, the more benign terms abortion-rights and anti-abortion will be used throughout this paper. Any other terminology used will be attributed to its source.

⁴ FACE established federal criminal penalties and civil remedies for "certain violent, threatening, obstructive and destructive conduct that is intended to injure, intimidate or interfere with persons seeking to obtain or provide reproductive health care services." 18 U.S.C. §844(i) establishes a federal felony criminal offense where an individual "maliciously damages or destroys, or attempts to damage or destroy, by means of fire or an explosive, any building, vehicle, or other real or personal property used in interstate or foreign commerce." National Task Force on Violence Against Health Care Providers, "Report on Federal Efforts to Prevent and Prosecute Clinic Violence 1998- 2000," Department of Justice, [online: web] cited 8 Dec 2002.

URL: <http://www.usdoj.gov/crt/crim/tfreppub.htm>

⁵ James Risen and Judy L. Thomas, *Wrath of Angels* (New York: Basic Books, 1998) 6.

⁶ For a comprehensive analysis of violence against abortion clinics and their providers, see the clinic violence and violence statistics section of the National Abortion Federation, "Incidents of Violence and Disruption Against Abortion Providers," National Abortion Federation, 31 Oct 2002, [online: web] cited 8 Dec 2002. URL: <http://www.prochoice.org>

⁷ Risen and Thomas, 364.

⁸ To learn more about the beginning of the anti-abortion movement and its ties with Catholics as well as anti-war leftist movements, see Risen and Thomas, *The Wrath of Angels*, 43-77.

⁹ Patricia Baird-Windle and Eleanor J. Bader, *Targets of Hatred* (New York: Palgrave, 2001) 4.

¹⁰ Baird-Windle and Bader, 75.

¹¹ Risen and Thomas, 87. There is some discrepancy as to whether the letters were written on the wall or were written on a sign placed near the wall.

¹² Barbara Walters, "Inside the Army of God," ABCNews.Com, [online: web] updated 28 Nov 2001, cited 8 Dec 2002.

URL: http://abcnews.go.com/sections/2020/DailyNews/2020_abortion_anthrax_011128.html

¹³ Baird-Windle and Bader, 167.

¹⁴ "99 Covert Ways to Stop Abortion - Part 1," *The Army of God Manual*, 12, [online: web] cited 8 Dec 2002. URL: <http://www.armyofgod.com/AOGsel5.html>

¹⁵ Risen and Thomas, 369.

¹⁶ Walters.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Risen and Thomas, 87.

²¹ Ibid., 78, 370.

²² In past years, the Banquet has featured letters from imprisoned Army of God "soldiers" Shelley Shannon and Paul Hill. Those interested in attending pay a fee, around \$40 to come and then have the chance to bid on items that belong to imprisoned AOG members. In January 1996, over one hundred people attended the banquet held at a local Best Western. For more information on the Banquet as well as the POC memorial bracelets see

URL: <http://www.armyofgod.com/wrbmikebray.html>,

<http://my.execpc.com/~awallace/anti.htm> and

<http://www.mttu.com/poc/pocbracelet.htm> Risen and Thomas, 370.

²³ Baird-Windle and Bader, 168.

²⁴ Those jailed were working with Randall Terry and Operation Rescue. During their rescues in Atlanta, Terry recommended that everyone strip themselves of identification and only answer to the name "Baby Doe." Because the activists refused to provide identification, the protestors were held in jail until they agreed to reveal their names. During the time in jail they communicated using the nicknames now associated with the Army of God. Risen and Thomas, 273-275.

²⁵ Risen and Thomas, 351.

²⁶ Baird-Windle and Bader.

²⁷ The appendices were not available in the online edition that I used. The Army of God website refers to the appendices and suggests they were removed because of "the lack of real free speech on the net, and the hysteria of the Federal Government." Baird-Windle and Bader, 170, and "An Historical Document," *Army of God Manual*, 1, [online: web] cited 8 Dec 2002. URL: <http://www.armyofgod.com/AOGhistory.html>

²⁸ Risen and Thomas, 351.

²⁹ "Who is Shelley Shannon?" *Army of God*, 2-4 [online: web] cited 8 Dec 2002. URL: <http://www.armyofgod.com/ShelleyWhois.html>

³⁰ “99 Covert Ways to Stop Abortion - Part 1,” *The Army of God Manual*, 5, and Laurie Goodstein and Pierre Thomas, “Clinic Killings Follow Years of Antiabortion Violence,” *Washington Post* 17 Jan 1995: A01.

³¹ Goodstein and Thomas.

³² “Operation B.R.I.C.K.: Babies Rescued Though Increased Cost of Killing,” *The Army of God Manual*, 3 [online: web] cited 8 Dec 2002. URL: <http://www.armyofgod.com/AOGse13.html>

³³ “99 Covert Ways to Stop Abortion - Part 1,” *The Army of God Manual*, 1.

³⁴ “Editor’s Preface to the Third Edition,” *The Army of God Manual*, 1, 2 [online: web] cited 8 Dec 2002. URL: <http://www.armyofgod.com/AOGse12.html>

³⁵ “Operation B.R.I.C.K.: Babies Rescued Though Increased Cost of Killing,” *The Army of God Manual*, 4, and “Epilogue,” *The Army of God Manual*, 1 [online: web] cited 8 Dec 2002. URL: <http://www.armyofgod.com/AOGse16.html>

³⁶ “Epilogue,” *The Army of God Manual*, 1.

³⁷ Anne Bower, “Soldier in the Army of God,” *Monitor Publishing*, 18 Feb 1996: 1 [online: web] cited 8 Dec 2002.

URL: <http://www.monitor.net/monitor/abortion/abortionsoldier.html>

³⁸ Risen and Thomas, 366.

³⁹ “Operation B.R.I.C.K.: Babies Rescued Though Increased Cost of Killing,” *The Army of God Manual*, 2.

⁴⁰ “Army of God Claims Birmingham Bombing,” UCSD.edu, 2 Feb 1998, [online: web] cited 8 Dec 2002.

URL: <http://burn.ucsd.edu/archives/ats-1/1998.02/msg00008.html>

⁴¹ “National Right to Life Condemns Violence,” National Right to Life Committee, 29 Jan 1998, [online: web] cited 8 Dec 2002.

URL: http://www.nrlc.org/press_releases_new/Jan2998violence.html

⁴² “Epilogue,” *The Army of God Manual*, 2.

⁴³ “Epilogue,” *The Army of God Manual*, 3.

⁴⁴ The Pro-Lifers Against Clinic Violence website states: There is a common stereotype that *all* pro-lifers support radical acts of violence. This simply is not true and we are here to represent the majority of pro-lifers who do not support violence. We firmly believe that violence and abuse have no place in the pro-life movement. The misguided extremists who take part in clinic bombings and abortionist shootings are **not** supported by mainstream pro-lifers and do **not** speak for us. Violence is contrary to what the pro-life movement stands for and hurts our cause. The extremists who have embarrassed the movement and damaged its credibility disappoint us.” “Representing the Non-Violent Majority,” Pro-Lifers Against Clinic Violence, [online: web] cited 8 Dec 2002.

URL: <http://members.tripod.com/~lifepeace/>

⁴⁵ The website states: “The Bible says ‘Thou shalt not kill’, and do you know it applies to abortionists as well as children? Surprise. The Bible also says to obey those who have the rule over you, and submit yourselves. You as a citizen have no right to aim that gun and take another’s life, no matter how condemnable you perceive their actions to be. We are free to make changes through ballot boxes,

peaceful protests, and offering of alternatives. Why do you have to break the law? The Bible also says 'Vengeance is mine, I will repay, saith the LORD.' It's not your job to deliver any retribution for another's sin. If it were, the family of the one you killed would have every right to aim guns at you for taking away their husband and father. Sehlat, "An Open Letter to the Killer of Barnett Slepian," 1998, [online: web] cited 8 Dec 2002.

URL: <http://www.sehlat.com/lifelink/killlet.html>

⁴⁶ "Who is Shelley Shannon?" Army of God, 1.

⁴⁷ "Who is Shelley Shannon?" Army of God, 1.

⁴⁸ Bower, 1.

⁴⁹ Risen and Thomas, 43.

⁵⁰ Ibid., 75, 76.

⁵¹ Robert B. Cialdini, *Influence: Science and Practice* (New York: Allyn and Bacon, 2001) 207.

⁵² "The Army of God Speaks Out," *The Army of God Manual*, 2, [online: web] cited 8 Dec 2002. URL: <http://www.armyofgod.com/AOGsel7.html>

⁵³ "99 Covert Ways to Stop Abortion - Part 1," *The Army of God Manual*, 1.

⁵⁴ "The Army of God: Dedication," *The Army of God Manual*, 2, [online: web] cited 8 Dec 2002. URL: <http://www.armyofgod.com/AOGsel1.html>

⁵⁵ "99 Covert Ways to Stop Abortion - Part 1," *The Army of God Manual*, 2.

⁵⁶ "Operation B.R.I.C.K.: Babies Rescued Though Increased Cost of Killing," *The Army of God Manual*, 1.

⁵⁷ "The Army of God Speaks Out," *The Army of God Manual*, 1.

⁵⁸ "The Army of God: Dedication," *The Army of God Manual*, 1.

⁵⁹ Ibid., 2.

⁶⁰ Ibid., 1.

⁶¹ "Epilogue," *The Army of God Manual*, 2.

⁶² "The Army of God: Dedication," *The Army of God Manual*, 2.

⁶³ Cialdini, 54.

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ "Editor's Preface to the Third Edition," *The Army of God Manual*, 1.

⁶⁷ Ibid.

⁶⁸ Ibid.

⁶⁹ "The Army of God Speaks Out," *The Army of God Manual*, 1.

⁷⁰ Ibid., 4.

⁷¹ Jessica Stern, *Terror in the Name of God* (forthcoming).

⁷² "99 Covert Ways to Stop Abortion - Part 1," *The Army of God Manual*, 12.

⁷³ "Operation B.R.I.C.K.: Babies Rescued Though Increased Cost of Killing," *The Army of God Manual*, 3.

⁷⁴ "99 Covert Ways to Stop Abortion - Part 1," *The Army of God Manual*, 1, 6.

⁷⁵ "Editor's Preface to the Third Edition," *The Army of God Manual*, 2-3.

⁷⁶ Risen and Thomas, 275, "Editor's Preface to the Third Edition," *The Army of God Manual*, 2, and "Who is Shelley Shannon?" Army of God, 3.

- ⁷⁷ “The Army of God Speaks Out,” *The Army of God Manual*, 7.
- ⁷⁸ “Epilogue,” *The Army of God Manual*, 2.
- ⁷⁹ Gary Orren, “Authority,” PAL-141 Classroom Lecture, Kennedy School of Government, Cambridge, MA 3 Oct. 2002.
- ⁸⁰ “Editor’s Preface to the Third Edition,” *The Army of God Manual*, 1.
- ⁸¹ *Ibid.*, 2.
- ⁸² “An Historical Document,” *The Army of God Manual*, 4.
- ⁸³ “Epilogue,” *The Army of God Manual*, 2.
- ⁸⁴ “Operation B.R.I.C.K.: Babies Rescued Though Increased Cost of Killing,” *The Army of God Manual*, 4.
- ⁸⁵ “Epilogue,” *The Army of God Manual*, 2.
- ⁸⁶ “The Army of God Speaks Out,” *The Army of God Manual*, 3.
- ⁸⁷ “The Army of God Speaks Out,” *The Army of God Manual*, 7.
- ⁸⁸ “Operation B.R.I.C.K.: Babies Rescued Though Increased Cost of Killing,” *The Army of God Manual*, 2.
- ⁸⁹ *Ibid.*
- ⁹⁰ “99 Covert Ways to Stop Abortion – Part 1,” *The Army of God Manual*, 5.
- ⁹¹ “99 Covert Ways to Stop Abortion – Part 1,” *The Army of God Manual*, 6.
- ⁹² “99 Covert Ways to Stop Abortion – Part 3,” *The Army of God Manual*, 6, [online: web] cited 8 Dec 2002.
URL: <http://www.armyofgod.com/AOGsel5B.html>
- ⁹³ Walters.
- ⁹⁴ Baird-Windle and Bader, 292.
- ⁹⁵ “Clinic Violence and Intimidation,” NARAL Foundation, 28 June 2002: 5, [online: web] cited 8 Dec 2002.
URL: <http://www.naral.org/mediaresources/fact/pdfs/terrorism.pdf>
- ⁹⁶ Risen and Thomas, 369.
- ⁹⁷ Lydia Saad, “Public Opinion About Abortion – An In-Depth Review,” Gallup: 3, [online: web] cited 8 Dec 2002.
URL: <http://www.gallup.com/poll/specialReports/pollSummaries/sr020122.asp>
- ⁹⁸ *Ibid.*
- ⁹⁹ *Ibid.*
- ¹⁰⁰ Risen and Thomas, 357.
- ¹⁰¹ *Ibid.*, 365.
- ¹⁰² *Ibid.*, 371.
- ¹⁰³ I set aside the First Amendment argument because it is less salient to the purposes of this paper. Moreover, such an argument would require a much longer paper and a much more legally astute author.
- ¹⁰⁴ “Epilogue,” *The Army of God Manual*, 2, and “The Army of God Speaks Out,” *The Army of God Manual*, 2.
- ¹⁰⁵ Gary Orren, “Standards for Ethical Persuasion,” PAL-141 Classroom Lecture, Kennedy School of Government, Cambridge, MA 24 Oct 2002.
- ¹⁰⁶ *Ibid.*

¹⁰⁷ In a statement believed to be a literal call for the execution of doctors who provide abortions, this passage finishes with “You shall not be tortured out our hands. Vengeance belongs to God only. However, execution is rarely gentle,” “Epilogue,” *The Army of God Manual*, 1.

PUBLIC SUPPORT FOR MILITARY FORCE POST-SEPTEMBER 11TH

JIN PAK

In "Still Pretty Prudent: Post-Cold War American Public Opinion on the Use of Military Force," Dr. Bruce W. Jentleson's OLS regression analysis of public opinion during the post-Cold War era up until the first Gulf War revealed that American support for military force was largely determined by the Principle Policy Objective (PPO) given for an operation. Additionally, there was greater support for a PPO to stop an aggressive policy by a foreign nation – Foreign Policy Restraint (FPR) – rather than a PPO for changing a foreign government – Internal Political Change (IPC). OLS regression analysis of polling data taken from post-September 11, 2001 to January 2003 seems to indicate that this may be changing. Americans may be more willing to support military force for IPC objectives. If true, this could provide continued support for wider campaigns in the future against countries with governments deemed hostile.

[Note: The author is an officer in the United States Army, and the views expressed are those of the author and do not necessarily reflect those of the Department of the Army, the Department of Defense, or any other agency of the U.S. Government.]

September 11, 2001 may have marked the beginning of a fundamental shift in American public attitudes toward proper use of military force. Prior to that horrible day, Americans generally supported the use of military force for a specific and well-defined purpose, whether it was to stop an aggressive act by another power or to deliver humanitarian relief. Statistical analysis of polling data from September 2001 to January 2003 concerning the use of military force seems to indicate that American public support for military force might be changing in favor of a broader range of purposes spanning from deterring state behavior to overthrowing governments deemed hostile.

According to a theory developed and tested by Dr. Bruce W. Jentleson, the Principle Policy Objectives (PPOs) for a military operation had a significant impact on public support; Americans prudently like to know what goal the force is intended to achieve.¹ They prefer well defined purposes designed for a Foreign Policy Restraint (FPR) objective to counter specific acts of aggression or for a Humanitarian Intervention (HI) objective. Missions dedicated to realizing Internal Political Change (IPC) objectives, ranging from taking sides in a civil war to using force to overthrow hostile governments, were the least favored.² Order of preference for the three different PPOs was HI and FPR >> IPC. Analysis of polling data during the post-Cold War period performed by Dr. Bruce W. Jentleson and Dr. Rebecca L. Britton in their piece, "Still Pretty Prudent: Post-Cold War American Public Opinion On the Use of Military Force," provides clear evidence of these preferences.

Using Ordinary Least Squares (OLS) regression analysis of polling data post-September 11th, this paper will describe how this attitude may be changing. While the impact of PPOs on public support remains statistically significant, as it was during the post-Cold War era, the difference in public support between FPR

and IPC objectives is decreasing. This implies that Americans are beginning to accept the idea of using military force for a far broader purpose. If true, such a trend could have a significant impact on US foreign policy, making it easier for the US government to justify a much broader campaign of using military force. Not only will it impact how aggressively the US protects its interest from near term threats such as Iraq, but also how the US pursues more long-term objectives. These could include efforts to deal with threats posed by the other two countries on the "Axis of Evil" – Iran and North Korea.

PPO Theory During the Post-Cold War Time Period

Using polling data from six different cases of conflict during the Post-Cold War era – Somalia, Rwanda, North Korea, Haiti, Bosnia, and Iraq – Jentleson and Britton found that the three different PPOs, FPR, HI, and IPC, had a significant impact in influencing public support when compared to other possible explanatory variables such as: the expected risk of an operation, whether or not there was allied involvement, and whether or not there was elite consensus.

While the objective of Humanitarian Intervention is largely self-explanatory – using the military as a means to provide humanitarian relief – the characteristics of the other two PPOs require further clarification. In the words of Jentleson and Britton:

The key distinction was between force used to coerce FPR on an adversary engaged in aggressive actions against the United States, its citizens or its interests and force used to try to engineer IPC in another country's government, whether as support for an existing government considered an ally or an effort to overthrow a government considered an adversary.³

Thus, when examining polling data for the six conflict cases, they focused on questions that asked whether a person supported military force for either an FPR, HI, or IPC purpose. After conducting OLS multivariate regression on this data, they found that:

Both HI and FPR showed independent and highly significant positive effects. They increased public support an additional 28.81 percentage points and 19.41 percentage points, respectively, above the baseline (IPC).⁴

The mean support score for FPR objectives was 55%, 64% for HI objectives, and a low 36% for IPC objectives, reflecting a 19% difference in mean support between FPR and IPC objectives.⁵ These estimations were for the cross-case PPO effect on public support, and were not conflict specific. This meant that, in each of these six cases, the public supported using military force for specific purposes, such as stopping certain aggressive acts and providing humanitarian

relief, significantly more than goals such as influencing political reform or overthrowing governments.

PPO Theory After September 11th

Today, the United States faces a challenging security environment marked with numerous potential sources of conflict. This prompts the following question: how does PPO theory fare in light of this more volatile international environment, post-September 11th? Using polling data from September 2001 to January 2003, I tested the theory via Ordinary Least Squares (OLS) regression analysis. In order to test the PPO theory, the data set for the regression consisted of polling questions that addressed using military towards a policy objective. More specifically, I only chose those questions that had the following two characteristics as a minimum:

- 1) It asked whether or not a person supported military force. The questions had terms such as “military force”, “military action”, “deploying forces”, and “deploying troops.” And,
- 2) The question linked the proposed military force to a specific PPO: FPR, HI, or IPC.

Questions that associated military force with a goal of reversing an aggressive policy or a threatening foreign policy employed by another country were categorized as FPR questions. Those that stressed the delivery of supplies, food, aid, and the like, were considered HI. And finally, questions that dealt with using force to change a government or topple a regime were deemed IPC-related. Two sample questions from the data set are shown below to further clarify the distinction between FPR and IPC related questions:

- 1) “If we learned that Iraq was harboring terrorists, would that be a very important reason, fairly important reason, or not important reason to justify the use of military force against Iraq?”⁶ This is an FPR question because it asks about the use of force to stop an aggressive policy: harboring terrorism.
- 2) “Would you favor or oppose having US forces take military action against Iraq to force Saddam Hussein from power?”⁷ This is an IPC question because it asks the respondent to make a judgment about using military force for the purpose of causing regime change rather than to counter a specific aggressive act.

Using this paradigm, a statistical data set was created with 34 FPR related questions, one HI related question, and 59 IPC related questions for a total of 94 observations.⁸ The dearth of polling questions dealing with the use of military aid for humanitarian purposes made it harder to estimate the true effect of HI, but HI nevertheless was included in the analysis.

Of the 94 records, one question concerned an Iran military scenario, four questions concerned a North Korea scenario, and the remaining 89 questions dealt solely with Iraq. The 89 Iraq related questions were used for the OLS regression analysis that estimated the intra-case PPO effect on public support for military force against Iraq, and all 94 observations were used for the OLS regression to

estimate the cross-case PPO effect. No attempt to estimate intra-case PPO impact on the Iran and North Korea cases was made due to lack of data.

Intra-case PPO Effect on the Iraq Scenario

On average, American public support for using military force against Iraq was 67% regardless of the Principle Policy Objective (PPO) offered as rationale for the military action, quite a clear majority. The mean support score for FPR related questions was a high 75%, 64% for IPC-related questions, and 50% for the only HI related question. Two elements are significant here:

- 1) The average support scores for FPR and IPC related questions are both high,
- 2) The difference between the scores is only 11 percentage points.

This 11% difference is eight percentage points lower than the 19% difference between the mean support scores for FPR and IPR objectives during the post-Cold War era.⁹ A reason for this might have to do with the sense of insecurity and vulnerability that September 11th inflicted on the American public. The terrorist attacks may have lowered Americans' inclination to make a clear distinction between FPR and IPC objectives for use of force against countries deemed a significant threat. This could imply that Americans may now be more likely to support the use of force for objectives such as regime change on governments it considers an adversary regardless of whether or not there is sufficient evidence that it is taking aggressive action against the United States.

The following polling data provide some examples that underscore this possible shift in public opinion. Prior to September 11th, Americans did not view Iraq as a sufficient enough threat to use military force; they essentially felt that containment strategy was sufficient. A March 1999 NBC News sponsored poll showed that only 49% of Americans supported using troops to overthrow Saddam Hussein, a distinctly IPC objective.¹⁰ Furthermore, as late as Jan 12, 2001, a plurality of Americans, 51%, continued to support the decision made in the 1990-1991 Persian Gulf War not to pursue Saddam Hussein.¹¹ When asked to categorize how seriously they perceived the threat posed to the US by Iraq, only 35% of Americans viewed it as very serious and 34% categorized it as moderately serious.¹²

Yet, post September 11th, a significant majority of Americans support using military force against Iraq. According to PPO theory, the bulk of this support should be attributable to the traditionally higher level of support that Americans display for FPR objectives. In this case, these objectives consist of stopping the Iraqi government's alleged pursuit of Weapons of Mass Destruction (WMD) and stopping its alleged support of terrorism. If post Cold-War attitudes toward military force remained constant, then the mean support score for a question involving the use of military force for these FPR objectives should be significantly higher than that for an IPC objective such as Iraqi regime change.

The average support scores depicted earlier hint that these attitudes may have changed; support for IPC objectives were almost as high as for FPR ones. This result implies that American attitudes toward military force may have

changed to a greater willingness to pursue a broader scope of purposes. In the past, the public was perfectly willing to let adversary regimes remain in power as long as they took no direct aggressive action against the United States or its interests. Examples of this phenomenon are numerous and include the public's historic willingness *not* to use force against countries like Iran and North Korea. While many consider these countries adversaries, there is no clear evidence that they are taking concrete and direct acts of aggression against the United States. This reflected a public attitude that put a sharp emphasis on the distinction between FPR and IPC objectives.

It now appears that the public may have largely equated the two objectives as similar. A heightened feeling of vulnerability and insecurity may have caused Americans to doubt that military force can successfully stop an aggressive action *without* dealing directly with the cause of the action. For a large portion of the public, it may not be enough to try to deter Iraq from seeking WMD capability; they may no longer think it is feasible to do so without actually changing the Iraqi government.

But, is this trend applicable only to the Iraq case, or does it reflect a changing attitude about military force in general? To answer this question, an analysis of the cross-case PPO effect is warranted.

The Cross-Case PPO Effect on Support for Military Force

Determining the PPO effect on support for military force in general was done using polling data from September 2001 to January 2003 for three possible sources of conflict: Iraq, Iran and North Korea. While there were plenty of polling questions that dealt with using military force on Iraq (89), there were only five questions for Iran and North Korea that specifically asked if a person supported using military force against either of the two countries for a particular FPR, HI, or IPC related objective. Consequently, the following cross-case estimates of PPO effects should be viewed only as indicators of a possible change in the public's attitude towards military force. More collection and scrutiny is necessary as additional polls dealing explicitly with this topic become available.

OLS Regression analysis was used to estimate the overall cross case impact of PPOs on public support: whether or not it was still significant, and the magnitude and direction of this impact. I conducted a series of regression analyses using a very similar model to the one used by Jentleson and Britton.¹³ The dependent variable was public support for using military force, and has a range from 0 to 100. The regressors were the following:

- 1) *FPR* – a dummy variable that was coded 1 if the question dealt with an FPR objective, and 0 otherwise.
- 2) *HI* – a dummy variable that was coded 1 if the question dealt with an HI objective, and 0 otherwise.
- 3) *risk* – a dummy variable that was coded 1 if the question made mention of using ground troops, and 0 otherwise. This variable was added to test PPO's significance in the face of other factors that influence public opinion such as the expected risk of an operation.

- 4) *multilateralism* – a dummy variable that was coded 1 if the question made mention of an international or multinational force or military help from any ally, and 0 otherwise. Much like the Risk variable, this one was added to ensure that the regression accounted for any impact multilateralism might have on public opinion.

The base case for this was a question that related purely to an IPC objective. Two variables that Jentleson and Britton used were not included: *presidential cues and congressional opposition*. Post September 11th, the high level of solidarity between the Congress and the President made these two parameters constants rather than variables, and thus they were not included in the analysis.

With the remaining four independent variables, I conducted four regressions using STATA. The results are depicted below:

<i>Independent Variables</i>	<i>Model 1</i>	<i>Model 2</i>	<i>Model 3</i>	<i>Model 4</i>
Foreign Policy Restraint (FPR)	9.77*** (2.17)	7.30*** (1.90)	7.26*** (1.89)	
Humanitarian Intervention (HI)	-13.85*** (1.05)	-17.46*** (0.95)	-17.57*** (0.91)	
Risk		-13.67*** (2.47)	-13.71*** (2.45)	-15.32*** (2.25)
Multilateral		1.12 (1.42)		0.62 (1.62)
Constant (Internal Political Change)	63.85*** (1.05)	67.46*** (0.95)	67.57*** (0.91)	70.28*** (1.03)
Adjusted R ²	0.2339	0.5031	0.5023	0.3536
N, sample size	94	94	94	94

Note: Estimated standard errors appear in parentheses. ***= $p < .001$.

- 1) *Model 1* included only the PPO variables. The results indicate that they maintain a statistically significant impact on public support.
- 2) *Model 2* included all the variables (FPR, HI, Risk, Multilateral) to see if PPOs were still significant when faced with other possible explanations. Indeed, they are still significant, and the explanatory power (adjusted R²) of this model increased tremendously from .2339 to .5031. However, it is interesting to note that Multilateral did not have a significant impact on public support, while Risk did.
- 3) *Model 3* – included all the variables except Multilateral to see what would happen without this variable. As before, the PPO and Risk variables remained significant, but the R² dropped slightly to .5023.
- 4) *Model 4* – which only included the Risk and Multilateral variables to see how much of an impact these two explanatory variables had on public support with regard to PPOs. Risk remained significant, and Multilateral

remained insignificant, but more importantly, the model's explanatory ability decreased sharply to .3536.

These results point out that the impact of policy objectives still exists in the post-September 11th time period. In this regard, these findings seem to confirm those of Jentleson and Britton. However, one thing is different: *the value of FPR's impact has decreased to 7.3 from the 19% cited by Jentleson and Britton.* This difference of over 12 percentage points is statistically significant to a .001 significant level using a two tailed hypothesis test.

Bottom Line – the effect of PPOs is still significant in influencing public support for use of force, but the positive impact that having an FPR objective had on support during the post-Cold War era has declined. Stated another way, the difference in public support for an FPR objective versus an IPC objective has dropped significantly. This could imply that the public is more supportive of a broader range of goals for military operations and is not limited to objectives that seek to deter only specific acts of aggression.

Implications on the “Axis of Evil”¹⁴

In light of recent revelations that North Korea is actively pursuing a nuclear weapons program and the release of satellite imagery hinting that Iran may be doing the same, the current change in American attitudes toward using military force could have potentially serious consequences. As mentioned earlier, a very small percentage of the polling questions in the data set dealt with Iran and North Korea. Thus, it is premature to say for certain how changing attitudes will affect public support for using force in either of these two scenarios. But there are certain indicators that Americans may be more willing to use force to deal with these sorts of challenges.

Prior to September 11, the American public always considered both Iran and North Korea as potential adversaries, yet they never showed any inclination to support the use of force against either government. This is probably because the public did not perceive either of them as serious enough threats to warrant military action.

A September 29, 1999 poll showed that 44% of respondents viewed Iran as unfriendly to the US and 34% viewed it as an enemy.¹⁵ Yet, when asked which nation posed the greatest threat to US national security, only 6% of the public chose Iran, while 36%, 21% , and 8% of the public chose China, Iraq, and Russia respectively.¹⁶

In the case of North Korea, the public traditionally has been very wary of supporting military force on the Korean Peninsula. The public has lingering memories of the Korean War and the proximity of 37,000 US troops against a heavily armed North Korea. Even after Kim Jong Il publicly revealed his nuclear weapons program in October 2002, only 40% of the respondents of a January 3, 2003 poll were willing to use force against North Korea's nuclear facilities, even if limited to air strikes with the support of other allies.¹⁷

Post September 11 polling data show that these numbers may be changing. A January 11, 2002 Gallup poll showed that 71% of the American

public would support the US government should it decide to take military action against Iran.¹⁸ Furthermore, a January 3, 2003 poll showed that if the US did not resolve the current nuclear crisis with North Korea diplomatically, 47% of respondents would support military action while 48% would oppose it.

While the question regarding North Korea specifically appeals to an FPR objective, the one regarding Iran does not. This is especially true since North Korea admitted having a nuclear weapons program while Iran repeatedly denies this despite US allegations to the contrary. Despite the release of satellite imagery of a suspected nuclear plant in Iran, no evidence remotely close to the North Korea case has presented itself. Therefore, the Iran related question on using force may have appealed to an IPC objective rather than an FPR one.

It is interesting to note that these polls seem to indicate that Americans were more willing to use force *without* a clear FPR objective against Iran while less willing to support the use of force *with* a clear FPR objective against North Korea. Of course, many other factors influence public opinion such as expected casualties. But if the narrowing gap between support for FPR and IPC objectives as indicated by my regression analysis continues, it does not bode well for those who hope for more limited operations with only well-defined purposes. The Axis of Evil label may become a signal for larger and broader campaigns to come.

Note to Reader: At the time of submission of this article, I received a copy of a letter written by Dr. Bruce W. Jentleson, whose writings on PPO theory were the test case and the inspiration for this paper. In the letter, he cautioned against making a firm conclusion that Americans are indeed more supportive of IPC objectives. He cited the Iraq case as relatively unique in that the IPC objective can be seen as a means to an overall FPR objective.¹⁹ He used the 1991 Gulf War as an example of IPC objectives receiving high support when tied to an overall FPR goal. Considering his input, I took care to assert only that opinions *may have changed*. Indeed, as the sample data set was drawn from a relatively limited time period – September 2001 to January 2003 – it remains to be seen if this possible change in public opinion holds for the long term.

¹ For a detailed explanation of the theory, see: Bruce W. Jentleson, "The Pretty Prudent Public: Post Post-Vietnam American Opinion on the Use of Military Force," *International Studies Quarterly* 36.1 (1992): 49-73.

² Bruce W. Jentleson and Rebecca L. Britton, "Still Pretty Prudent: Post-Cold War American Public Opinion on the Use of Military Force," *Journal of Conflict Resolution* 42.4 (1998): 395-417.

³ *Ibid.*, 397

⁴ For a thorough discussion of their regression analysis see Jentleson and Britton, 405-414.

⁵ *Ibid.*

⁶ Pew Poll, 9 Jan 2002.

⁷ ABC News Poll, 13 Nov 2002.

⁸ A data set of 94 questions from Lexis Nexis and Polling the Nations polling databases from September 2001 to January 2003 met the criteria of dealing with military force and an FPR, IPC, or HI policy objective.

⁹ Jentleson, 401.

¹⁰ NBC News Poll, Mar 1999, asking, "Eight years have passed now since the end of the Persian Gulf War, and Saddam Hussein is still in power in Iraq. Do you think that the US should or should not use American troops to overthrow him?"

¹¹ Time/CNN Poll, 12 Jan 2001, asking, "Looking back to the war with Iraq in 1999, do you think we made the correct decision stopping fighting when we did, or do you think we should have fought longer?"

¹² Time/CNN Poll, 14 Jun 2000, asking, "Thinking now about foreign policy issues, would you say that the following represent a very serious threat to the United States, a moderately serious threat, just a slight threat, or no threat at all?... Iraq?"

¹³ Jentleson, 408.

¹⁴ A term used by President George W. Bush in his January 2002 State of the Union speech.

¹⁵ Gallup Poll, 29 Sep 1999, asking, "(For each of the following countries, please say whether you consider it an ally of the United States, friendly, but not an ally, unfriendly, or an enemy of the United States.) How about... Iran?"

¹⁶ Gallup Poll, 28 Sep 1999, asking, "Which nation do you consider the greatest threat to US (United States) national security?"

¹⁷ ABC News Poll, 3 Jan 2003, asking, "As part of an effort to block North Korea from developing nuclear weapons, would you support or oppose... United States-led air strikes against nuclear weapons facilities in North Korea?"

¹⁸ Gallup Poll, 11 Jan 2002, asking, "(If the US government decides to take military action in the following countries, would you favor or oppose it?) How about... Iran?"

¹⁹ Bruce W. Jentleson, Letter to Dr. Maxine Isaacs regarding this paper, 3 Mar 2003.

**TACTICALLY ADEPT, STRATEGICALLY INEPT:
REFLECTIONS ON THE 1999 CAMPAIGN
TO RATIFY THE COMPREHENSIVE NUCLEAR TEST BAN TREATY
PHILIPP CARROLL BLEEK**

The 1999 U.S. Senate battle over the Comprehensive Nuclear Test Ban Treaty, which culminated in the treaty's rejection, is a test case for the role of public opinion in contentious nonproliferation policy disputes. This article explores the events leading up to the test ban vote, with particular emphasis on the role public opinion played in treaty proponents' and opponents' strategies. The article concludes that although treaty proponents launched a tactically adept campaign that made sophisticated use of polling tools, their broader strategy for achieving test ban ratification was flawed. The timing of their campaign was poor, the opposition was too well organized, and public opinion was not the asset some proponents had hoped. The test ban case demonstrates that public opinion is a limited asset at best in battles over controversial foreign policy issues.

High Stakes

The 1999 U.S. Senate vote on the Comprehensive Nuclear Test Ban Treaty has been called the most important foreign policy vote in recent history.¹ The treaty, which seeks to ban all nuclear test explosions, was constructed on a foundation of multiple, less ambitious agreements and more than fifty years of preliminary work by arms control advocates and statesmen representing a broad coalition of nations. The final text was the product of three years of intense multilateral negotiations. U.S. President Bill Clinton, who spearheaded negotiations on the pact and was the first to sign it in 1996, called the treaty the "longest sought, hardest fought prize in the history of arms control."²

The pact has a dual purpose. It is intended to constrain the efforts of existing nuclear weapons states to design, develop, and deploy more advanced nuclear weapons, so-called vertical proliferation. And it would hamper attempts by non-nuclear weapons states to acquire a nuclear weapons capability, known as horizontal proliferation.

The treaty was the product of a consensus-oriented process involving nations around the globe as well as many non-governmental groups that participated actively in its negotiation. As such, the test ban represented a test of the viability of a multilateral, inclusive approach to controlling the threat of weapons of mass destruction. And indirectly, it tested the government officials and non-governmental actors who were both key participants in and advocates for such an approach.

Even more broadly, the treaty pitted two increasingly dichotomous schools of American foreign policy, perhaps most aptly described using Eugene Wittkopf's terms militant internationalism and cooperative internationalism, against one another.³ Opponents of the pact believed in an approach to counter weapons of mass destruction threats consonant with a realist approach to

international relations (which in turn corresponds to Wittkopf's militant internationalists), a school that believes the United States ultimately can rely only on itself for security. In fact, the statesman most closely associated with that approach, Henry Kissinger, refused to endorse the treaty, although he did join several other former national security officials in calling for the vote to be postponed when it became clear the treaty would be voted down.⁴

Supporters, meanwhile, tended to fall into Wittkopf's cooperative internationalist camp, with core beliefs about the necessity of cooperation in an inherently interlinked or "globalized" world. Arguments about global goodwill very similar to those advanced by Joseph Nye under the rubric of "soft power" played a significant role in their case for the treaty.⁵

In a narrower sense, the test ban vote was a test of American public opinion. There was broad, historically consistent public support for a nuclear test ban. While the issue did not mobilize the public in the way the Vietnam War or the Nuclear Freeze Movement had in the 1960s and 1980s, respectively, it was certainly the most salient arms control issue on the post-Cold War agenda.

Nuclear testing is an arms control issue the public can understand – the mushroom cloud produced by an atmospheric nuclear test is universally recognized and feared, and the public has a dread of all things nuclear that borders on the irrational, or at least the less-than-scientific. If public opinion did not matter in the 1999 battle over test ban ratification, it is hard to make a case that it could ever be a factor on an arms control or non-proliferation issue.

That said, there is a case to be made that public opinion has changed in the aftermath of the September 11, 2001 terrorist attacks on New York and Washington, which drew tremendous public attention to the threat posed by mass destruction terrorism. But that attention has yet to translate into substantially increased support for programs to address proliferation threats. It may be too early to tell what its long-term ramifications will be.

For all the reasons spelled out above, the Senate test ban vote was a historic moment. And the Senate's rejection of the pact, not merely by the one-third constitutionally required to decline advice and consent on a treaty, but by a narrow majority, had profoundly negative implications for the global entry-into-force of the treaty specifically and the approach to controlling mass destruction threats it represented more broadly. In fact, some commentators described the 1999 vote as marking the end of traditional arms control.⁶

This paper seeks to understand the 1999 vote, with particular emphasis on the role of public opinion. The paper will explore how public opinion figured into the strategies of treaty proponents (and to a lesser degree, treaty opponents) and how it did or did not affect the outcome of the campaign to ratify the pact.

Brief Background

The Comprehensive Nuclear Test Ban Treaty was signed September 24, 1996 by U.S. President Bill Clinton and the leaders of seventy other states, including all five formally-recognized nuclear weapon states.⁷ The agreement will enter into force when it has been ratified by all forty-four states recognized by the

treaty as capable of producing nuclear weapons.⁸ As of the end of 2002, the treaty had been signed by 166 of a total of 193 recognized states and ratified by 97.⁹ Of the forty-four states that must ratify the treaty before it can enter into force, forty-one had signed and thirty-one had ratified.¹⁰

Submitted to the Senate by President Clinton in 1997, the treaty was held in the Foreign Relations Committee by then-chairman Jesse Helms (R-SC), who sought leverage to force the White House to submit two unrelated agreements on Anti-Ballistic Missile Treaty modification and global climate change. In a letter to Senate colleagues, Helms famously termed his approach to the test ban “flocinaucinihilipilification,” using one of the longest words in the English language, which he reportedly claimed to have learned from the Senate’s unofficial scholar-in-residence Daniel Patrick Moynihan (D-NY), to communicate his derision for the pact.¹¹

Sophisticated Tactics

Frustrated with Helms’ successful blocking strategy, a small group of treaty proponents, spearheaded by several Washington-based arms control organizations, moved to force the issue in early 1999.¹² Even harsh critics of the ultimately failed effort to secure test ban ratification like Thomas Graham admit that the campaign they launched was tactically adept.¹³

Treaty supporters launched a publicity campaign targeted both at building public support and at increasing pressure on Senate allies and opponents alike.¹⁴ The campaign involved collecting endorsements from former military and government officials and nuclear weapons scientists as well as public interest organizations, persuading newspapers to editorialize on the test ban and publish commentary articles and letters-to-the-editor, and encouraging concerned citizens to call their senators.¹⁵

As part of their campaign, pro-treaty groups deployed an extensive polling strategy, developed in conjunction with leading Democratic pollster Mark Mellman and implemented by his Mellman Group and a Republican polling outfit, Wirthlin Worldwide.¹⁶ Daryl Kimball, who spearheaded the campaign as executive director of the Coalition to Reduce Nuclear Dangers, an organization established to coordinate the efforts of 14 of the largest arms control groups, indicated in an interview that the polling campaign had multiple goals.¹⁷

One of the most critical goals was to reassure potential swing-vote senators, and particularly the moderate Republicans who were essential to achieving ratification of the treaty, that the issue was not a political liability.¹⁸ Treaty proponents had modest goals in this regard – they did not regard favorable polling numbers as a strong asset in winning votes, but did believe those numbers at least highlighted the absence of a political downside for those who voted in favor of the treaty.¹⁹ This part of the strategy involved conducting polls in a few specific states, including Indiana, Nebraska, Washington, and Colorado, whose Senate representatives had been identified as potential swing votes.²⁰ Kimball also indicated that these state-specific polls helped treaty proponents “get in the door” to meet with the Republican congressional offices they were courting.²¹

Another goal of the polling was to gain leverage with the Clinton White House.²² The White House dragged its feet on the test ban, only springing into action as it became clear that the issue was coming to a head in the Senate, and proponents recognized that the Clinton White House “paid attention to polling data.”²³

Finally, treaty proponents were looking for ammunition for their public statements; favorable polling numbers were intended as a “strong rhetorical tool.”²⁴ Mark Mellman indicated in an interview that one of the objectives of the polling campaign was to obtain the highest possible “honest” figure for public support of the treaty, a job the Mellman Group apparently did rather well, since the 82 percent in favor it reported was the highest such figure obtained by any of the major polls conducted at the time.²⁵

A Striking Defeat

Unbeknownst to treaty advocates, a small group of right-wing senators had been quietly marshalling opposition to the treaty once it became clear in early 1999 that advocates were likely to push for a vote.²⁶ After treaty advocates launched their campaign to bring wide-scale attention to the treaty, opponents surprised them by proposing a vote, but with very limited time for debate.²⁷

Caught on the defensive, the Democratic senators who had been pushing for a vote felt compelled to accept.²⁸ As it became clear that the treaty would be defeated, both Senate advocates and the White House sought to postpone the vote, supported by a bipartisan letter signed by 62 senators calling for postponement. But advocates’ reluctance to commit unequivocally not to raise the issue again prior to the 2000 elections – the price the Republican leadership sought for postponement – together with the determined efforts of the small group of senators eager to see the treaty voted down, forced the issue.²⁹ On October 13, 1999, the Senate declined to provide its advice and consent to the Comprehensive Nuclear Test Ban Treaty by a vote of 51-48, far short of the two-thirds majority required to approve a treaty.³⁰

A Flawed Strategy

Why were test ban proponents defeated in the Senate? The answer is complicated, with many factors sharing responsibility for the ultimate outcome. What seems clear is that public opinion did play a role, although perhaps not in the manner treaty proponents had hoped. While tactically adept – the campaign “did what a campaign should do,” as Thomas Graham put it – the underlying strategy was fatally flawed.³¹ The timing was simply not conducive, the opposition was too well organized, and public opinion was not the asset some proponents had hoped. In retrospect, it appears clear that the campaign could not have succeeded – the deck was stacked against test ban ratification.³²

Treaty proponents missed the big picture, and in so doing, caused long-term damage to ongoing arms control and non-proliferation efforts and U.S. security interests writ large. Efforts by Senator Joseph Biden and others to justify

the loss ring hollow at best and self-serving at worst. As it became clear that the deck was stacked against treaty proponents, Biden asked, with reference to the treaty, "If you are going to die, do you want to die with no one knowing who shot you, or do you want to go at least with the world knowing who killed you?"³³

But Biden was pointing to a false dichotomy. A signed but unratified treaty would have been vastly preferable to a rejected one. Under Article 18 of the Vienna Convention on the Law of Treaties, a state that has signed but not yet ratified a treaty "is obliged to refrain from acts that would defeat the object and purpose" of the agreement.³⁴ The Senate's rejection of the pact paved the way for the formal withdrawal of the U.S. signature, a step the current Bush administration has considered but not yet taken as of early 2003.³⁵

In fact, Leon Sigal argues that the Senate's rejection paved the way for candidate Bush to stake out a position in strong opposition to the treaty and subsequently to pursue measures, such as shortening the time required to conduct a nuclear test and authorizing initial development of a new earth-penetrating nuclear weapon, contrary to the treaty's purpose if not explicitly prohibited by it.³⁶

So what went wrong? Perhaps most importantly, treaty opponents on the right-wing of the Republican Party, and for that matter much of the party's representation in the Senate, felt backed into a corner and consequently fought back. The increasing number of pro-treaty commentary articles and letters-to-the-editor, together with public statements by the administration and Democratic senators, all seemed to herald an impending push for the treaty.³⁷ In retrospect, it appears that treaty opponents overestimated the preparations of proponents, particularly the White House, which ultimately mobilized too little, too late.³⁸

Fearing a backlash from public opinion and perhaps even electoral consequences in the rapidly approaching congressional and presidential elections, and knowing they had the votes to kill the treaty, opponents called the treaty advocates' bluff. Treaty opponents knew they could kill the pact quickly and calculated, correctly, that the treaty would fade from the limelight and not factor into the upcoming elections.

Treaty opponents were right: the issue does not appear to have been a factor in either the congressional or presidential elections.³⁹ Then-Vice President Al Gore's first television advertisement for the 2000 presidential campaign actually focused on the test ban treaty, but attracted little attention and did not appear to have a long-term impact. Leon Sigal speculated that the advertisement was likely targeted not at potential swing voters but rather intended to reassure his party's core constituency of Gore's sound Democratic credentials.⁴⁰

The rejection of the treaty, after a majority of the Senate had requested a delay in the vote, was the product of both intransigence on the part of the most rabid treaty opponents, who saw an opportunity to kill the pact once and for all and score political points over President Clinton in the process, as well as the reluctance of treaty proponents to return the treaty to the Senate calendar, where it had been stagnating. It appears that had proponents been willing to pledge publicly not to bring the treaty up again prior to the upcoming elections, they would likely have succeeded in getting the postponement they sought.

While public opinion and corresponding electoral consequences appear to have been a concern for treaty opponents, they do not appear to have been a strong asset for proponents. Although a cursory glance at polls conducted at the time of the vote shows broad, consistent support from about three-quarters of the public, a more thorough examination of the data explains the issue's lack of salience.⁴¹ Public support was broad, but it was also weak.

When asked a simple question regarding their support for the test ban in the weeks prior to the vote, an overwhelming majority of the public was in favor – 75 percent in one case, 82 in another.⁴²

But when provided with factual information on the positions of supporters and opponents as well as indications that the issue was controversial, support declined to 60 percent in favor, 33 percent opposed in one poll, and in another, a nearly even split of 44 percent in favor, 43 percent opposed.⁴³

(It should be noted that the former poll was conducted before the brief Senate debate and vote, while the latter was conducted in the week following the vote, so it is possible that public opinion was influenced by the vote and press coverage of it. But given the widespread condemnation of the outcome of the vote in the press, the observed shift in public opinion against the treaty that the data seem to depict is counterintuitive.⁴⁴)

When asked a week after the vote whether they had heard of the treaty, 65 percent of respondents indicated they had while 34 percent indicated they had not.⁴⁵ Of those who had heard of the treaty, 8 percent indicated they had been following it closely, 30 percent somewhat closely, 22 percent not too closely, and 40 percent not at all closely.⁴⁶ When the same poll asked what the outcome of the vote had been, only 26 percent of respondents correctly indicated that it had been defeated, while 4 percent thought it had been approved and 60 percent identified themselves as unaware.⁴⁷

The uninformed nature of much of the public on this issue is hardly surprising – it is virtually axiomatic in the academic public opinion community that the majority of the public displays little awareness about domestic policy and even less about international affairs.⁴⁸ In fact, Thomas Graham observed prior to the September 11, 2001 terrorist attacks on New York and Washington, on the basis of an extensive review of survey data from 1990-2000, that the current “importance assigned to all foreign and defense issues...is extremely low [even] by historic standards.”⁴⁹

There are at least two ways to interpret the public's apparent ignorance about an issue that many observers, and certainly treaty proponents, believed should have been salient to them. Ole Holsti professes to be “sobered” by “poorly informed” American public opinion and suggests that improved education is necessary.⁵⁰ In his classic text *The Semisovereign People*, on the other hand, E.E. Schattschneider derides the notion that “a great effort to educate everyone to the point where they know enough to make these decisions” is required for effective, responsive democratic governance.⁵¹ Schattschneider argues that the public is able to distinguish what it needs and does not need to know and to delegate decision-making authority where necessary.⁵² The public need not, indeed it should not participate in the minutiae of the governing process, he argues.⁵³

When the public was asked what the Senate *should* have done, without information on what had transpired, 59 percent of respondents indicated the treaty should have been ratified while 29 percent said it should have been defeated.⁵⁴ But in an indication that public sentiment showed some concordance with the actions of senators and was surprisingly nuanced, when given the additional option of withdrawing the treaty from Senate consideration at the present time, only 44 percent believed it should have been ratified and 19 percent defeated, while 21 percent believed it should have been withdrawn.⁵⁵ The latter poll result bears at least a modest resemblance to actual events, where 62 of the senators wrote to then-Majority Leader Trent Lott to request that the vote be postponed, but when their request was denied and they were forced to decide, voted the pact down 51-48.⁵⁶

When asked in another poll whether they approved of the Senate's rejection of the treaty, 28 percent of respondents indicated they did while 46 percent said they disapproved.⁵⁷ But demonstrating the reduced salience of the issue for electoral politics, when asked in the same poll whether they were more or less likely to vote for their senator if he or she had rejected the treaty, only 14 percent of respondents indicated they were more likely and 23 percent less likely, with a substantial majority, 59 percent, indicating the issue would not be a factor.⁵⁸

Interestingly, the issue may have had slightly greater salience in the subsequent presidential election, perhaps because treaties are an issue the public identifies with presidential leadership in foreign affairs. In one poll conducted two weeks after the Senate vote, 57 percent of the public indicated the issue was very important to their vote in the 2000 presidential election, while 30 percent said it was somewhat important, 6 percent not very important, and 4 percent unimportant.⁵⁹ Another poll similarly found 44 percent ranking the issue as important, 28 percent as somewhat important, and 18 percent as either not very or not at all important.⁶⁰ Although more self-identified Democrats ranked the issue as very important in the latter poll, overall the split between self-identified Democratic and Republican respondents was fairly even.⁶¹

But the possible impact of the test ban on the 2000 presidential elections is counterintuitive. When asked which of the two principle candidates, Vice President Al Gore or Governor George Bush, would do a better job on the treaty, only 36 percent picked the pro-treaty Gore, while 46 percent of respondents picked Bush, who had indicated he was opposed to the agreement.⁶²

However, rather than indicating public opposition to the treaty, the latter result may be the product of longstanding distrust of Democratic candidates on national security issues or, conversely, increased trust of Republican candidates. In fact, it is not clear whether most voters would have known the candidates' positions on this specific issue, particularly given how early in the campaign these polls were conducted.

Perhaps most interestingly, despite consistently strong to very strong support for the treaty, when respondents were asked to rank its importance relative to other concerns, the numbers plunge. When asked in the week after the vote to pick the issue Congress had worked on that year most important to them, only 10

percent of respondents picked the test ban treaty.⁶³ A patient's bill of rights topped the list at 21 percent, followed by gun control, cutting taxes, and restrictions on abortion. The test ban did, however, barely beat out campaign finance reform, which came in at 9 percent.⁶⁴

However, even the test ban score of 10 percent was probably inflated as a result of the widespread media coverage of the treaty's rejection by the Senate. Although election-specific polling numbers were not reviewed as part of this study, it seems unlikely that 10 percent of voters considered the test ban their most important issue as they cast their ballots in the 2000 elections.

Of course, weak public support is not unique to the test ban. The consensus in the academic community is that public opinion on foreign policy is rarely strong enough to affect the implementation of specific policies or the outcome of elections.⁶⁵ As I.M. Destler has observed, "The American public doesn't give priority to international issues when it goes to the polls...Members of Congress have no overriding stake in getting that opinion right because they are unlikely to lose elections for getting it wrong."⁶⁶ The exception to this rule is when "the body bags start coming home," as Leon Sigal put it – in other words, when a war results in American casualties.⁶⁷

Many different explanations have been floated for the low salience of foreign affairs on the public's political radar and the corresponding, if not necessarily correlated, reduced impact of public opinion on foreign policy. Empirical evidence on the relationship between public opinion and public policymaking in both the foreign and domestic spheres "tends to be inconclusive," according to the authoritative scholars Benjamin Page and Robert Shapiro.⁶⁸

But Page and Shapiro point out, citing A.D. Monroe, that "there is considerable – though far from complete – consistency between opinion and policy, especially for foreign policy."⁶⁹ They observe that inferring a causal relationship remains "problematic" – it is hard to discern whether policymakers are responding to their constituents, leading or manipulating them, or some combination of the two.⁷⁰ Despite these reservations, Page and Shapiro do observe a temporal relationship between opinion shifts and subsequent policy shifts that leads them to conclude that "opinion changes are important causes of policy change," but their analysis focuses on highly salient issues and long-term shifts in public opinion, making it less relevant to the specific case under consideration here.⁷¹

One line of thought that has received considerable attention postulates that politicians misread their publics, either unintentionally or willfully. Steven Kull and Clay Ramsay are two of the most prominent proponents of the former school, arguing that policymakers fail to seek information about public attitudes, that they respond to the vocal minority as if it were the majority, that they view Congress and the media as mirrors of the public, and that they underestimate the public.⁷²

Kull and Ramsay's concern about the undue influence of the vocal minority predates them by several decades. In the middle of the last century, E.E. Schattschneider worried about the smoke-filled rooms where deals were made, arguing that well-organized business and professional lobbies wielded undue

influence in American democracy – and by inference, that politicians were paying more heed to the opinions of this vocal minority than their constituent majority.⁷³

Countering this analysis, James Lindsay observes that “politicians worry less about what the public thinks than about how intensely it cares.”⁷⁴ So politicians who heed the vocal minority may be on solid footing. The vocal minority is, after all – precisely because it is engaged and mobilized on the issue in question – the one group that is likely to draw political blood if it is scorned.

I.M. Destler notes that “the rise of activist, ‘cause’ groups on the left and right” has both promoted and reinforced increased congressional polarization.⁷⁵ This phenomenon played a substantial role in the test ban debate on both sides of the aisle. On the Democratic side, the non-governmental organizations pushing the test ban had a great deal of leverage with their traditional allies in Congress and the White House, making it difficult to rein in the process even once it became clear that the vote was not winnable.

On the Republican side, right-wing interest groups and elements within the party were able to stage-manage the process to achieve their desired outcome of a vote rejecting the test ban, over the wishes of 62 senators and the instincts of then-Majority Leader Trent Lott, who historically tended towards compromise on contentious issues. Senator James Inhofe (R-OK), part of the small group that worked to kill the treaty, reportedly said, “As much as I like and love Trent Lott, I’ve said that he’d rather make a bad deal than no deal at all.”⁷⁶

Even treaty proponents, for all their trumpeting of public opinion in support of their cause, readily admit it served largely as a rhetorical device and was not expected to sway any votes directly.⁷⁷ Senator Robert Byrd (D-WV), the consummate parliamentarian, even criticized fellow treaty proponents for using “the popularity ratings of the treaty as a political club to hold over their opponents in an election year,” a comment that borders on the naïve, although Byrd’s stature and wily politicking reputation belie that interpretation.⁷⁸

While proponents did attempt to use the favorable polling data to show possible allies that voting for the test ban need not be a political liability, the senators who voted against the treaty did not appear to do so out of a fear of electoral ramifications. Instead, they gambled, correctly, that the issue would have little to no electoral impact.

Several other factors played a role in the defeat. There were clearly genuine policy differences. A more thorough set of Senate hearings might have allowed differences to be reconciled, but those differences were sufficiently large to present a serious hurdle even to a lengthy consensus-building attempt to achieve Senate advice and consent.

The lack of effective leadership by the Clinton administration undoubtedly played a role as well. In part, the administration was hampered by the highly partisan, rabidly anti-Clinton atmosphere that pervaded the more right-leaning elements of the Republican Party at the time.⁷⁹ But the administration also failed to mobilize effectively. The power and hence importance of presidential leadership on contentious policy issues is virtually axiomatic.⁸⁰ Recent public opinion research has compellingly demonstrated the limitations of the president’s role in shifting public opinion, but there remains a widespread consensus that

contentious foreign policy battles in Congress are not winnable in the absence of strong presidential support.⁸¹

Conclusions

The campaign to ratify the Comprehensive Nuclear Test Ban Treaty clearly demonstrates that public opinion is a limited asset at best in battles over controversial foreign policy issues. But that observation need not be interpreted as disparaging public opinion, whose impact on specific issues and battles may be weak, but whose overall effect is crucial and not to be discounted.

The test ban treaty itself may not have cost senators any votes, and almost certainly not any seats in the near term, but that does not mean that the larger trends reflected in the vote will not ultimately have electoral repercussions. The American public strongly supports multilateral, cooperative approaches to international security problems, and leaders ignore that sentiment at their peril.⁸²

Even the current President Bush, whose tendency is toward a more unilateral approach, appears to have learned the necessity, or at least the advantage, of working through the United Nations and America's allies. This admittedly modest multilateral tendency has been evident in Washington's approach to the proliferation threats posed by Iraq and even more notably, North Korea. The September 11, 2001 terrorist attacks on New York and Washington have galvanized public opinion, and there is hope that this trend can be harnessed in support of much-needed efforts to confront urgent global non-proliferation threats.

¹ See Joseph Biden, Remarks on the CTBT, *Congressional Record*, 106th Congress, 30 Sep 1999 and Jeff Bingaman, Remarks on the CTBT, *Congressional Record*, 106th Congress, 30 Sep 1999 and Edward Kennedy, Remarks on the CTBT, *Congressional Record*, 106th Congress, 12 Oct 1999.

² William Clinton, "Remarks to the 51st General Assembly of the United Nations" 24 Sep 1996.

³ Eugene Wittkopf, *Faces of Internationalism* (Durham, NC: Duke University Press, 1990) 9.

⁴ Henry Kissinger, "Political Sense Needed on Nuclear Testing," *Courier Mail* 30 Nov 1999: 15 and John Deutch, Henry Kissinger, and Brent Scowcroft, "Test Ban Treaty: Let's Wait Awhile," *Washington Post* 6 Oct 1999: A33.

⁵ Joseph Nye, *The Paradox of American Power* (Oxford: Oxford University Press, 2002) 8.

⁶ Terry Deibel, "The Death of a Treaty," *Foreign Affairs* 81 (September/October 2002): 142.

⁷ Preparatory Commission for the Comprehensive-Nuclear-Test Ban Treaty Organization, [online: web] cited 20 Jan 2003, URL: <http://www.ctbto.org>

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ Ibid.

¹¹ Stephen Schwartz, "Outmaneuvered, Outgunned, Out of View," *Bulletin of the Atomic Scientists* 56.1 (January/February 2000). Note: The word means, roughly, the act of estimating something to be worthless.

¹² Daryl Kimball, interview, 15 Jan 2003 and Daryl Kimball, "What Went Wrong," *Arms Control Today* 29.10 (December 1999).

¹³ Thomas Graham, interview, 20 Jan 2003.

¹⁴ Kimball, 2003 and Kimball, 1999 and Mark Mellman, interview, 21 Jan 2003.

¹⁵ Kimball, 1999.

¹⁶ Kimball, 2003.

¹⁷ Ibid.

¹⁸ Kimball, 2003 and Mellman, 2003.

¹⁹ Ibid.

²⁰ Ibid.

²¹ Kimball, 2003.

²² Ibid.

²³ Ibid.

²⁴ Ibid.

²⁵ Mellman, 2003 and The Mellman Group and Wirthlin Worldwide poll for the Coalition to Reduce Nuclear Dangers, 18-21 Jun 1999.

²⁶ Deibel, 2002 and Kimball, 1999 and Richard Lowry, "Test-Ban Ban," *National Review* 51.21 (8 November 1999) and Schwartz, 2000.

²⁷ Ibid.

²⁸ Ibid.

²⁹ Ibid.

³⁰ Ibid. A detailed narrative description of the pitched battle that raged in the Senate, initially behind the scenes and ultimately in public, is beyond the purview of this paper. Readers are urged to consult one or several of the following excellent accounts: Deibel, 2002 and Kimball, 1999 and Schwartz, 2000.

³¹ Graham, 2003.

³² Leon Sigal, interview, 16 Jan 2003 and Graham, 2003.

³³ Senator Joseph Biden, press conference, 2 Oct 1999.

³⁴ Vienna Convention on the Law of Treaties (with annex), [online: web] cited 22 May 2003. URL: http://www.unog.ch/archives/vienna/vien_69.htm.

³⁵ Background interviews with Bush administration officials in 2001 and 2002.

³⁶ Sigal, 2003 and Philipp Bleek, "Energy Department to Study Modifying Nuclear Weapons," *Arms Control Today* 32.3 (April 2002), and Philipp Bleek, "Nuclear Posture Review Leaks; Outlines Targets, Contingencies," *Arms Control Today* 32.3 (April 2002) and Philipp Bleek, "Foster Panel Calls for Reducing Nuclear Test Preparation Time," *Arms Control Today* 32.3 (April 2002).

³⁷ Lowry, 1999.

³⁸ Kimball, 2003 and Graham, 2003 and Sigal, 2003.

³⁹ Mellman, 2003.

⁴⁰ Sigal, 2003.

⁴¹ Mark Penn poll for the Democratic Leadership Council, 28-29 Sep 1999 and The Mellman Group and Wirthlin Worldwide poll for the Coalition to Reduce Nuclear Dangers, 18-21 Jun 1999.

⁴² Ibid.

⁴³ Penn, 1999 and Hart and Teeter Research Companies poll for *NBC News* and the *Wall Street Journal*, 23-25 Oct 1999.

⁴⁴ Media content analysis would be necessary to show with scholarly rigor that the treaty's defeat was in fact widely condemned in the press. But editorial headlines culled from major newspapers in the two days after the vote anecdotally make the point: "A Damaging Arms Control Defeat" (*New York Times*), "Shameless Treaty Defeat" (*Seattle Times*), "A Reckless Rejection" (*Washington Post*), "Politics Imperils Security" (*Atlanta Journal and Constitution*), "No Way to Treat a Treaty" (*Christian Science Monitor*). In fact, only one major U.S. newspaper published an editorial praising the outcome of the treaty vote in the two days following it: "The Grand Delusion" (*Wall Street Journal*).

⁴⁵ Gallup Organization poll for *Cable News Network* and *U.S.A. Today*, 21-24 Oct 1999.

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Ole Holsti, *Public Opinion and American Foreign Policy* (Ann Arbor: University of Michigan Press, 1996) 215-216.

⁴⁹ Thomas Graham. "National Security." *Public Perspective* 12.1 (January/February 2001): 22 and Mellman, 2003.

⁵⁰ Ibid.

⁵¹ E.E. Schattschneider, *The Semisovereign People* (Fort Worth: Harcourt Brace Jovanovich, 1975) 130.

⁵² Ibid., 134-138.

⁵³ Ibid.

⁵⁴ Gallup Organization, 1999.

⁵⁵ Ibid.

⁵⁶ Deibel, 2002.

⁵⁷ Hart and Teeter Research Companies, 1999.

⁵⁸ Ibid.

⁵⁹ ABC News poll for *ABC News*, 28-31 Oct 1999.

⁶⁰ Newsweek, Inc. poll for *Newsweek*, 23 Oct 1999.

⁶¹ Ibid.

⁶² ABC News, 1999. The candidates enunciated their views on the test ban treaty early in the campaign, and subsequently elaborated on them in greater detail in George Bush and Albert Gore, "Presidential Election Forum: The Candidates on Arms Control," *Arms Control Today* 30.7 (September 2000).

⁶³ Hart and Teeter Research Companies, 1999.

⁶⁴ Ibid.

⁶⁵ Sigal, 2003 and Graham, 2003 and Kull, Steven and Clay Ramsay, "Elite Misperceptions of U.S. Public Opinion and Foreign Policy," Eds. Brigitte Nacos,

Robert Shapiro, and Pierangelo Isernia, *Decisionmaking in a Glass House* (Lanham, MD: Rowman and Littlefield, 2000) 95-110.

⁶⁶ I.M. Destler, "The Reasonable Public and the Polarized Policy Process," Eds. Anthony Lake and David Ochmanek, *The Real and the Ideal* (Lanham, MD: Rowman and Littlefield, 2001) 79.

⁶⁷ Sigal, 2003. It is important not to oversimplify the relationship between casualties and declining domestic support for a war. In an excellent and nuanced study, "Casualties and Consensus," Eric Larson discusses the "sensible weighing of benefits and costs" performed by the public when considering engagements, countering the widely prevalent view that Americans cannot tolerate battlefield casualties (RAND, 1996).

⁶⁸ Benjamin Page and Robert Shapiro, "Effects of Public Opinion on Policy," *American Political Science Review* 77.1 (March 1983).

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² Kull and Ramsay, 2000: 104-108.

⁷³ Schattschneider, 1975: 20-43 and Graham, 2003 and Page and Shapiro, 1983.

⁷⁴ James Lindsay, "The New Apathy," *Foreign Affairs* (September/October 2000).

⁷⁵ Destler, 2001.

⁷⁶ Deibel, 2002.

⁷⁷ Kimball, 2003 and Sigal, 2003.

⁷⁸ Byrd, Robert, "Advise and Consent? Not This Time," *The New York Times* 15 Oct 1999: A35.

⁷⁹ Kimball, 2003 and Sigal, 2003.

⁸⁰ Richard Neustadt, *Presidential Power* (New York: Wiley, 1960) passim.

⁸¹ Benjamin Page, Robert Shapiro and Glenn Dempsey, "What Moves Public Opinion?" *American Political Science Review* 81.1 (March 1987) and Kimball, 2003 and Mellman, 2003.

⁸² Harris Interactive poll for The Chicago Council on Foreign Relations and the German Marshall Fund of the United States, 1-30 Jun 2002.

**WATER IN THE WEST BANK:
A FINAL-STATUS HUMAN RIGHTS ISSUE
IN THE ISRAELI-PALESTINIAN CONFLICT**
LEILA SAAD

Given that it is one of just five issues left for the final-status negotiations of the Israeli-Palestinian conflict, water is a major source of tension in the region. This paper discusses how the 1967 occupation by Israel of the West Bank has resulted in a disparity of water consumption by Palestinians living in the West Bank compared to Israelis in Israel and Israeli settlers in the West Bank. The water shortage in the West Bank today puts Palestinian consumption below the minimal requirement for daily survival. As a basic human right, this paper argues that the minimum water requirement must be made available to Palestinians in the West Bank. The development of a fair, equitable, and secure water policy will play a central role in the resolution of the conflict, and this paper suggests ways to develop such water solutions in the short- and long-run.

In late October 2002, Israeli Minister of Infrastructure Ephraim Eitam banned drilling for water in the Occupied West Bank by Palestinians, on the grounds that a "water Intifada" was being perpetrated by Palestinians against Israel. He charged that Palestinians were attempting to pollute water being supplied to Israel by failing to build purifying facilities.¹ Eitam also claimed that the Palestinian Authority was letting Palestinians steal water, by piping to their land via "illegal connections." The decision has deprived Palestinians of drinking water and prevented them from irrigating their crops.²

This incident is representative of the entrenchment of the water dispute between the Palestinians and the Israelis. The fact that water negotiations were postponed, among five other central and contentious issues, to the final-status negotiations, is indicative of the important role that water plays in the resolution of the Israeli-Palestinian conflict. (The other final-status negotiation issues are borders, Jerusalem, refugees, settlements, and security.)

This anecdote, however, tells part of the story. The other part of the story is a 30-plus-year history of occupation, under which Israel maintains ultimate control of water sources, and inequitable distribution of water resources is the norm. This control of water despite international law that maintains Palestinians and Israelis should jointly share water resources in the region. The result is discrimination in water distribution. For example, in the summer when shortages are the worst, the Israeli water company Mekorot cuts off water supplies to Palestinian villages to ensure uninterrupted Israeli provisions.³ Some Palestinians are not connected to the water network, cannot afford to buy water, or their villages do not receive water because Israel's closures prevent water tanks from getting through.⁴ They are therefore forced to utilize alternate water sources, such as rainfall collection on their roofs and collecting water from ground sources.

Given these historical injustices, Eitam's claim that Palestinians are stealing Israeli water appears misplaced. Furthermore, his charge that Palestinians are intentionally polluting water, which they use for their own drinking water,⁵

appears at least questionable and perhaps unfounded. Therefore, from the Palestinian perspective, Eitam's actions represent a continuation and exacerbation of the type of restrictions to their own natural resources that they have suffered under occupation.

This paper explores how the 1967 occupation by Israel of the West Bank has resulted in a disparity between water consumption by Palestinians living in the West Bank and Israelis and Israeli settlers living in the West Bank and suggests ways to remedy this disparity in the short- and long-run. The water shortage suffered in the West Bank today puts Palestinian water consumption far below the minimal requirement for daily survival. As a basic human right, this paper argues, the right to a minimum level of water must be made available to Palestinians in the West Bank.⁶ Additionally, because it is a final-status negotiation issue, the development of a fair, equitable, and secure water policy will play a central role in the resolution of the Israeli-Palestinian conflict.

The Water Crisis: From Occupation to Oslo to Today

In 1967 when Israel occupied the West Bank and Gaza Strip, it took control of territory including access to the Jordan River and to three aquifers in the West Bank. Between August 1967 and December 1968, three Israeli Military Orders established the authority of water resources under local military command, prohibited water infrastructure building without a license, and declared all water resources state property.⁷ Since then, water from these two main sources for the Palestinians has been under Israeli control and disproportionately distributed to Israel and Israeli settlers over Palestinian villages in the Occupied Palestinian Territories (OPT). The other major component of water policy under occupation includes stringent restrictions placed on new well drilling. It is now necessary to have a permit for any new drilling, but obtaining one is a lengthy process, and most requests are denied.⁸

Almost thirty years after the beginning of the occupation, in 1993, the signing of the Declaration of Principles (DOP), in Annex II, stated a goal to "include proposals for studies and plans on water rights of each party, as well as on the *equitable utilization* of joint water resources for implementation in and beyond the interim period" (my emphasis). Then, in 1995, with the signing of the Israeli-Palestinian Interim Agreement (Oslo II), "Israel recognize[d] the Palestinian water rights in the West Bank."⁹ These are important statements given that, as we will see, Israel argues for its right to a large proportion of the West Bank Mountain Aquifer at the expense of Palestinian water consumption.

Oslo II was problematic with regard to water in a few ways. First, the precise nature of Palestinian water rights was never outlined. Second, despite the fact that administration of Palestinian water sources was ostensibly given to the Palestinian Authority in Oslo II, ultimate control remained with the Israelis, who for example, have veto power over any new water infrastructure construction and control over division of water between Israel and the Palestinians.¹⁰ Third, in the interest of alleviating drastic water shortages of the Palestinians, Oslo II included an increase in the water supply to the OPT by 30 percent between the years 1995

and 1999 as a stopgap measure. But by June 2000, only half of that water had been supplied.¹¹ Finally, because Oslo II required no water reduction to Israel, it is implied that the water increases to the Palestinians described in Oslo II must be from new, unutilized water resources. However, experts find that all current resources are overextended already, so it is unclear to what new, unutilized resources the document refers.¹²

Today, disproportionate distribution of water between Israel and the OPT has resulted in a disparity of consumption. Two hundred eighteen Palestinian communities are not connected to a water network,¹³ but among those who are connected, average daily consumption is 60 liters in the West Bank – which is 40 liters short of the recommended minimum of 100 liters per day.¹⁴ Comparatively, the average Israeli consumption is nearly six times that, at 350 liters per day.¹⁵ This disparity affects many uses from drinking, cooking, and bathing water to urban and industrial use. For those who are not connected to a water network, the main source of water is from roof collection of rainfall in the winter months and springs in the summer.¹⁶ Inevitably, these villages suffer from even greater water shortages.

Exacerbating the Water Dispute: Inequitable Distribution to Settlers

It is common for Palestinians to suffer major water shortages while Israeli settlers in the OPT are provided with enough water to fulfill their basic needs. It has been found that settlers consume about six times more water per capita than Palestinians.¹⁷ The disproportionate amounts of water provided to Israeli settlers versus Palestinian settlers is particularly evident in villages where both have access to the same Mekorot well, but where Palestinians suffer shortages for their basic means while the illegal Israeli settlements benefit from water enough to water lawns and fill swimming pools.¹⁸ In addition, Palestinians have been known to pay exorbitant prices for water – \$4 per cubic meter – while Israelis are charged \$.50-1.00 per cubic meter. Worse, it has been reported that some Israeli settlers have sold their portion of the water to Palestinians at a 40 percent markup.¹⁹ Further, attacks on Palestinian water sources have exacerbated the problem. In October 2001, the UN reported that “Settlers have been reported to use their bulldozers to rupture Palestinian water pipelines, whereas Israeli snipers have targeted Palestinian roof water tanks.”²⁰

Available Water Sources for West Bank Use

Palestinians and Israelis jointly, but inequitably, utilize two main sources of water: the Mountain Aquifer in the West Bank and the Jordan River. Palestinians only use about 15 percent of the Mountain Aquifer, and Israel uses 85 percent, which accounts for 27 percent of its water. As for the Jordan River, which provided the West Bank with water before 1967, it is now entirely denied to Palestinians. Israel uses 640 mcm per year of the Jordan River, which accounts for 31 percent of its water.²¹ This inequitable distribution of water is the main reason for the shortage of water in the West Bank. The only other water sources

for West Bank villages are: (1) collected rainwater of about 7 mcm per year, and (2) water bought from the Israeli water company Mekorot, which accounts for 10 percent of all West Bank water.²² Overall, 56 percent of West Bank water is supplied via Israel and bodies under its control; therefore Palestinians in the West Bank are heavily dependent on Israel for their water consumption.²³

Disputed Water Rights Claims

The Palestinian claim to the right to water is based on: (1) the recognized human right to water, (2) international law regarding the duties of occupying countries, and (3) international law regarding water sources that cross borders. The respective proposed results would be (1) that Palestinians receive at least 100 liters per day per person in the short-run; (2) that they are granted full sovereignty over the Mountain Aquifer in the West Bank; and (3) that they benefit from an equitable division of water resources from the Jordan River basin. The Israeli claim to maintaining its current level of water consumption within its own borders and by Israeli settlers living in the OPT is based on: (1) the right to security, (2) the right to "survival," and (3) claims of prior use. The proposed result would be a continuation of Israeli consumption at present levels.

The Palestinian Claim

First, as recently as November 2002, the right to water as a basic human right was codified by the UN Committee on Economic, Social, and Cultural Rights in a General Comment to the International Covenant on Economic, Social, and Cultural Rights, as follows, "the human right to water entitles everyone to sufficient, affordable, physically accessible, safe and acceptable water for personal and domestic uses." The General Comment requires all signatories to ensure equitable and non-discriminating drinking water and sanitation facilities to all people.²⁴

Second, according to both the Hague Regulations of 1910 and the Forth Geneva Conventions of 1949, an occupier has the legal duty to protect the occupied country's national resources and to supply its citizens with enough of these natural resources to meet their needs.²⁵ Additionally, as early 1972, the UN General Assembly passed Resolution 3005, which recognizes the Palestinians right to permanent sovereignty over the natural resources of the OPT. This declaration, which applies to the Mountain Aquifer in the West Bank, has been reaffirmed numerous times by the UN, including as recently as November 14, 2002, by a UN committee.²⁶

Third, the 1997 United Nations Convention on the Law of the Non-Navigational Uses of International Watercourses provides that countries who share a watercourse "shall in their respective territories utilize an international watercourse in an equitable and reasonable manner."²⁷ This is applicable to the Jordan River. Additionally, though less valuable, the Helsinki Rules of 1996 call for equitable use of water by two people when a river basin crosses international boundaries, such as the Jordan River.

The Israeli Claim

Israel bases its claim to current levels of water consumption for security and “survival” concerns. The survival concern relates mainly to the maintenance of current economic and social standards of the State of Israel and of the Israeli citizens living in the illegal settlements in the OPT. This claim, however, is problematic, solely because it is based on an underlying assumption that Palestinians do not require or deserve the same standards as Israelis in Israel and in settlements in the OPT. Because almost any increase to the water consumption by Palestinians would have to come at a cost to Israeli consumption, the argument is that Israeli consumption should remain at a level well above the minimum even while Palestinian consumption remains far below the minimum consumption. The implication, then, is that Israeli survival necessitates more than minimum requirements (such as water to support industry, business, tourism, etc.), while Palestinians survival entails less than minimum standards. It is an implication that says that the Palestinians do not have a right to progression beyond that minimal and unacceptable level of water consumption.

Israel supports its right to water by the Helsinki Rules of 1996 and the Seoul Rules of 1986, which point to the right to water use based on prior use. This argument says that any water currently being used by Israel does not have to be given up to provide Palestinians with further water resources. However, neither the Helsinki Rules nor the Seoul Rules are binding in international law; only the International Law Association has adopted the rules.²⁸ Furthermore, by that argument, Palestinians can just as well claim the right to the West Bank aquifers and the Jordan River to prior use – before the 1967 occupation and before the 1948 formation of the State of Israel.

Based on an analysis of these competing claims, I conclude that the right of the Palestinians to at least 100 liters per day per person in the short-run, to full sovereignty over the Mountain Aquifer in the West Bank, and to an equitable division of water resources from the Jordan River basin outweighs the rights of the Israelis to maintain their current level of water consumption. These conclusions constitute the ingredients for a fair, equitable, and secure water policy to resolve the water dispute in the Israeli-Palestinian conflict. However, it is an assumption of this paper that some of these recommendations could not be implemented without bringing the two sides back to the negotiating table, which will not be accomplished until significant American and UN pressure and support are provided.

Remedying the Inequitable Access to and Distribution of Water

The following recommendations are made on the basis of two underlying principles. First, that because the right to water is a basic human right, the imperative to meet basic water requirements of all participants in this dispute is the primary problem in need of an immediate and prioritized solution. In the long run, the continued right at least to a minimal amount of water for basic necessities must be supplemented by water for further development. Second, since as early as

1993 in the DOP, the Israelis and Palestinians agreed to the goal of structuring water negotiations around equitable division and cooperation in management, a framework to provide these is proposed.

Short-Term Remedies

The first step in remedying the shortages suffered in the West Bank must be to ensure that the minimal 100 liters per day is made available to every Palestinian. In the long-term this amount should be increased to 130 cubic meters per year per person, which has been calculated for future Palestinian needs based on basic needs plus social and economic needs, such as supplying schools, hospitals, parks, businesses, industry, and so forth.²⁹ The implementation of the following policies can ensure that 100 liters per day is supplied to Palestinians in the West Bank immediately.

First, because they are suffering the most from water shortages, all Palestinian villages not connected to the water network must be added immediately. Not only are these Palestinians suffering water shortages, they also run the risk of drinking polluted water, because their drinking water comes from unmonitored collection of rainwater. Because it currently controls the water network running through the West Bank, the Israeli government must be responsible for building this infrastructure immediately. The United States, as a central player in the conflict resolution, must be responsible for pressuring the Israeli government to act on this, and provide financial assistance where necessary. An additional, more superficial means of pressuring Israel to build this water infrastructure is via the UN Committee on Economic, Social, and Cultural Rights, which recently authored a General Comment, calling on all signatories of the covenant (of which Israel is one) to ensure equitable and non-discriminating provisions of safe and secure drinking water and sanitation facilities.³⁰

Second, water delivery tanks, which are currently being prevented from entering the West Bank at checkpoints, must be allowed automatic access. Because there is little reason to argue that allowing these tankers into the West Bank should compromise Israeli security, the Israeli government must write into law that checkpoints cannot under any circumstance delay or obstruct these tankers from delivering much-needed water to Palestinians. Under pressure from regional and international NGOs, Israel could affect this in the short-term.

Third, the Israeli Water Commission should immediately reconsider the proposal made by the Minister of Agriculture in 1995 to end subsidies to Israeli farmers for water consumption, which in 1998 accounted for 53 percent of the drinking-quality water produced in Israel.³¹ If water consumption by farmers is unsubsidized, then farmers are likely to be more conservative in their use and this water can be made available to Palestinian villages suffering shortages. In addition, Israel, which is already using waste treatment facilities, must end utilizing any natural resource water for agriculture. Instead, all irrigation water must come from waste treated water. Because agriculture accounts for a small portion of Israeli GDP and because the Israeli government has the ability to enhance these waste treatment facilities, the burden must be on them to do so. In

the long run, as outlined below, the Palestinian Authority must take on the same task.

Fourth, the Mekorot water company must be pressured by regional and international NGOs, as well as international stakeholders in the conflict (the United States and European Union) to discontinue its discriminatory water distribution practices in the West Bank in the short-term. In an effort to make a symbolic (and practical) gesture that it will do so, it should be asked to build local filling stations throughout the West Bank at which water tankers can purchase water to deliver to the families suffering shortages.³²

Finally, in the short-term, and especially until such time as all Palestinian villages are added to the water network, systemized facilities for water collection of rainfall should be built. Because the PA could probably not comprehensively fund or oversee this project under the current circumstances, this could be implemented by an international NGO working in the region, which may have success in seeking resource support from sympathetic European governments.

Long-Term Remedies

Solutions proposed by Israel to the water shortages faced in the region focus on methods to create new water resources. Though this must inevitably make up one part of the comprehensive water solution, it is insufficient to suggest that this is the only step that can be taken to remedy the situation. Furthermore, it removes the burden on Israelis to reduce their current levels of water consumption to enable increasing Palestinian consumption to minimally acceptable levels. However, because the water shortages in the OPT are so dangerously low, Palestinian right to water, as an immediate survival and health need, must trump the claim by Israelis to maintain their current water supply. Therefore, options other than developing new resources must be utilized.

Among them, one of the most important is to fulfill the vision of the Declaration of Principles and later agreements that seek to bring about equitable water division and cooperation in management. This must be enacted under the commonly accepted rules of international law. Therefore, in the long run the goals must be to place total control of the Mountain Aquifer under the Palestinian Authority, and to give joint access of the Jordan River to the Palestinians. Additionally, a framework for joint cooperation and management, as well as equitable distribution, as defined by international law must be implemented. The creation of such a plan will require lengthy negotiations led by a third-party. It must be noted that this strategy will invariably require Israel to reduce its water consumption but that in the longer term, new water resources can provide both Israel and the future Palestinian State with increased water sources to improve their standards of living. In conjunction with these negotiations, a few other strategies can be implemented in the long-term.

First, a data collection project should be started as soon as possible, by an outside organization. There are holes in the data about Palestinian water access and consumption in the OPT, and some of it is outdated. Funding for the project could be sought from a neutral party, say, one of the Scandinavian countries. This

information can then be used to ensure that all water shortages suffered in the OPT are being remedied.

Second, a serious and comprehensive conservation program must be implemented. Currently, a program exists in Israel, but it must be expanded. In the future, once the water situation has been stabilized in the OPT and there is a Palestinian state with sufficient infrastructure, a conservation program must be implemented by the Palestinian administration as well.

Third, because agriculture accounts for a large proportion of both Palestinian GNP and employment, effecting change in the use of natural water in this industry should occur more slowly than was recommended for the Israelis above, so as to avoid disruption in this sector. However, once the water shortages in the Palestinian territories become stabilized, the full transition of natural resource water to waste treated water should begin in the Palestinian agriculture economy.

Fourth, Israeli drilling has been responsible for overuse of groundwater sources in the West Bank,³³ causing seawater to seep into these resources, thus raising salinity levels. Therefore, stringent regulations must be placed on drilling to ensure that further degradation of water resources by both Israelis and Palestinians does not occur. The responsibility for creating regulations should be placed in the hands of a third-party water expert who has experience creating such regulations elsewhere, and the responsibility for implementing them lies with the Israeli and Palestinian water authorities.

Finally, a commitment must be made to discover and access alternative water resources. These will come primarily in the three forms: recycled water, water imports, and desalinized water. Outlines for this strategy are already being formed by the Israeli government, which could be used as a framework for a broader program, to be jointly formulated by the two parties' administrations.

Summary

The disproportionate water distribution to the West Bank under Israeli occupation has resulted in water shortages for Palestinians. A fair, equitable, and secure solution must reverse this water crisis. In keeping with international law on belligerent occupation as well as international water law about cross-boundary water resources, a new framework for joint management and cooperation must be implemented, including the full control of the Mountain Aquifer in the West Bank by the Palestinian Authority and the joint management and access to the Jordan River by Palestinians and Israelis. Until such time as peace negotiations are completed, the steps described above must be taken to enact a fair, equitable, and secure solution to water inequities in the West Bank.

¹ Amos Harel and Amiram Cohen, "Eitam Bans Palestinians from Drilling for Water in W. Bank," *Ha'aretz* 22 Oct 2002, [online: web] para 5, URL: <http://www.haaretzdaily.com/hasen/pages/ShArt.jhtml?itemNo=222372>.

² Chris McGreal, "Israeli Retaliation Target Olive Harvest and Waterholes," *The Guardian* 23 Oct 2002, [online: web] para 3, URL: www.guardian.co.uk/Print/0,3858,4529845,00.html.

³ Ibid.

⁴ Jessica McCallin, "Israel Bans New West Bank Wells," *The Sunday Herald*, 28 Oct 2002 [online: web] para 3. URL: <http://www.sundayherald.com/28790>.

⁵ Ibid., para 8.

⁶ For the purposes of this paper, the classification of the right to water as a human right is based on the recently written General Comment on the International Covenant on Economic, Social, and Cultural Rights, which enshrines the right to water as a basic human right and charges signatories with ensuring equitable and undiscriminatory provisions of safe and secure drinking water and sanitation facilities (ICESCR, General Comment, 26 Nov 2002). Israel is a signatory to the ICESCR.

⁷ Palestinian Academic Society for the Study of International Affairs, *Water: The Blue Gold of the Middle East*, Special Bulletin, (Jerusalem: PASSIA, Jul 2002): 1.

⁸ B'Tselem, *Thirsty for a Solution: The Water Crisis in the Occupied Territories and its Resolution in the Final-Status Agreement* (Jerusalem: B'Tselem, July 2000) 29

⁹ The Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, Annex III, Article 40.

¹⁰ B'Tselem, *Thirsty for a Solution*, 5, 34.

¹¹ B'Tselem, *Thirsty for a Solution*, 5.

¹² B'Tselem, *Thirsty for a Solution*, 32.

¹³ B'Tselem, *Not Even a Drop: The Water Crisis in Palestinian Villages without a Water Network* (Jerusalem: B'Tselem, May 2001) 4.

¹⁴ This is the minimal quantity according to both the U.S. Agency for International Development and the World Health Organization (URL: <http://www.usaid.gov/pubs/bj2001/ane/wbg/>). That amount includes use for basic urban (non-agricultural) needs, and it is much less than what is needed for a modern city to operate, which is closer to 274 liters per person per day. (B'Tselem, *Thirsty for a Solution*, 16).

¹⁵ B'Tselem, *Not Even a Drop*, 2

¹⁶ Ibid, 4.

¹⁷ Palestine Monitor, "Israeli Settlements on Occupied Palestinian Territories," [online: web] updated Sep 2002, para 17. URL: http://www.palestinemonitor.org/factsheet/israeli_settlements_on_occupied.htm

¹⁸ B'Tselem, "Disputed Waters: Israel's Responsibility for the Water Shortage in the Occupied Territories," Information Sheet, [online: web] Sep 1998, para 5, http://www.btselem.org/English/Publications/Summaries/Disputed_Waters.asp.

¹⁹ Jad Isaac, "The Palestinian Water Crisis," *Information Brief* No. 4, 18 Aug 1999 (The Jerusalem Fund for Education and Community Development), [online: web] URL: <http://www.palestinecenter.org/cpap/pubs/19990818ib.html>.

²⁰ UN General Assembly Official Records No. 1/56/35, 31 Oct 2001, para 28.

²¹ PASSIA, *Water*; B'Tselem, *Thirsty for a Solution*, 22.

²² Mekorot is run by Israeli's Water Commissioner and Ministry of Agriculture. (B'Tselem, *Thirsty for a Solution*, 24-5).

²³ B'Tselem, *Thirsty for a Solution*, 35.

²⁴ International Covenant on Economic, Social, and Cultural Rights (ICESCR), General Comment, 26 Nov 2002.

²⁵ B'Tselem, *Thirsty for a Solution*, p. 15.

²⁶ UN 57th General Assembly, Second Committee, 34th and 35th Meetings, GA/EF/3025, 14 Nov 2002.

²⁷ UN Convention on the Law of the Non-Navigational Uses of International Watercourses, Article 5(1), 1997. Note that Israel has not ratified this convention, but because its principles reflect international water law, they are bound by it anyway. (B'Tselem, *Thirsty for a Solution*, 52).

²⁸ Jad Isaac, *Core Issues of the Palestinian-Israeli Water Dispute*, In *Environmental Crisis: Regional Conflicts and Ways and Cooperation* by Spillmann: Kurt R; Bachler, Gunter (Eds.), Proceedings of an International Conference at Centro Stefano Franscini, Ascona/Switzerland 2-7 Oct 1994. ENCOP Occasional Paper, No. 14. Swiss Federal Institute of Technology/Swiss Peace Foundation: Zurich/Berne).

²⁹ B'Tselem, *Thirsty for a Solution*, 55.

³⁰ ICESCR, General Comment, 26 Nov 2002.

³¹ B'Tselem, *Not Even a Drop*, 3.

³² This idea behind this recommendation comes from B'Tselem, *Not Even a Drop*.

³³ Walid Sabbah and Jad Isaac, *Towards a Palestinian Water Policy*. Presented at the Seminar on Options and Strategies for Freshwater Development and Utilization in Selected Arab Countries, organized by the Center for Environment and Development for the Arab Region and Europe (CEDARE), Amman, 26-28 Jun 1995.

PEACEBUILDING AND DECENTRALIZATION: OPTIONS FOR GOVERNANCE IN MALUKU, INDONESIA

YUHKI TAJIMA

This article explores the possibilities of decentralization and governance in reducing violent sectarian conflict in Maluku Province, Indonesia. Applying comparative institutional analysis, the article draws lessons for the mitigation of ethnic conflict from four policy experiments of varying levels of devolution of governance over land-use and fiscal control. The results indicate that tailoring the level of devolution of salient tasks of governance to the level of ethnic mobilization may provide a political means of resolving conflicts as an alternative to violence. This paper focuses on the design of formal institutions of governance, while recognizing that comprehensive security requires the integration of more contextual factors (e.g. timing, local politics and cultural norms) and further modes of analysis beyond the political institutional analysis (e.g. ethnography, public finance, etc.) presented here.

1. Introduction

Since 1998, communal violence between Christians and Muslims has ravaged Maluku Province in Indonesia and claimed over 5,000 lives. During this period there have been a few major developments in Indonesia that have changed the complexion of this conflict and presented policymakers with new opportunities and risks for peace-building: decentralization legislation, a peace agreement and the involvement and subsequent exiting of the militant Islamic group, Laskar Jihad.

In 1999, under pressure from emerging separatist movements and growing criticism that the government was unresponsive and lacked accountability, then-president B.J. Habibie signed sweeping legislation calling for decentralization reforms. Laws 22/1999 and 25/1999 called for a decentralization and democratization of the top-down regional and local governmental structures through the establishment of autonomous district councils and the devolution of a wide range of responsibilities formerly held by the government.

On February 2002, key stakeholders in Maluku except Laskar Jihad signed the Malino II peace agreements paving the way for an exploration of sustainable options for peaceful coexistence.

Then, in October 2002, following the bombing of a Bali nightclub and the subsequent pressure from the Indonesian government, hundreds of Laskar Jihad fighters left Maluku.

These three developments are now offering an opportunity for Maluku to rethink its governance institutions so that they address the underlying causes of conflict in Maluku and begin to build a sustainable peace. Although the legislation decentralizing the central government was intended to mitigate separatist conflicts, the implications of decentralization for non-separatist communal conflicts such as Maluku have yet to be addressed.

Operationalizing this decentralization legislation has yet to be completed and may require key modifications that are adapted to the cases of communal (not separatist) conflicts such as in Maluku, Central Sulawesi and Central Kalimantan. In this study, I examine the benefits and risks of various forms of local governance in mitigating communal conflicts in this context of decentralization. I employ a comparative case study of Malaysia (Sarawak), the Southern Philippines (Mindanao), Sri Lanka and Lao PDR (Nam Ngum) in the analysis of this study.

1.1. The Context

Since it began in January 1999, the violence that has engulfed Maluku between Muslims and Christians has claimed over 5,000 lives and displaced as many as 700,000 of the estimated 2.1 million inhabitants of the Maluku Islands.¹ There have been offered many causes for the violence in Maluku. Most explanations attribute the rise in tensions between Muslims and Christians due to the influx of Muslim migrants from other parts of Indonesia, thus upsetting the demographic balance of Maluku. The influx of up to 100,000² mostly Muslim migrants moved to Maluku through the government's transmigration program from the period 1974 to 1999. This tipped the population balance in favor of Muslims so that in Maluku Province, Muslims accounted for 59 percent of the population, while Protestants accounted for 35 percent and Catholics 5 percent in 1997.³

Prior to this shift in demographics that altered the social landscape of Maluku, Protestant and Muslim communities co-existed relatively peacefully, albeit in separate villages, through a traditional village alliance system called *pela gandong*.⁴ This system was a consociational arrangement between representatives of Muslim and Christian villages that helped to govern disputes through peaceful means.⁵

The *pela gandong* system was steadily undermined by the policies of the Suharto government, both through the transmigration shifts in demographics and through the imposition of top-down power structures (provincial governors, district administrators, village heads) who were accountable to the central government not to the citizens of Maluku. These formal governance structures were used more to control the citizenry rather than to encourage responsive governance.

[President] Suharto followed a policy of "divide-and-rule", first giving patronage and privilege to Christians, and then favoring Muslims. In some cases, residents lost land to the migrants through "land reform projects," a clear source of strife.⁶

The external decision-making power over the use of land and other natural resources as well as the top-down supervisory role of the government contributed to the increase in tensions between the two communities as they were pitted against each other in order to consolidate Suharto's power. Tensions that would formerly be mediated by the *pela gandong* structures, were instead

exacerbated by government policies and *pela gandong* were increasingly marginalized. Tensions were able to persist for many years without major incident because of the pervasive power that Suharto held throughout Indonesia, both politically and militarily. Following Suharto's fall, ethnic tensions and separatist movements throughout Indonesia gained momentum (i.e. East Timor, Aceh, Maluku, Central Kalimantan, West Papua).⁷

In January 1999, a conflict at a bus stop involving a Muslim and a Christian became a full-scale riot that catalyzed the violence that has escalated into war. Language on both sides has taken a decidedly religious tone, with elements of both sides calling for religious cleansing. Some areas have already been "cleansed", while others still remain mixed. Complicating the situation further, the Islamic fundamentalist group Laskar Jihad based in Yogyakarta, Indonesia, sent thousands of its soldiers to exact "justice" through revenge and religious cleansing. The presence of Laskar Jihad fighters has further polarized both communities.

Finally, in February 2002, the Malino II peace agreement was signed by representatives of Christians and Muslims for a ceasefire and commitment to finding peaceful means to ending the conflict.⁸

In the backdrop of decentralization and devolution, there are many opportunities to rethink governance in the context of violence. The decentralization legislation of 1999 calls for significant powers to be shifted from the central government to the districts. This devolution essentially by-passes the provinces in order not to further legitimize and embolden separatist movements. This devolution may potentially address the issues of local control over resources, but at the same time may embolden conflicting groups in Indonesia and specifically in Maluku Province. Taking these factors into account, I will examine the options for decentralization that appear most conducive to peace-building paying closest attention to the use of land and fiscal decentralization.

2. Theoretical Framework

This study will focus on the dynamics and governance of internal ethnic conflicts. In particular, I will examine the prospects for and challenges of local governance and decentralization in reducing violent ethnic conflict in the short- and long- term. Through comparative institutional analysis, I will present the merits and limitations of various forms of governance that may be considered for the context of ethnic violence in Maluku Province, Indonesia. In addition, for those governance forms that have proven more successful in reducing conflict, I will present the conditions that are necessary for that success.

2.1. Causes of Ethnic Conflict

While many explanations have been asserted for the causes of ethnic conflict, I will focus on a limited range of explanations that have substantial empirical backing and currency in the literature.⁹ As most conflicts can be explained by an interaction of different causes, it is important not to narrowly

limit the causes of particular conflicts along one causal dimension. In this selected review of causal theories of ethnic conflict, I will first outline each archetype of the causal theories. I will then create a typology of conflicts based on causes (using each of the causal theories as a dimension), which will constitute a framework for manageably describing ethnic conflict. It is important to recognize that this analytical approach is taken due to the (fortunate) lack of controlled experiments. I will thus contextualize some of the salient social and historical factors that may help us to understand the dynamics of a particular conflict and the causes that will likely explain the existence of conflict.

For this analysis, I will categorize the prominent explanations for the causes of ethnic conflict into the following categories:

- Elite motivations
- Non-elite motivations
- Social structure
- Symbolic factors

I use this categorical system because it encompasses a wide range of theoretical explanations in the literature.

2.1.1. Elite Interests

Modernization Theory

At first glance modernization theory may be expected to predict that the process of modernization would subvert the bonds of traditional tribalism in favor of modern ideals in which ethnicity would become less important in the determination of social outcomes. However, the opposite has more frequently been argued: as societies confront the changes of modernization, ethnic conflict is to be expected as an integral product of this process toward modernity.¹⁰

The pressures of modernization bring with it social mobilization that erodes traditional norms and practices and places incentives in favor of modern ways of living. This period of social mobilization exposes the risks and opportunities of modernization and concomitant increases in competition. In such a period of upheaval, individuals may seek to organize themselves along the traditional lines of ethnicity as a strategy to manage these risks and capitalize on the opportunities. In addition people will tend to demand more resources (from higher expectations of modern norms). As modern urban elites are often the first to benefit from modernization, it is often in their interests to mobilize non-elites of their own ethnic group to compete for the rewards of modernization at the expense of other groups.¹¹

Economic Interest Theory

Similar to modernization theory, economic interest theory argues that elites will mobilize the support of non-elites of their own ethnic groups to

compete with other ethnic groups because they stand to benefit economically from inciting conflict. This theory assumes that elites base decisions of conflict on rational choice arguments, weighing the economic costs and benefits to conflict. This theory, however, assumes that non-elites are either irrational or do not have access to the same information in making the decision to undertake the costly activities of conflict. Unless it is assumed that non-elites are irrational, are subject to manipulation by elites, or are acting on a wider calculus of costs and benefits than are observed, the behavior of non-elites cannot be fully explained with this theory.

Ideological

A variant of the economic interest theory is the use of ideological tools by elites to diffuse anti-elite class tensions by raising tensions with other ethnic groups as a method of distracting and manipulating the public. In this case, elites weigh the relative merits and demerits of class conflict with those of ethnic conflict.¹²

2.1.2. Non-elite Interests

Economic Interest Theory

Rather than assuming that non-elites are irrational, the non-elite economic interest theory, tries to explain why it is economically in the interest of non-elites to partake in violent conflict. In this model, non-elites also make rational choices in deciding whether to become involved in ethnic conflict, given the information and conditions presented to them. Individuals of the working class of an ethnic group must compete with those of another ethnic group. Direct competition between workers of different ethnicities, combined with other factors such as preference by employers of one group or a change in supply of labor as a result of demographic shifts can intensify into conflict.¹³

Cultural-Pluralist Theory

Cultural pluralism explains that the conditions for ethnic conflict arise as a clash of incompatible cultural values among ethnic groups. This clash of values foments conflict when one group imposes these values upon another at the non-elite level. The role of elites in causing and mitigating conflict is seen as less important than the interactions governed by cultural values at the non-elite levels. The policy conclusion of this theory is separation and isolation of groups. This theory diminishes the importance of elites who may have intersecting interests that could form alliances that cut across ethnic lines.

2.1.3. Social Structure

Some theorists have suggested that it is necessary to examine social structures to determine whether a society is likely to have conditions that may lead to ethnic conflict. The most commonly stressed social structural feature salient to conflict is the existence of crosscutting or reinforcing cleavages.

Crosscutting Cleavages

According to modernization theorists, Melson and Wolpe, "the fewer [are] cross-cutting socio-economic linkages, the more naked [are ethnic] confrontations and the greater [is] the likelihood of secessionist and other movements of communal nationalism."¹⁴ As societies undergo the process of modernization, some ethnic groups may take advantage of the benefits of modernization before others. This reinforces social cleavages along ethnic lines and is a situation more likely to experience conflict than if the social cleavages cut across ethnic lines.

Ethnic Division of Labor

One particularly salient manifestation of reinforced social cleavages is the ethnic division of labor, which is often characteristic of areas of immigrant or transplanted communities. Migrants are often endowed with or perceived to have different skills from indigenous populations and thus fill specialized vocations. Additionally, one group may have different preferences over the types of labor or there may be norms or legal provisions that impose specialization in different fields along ethnicity. This ethnic division of labor is a special case of reinforced ethnic cleavages and can be a source of ethnic conflict.

Social Capital

This argument is further elaborated in the research of Ashutosh Varshney, who combines the concepts of civic engagement and social capital with ethnic conflict. His argument consists of two parts. First, he argues that 'interethnic networks of civic engagement'¹⁵, or cross-cutting social capital, promote peace through the management of tensions across ethnic lines. Conversely, 'intraethnic networks of civic engagement'¹⁶, or reinforcing social capital, raises the likelihood for ethnic conflict. Second, his theory claims that formal (or associational) forms of civic engagement that cut across ethnic lines are more difficult for elites to use to polarize communities to foster the conditions for violence.¹⁷

2.1.4. Symbolic Factors

The materialist explanations of elite and nonelites and social structure explanations are not enough to explain group psychology and the power of

symbolism to divide and foster conflict. To explain this, I focus on Horowitz's theory of legitimacy and entitlement.

Legitimacy and Entitlement

Ethnic conflict is said to become more likely where a group's sense of entitlement is not reflected by the reality. Often different groups will have competing senses of entitlement, where one group may believe in exclusive (e.g. a region or resource should be exclusively their own) or inclusive entitlement (e.g. a group may claim the right to equal terms vis-à-vis the region or resource in question). This clash over entitlement is more generally called an asymmetry of claims, where group claims that are based on varying sources of legitimacy are incongruent with each other. Asymmetric claims may rise out of historical, religious or political origins that legitimize and prioritize a group's claim to land and the polity that governs it.¹⁸

2.2. Governance for Conflict Management

As outlined above, the underlying causes of ethnic conflicts often relate to the management and governance of resources (political and natural) and the social interactions between groups. I will therefore outline various options for governance, highlighting their ability to 1) foster mechanisms of resource allocation that are seen as legitimate by salient stakeholders and 2) mediate social interactions that build cross-cutting bridges for conditions of peace-building in the long-term.

There are three general approaches in managing conflict in the literature: decentralization, power-sharing and separation. The first two approaches are operationalized through the concepts of federalism and consensual (and consociational) democracy, which are usually explored before separation as a final option.

2.2.1. Federalism and Consociationalism

Federalism is seen to be a useful form of governance for contexts of ethnic conflict due to their design of protecting diversity while achieving unity within a country.¹⁹ Elazer defines federalism as "self-rule plus shared-rule"²⁰ Federalism implies the devolution of power, which gives equitable representation for each salient group so that they have a "voice" in the process. Without adequate voice, as Hirschman states, groups will choose to "exit", which in the context of conflict may entail violence. In its function of decentralizing power, federal solutions disperse voice to the various parties so that disparate groups can mediate differences. Similarly, consensual and consociational democracy provide for power-sharing, which gives proportionate voice to each party, while forcing different groups to work together and seek consensus.

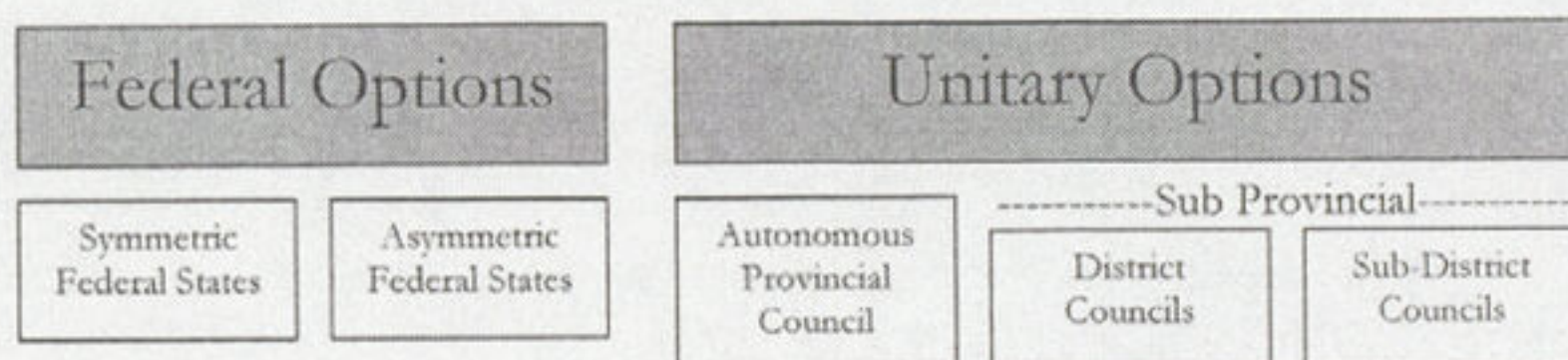
Federalism and Consensual characteristics of democratic institutions lie on the dimension of territorial and electoral techniques, respectively.²¹ The

generalized options along the territorial dimension are *federal* and *unitary*. The electoral techniques have *majoritarian*, *consensual* and *consociational* options. However, in this analysis, I will adopt a more general classification of majoritarian vs. consensual electoral designs.

In addition to the territorial and electoral dimensions of democratic institutions, the level of decentralization is an additional dimension of variation for democratic institutional design. This dimension includes *provincial*, *district*, *sub-district* and *village* level options. In this analysis, I focus on the provincial and subprovincial (district and sub-district) levels only.

Thus, with this three dimensional basis, it is possible to construct a typology for democratic institutional design that addresses the objectives of conflict management. With the territorial and level of decentralization dimensions, International IDEA²² articulates several options for devolving power: (symmetric) federalism, asymmetrical federalism, provincial autonomy and various local governance institutions. In this study, I name these local government institutions sub-provincial government institutions (see Figure 1), which includes district and sub-district levels.

Figure 1: Typology of Territorial- and Level of Decentralization- Dimensions



In addition, there is an additional dimension of decision-making processes that I call the electoral dimension that bifurcates each of the above options into majoritarian and consensual forms.

The territorial and electoral dimensions can be easily observed due to their structural nature. However, the level of devolution among the unitary options is a much more subtle characteristic and is subject to definitional freedom. In this analysis, I take the level of decentralization to be first, the level that has primary decision-making authority over land-use and fiscal policy (both expenditures and taxes). As control and use of resources represents one of the primary arenas over which the Maluku conflict is fought, it is useful to categorize the level of decentralization in terms of land-use and fiscal policy (expenditures and tax collection).

3. Hypothesis

Based on the theory that the underlying causes of these conflicts revolve around the allocation and appropriation of resources and the degree of cross-cutting social interactions, governance forms will be most effective in managing

conflict that are able to allocate resources in an equitable manner acceptable to stakeholders.

4. Analysis

In this section, I will describe the methods of analysis for this study for the purpose of comparing various levels of decentralization in their effectiveness in reducing the conditions for and the incidence of conflict. I will then use these methods to examine the data that I collected for this purpose.

4.1. Methods

In order to isolate causal links between the level of decentralization on conflict, I utilize a comparative case approach. This approach is more useful than regression analysis for the level of specificity required to describe salient characteristics of each case. In addition, this comparative approach is better than regression models due to limitations in quantifying salient qualitative data, a lack of sufficient data and variation, the sheer complexity of explaining the dynamics of conflict and the time-dependency of conflict. The comparative approach is more suited to this study than single-country analysis because comparisons across similar contexts can offer evidence for an outcome of particular policy options.

4.1.1. Comparative Framework

I employ *most similar systems design* in order to isolate differences while varying the level of devolution dimension by controlling for the similar causes of conflict. It is instructive to narrow the choices through the use of a decision tree (see Figure 2) along the three dimensions of governance types: territorial dimension, level of devolution and electoral dimension. This is useful in making the comparative framework more manageable and in choosing the cases of study. Along the territorial dimension, governance institutions can be either federal or unitary systems. In the dimension of devolution level, unitary models can be at the provincial/regional level and sub-provincial level, which can be disaggregated into district and sub-district levels. Federal systems can either be symmetric or asymmetric in the dimension of devolution level.

The constraints derived from examining the Maluku case will allow me to eliminate various options for governance institutions. In the case of Indonesia, the symmetric federal states type would not be a politically viable option as it may work to embolden separatist movements. Indeed, the decentralization Law 22/1999 pre-empts this solution by devolving governance functions to the district level for the reason that symmetric federalism may in fact reify the differences across provinces. In decentralized governance, provincial government is relegated to a coordinating role that must report to the center. Therefore, I do not consider this option either.

An asymmetric model of federalism is more tenable since it would not grant federalism to other, separatist parts of Indonesia. The conflict in Maluku

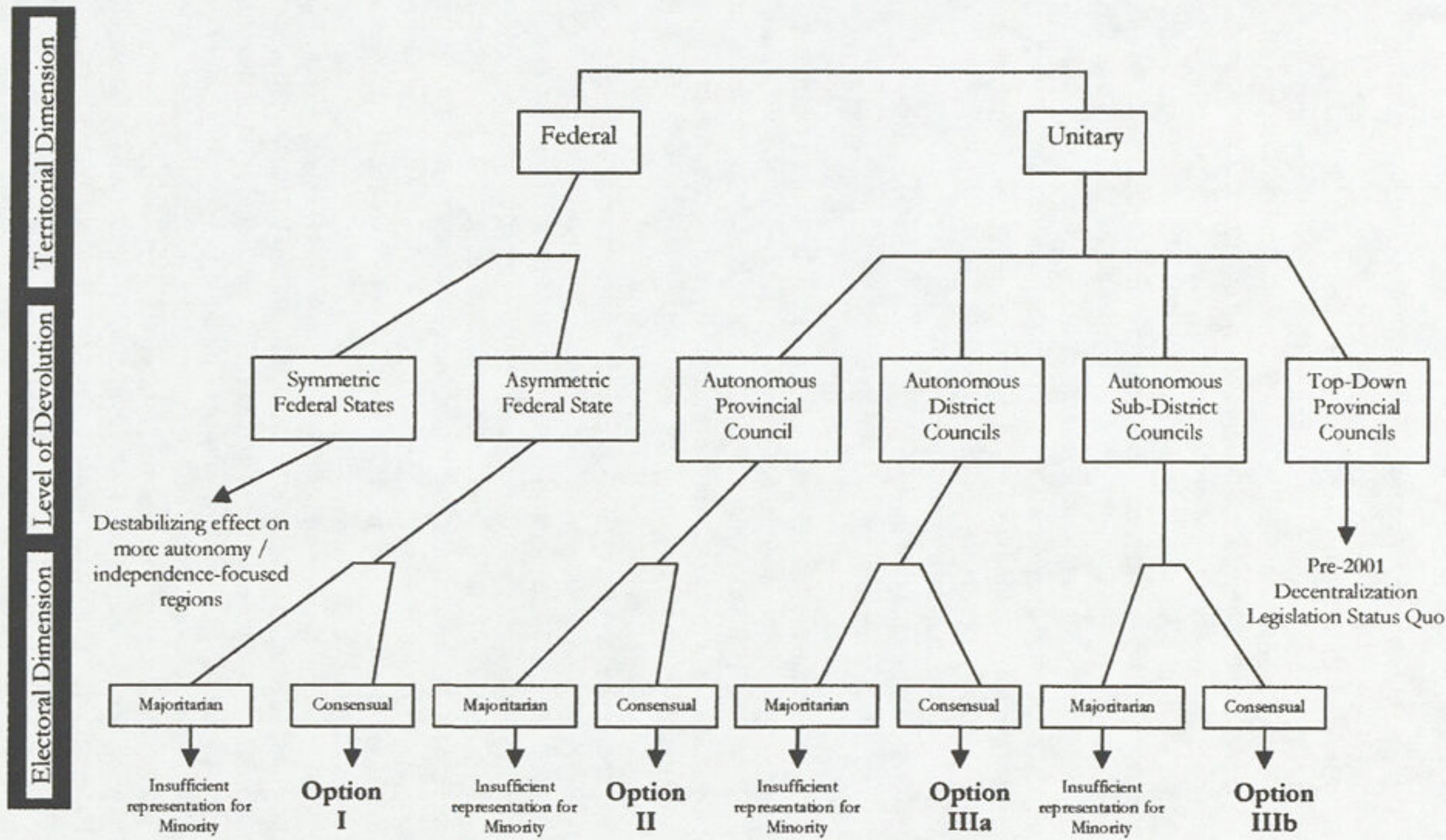
province is characterized as a communal conflict, not as a separatist conflict. As the decentralization legislation was largely written to address separatist conflicts, there may be scope for the government to make exceptions for particular provinces that have communal conflicts. Salient government functions would be devolved to the provincial level, which would become a state with greater responsibilities as well as having an input into national policies.

Unitary options can give some level of autonomy to lower levels of government, however, they are all accountable in some way upward toward the central government. Among the unitary options, provincial councils would be the least decentralized, followed by sub-provincial councils. Law 22/1999 essentially creates sub-provincial (district) councils, the result of which will be important to compare in the Malukan context. The sub-provincial level of devolution can be further disaggregated into two sublevels, district and village levels.

Finally, in the electoral dimension, I will only consider the consensual decision-making options to account for the fact that Maluku has significant populations of minority groups, who would otherwise be unrepresented in the government and would likely reduce the legitimacy and stability of the governance body and possibly lead to further conflict.

As shown in the decision tree (see next page), I therefore will explore the following: 1) Asymmetric Federal State 2) Provincial Council 3a) District Council and 3b) Sub-district Council.

Figure 2: Decision Tree for Types of Governance in Maluku



4.2. Data

In my search for appropriate case studies, I focused my initial survey on countries within the South- and Southeast Asian region in order to retain some cultural similarities. I explored in greater detail the following countries with communal conflicts: Malaysia, the Philippines, Sri Lanka and the Lao PDR.

I used data collected from various sources as they are not all collected in a standardized source and methodology. As such I consolidated data from differing sources in the following order of priority: Minorities at Risk reports (MAR), Elazer's handbook on Federal Systems of the World, Asian Resource Center for Decentralization's Sourcebook on Decentralization as well as supplemental accounts for the Sri Lankan²³ and Lao cases. If the data were not present in the MAR data sets, I deferred to Elazer's handbook and so on. I present the data, which I gather in the form of three matrices that cover the following aspects of each case study:

- Contextual information
- Institutional design
- Implementation Factors and Results

Within the Context matrix (see Table 1 at end of article), I highlight several factors obtained from literature as salient to the dynamics of ethnic conflict in general and particularly to the Maluku case. Due to length limitations, I only consider a narrow range of variables relating to resources and do not investigate the social structural and cultural dimensions in this analysis. I focus instead on the competition over resources (both land and development resources) and the existence of migration pressures. This is useful in testing the elite and non-elite economic theories of ethnic conflict. I also record data on whether the government has an antagonistic relationship with ethnic groups in question, as a measure of the trust by different groups toward government as an honest broker or as an adversary. This is supplemented by data indicating the movement toward separatism, which requires a different range of institutional solutions to address separatist dynamics. Finally, I record the level at which ethnic groups are mobilized in each case, which will help to determine the most appropriate level of devolution.

Within the Institutional Design matrix (see Table 2 at end of article), the level of devolution in question is the nominal level of devolution. This information is supplemented with data on the functional level of devolution that is the focus of this analysis: decision-making authority over land- and resource- use and authority over fiscal policies pertaining to development. The level of interference or supervision by the central government is also useful in characterizing the true level of devolution of a particular institutional design. Higher levels of interference may suggest that devolution may be nominal, but not in practice. Finally, data of the government bodies' influence over central government policies is a useful measure of the level of a local government's ability to influence the central government's policies that may affect the

conditions of conflict. In particular, national migration and resource allocation policies may have significant effects on the conditions of conflict at the local level.

Finally, I have recorded data related to implementation, which may significantly affect the ability of the institutional design reforms to be implemented successfully. I then include the results following implementation of the institutional changes, recording changes in violence patterns.

5. Results and Findings

The dependent variable of interest is the changes in patterns of violence variable. The Sarawak, Malaysia case and the Nam Ngum Lao PDR cases are the most successful in reducing communal violence. The Mindanao, Philippines case shows a small decrease in communal violence and more contained separatist violence. The Sri Lanka (1981) case was ineffectual, after which the violence actually escalated. The key institutional design variable, which I vary to explain the variation in changes in the patterns of violence, is the level of devolution by the following measures:

- Decision-making power over land-use
- Fiscal authority over development monies
- Level of devolution
- Degree of central government interference/supervision
- Level of ethnic mobilization
- Progression toward separatism
- Influence over central government policies

All of the comparative cases except for Sri Lanka devolved decision-making power over land-use to the local level. In Sri Lanka, land policy was decided at the central government and implemented by the local governments. In the cases of devolved decision-making power over land-use, there is a clear pattern of conflict reduction. Furthermore, for cases in which the level of devolution is at the same level as the level of ethnic mobilization, there is a decrease in violent conflict. The Sri Lankan case had a national level of ethnic mobilization, which was much greater than the district level councils. The district councils were not equipped to mediate between the two groups at the national level. It is therefore probable that the appropriate level of devolved authority over land use is an important determinant of the causes of ethnic violence. However, a more sophisticated interpretation of the data is necessary to inform policy analysis.

Fiscal authority has weaker results than land-use authority. The successful Lao case had very little fiscal authority, but this may be in part due to a general lack of fiscal revenues in Laos. Also, the unsuccessful case of Sri Lanka exhibits a devolution of fiscal authority to the district councils. A possible explanation for this contradiction lies in the data concerning the degree of central government interference. In the Sri Lankan case, the executives of the district

councils were chosen by the central government. As a result, according to one commentator, Felix R. D. Bandaranaike,

The [District] Development Councils [were] not vested with any executive power at all, as far as their elected members are concerned. The executive power is vested in the District Minister who is an official of the central government.²⁴

The high level of government interference in the district development councils prevented true devolution of the councils and worked to undermine the legitimacy of the councils. It therefore was not effective in diffusing the tension.

The variable of progression to separatism is useful in integrating temporal dynamics into institutional design. In the Sri Lankan case, when the conflict was still considered a communal conflict, the degree of devolution could be practically implemented at a lower level. However, as the conflict evolved into a separatist struggle, the appropriate degree of devolution increased steadily. Proposals to devolve power have steadily increased the level of devolution beginning with a district solution and leading to the current negotiations on a federal state solution. It is important that the level of devolution is appropriate vis-à-vis the timing of the proposed changes as well as the level at which ethnic groups are being mobilized. Similarly, in the Philippines, as the progression toward separatism increased or changed in nature, the appropriate level of devolution changed. This dynamism has underscored the difficulty in pinning down an appropriate level of devolution in the Philippine and Sri Lankan cases alike.

In addition, as many national policies have very profound impacts on the dynamics of local conflict, increasing influence over the center by the local governments may be a useful feedback mechanism, which prevents the imposition of national policies that may foment conflict. The Malaysian case of asymmetric federalism for the state of Sarawak gives Sarawak representatives veto power over changes in federal constitutional amendments and a potentially destabilizing influx of migrants.

Finally, even under the ideal case that the "most appropriate" institutional design has been determined, there are still various risks that may undermine the efficacy of governance institutions in addressing the underlying causes of conflict. These risks are most evident in the implementation phase and must be carefully weighed as part of the constraints in adopting a particular institutional design. For example, in Sri Lanka, the district development councils were dealt a final blow when large-scale violence followed the destruction of the symbolic Tamil library by a radical Sinhalese group. Similar radical groups have sidetracked previous attempts at institutional solutions to the Mindanao conflict.

6. Conclusion: Recommendations and Further Questions

Comparative institutional analysis is instructive in drawing lessons from other cases of conflict for the case of the Maluku. I have shown that the level of

devolution is essential in providing the level of responsiveness to the conflict. Devolution of decision-making power free of excessive interference from the central government that also allows for national policies to be responsive to local constituencies has shown to help mitigate the incidence of conflict.

In applying the results of the above analysis to the Maluku case, there are several recommendations that can be made, which include the following:

- Tailor the level of devolution to the level of ethnic mobilization (i.e. District level in this case)
- Devolution should include:
 - Decision-making power over land-use
 - Decision-making power over fiscal policy
- Devolution must be free of excessive interference by the central government
- Upward and downward decision-making linkages should be implemented to make national policies more responsive to local conditions (i.e. the central government policies can be affected by local government bodies)

My analysis suggests that these policy recommendations would meet the necessary conditions for the mitigation of communal conflict in Maluku Province through institutional design. However, they do not constitute a sufficient condition for conflict mitigation. Various contextual and risk factors must be accounted in truly operationalizing an effective institutional design. Further, as suggested by the Philippine case, timing and efficacy in implementation are crucial and require detailed knowledge about contextual factors.

There is significant scope to delve deeper into this analysis to examine further issues necessary for a more specific and comprehensive plan for implementation. Further research is required to address such concerns including the following:

- By what process can all relevant stakeholders buy into and implement a sustainable agreement in Maluku?
- What role do traditional governance institutions have in mitigating conflict and how can these be factored into formal institutional design?
- What are the roles and prospects for civic engagement in the process of institutional design?
- How do social capital and social cleavages interact in fostering or preventing conflict?

Table 1: Context

		Option I	Option II	Option IIIa	Option IIIb
Country	Indonesia (2001)	Malaysia (1963-present)	Philippines (1996)	Sri Lanka (1981)	Lao PDR (1996)
Region or Province	Maluku	Sarawak	Mindanao	North and East	Nam Ngum
<i>Ethnic Groups in Conflict</i>	Christians vs. Muslims	Dayaks vs. Malays & Melanau	Muslims (Moros) vs. Catholics	Tamils vs. Sinhalese	Hmong, Lowland Lao, Highland Lao
<i>Resource Competition</i>	Yes	Yes	Yes	Yes	Yes
<i>Migration Pressures</i>	Yes. Muslims from other parts of Indonesia	Yes. Malays, Muslims	Yes, Catholics from other parts of the Philippines	Yes, Sinhalese	Yes, Hmong returnees
<i>Antagonistic vs. Cooperative government policies</i>	Alternating Antagonism against Christians and Muslims	Cooperative	Antagonistic against Moros / Muslims	Antagonistic (against Tamils)	Antagonistic (against Lao)
<i>Progression toward Separatism</i>	No	No	Yes	Yes	Limited
<i>Level of ethnic mobilization</i>	District mobilization of Christians and Muslims	Provincial mobilization of Dayaks and Malay-Melanau	Regional mobilization of Moros and Catholics	National mobilization of Tamils and Sinhalese	Mobilization within districts of Hmong and Lao communities

Table 2: Institutional Design

Country	Indonesia	Malaysia	Philippines	Sri Lanka	Lao PDR
Region / Province	Maluku	Sarawak	Mindanao	North and East	Nam Ngum
<i>Level of Devolution</i>	(Proposed) Elected District Councils	Elected Federal State Legislature	Elected Autonomous Regional Council	Elected Sub-Provincial Councils (District Development Councils) with appointed head	Appointed Sub- Provincial (District- Village Administration cooperation)
<i>Authority over Land- Use</i>	To be determined	Independent State Land Development Board	Autonomous Regional Government has functions of environmental and natural resources management	Not clearly stipulated in DDC legislation	Decree 169 and Forest Law No. 125/PO Article 63: Granted rights & duties to Villages & District to develop regulations on use of forests, land
<i>Fiscal Authority over Development Initiatives</i>	Yes	Yes. Independence from federal government of local government finance functions	Yes. Fiscal independence and special tax-levying powers	Yes.	No. Limited by lack of funds and undemocratic regime
<i>Interference by center (defined by level of supervision by center)</i>	Low	Low	Medium	High; Appointed DDC head	Low
<i>Influence over Central Government Policies</i>	No	-Veto power on all federal constitutional amendments. -Control over labor migration from other parts of Malaysia	No	No	No

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¹ ICG Asia Report No. 31, 8 Feb 2002: 1.

² According to <http://www.websitesrcg.com/ambon/Transmig.htm>, citing official statistics from Regional Office of the Ministry of Transmigration and Forest Settlers Province of Moluccas.

³ *Indonesia: The Search for Peace in Maluku*, ICG Asia Report No. 31, 8 Feb 2002: 1.

⁴ See http://www.preventconflict.org/portal/main/maps_maluku_resources.php

⁵ John Gershman, "Indonesia: An Archipelago of Self-Determination and Communal Conflicts," para 18, [online: web] cited 4 Dec 2002.

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⁶ See http://www.preventconflict.org/portal/main/maps_maluku_background.php

⁷ Ibid.

⁸ Ibid.

⁹ This is not to disclaim the validity of alternative explanations. Rather, it is a methodological choice to limit the scope of this study to a manageable and somewhat generalizable level.

¹⁰ See Donald Horowitz, *Ethnic Groups in Conflict* (Berkeley, University of California Press, 1985) 96. I use the word "modernity" in its positive aesthetic definition, rather than in its more problematic normative evaluative use.

¹¹ Robert Melson and Howard Wolpe, "Modernization and the Politics of Communalism: A Theoretical Perspective," *The American Political Science Review* 64.4 (Dec. 1970): 1115.

¹² Horowitz, 106.

¹³ Ibid., 124.

¹⁴ Melson and Wolpe, 1116.

¹⁵ Ashutosh Varshney, "Ethnic Conflict and Civil Society: India and Beyond," *World Politics* 53 (April 2001): 2

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Horowitz, 197.

¹⁹ Ibid., 64.

²⁰ Ibid., 12.

²¹ Ibid., 601-628.

²² *Democracy and Deep Rooted Conflict*, "The Structure of the State: Federalism and Autonomy," International IDEA, Ch. 4, [online: web].

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²³ See Ketheshwaran Loganathan, *Sri Lanka: Lost Opportunities* (Centre for Policy Research and Analysis University of Colombo, 1996) and Sunil Bastian, "Ethnic Conflict and the Provincial Council System of Sri Lanka," *Problems of Democracy, Constitutionalism and Political Violence*, Ed. Ulrich Everding (Goethe-Institut Colombo Law & Society Trust, Sri Lanka, 1993) 22.

²⁴ Loganathan, 76.

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