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Conflict Prevention and Cooperation in International Water Resources - Reader

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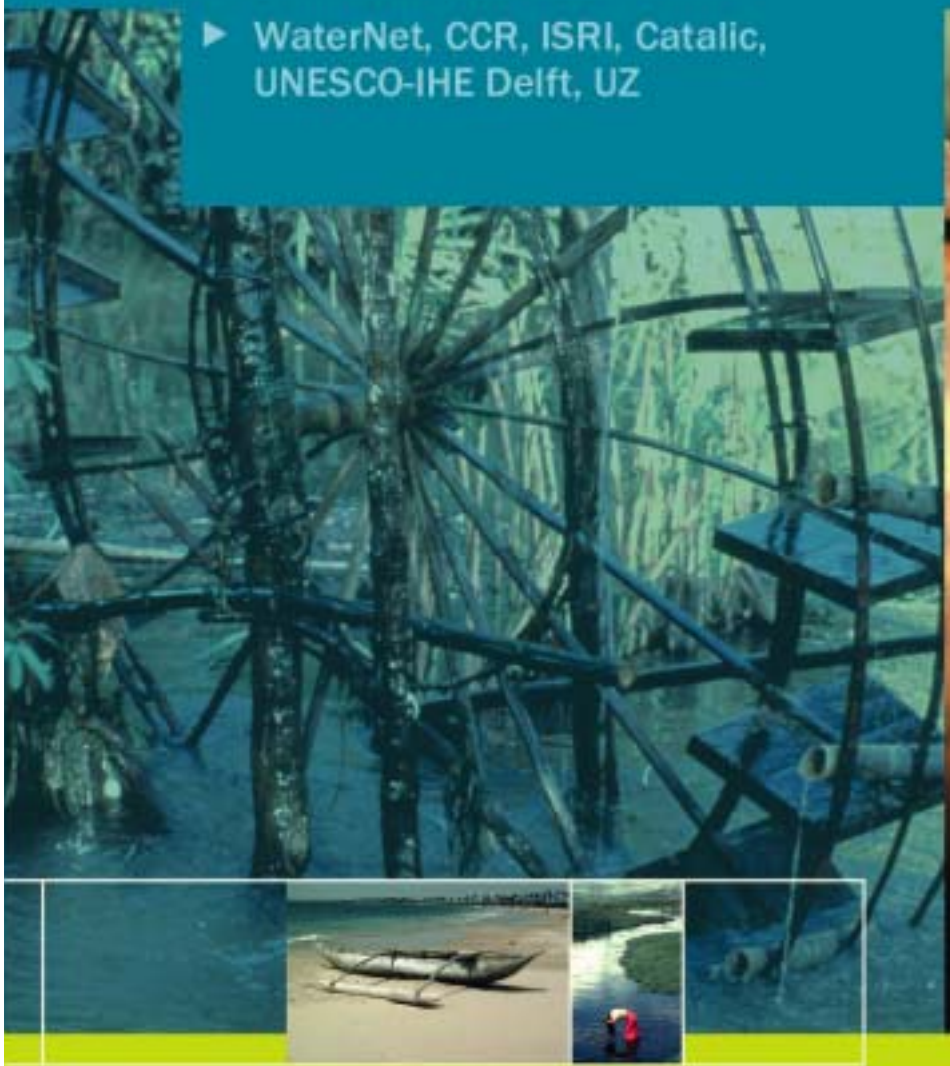

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Conflict Prevention and Cooperation in International Water Resources

Reader

Course B

(SC-2003/WS/71)

“Conflict prevention and cooperation in international water resources”

Course reader

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Course B

Conflict Prevention and Cooperation in International Water Resources

Course reader

Part 1

Water

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Principles of Water Allocation in Historical Perspective

From traditional customary water distribution to modern sustainable and economic water allocation systems

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ABSTRACT

From early civilisations until now water allocation principles have played a substantial role in sustaining communities of people and other forms of life. Over time principles have developed to arrange water allocation for nomadic and early sedentary civilisations to complex industrialised contemporary societies. Water allocation can range from traditional systems where water is considered to belong to nobody and can be taken randomly, to systems of tradable water rights and integrated river basin planning.

Traditional principles ruling water allocation still exist in both developing and developed countries among certain layers of society or under certain circumstances or for a certain type of users. Many principles may be applied simultaneously. Some principles that were considered redundant may become of interest again, when circumstances change.

The development of water allocation principles depends heavily on the physical characteristics of the river basins of application in question, the absolute and relative scarcity of resources, on the rate of (agricultural and industrial) development, on the customs, norms, values, culture and religion of the respective communities and on the legal and institutional history and traditions.

Emphasis is given to water allocation principles that developed over time under Roman-Dutch and Common Civil Law systems. Water rights and water uses are defined as well as the modalities under which specific systems of water rights emanate. The technical (volumetric) appearance of rights is (briefly) indicated. The following principles are described respectively with their specific characteristics and their value of application under certain circumstances: ***res nullius*** (*water belongs to nobody)*, ***res communis omnium*** *(water belongs to the community)*, prior appropriation, proportionality, correlation and tradable water rights. These principles are described in their proper perspective with modern approaches of integrated and participatory plan development.

Possible conditions for sustainability of water right systems are depicted. The paper concludes with a brief comparison of water right systems.

1. INTRODUCTION

A quick glance at history demonstrates the intimate connection between the stability of a group of people, its economic and social development, and the availability and the reliability of water supply. This has rightly led many authors to define the first developed social groupings as hydraulic civilisations. All major human migrations and the birth of towns and communities have been closely correlated with the search for and the settlement around areas and valleys adequately supplied with water. As soon as human groups settled around a water point or in a river valley, the need arose for minimum water control in order to satisfy water demands and to ensure an equitable water distribution between different uses and users. It is from this need that the earliest water right systems developed. Their growth, persistence and character varied and were dependent upon many factors, such as local geo-physical and climatic conditions, socio-economic and managerial situations, and the religious-philosophical beliefs of the population concerned (Caponera 1992).

In regions where water was abundant, water control was largely directed towards defence against harmful effects of water, such as flood warning and control and fight against water invasion, embankment and dyke construction and maintenance. In areas where water was scarce, this control developed towards the conservation of water supplies and adequate distribution of the little water available. Here, water law systems were more detailed and restrictive. In regions where periods of water shortage were alternated with periods of flooding, water law systems contained elements of both patterns.

In contemporary times with the increasing complexity of societies, dense occupation of land and growing economic development, extra dimensions were added to the original functions of water allocation and flood control. There is an increasing interest in both looking upon water as an economic good (ICWE 1992) and in considering the water cycle as inseparable and hence managing water on hydrological boundaries with the watershed as logical unit. Nowadays, the aim is to reach sustainability in social, economic and environmental perspectives (Savenije 2000).

To put water allocation principles in a historical perspective is certainly is relevant, in that traditional principles ruling water allocation still exist in both developing and developed countries among certain layers of society or under certain circumstances or for a certain type of users. Many principles may be applied simultaneously. Recently developed water legislation is often based on various water allocation principles. Moreover, principles that were considered redundant before may become of interest again, when circumstances change. For example, the modern approaches in water resources management to apply stakeholder participation in decision making and integrated methodologies are in fact a return to the old days when water was considered as belonging to the community as a whole (*res communis omnium*).

This paper describes principles that ruled and still rule water rights in the sense of water allocation to individuals or groups of individuals for certain uses. The aim is to identify the value of these principles for contemporary civilisations in developing countries and to determine the institutional arrangements under which their performance may be optimal. Examples from literature are matched with the authors' own experiences in establishing and managing water right systems in various (mainly developing) countries around the world.

2. WATER USE AND WATER RIGHTS

Which type of water can be subject to a system of rights? Seawater, surface water in stocks, surface water in streams, soil water (both percolating water and capillary rising water), phreatic water, fossil water, water in organisms, waste water, rain, vapour etc.*?* *What kind of use may be authorised by the water right?* The use of water for consumption, pollution, power generation, fishing, recreation, transport, nature and wildlife conservation etc.?

Here we investigate rights for consumptive uses for drinking water, industrial water, water for agriculture and livestock and further for the non-consumptive uses of power generation and preservation of environmental flows. In physical terms this implies that we concentrate on water rights for the use of surface and subsurface water. Further, we focus on Roman Dutch and Common Civil Law water right systems.

On the one hand water law creates legally enforceable expectations ('water rights'), duties to respect those, and means to redress violations of these rights (Goldfarb1988). On the other hand, water law creates (among many other items) also control mechanisms against flooding and for the protection of the quality of water and the watershed as a whole. In this publication we concentrate on the first category of water rights in the strict sense of the word.

The following types of rights can be identified in an analytical sense (the summary is not exhaustive):

- **Absolute water ownership right.** Water belongs to the property on which it is found. It is part of a real estate. The owner of the property also owns the water. He may use it for any purpose or whatsoever (*ius utendi et abutendi*).
- **Absolute user right.** The water is owned by somebody else or another institution often by the state as tutor of the public domain. The right to use, however, in its purest sense is absolute. It is not attached to land or depending on a specific abstraction point, it can be leased, sold, inherited, mortgaged and is not restricted to any type of effective and beneficial use. The owner can sit on it as a speculation object. Only very few legal systems i.e. in the Western United States and in Chile have a water right concept close to these absolute user rights.
- A **relative user right** may have some of the restrictions mentioned above. Often, it is attached to land and specific abstraction points; it cannot be sold or transferred, mortgaged or inherited. It is restricted to a certain type of beneficial and effective use: agriculture, cattle watering, drinking water supply and when 'you do not use it, you loose it' either temporary or indefinite. This is a very common type of right and found all over the world.
- A **water permit** (concession, licence) is acquired through administrative allocation or authorisation. It may have the restrictions of above, time limitations and it may be subjected to charges or fees either for the use of it or as a contribution to the water management services.

The legal status of a right may have far going consequences in terms of capability to trade, transfer or inherit the right or to use it for collateral or as a security investment. It is more difficult to attach conditions (time, charges, suspension) to ownership and absolute user rights than to relative user rights and permits and concessions. More often

than not the Constitution of a nation protects ownership rights and absolute rights to the extent that compensation is required in case of expropriation.

A water right may be acquired through the law, through custom or practice, by a court resolution, through continuous effective and beneficial use, and in case of a permit or licence through administrative allocation or from a river basin plan.

Further, a water right may be expressed in volumetric terms (m^3/s or l/s), as a share of the stream or canal flow or as a share of the water available in a reservoir, a lake or an aquifer. A water right may also be expressed in terms of shifts or hours of water availability at a certain intake (Holden and Thobani, 1995). It is also possible to express a water right as a percentage of capacity of storage works (either or not subdivided in stages of probability of filling, examples in Zimbabwe). A water right may be applied by simple diversion or by abstracting through mobile or fixed pumping installations.

3. WATER ALLOCATION PRINCIPLES

To oversee the whole spectrum of potential water allocation principles it can be useful to imagine a huge continent with all possible physical circumstances and a variety of human occupation patterns and cultures alongside one another. The continent is 'discovered' by an external power as was usually the case in the present developing countries, our target group of countries.

In the North the continent is humid and has a relative abundance of water and in the South it is arid and has a relative water shortage. Initially the North is 'developed' first and the South remains inhabited by the traditional societies in their own cultural and physical context. As times go by, the North becomes very occupied, and the need arises to develop the South, which is extended in space, but rather short in water resources. Migration takes place and the pressure on the water resources in the South as well as in the North intensifies. In the South this is mainly due, because of population pressure and overexploitation. In the North this is due to far-going industrialisation and failing water quality control. The following is a summary and a description of water allocation principles that (may) emanate over time and under different circumstances during the process of transition of a traditional civilisation towards a highly industrialised continent with dense human occupation patterns. Our imaginary continent is gradually emanating as a nation of federal states that have sovereignty in developing their own water laws. The management of river basins, however, is predominantly an issue that goes beyond the state boundaries. The watersheds of the larger river basins cover areas in multiple states. Any similarity with existing nations is fully coincidental.

Res nullius

Initially before our imagined continent was "discovered", the traditional inhabitants were nomads who travelled around with their (relatively) small herds of cattle and sheep. 'Water belonged to nobody' and was taken by everybody as, when, and where the need arose. When water shortages emanated people simply moved with their herds. Mainly surface water was abstracted and some water from shallow wells. Water was not abstracted outside its natural domain. The water balance of the watershed as a whole remained basically unchanged.

The principle remained in vigour until present. Although the nomads reduced drastically in numbers and at present only persist in accurately delimited reservations, the principle of water allocation has remained unchanged, but only for the territory of the reservations. The principle is also used outside the reservations for any limited water abstraction not being done through any artificial fixed abstraction means (incidental water use). Mobile abstraction means are allowed, but the abstraction must be incidental and limited in extent. Water supply for herds of cattle of more than 100 head cannot be qualified as incidental use. The condition is that the abstraction must not be contravening any other regulation like e.g. trespassing on other people's property without their consent. The exemption of righting of the incidental water use is not only inspired by the need to give living creatures access to the limited amount of water they need for direct use, but also by the wish to avoid heavy administrative procedures for relatively small water abstractions.

Res communis omnium

After the continent was 'discovered' and 'invaded' by immigrants, the land use pattern drastically changed at first in the North, but later also in the South.

The original nomadic character changed into a sedentary pattern with either only agriculture or a mix of agriculture and livestock. After a while most of the land was occupied by farms. With the emergence of fences around land and when the concept became rooted that land could actually be owned by individuals, the concept of water allocation also changed.

The conception that water belonged to nobody gradually changed into one that water was 'owned by the whole community' (*res communis omnium*). An example of this principle of water allocation is the well known *riparian doctrine,* the corner-stone of the water allocation under the earlier common law systems (U.K. until 1963, some states in the U.S. and South Africa until 1998). The key tenet of the riparian doctrine is that only persons owning land on natural watercourses possess riparian rights (Goldfarb 1988). A riparian owner or occupier may abstract water for his own domestic purposes, i.e., for drinking and cooking, cleansing and washing and to satisfy the ordinary needs of livestock. If abstraction for domestic purposes exhausts the water, downstream riparian owners cannot complain. Nevertheless, the right of a riparian owner to take water is not limited to domestic purposes. He may exercise his right for extraordinary purposes, provided that he does not interfere with the rights of other riparian owners. The use should be reasonable and connected with the riparian tenement, and the water should be returned to the river undiminished in quality and quantity (!) (Caponera 1992). This misconception could only persist as long as there was no real competition for water. Of course, this was before the major take-off of irrigation practices.

After the big boom of water diversion for irrigation, the riparian doctrine was combined with the *natural flow doctrine.* Diversion rights were restricted by the obligation of preserving a 'natural' flow in the river. Any other riparian owner was entitled to have a stream flow through his land in its natural condition not materially retarded, diminished, or polluted by others (Ausness 1977). In principle in areas were groundwater abstraction is dominant the riparian diversion from a stream should be understood as the contiguous abstraction from an aquifer.

In summary a water right according to the riparian doctrine is a user right allocated by law (*ministerio legis*) without any administrative intervention to the owner or the occupier of land adjacent to a stream or contiguous to an aquifer. Restrictions to this right are the attachment to land and the beneficial and effective use and the obligation of preserving the natural flow as far as non-domestic uses are concerned. The system has the advantage of administrative simplicity and transparency. The system does not provide any solution for non-riparian owners or occupiers, or landless people or even for nature in the sense of being the custodian of environmental values. (Only landowners and land occupiers can claim legal action for the interruption of flow.)

The system also denies the existence of water needs of nomadic people or for the incidental needs of any people, as passers-by. With the development of irrigation practices conflicts unavoidably had to arise at times of low stream flow and/or depletion of aquifers. The natural flow principle could not tackle drought prone water distribution. The definition of *natural flow* already appeared cumbersome, if not impossible.

Prior appropriation

As time went by another principle of water allocation emanated in the dry South: *the prior appropriation doctrine.* To stimulate frontier development and to safeguard investment, water rights of the prior users in time were protected. These user rights were initially attached to land and could not be transferred from one property to another. There was no obligation to use them. Water not utilised simply flowed downstream. At first, these user rights were applied through direct abstraction from flow as and when flow was available. Later, private storage works were built to overcome the dry season or periods of drought.

This ‘first come, first served’ or *date priority* principle helped out especially in drought prone areas and elsewhere during periods of low water availability. Initially, this principle appeared to be very useful, until such time that rivers and aquifers were fully righted or even over righted in terms of availability of *normal or natural* flow. In some situations the mean annual runoff was nearly completely absorbed by existing water rights. In such cases no other development than the initially enhanced agriculture could take place. The water supplies of towns and cities were jeopardised and nature and wildlife were often deprived of the water resources necessary to sustain aquatic and other life. Consequently, in the South laws were enacted in which drinking water supply and water for preserving natural flows was prioritised above the water use of other sectors (*sector or use priority).* Water was reserved for these prioritised uses and it was used whenever it was needed. When in the wetter periods, water was not needed, water was added to the pool of other uses and distributed under the system of date priority.

But government was in need of a lot of water for city water supply as well industrial development and energy supply. Huge storage works were built for satisfying those public interests. The surplus water (as and when available) or water not used for energy supply was sold by the government to private farmers on private contract or through long term concession. Although water was not tradable for private citizens, nevertheless, practices of selling or leasing water from private storage works also developed because of the shear need of transferring water to where it was needed and using it as per best economic advantage. This practice could only take place by releasing the water along the river and hence private storage works were indispensable. Only the rich estate farmers could afford those kinds of investments. They were also the

first who organised themselves in Water Users Organisations to take care of their private interests in water.

Correlation

With the appearance of fences the original inhabitants of our imaginary continent soon had to give up their nomadic lifestyle. There was simply not enough land to sustain this way of life. A process of settlement was enhanced and stimulated by the government. Large scale irrigation schemes were constructed by the government to support this process of settlement. Together with the landless and poorer immigrants, the indigenous population could acquire irrigated land and housing in one of the irrigation schemes, initially as tenants only. These schemes were fed with irrigation water by huge river intakes combined with diversion weirs or in the dryer areas from dams. Through extensive systems of primary, secondary and tertiary canals the water was conveyed to the farm outlets of the smallholder farmers. The irrigation schemes were managed by the government and water permits could be acquired through administrative allocation. These water permits were issued and administered by government officials. Standards for water allocation were developed by the government. Water was allocated in correlation to these standards. As a yardstick, standards were based on farm and family size, cultivated area, cropping pattern and, if applicable, number of cattle. These 'correlative water permits' were strictly personal rights, non-transferable, attached to the piece of land for which they were allocated and were restricted in time. The only security a tenant of a piece of land or his successor could obtain, was that the permit was renewable. Informally, however, complex systems of exchange, lease, lease options and sales of water developed.

Later on, when the system of land tenancy appeared to be highly inefficient, ownership of parcels of land was introduced in those originally public schemes. With the ownership of land the transferability and mobility of water rights became more pressing.

Proportionality

In the beginning there were no water shortages in the public irrigation schemes. Farmers could simply take the water they needed, either as a continuous flow through their outlets or by rotational shifts. But when the schemes grew bigger or when canals were fully occupied, water shortages did occur. The only way for the Government of dealing with water shortage in a socially acceptable way was to distribute water scarcity proportionally. Thus, the birth of the principle of *proportional distribution* was born. In case of water shortage, farmers could only acquire water in proportion to their original allocation.

This principle was also used in the river basins for the private estate farmers when emergency legislation was applied. In times of extreme water shortage government from time to time had to apply its right to suspend all water rights and to allocate the available water proportionally over the users. This took place after the uses for drinking water supply and environment had been taken care of. When farmers in the irrigation schemes started to grow higher value crops on sizeable farms consolidated from former various small holder farms, this practice became inefficient and the need for tradable water rights increased.

Tradable water rights/water markets

Throughout the history of our continent water rights had not officially been priced. In fact, to charge for (raw) water per se was not allowed. (Water management fees to governmental institutions were common though.) Only the water sold on private contract from huge government storage works was officially priced. Nevertheless, this type of water was still heavily subsidised and the price was certainly not reflecting the full costs of water. Then, practice overtook outdated regulations. The following informal practices developed especially among users with private storage works:

(i) Lease of otherwise not utilised water. Farmers who did not need or could not use the water that they were authorised to use through their user right (from prior appropriation) leased the use of the right to another user. The title of the right remained with the lessor.

(ii) Incidental water sales or water exchange (spot markets). Water was simply sold to other users on an incidental basis. A variation to this was that farmers made agreements to exchange water resources for instance by rotation. The available water under two water rights was shared and used as per best mutual advantage.

(iii) Lease options to overcome a very dry period or event. Farmers or users with high value crops (orchards) or products secured themselves against future droughts by leasing water from other farmers with lower value crops, as and when droughts would take place. In that case the water right holder sacrificed the use of his water right (at a high price). The loss of a citrus orchard would have been greater than the other farmer foregoing one season's crop.

Soon private enterprise went even further. In order to overcome prolonged drought periods, estate farmers associated themselves in organisations or private syndicates for the construction of huge storage or diversion works. These very successful enterprises were managed privately either by a committee or by privately appointed managers. Farmers contributed to the construction and maintenance and management costs of the works and were allocated storage space in proportion to their financial input. The first stage of the storage with a higher probability of filling was more expensive. Those stages were bought by farmers who needed a higher security of supply and were willing to pay a higher price (farmers with orchards, tobacco farmers etc.). The water (user) right for these private dams was initially on the name of the owner of the farm where the dam or diversion weir was located. Other users could legally take a share out of the water right of the owner of the land under a joint ownership clause. Later on, the law in the respective states was changed to the effect that syndicates could own water rights for so called combined irrigation schemes. The syndicate actually owned the water right after public authorisation by the water minister.

New developments

Those private initiatives were forebodes of massive changes in the thinking about water allocation in various (drought) prone states of our continent. Somehow, the restriction of user rights and even of water permits to attachment of land and not being transferable did not do justice to the economic practice. Many properties had water rights attached under prior appropriation systems without being able to make optimal beneficial use of it. This counted for both estate farmers and for smallholders in the irrigation schemes.

The call that water had to be considered as *economic good in all its competing uses* was gaining momentum (ICWE 1992).

From a legal point of view, governments were challenged to formalise already existing practices. There was a pressure to authorise and enable water sales, water lease contracts and option contracts. Strong lobbies were undertaken by the commercial world to enable water markets and maybe even water auctions in order to create optimal mobility of water rights. Of course, state governments were not opposed to the idea of allocating water as per best economic advantage. However, a few constraints had to be considered:

- The physical characteristics of water sometimes simply do not allow transfer of water rights. Because water flows downstream and is extremely expensive to transport water over large distances (it is relatively bulky and has a low value per unit weight), it is not always possible to transfer water to another user. Moreover, in semi-arid to arid regions and at the higher positions in the river basin water may simply not be available during droughts, when the water is needed most. More often than not there is also substantial interaction of groundwater and surface water resources. Water abstracted as groundwater will not come to run-off.
- On the other hand markets can only develop under circumstances of substantial water shortage. In the absence of a strong economic trigger to transfer water, it can be understood that markets will remain thin. (Holden and Thobani 1995)
- The market system per se does not foster any social equity. In fact, it is more likely that monopolies or other market imperfections will develop (Solanes 1999).
- Water has no substitute. The demand for water is relatively inelastic. Speculation with water would be a sensitive issue even in our commercially oriented continent.
- There is no real market solution for tackling externalities. Government would have to come in anyhow to regulate (economic) externalities or third party effects.
- A free exchange of water rights would not only create environmental externalities, but it would also hamper environmental resources planning. Especially, moving water rights from downstream to upstream or inter-basin transfers could have serious environmental complications.
- In general there is the issue of transaction cost, especially when formal trade of water rights involves the construction of new conveyance structures or other infrastructure. These costs are generally high in relation to the value of the water.
- Inter-basin transfers are hard to manage and difficult to monitor.
- Government would have to develop adequate regulatory capacity to enable the functioning of the water markets. Monitoring, policing and sanctioning functions become increasingly important. Appeal procedures and legal arrangements for compensation of ‘victims” are needed. Accurate registration of the water transfers is needed as well as sophisticated decision support systems for water resources planning and operation. At the end, under certain circumstances, these ‘transaction’ costs might exceed the economic gains reached by the water transfer.

Nevertheless, water allocation as per best economic advantage through mobility and transfer of water rights is a major challenge that governments geared towards economic sustainability will have to address.

4. RIVER BASIN MANAGEMENT: PLAN DEVELOPMENT

In recent times it became painfully apparent that the traditional water management by the state governments (of our imaginary continent) on administrative boundaries organised in sectors was ineffective and inefficient. The de-concentration to provincial and district offices not really increased the efficiency. In fact, water management even became more scattered and the competencies between the many sector offices were not clear. Supply driven approaches to increase the number of storage works or the volume of stored water was not effective anymore. In oversubscribed river basins the viability of new storage works under systems of prior appropriation was low. The viability of all storage works under systems of proportional distribution was seriously reduced. When consequently, groundwater was being tapped at a large scale for irrigation, water availability became even more erratic. Large scale and rapid industrial development, extensive urbanisation and the development of bio-industry enhanced and accelerated the problem of water pollution and water quality deterioration beyond control. Hence, the availability of water of good quality was significantly reduced. Dense human occupation patterns became the major cause of substantial erosion processes and further watershed degradation.

To overcome these problems, the federal government installed a committee to launch and undertake a nation wide consultation process involving all relevant stakeholders and interested parties from both the government and the private sector. The aim was to come up with a nation wide water policy to prepare federal water legislation and harmonise state water legislation. In its report the committee came up with the following recommendations (compare the proceedings that took place to establish new water legislation in Zimbabwe and South Africa, Jaspers 2001):

- All public water should be vested in the government and the management of it should make part of its public domain: the federal government for the main streams of the inter-state river basins and the state governments for the watersheds of the tributaries and state rivers within their territories.
- Water has to be managed on hydrological boundaries with the river basin as the logical unit. It is cumbersome to apply effective and efficient water resources management and at the same time satisfy all kinds of political and administrative interests.
- The federal government has to create national institutional arrangements to enable river basin planning of the mainstreams. The state governments will have to create arrangements to enable river basin planning of the tributaries and smaller rivers within their territory.
- River basin authorities and watershed authorities are to be established to carry out river basin planning and to authorise water distribution and water conservation. The river basin authorities are responsible for formulating river basin outline plans. The river basin plan is based on the plans adopted by the watershed authorities. However, in case of conflict the watershed plan should follow the overall river basin plan.
- Watershed authorities should play a pivotal role in monitoring, policing and enforcement of the use of water. In the boards of the authorities all relevant

governmental administrations, all stakeholders' organisations and all interest groups should be represented. Existing water users organisations of any kinds could merge with or be represented in the boards of the watershed authorities.

- Water has to be managed through application of integrated approaches: water quantity, water quality and environmental values are managed in a co-ordinated and harmonised way (holistic approach).
- Water has to be reserved to keep up sufficient environmental flows for the protection of aquatic life and other natural values as well as to enable domestic and incidental uses. The government will have to be the custodian of these prioritised water uses.
- All existing water rights are to be suspended (after a grace period) and exchanged by water permits of a sufficient duration (to guarantee return of investments) with a maximum of 40 years. Permits can be renewed in accordance with the river basin plan.
- All water permits should be priced to finance water management (in every aspect) of the river basin. Water management should be based on principles of full cost recovery.
- Within a tributary administered by the watershed authority, water permits should be transferable as free as possible and one should be able to sell against market prices.
- Transfers of water permits are to be approved and registered by the watershed authority and should be in accordance with the river basin plan.

5. THE ULTIMATE CHALLENGE: SUSTAINABILITY

This is how the situation in our imaginary continent (and to a certain extent in many countries of the world) is now: On the one hand, there is great need to stimulate economic development and allocate water as per best economic advantage. For that purpose water transfers between sectors need to be facilitated. The necessary institutional arrangements should enable mobility of water rights. There is a need for mechanisms of registration, policing, enforcement, appeal procedures to handle externalities etc. On the other hand arrangements should be made to guarantee water for basic needs (domestic) and for the environment. Furthermore, there is the issue of subsidiarity: take decisions at the lowest appropriate administrative level as close as possible to the end users, so as to guarantee that all interests are considered. Moreover, it appears very difficult not to manage water on hydrological boundaries. Therefore, the river basin is the logical management unit as far as planning is concerned. For reasons of efficiency and subsidiarity the sub-basin or watershed appears to be very instrumental for the more operational management functions (Jaspers 2001).

For water allocation this means that all water can be vested in the state governments. The management of the cross-boundary mainstreams, however, belongs to the domain of the federal state. All water resources should be subject to valuation and priced for all its competing uses. The river basin authority should produce a river basin plan to give general directions for water allocation as well as for other purposes. Within the guidelines of the river basin plan, the watershed authorities should produce operational

plans. The watershed authority is authorised to allocate water on permit through administrative allocation.

6. INTERNATIONAL COMPARISON

Our imaginary continent has not been chosen haphazard and in a way its situation reflects a broad spectrum of potential water allocation and water right systems available in the world from the past, for now and with an outlook on the future. The riparian doctrine still persists in slightly adapted forms in the U.K., in many states in the Eastern U.S. and de facto in South Africa. Systems of prior appropriation are still very common again in some states of the U.S. and de facto in Zimbabwe. There is no 'Utopia like' nation where systems of tradable water rights are combined with systems of decentralised and integrated planning for river basin management. Systems of tradable water rights are found on the American continent in the West of the United States, in Chile, Peru and Bolivia and in Spain. In Mexico rights can be traded after approval of the relevant water management authority. In (Northern) Europe the issue of water rights does not have much emphasis because of the favourable climatic conditions, perennial rivers etc. In Africa and Asia governments tend to play a dominant role in the allocation of water, especially in the irrigation schemes. Pricing, however, for at least the cost recovery of management services, is becoming of a more general application. Systems of (decentralised) integrated planning according to French (river basins) or Dutch (tributaries) example on hydrological boundaries are gaining interest in new legislation of African and Asian countries (Caponera 1992). Spot markets of localised water transfers are originating throughout.

A special case is the new legislation of South Africa. The Minister of Water Affairs is legally tasked to ensure that specific river basin management strategies are produced by the relevant authorities in line with the national strategy. A river basin management strategy necessarily covers a water allocation schedule (among other requirements). A massive change is the introduction of a classification system of water and the obligatory (!) determination of the Reserve, as a volume of water in each river which is not to be used for any other purpose than domestic water supply or environmental flow. This system results in the determination of environmental flows for basically all rivers and streams in all periods of the (hydrological) year depending on the selected classification. Any other water is priced and economic allocation of water rights is foreseen for competing uses (Jaspers 2001).

7. CONCLUSIONS

Water allocation principles from early civilisations until now have played a substantial role in sustaining communities of people and other forms of life. Over time principles have developed to arrange water allocation from nomadic and early sedentary civilisations to complex industrialised contemporary societies. Water allocation can range from traditional systems where water is considered to belong to nobody and can be taken randomly to systems of tradable water rights and integrated river basin planning.

Traditional principles ruling water allocation still exist in both developing and developed countries among certain layers of society or under certain circumstances or for a certain type of users. Many principles may be applied simultaneously. Some

principles that were considered redundant may become of very present interest again, when circumstances change.

The development of water allocation principles depends heavily on the physical characteristics of the river basins in question, the absolute and relative scarcities of resources, on the rate of (agricultural and industrial) development, on the customs, norms, values, culture and religion of the respective communities and on the legal and institutional history and traditions etc.

Contemporary water allocation systems are based on several principles that will have to be applied in balance with one another. Firstly, there is great need to stimulate economic development and allocate water as per best economic advantage. For that purpose water transfers between and within sectors should be facilitated as much as possible. Secondly, systems of integrated (river basin) plan development with full participation of stakeholders in decision making and at the lowest appropriate level are becoming indispensable. Finally, the need of looking at the river basin as a whole and at the sustainability of all its natural resources will continue to put pressure on the government as caretaker of general interests to guarantee that sufficient water is reserved for basic needs and environmental purposes.

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Course B

Conflict Prevention and Cooperation in International Water Resources

Course reader

Part 2

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The human right to water

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Abstract

More than a billion people in the developing world lack safe drinking water — an amenity those in the developed world take for granted. Nearly three billion people live without access to adequate sanitation systems necessary for reducing exposure to water-related diseases. The failure of the international aid community, nations and local organizations to satisfy these basic human needs has led to substantial, unnecessary and preventable human suffering. This paper argues that access to a basic water requirement is a fundamental human right implicitly and explicitly supported by international law, declarations and State practice. Governments, international aid agencies, nongovernmental organizations and local communities should work to provide all humans with a basic water requirement and to guarantee that water as a human right. By acknowledging a human right to water and expressing the willingness to meet this right for those currently deprived of it, the water community would have a useful tool for addressing one of the most fundamental failures of 20th century development.
Author Keywords: Fresh water; Human rights; Basic water requirement; International law; State practice

The Human Right to Water

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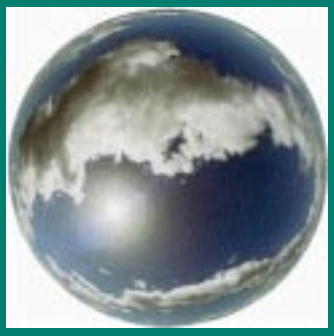

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Abstract

More than a billion people in the developing world lack safe drinking water – an amenity those in the developed world take for granted. Nearly three billion people live without access to adequate sanitation systems necessary for reducing exposure to water-related diseases. The failure of the international aid community, nations, and local organizations to satisfy these basic human needs has led to substantial, unnecessary, and preventable human suffering. This paper argues that access to a basic water requirement is a fundamental human right implicitly and explicitly supported by international law, declarations, and State practice. Governments, international aid agencies, non-governmental organizations, and local communities should work to provide all humans with a basic water requirement and to guarantee that water as a human right. By acknowledging a human right to water and expressing the willingness to meet this right for those currently deprived of it, the water community would have a useful tool for addressing one of the most fundamental failures of 20th century development.

Keywords

Fresh water, human rights, basic water requirement, international law, State practice

"If the misery of our poor be caused not by the laws of nature, but by our institutions, great is our sin." Charles Darwin

"The test of our progress is not whether we add more to the abundance of those who have much; it is whether we provide enough for those who have little." Franklin Delano Roosevelt

1. Introduction

The 21st century will open with one of the most fundamental conditions of human development unmet: universal access to basic water services. More than a billion people in the developing world lack safe drinking water that those in the developed world take for granted. Nearly three billion people live without access to adequate sanitation systems necessary to reduce exposure to water-related diseases. The failure of the international aid community, nations, and local organizations to satisfy these basic human needs has led to substantial, unnecessary, and preventable human suffering. An estimated 14 to 30 thousand people, mostly young children and the elderly, die *every day* from water-related diseases. At any given moment, approximately one-half of the people in the developing world suffer from disease caused by drinking contaminated water or eating contaminated food (United Nations, 1997b). A diverse array of individuals, professional groups, private corporations, and public governmental and non-governmental interests have recently stepped up efforts to better manage and plan for meeting basic water needs in the next century. The outcome of these efforts will be vital to the health and well-being of billions of people. This paper argues that access to a basic water requirement is a fundamental human right implicitly supported by international law, declarations, and State practice. In some ways this right to water is even more basic and vital than some of the more explicit human rights already acknowledged by the international community, as can be seen by its recognition in some local customary laws or religious canon.

A transition is underway making a right to water explicit. As we enter the 21st century, governments, international aid agencies, non-governmental organizations, and local communities should work to provide all humans with a basic water requirement and to guarantee that water as a human right. By acknowledging a human right to water and expressing the willingness to meet this right for those currently deprived of it, the water community would have a useful tool for addressing one of the most fundamental failures of 20th century development.

2. Is There A Human Right to Water?

The term "right" in this paper is used in the sense of genuine rights under international law, where States have a duty to protect and promote those rights for an individual. The question of what qualifies as a human right has generated a substantial body of literature, as well as many organizations and conferences. The initial impetus to human rights agreements was to address violations of moral values and standards related to violence and loss of freedoms. Subsequently, however, the international community expanded rights laws and agreements to encompass a broader set of concerns related to human well-being. Among these are rights associated with environmental and social conditions and access to resources. The extent to which environmental rights are either found in, or supported by, existing human rights treaties, agreements, and declarations has been the subject of a growing literature (Boyle and Anderson, 1996).

This paper answers the question of whether individuals or groups have a legal right to a minimum set of resources, specifically water, and whether there is an obligation for States or other parties to provide those resources when they are lacking. This question has not been adequately addressed. Several of the major references and bibliographies related to the issue of human rights have no entries or citations related to water (Lawson, 1991; United Nations, 1993; Steiner and Alson, 1996). Even the current index of the website of the UN High Commissioner for Human Rights has no entry for water (http://www.unhchr.ch/index.htm). In 1992 McCaffrey tackled the legal background from the perspective of the UN (and related international law) human rights framework in a comprehensive and perceptive assessment. His initial conclusion was that there is a right at least to sufficient water to sustain life and that a State has the "due diligence obligation to safeguard these rights" as a priority (McCaffrey, 1992). This paper expands upon that analysis and concludes that international law, international agreements, and evidence from the practice of States strongly and broadly support the human right to a basic water requirement.

What is the value of explicitly acknowledging a human right to water, as the international community has explicitly acknowledged a human right to food and to life? After all, despite the declaration of a formal right to food, nearly a billion people remain undernourished. One reason is to encourage the international community and individual governments to renew their efforts to meet basic water needs of their populations. International discussion of the necessity of meeting this basic need for all humans is extremely important – it raises issues that are global but often ignored on the national or regional level. Secondly, by acknowledging such a right, pressure to translate that right into specific national and international legal obligations and responsibilities is much more likely to occur. As Richard Jolly of the UNDP notes:

"To emphasize the human right of access to drinking water does more than emphasize its importance. It grounds the priority on the bedrock of social and economic rights, it emphasizes the obligations of states parties to ensure access, and it identifies the obligations of states parties to provide support internationally as well as nationally" (Jolly, 1998).

A third reason is to maintain a spotlight of attention on the deplorable state of water management in many parts of the world. A fourth is to help focus attention on the need to more widely address international watershed disputes and to resolve conflicts over the use of shared water by identifying minimum water requirements and allocations for all basin parties. Finally, explicitly acknowledging a human right to water can help set specific priorities

for water policy: meeting a basic water requirement for all humans to satisfy this right should take precedence over other water management and investment decisions.

3. Existing Human Rights Laws, Covenants, and Declarations

There is an extensive body of covenants and international agreements formally identifying and declaring a range of human rights. Among the most important of these are the 1948 Universal Declaration of Human Rights (UDHR), the 1966 International Covenant on Economic, Social and Cultural Rights (ESCR), the 1966 International Covenant on Civil and Political Rights (CPR), the InterAmerican Convention on Human Rights, the Declaration on the Right to Development (DRD), the 1989 Convention of the Rights of the Child (CRC), and the European Convention on Human Rights. Among the rights explicitly protected by these various declarations and covenants are the rights to life, to the enjoyment of a standard of living adequate for health and well-being, to protection from disease, and to adequate food. Although access to clean water is a precondition to many of these rights, water is explicitly mentioned only in the Convention of the Rights of the Child. Is a right to water a "derivative" right – that is to say, is a comparable human right to water implied by these declarations – or can it be inferred from the debate over, and background materials from, the existing Covenants? Is water so fundamental a resource, like air, that it was thought unnecessary to explicitly include reference to it at the time these agreements were forged? Or could the framers of these agreements have actually intended to exclude access to water as a right, while including access to food and other necessities?

A detailed review of international legal and institutional agreements relevant to these questions supports the conclusion that the drafters implicitly considered water to be a fundamental resource. Moreover, several of the explicit rights protected by international rights conventions and agreements, specifically those guaranteeing the rights to food, human health, and development, cannot be attained or guaranteed without also guaranteeing access to basic clean water. These conclusions are discussed below. In recent years, more explicit articulations of this view supporting the right to water have been made.

3.1 The Right to Water as an Implicit Part of the Right to Food, Health, Human Well-Being, and Life

At the United Nations Conference on International Organization, held in San Francisco in 1945, it was suggested that the United Nations General Assembly develop a bill of rights. The subsequent UN Charter requires the Economic and Social Council to set up a commission for the promotion of human rights – the only commission specifically named in the Charter. The Commission on Human Rights held its first meetings in 1947 and agreed to prepare for the General Assembly both a declaration and a convention on human rights. Strictly speaking, a declaration is a statement of basic principles of inalienable human rights and imposes only moral, not legal weight on Members. Such declarations, however, often either express already existing norms of customary international law (human rights or otherwise), or, as in the case of the UDHR, may over time crystallize into customary norms. The convention or covenant, on the other hand, was to be drafted in the form of a treaty legally binding on signatories (United Nations, 1949, pg. 524ff).

During late 1947 and early 1948, a draft declaration was developed and debated by the Commission. In mid-1948, the Commission presented a draft declaration to the Economic and Social Council. Article 22 of the draft stated:

"Everyone has the right to a standard of living, including food, clothing, housing and medical care, and to social services, adequate for the health and well being of himself and his family" (UN, 1948, pp. 576)

In the final debate over this document, the emphasis was refocused from providing a general standard of living to a more encompassing right to health and well-being. Why was "water" not included in this list? The debate around the wording makes clear that the specific provisions for food, clothing, housing, and so on were not meant to be all-inclusive, but representative or indicative of the "component elements of an adequate standard of living" (UN, 1956, pp. 216). In 1948 the United Nations General Assembly approved the Universal Declaration of Human Rights (UDHR) by 48 votes, with 8 abstentions. The reworded Article 22, now Article 25 of the Declaration, was adopted unanimously and states:

> "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing..." (UN General Assembly, 1948)

Logic also suggests that the framers of the UDHR considered water to be implicitly included as one of the "component elements" – as fundamental as air. Satisfying the standards of Article 25 cannot be done without water of a sufficient quantity and quality to maintain human health and well-being. Meeting a standard of living adequate for the health and well-being of individuals requires the availability of a minimum amount of clean water. Some basic amount of clean water is necessary to prevent death from dehydration, to reduce the risk of water-related diseases, and to provide for basic cooking and hygienic requirements. This fact has long been recognized by the World Health Organization and other UN and international aid agencies that specify basic water standards for quantity and quality.

The 1948 Declaration also includes rights that must be considered less fundamental than a right to water, such as the right to work, to protection against unemployment, to form and join trade unions, to rest and leisure (Articles 23 and 24). This further supports the conclusion that Article 25 was intended to implicitly support the right to a basic water requirement.

The Universal Declaration also implies a need for water to grow sufficient food for an adequate standard of living. An important distinction can be made between water for food and the much smaller amount of water required to support the health and well-being of individuals. In particular, the food necessary to meet the rights described in Article 25 can be produced in distant locations and moved to the point of demand. It can thus be argued that the provision of adequate food to satisfy Article 25 does not require local provision of water. This issue has been discussed more completely in the work of Tony Allan (1995) and a final background document to the Comprehensive Assessment of the Freshwater Resources of the World (Lundqvist and Gleick, 1997).

As a resolution of the UN General Assembly, the 1948 Human Rights Declaration is not binding on States. As mentioned above, however, many of the provisions of the Declaration are now considered to be customary international law, and the broad human rights found there have since been re-asserted in many international documents.

In the 20 years following the UDHR, work continued at the United Nations on the more binding convention, which became two separate Covenants in 1966: the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR). As of January 1999 there were nearly 140 parties to the ICESCR and the ICCPR (Churchill, 1996; Danieli et al., 1999). Under these Covenants, each State would undertake to ensure to all individuals within its jurisdiction certain human rights and adopt "the necessary legislative or other measures to give them practical effect" (United Nations, 1949, pp. 538). Article 2(1) of the ICESCR provides that each party to the Covenant

> "undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised by the present Covenant by all appropriate means including particularly the adoption of legislative measures."

Work was not completed on the entire agreement until 1966, eighteen years after the initial draft was presented for debate (United Nations, 1966). But ten years earlier, in 1956, Articles 11 and 12 of the ICESCR addressing the right to an adequate standard of living and human health were both adopted without any dissenting votes (United Nations, 1963). Article 11 formalizes the right to food and some minimum quality of life:

> "The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions."

Article 12 continues:

> "The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The steps to be taken . . . to achieve the full realization of this right shall include those necessary for. . . (3) The prevention, treatment and control of epidemic, endemic, occupational and other diseases."

As with the UDHR, access to water can be inferred as a derivative right necessary to meet the explicit rights to health and an adequate standard of life. In their review of major human rights progress over the past 50 years, Danieli et al. (1999) support the right to water as implicit in the rights guaranteed by the ICESCR:

> "There is nothing ill-defined or fuzzy about being deprived of the basic human rights to food and clean water, clothing, housing, medical care, and some hope for security in old age. As for legal toughness, the simple fact is that the 138 governments which have ratified the International Covenant on Economic, Social, and Cultural Rights have a legal obligation to ensure that their citizens enjoy these rights."

The International Covenant for Civil and Political Rights (ICCPR) was debated and developed at the same time as the one for Economic, Social, and Cultural Rights. Article 6 of the ICCPR states:

> "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."

Water once again is not explicitly mentioned in the final document of the Covenant but the right to life implies the right to the fundamental conditions necessary to support life. Referring to the accompanying history and interpretation of the negotiations and discussions surrounding the preparation of the Convenant reveals that the Human Rights Committee (HRC) established by the ICCPR took a broad interpretation of the right to life. In particular, the HRC called for an inclusive interpretation of this provision that requires States to take positive action to provide the "*appropriate means of subsistence*" necessary to support life:

> " . . . the right to life has been too often narrowly interpreted. The expression 'inherent right to life' cannot properly be understood in a restricted manner, and the protection of this right requires that States adopt positive measures" (United Nations, 1989a).

The InterAmerican Convention on Human Rights and the European Convention on Human Rights also supports the requirement that States take positive, proactive steps to support the right to life. Article 2 of the

European Convention requires that States have an obligation "not only to refrain from taking life 'intentionally' but further, to take appropriate steps to safeguard life" (DRECHR, 1979; Churchill, 1996). Even narrow definitions of Article 6 of the ICCPR interpret it as guaranteeing protection against arbitrary and intentional denial of access to sustenance, including water (Dinstein, 1981; McCaffrey, 1992).

At a minimum, therefore, the explicit right to life, and the broader rights to health and well-being described above must include the right to sufficient water, at appropriate quality, to sustain life. To assume the contrary would mean that there is no right to the single most important resource necessary to satisfy the human rights more explicitly guaranteed by the world's primary human rights declarations and covenants.

3.2 Explicit Support for the Human Right to Water in International Statements, Agreements, and State Practice

A second wave of international agreements and examples of State practice offer further evidence of the transition toward an explicit right to water. Beginning in the 1970s, a series of international environmental or water conferences have taken on the issue of access to basic resource needs and rights to water. A series of statements and conclusions from these sources are relevant to this analysis. While these are not legal documents with the same standing as the covenants described above, they offer strong evidence of international intent and policy that inform the views of States.

One of the earliest comprehensive water conferences was the 1977 Mar del Plata conference. The conference statement issued at the close of the meeting explicitly recognized the right to access to water for basic needs:

> ". . . all peoples, whatever their stage of development and their social and economic conditions, have the right to have access to drinking water in quantities and of a quality equal to their basic needs" (United Nations, 1977).

In recent years, the question of "development" has become more central to overall actions and priorities of the United Nations and other international organizations. Along the way to the Earth Summit in Rio in 1992, the right to development had increasingly come to be considered as a "universal and inalienable right and an integral part of fundamental human rights" (Article I(10) of the Vienna Declaration, Principle 3 of the Cairo Programme of Action, Commitment 1(n) of the Copenhagen Declaration, and Article 213 of the Beijing Platform of Action, cited in UNDP, 1998).

In 1986, the United Nations General Assembly adopted the Declaration on the Right to Development (DRD) (United Nations, 1986). Article 8 of the Declaration says:

"States should undertake, at the national level, all necessary measures for the realization of the right to development and shall ensure, *inter alia*, equality of opportunity for all in their access to basic resources . . . "

In interpreting Article 8 of the DRD, the United Nations explicitly includes water as a basic resource when it states that the persistent conditions of underdevelopment in which millions of humans are "denied access to such essentials as food, water, clothing, housing and medicine in adequate measure" represent a clear and flagrant "mass violation of human rights" (United Nations, 1995). At a minimum, this implies that nations should implement continued and strong efforts to progressively meet these needs to the extent of their available resources, as required by the ISESCR. As noted later, resource limitations should not constrain these efforts in the case of water.

Explicit recognition of water continued with the 1989 Convention of the Rights of the Child (CRC). Article 24 of the CRC, paralleling Article 25 of the Universal Declaration of Human Rights, provides that a child has the right to enjoy the highest attainable standard of health. Among the measures States are to take to secure this right are measures to:

> "combat disease and malnutrition . . . through, *inter alia*, . . . the provision of adequate nutritious foods and clean drinking water" (United Nations, 1989b).

Here for the first time is explicit recognition of the connections between resources, the health of the environment, and human health.

Regional and national conventions and constitutions are also increasingly making the right to basic resources a part of accepted State practice. For example, Article 11 of the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights of 1988 provides that "Everyone shall have the right to live in a healthy environment and to have access to basic public services" (OASTS, 1988). Although few States have made formal commitments to providing a right to water, more and more of the newer national constitutions discuss either water or the right to a healthy environment. South Africa has recently moved strongly in this direction. The Bill of Rights of the new Constitution of South Africa, adopted in 1994, offers a clear example of State practice relevant to an explicit human right to water. Section 27(1)(b) states: "Everyone has the right to have access to sufficient food and water." Water policies to implement this right in South Africa are now being developed.

4. Defining and Meeting a Human Right to Water

What are the implications of a human right to water? A right to water cannot imply a right to an unlimited amount of water. Resource limitations, ecological constraints, and economic and political factors limit water availability and human use. Given such constraints, how much water is necessary to satisfy this right? Enough solely to sustain a life? Enough to grow all food sufficient to sustain a life? Enough to maintain a certain economic standard of living? Answers to these questions come from international discussions over development, analysis of the human rights literature, and an understanding of human needs and uses of water. These lead to the conclusion here that a human right to water should only apply to "basic needs" for drinking, cooking, and fundamental domestic uses, described in Gleick (1996).

Both the 1977 Mar del Plata statement and the 1986 UN Right to Development set a goal of meeting "basic" needs. The concept of meeting basic water needs was further strongly reaffirmed during the 1992 Earth Summit in Rio de Janeiro and expanded to include ecological water needs:

> "In developing and using water resources, priority has to be given to the satisfaction of basic needs and the safeguarding of ecosystems" (United Nations, 1992).

More recently, the Comprehensive Assessment of the Freshwater Resources of the World prepared for the Commission on Sustainable Development of the UN stated:

"All people require access to adequate amounts of clean water, for such basic needs as drinking, sanitation and hygiene" (p.3), and "develop sustainable water strategies that address basic human needs, as well as the preservation of ecosystems" (p.29), and "it is essential that water planning secure basic human and environmental needs for water" (p. 25) (UN, 1997b).

The UN Convention on the Law of the Non-Navigational Uses of International Watercourses, approved by the General Assembly on May 21, 1997, also explicitly addresses this question of water for basic human needs, including food. Article 10 states that in the event of a conflict between uses of water in an international watercourse, special regard shall be given "to the requirements of vital human needs." The States negotiating the Convention included in the Statement of Understanding accompanying it an explicit definition that:

"In determining 'vital human needs', special attention is to be paid to providing sufficient water to sustain human life, including both drinking water and water required for production of food in order to prevent starvation" (UN, 1997a).

Article 10 is obligatory. In interpreting Article 10, priority allocation of water in the event of conflicting demands goes to water for basic human needs.

Implicit in the phrase "basic needs" is the idea of minimum resource requirements for certain human and ecological functions and the allocation of sufficient resources to meet those needs. A true minimum human need for water can only be defined as the amount needed to maintain human survival, approximately three to five liters of clean water per day. But setting a minimum at this level would have little meaning: except in accidental rare circumstances, no one dies solely from a lack of water and studies show improvement in human health can be realized by increasing amounts of clean water up to about 20 liters per person per day (lpcd) (Esrey and Habicht, 1986).

Various international organizations have made recommendations over the years for basic drinking water and sanitation requirements. The U.S. Agency for International Development, the World Bank, and the World Health Organization have recommended between 20 and 40 lpcd, each of which excluded water for cooking, bathing, and basic cleaning. This is also in line with recommended standards from the UN International Drinking Water Supply and Sanitation Decade and Agenda 21 of the Earth Summit.

Adopting a standard of 5 liters of clean water per person per day for drinking water and 20 lpcd for sanitation and hygiene, I earlier recommended a basic water requirement of 25 lpcd to meet the most basic of human needs with an additional 15 lpcd for bathing and 10 lpcd for cooking (Gleick, 1996). International organizations and water providers should adopt an overall basic water requirement (BWR) for meeting these four domestic basic needs, independent of climate, technology, and culture (see Table 1). The recommendation of 50 liters per person per day is justifiable and appropriate, but the specific number is less important than the principle of setting a goal and implementing actions to reach that goal. Table 1 also notes the much larger volume of water necessary for growing food, but as others have noted, the right to food is already addressed in the human rights literature and international trade in food can permit this right to be met with water from other regions.

Billions of people lack access to even a basic water requirement of 50 lpcd, though not because of inadequate water availability. Table 2 shows those countries where the average domestic (reported) water use falls below 100 lpcd. Using these data and UN medium population projections, by the year 2000, 2,157 million people will live in the 62 countries that report average domestic water use below 50 lpcd. Yet absolute water *availability* is not the problem: 12 water-short countries have less than 1,000 lpcd and only Kuwait reports having a natural renewable freshwater supply of less than 100 liters per person per day. Despite its limited natural endowment, Kuwait provides more than the recommended BWR to its population by supplementing its natural supplies with desalinated water.

There are, of course, problems with the data. Average water-use figures by country are known to be unreliable or outdated. There are few data to indicate the typical *quality* of the water received. Poor quality of domestic water is a severe and widespread problem, and it is likely that many people who may receive more than the recommended BWR are getting contaminated and unhealthy water. Several large countries, such as India and China, report that their average domestic water use is very close to 50 liters per person per day. In these countries large segments of populations no doubt receive less than the average, while wealthier portions of the popula-

tion receive more. There are many countries in Table 2 that are relatively water-rich, suggesting that official data on water withdrawals may miss substantial domestic water use that is self-supplied. Finally, in most of these regions, populations are growing faster than improvements to water availability. Improving the scope, quality, and extent of water-use data is vitally important. Notwithstanding these data problems, however, we must conclude that meeting a basic water requirement for all people is constrained by institutional and management failures, not by basic water availability.

4.1 Translating the Right to Water into Specific Legal Obligations

If we accept that there is a human right to water, to what extent does a State have an obligation to provide that water to its citizens? While the many international declarations and formal conference statements supporting a right to water do not directly require States to meet individuals' water requirements, Article 2(1) of the ICESCR obligates States to provide the institutional, economic, and social environment necessary to help individuals to progressively realize those rights. In certain circumstances, however, when individuals are unable to meet basic needs for reasons beyond their control, including disaster, discrimination, economic impoverishment, age, or disability, States must provide for basic needs (Gleick, 1996). Meeting this minimum need should take precedence over other allocations of spending for economic development. This will require a redirection of current priorities at international and local levels, and it is likely to require new resources be invested as well.

The overall economic and social benefits of meeting basic water needs far outweigh any reasonable assessment of the costs of providing for these needs. One early estimate was that water-related diseases cost society on the order of $125 billion per year (in late 1970 dollars) just in direct medical expenses and lost work time (Pearce and Warford, 1993). Even this estimate excluded costs associated with social disruptions caused by disease, lost educational opportunities for families, long-term debilitation of children, or any other poorly quantified or hidden costs. Yet the cost of providing new infrastructure needs for all major urban water sectors has been estimated at around $25 to $50 billion per year (Christmas and de Rooy, 1991; Rogers, 1997; Jolly, 1998).

While these costs are far below the costs of failing to meet these needs, they are two to three times the average rate of spending for water during the 1980s and 1990s (UN, 1997b). It has been estimated, moreover, that 80 percent of the investment in the 1980s represented expenditures to meet the needs of a relatively small number of affluent urban dwellers (WSSCC, 1997). Studies on investment alternatives reveal that 80 percent of the unserved can be reached for only 30 percent of the costs of providing the highest level of service to all. The WSSCC, for example, estimates that 35,000 rural people could be provided with basic sanitation services for the same cost of providing 1,000 urban residents with a centralized sewerage system.

McCaffrey (1992), who supports the conclusion that "in some form, the right [to water] may be inferred under the basic instruments of international human rights law" argues that the devastating consequences of being denied such water should require that relevant provisions of existing humans rights instruments "ought to be interpreted broadly, so as to facilitate the implementation of the right to water as quickly and comprehensively as possible." McCaffrey also raised the concern that defining a basic human right to water might have the unintentional effect of causing disputes between neighboring countries that share water: would such a human right require that one State has the right to receive water from another to meet this basic need?

The final statement from the 1997 Convention appears to resolve this question: in the unusual case in which a basic water requirement cannot be met solely from a State's internal water resources, neighboring States do not have the right to deny a co-riparian sufficient water to meet those needs on the grounds that the upstream nation needs the water for economic development. A country is thus not permitted to exploit a shared water resource in a manner that deprives individuals in a neighboring country of access to their basic human needs. In practice, this kind of conflict seems unlikely to arise: in almost all regions of the world absolute water availability is no constraint to meeting these minimal basic needs.

4.2 Consequences of the Failure to Meet Basic Needs for Water

Many international organizations work to meet the unmet water needs of human populations, including the United Nations, the Water Supply and Sanitation Collaborative Council, the World Bank, international aid organizations such as US AID, the Swedish International Development Agency, the Canadian International Development Agency, and non-governmental organizations such as WaterAid and Water for People. These efforts have made significant progress in increasing access to basic water needs for hundreds of millions of people.

Yet, despite these efforts, many water-related problems have worsened. The incidence of cholera soared in the 1990s and expanded in geographic extent. The populations in urban areas without access to clean water and sanitation actually increased between 1980 and 1990, despite great efforts to meet these needs (WHO, 1996). Even more distressing has been the apparent difficulty the world water community has had in setting new targets and goals for meeting basic needs. The world food community has set and continually revised action plans for reducing hunger. The World Food Council met in 1989 in Cairo to propose a specific Programme of Cooperative Action. In that same year, a meeting of food experts in Bellagio, Italy set nutritional goals for the year 2000, which were reaffirmed at the 1990 UN World Summit for Children. The 1992 UN International Conference on Nutrition laid out a World Declaration and Plan of Action for Nutrition. While huge populations remain undernourished, even less success has been achieved in setting and meeting water-related goals.

While this paper is not the place for a comprehensive discussion of the economics of water, it seems likely that an appropriate mix of economic, political, and social strategies can be developed to reliably provide for basic needs. And despite a growing emphasis on markets, if a "market" system is unable to provide a basic water requirement, States have responsibilities to meet these needs under the human rights agreements discussed above.

Unless international organizations, national and local governments, and water providers adopt and work to meet a basic water requirement standard, large-scale human misery and suffering will continue and grow in the future, contributing to impoverishment, ill-health, and the risk of social and military conflict. Ultimately, decisions about defining and applying a basic water requirement will depend on political and institutional will.

5. Conclusions

A communications and computer revolution is sweeping the globe. There is renewed interest in reaching out to outer space. International financial markets and industries are increasingly integrated and connected. And efforts are being made to ensure regional and global security. In this context, our inability to meet the most basic water requirements of billions of people has resulted in enormous human suffering and tragedy and may be remembered as our century's greatest failure.

This paper reviews evidence of international law, declarations of governments and international organizations, and State practices and concludes that access to a basic water requirement must be considered a fundamental human right. The major human rights treaties, statements, and formal covenants contain implicit and explicit evidence that reinforce the application of rights law in this area. If the framers of early human rights language had foreseen that reliable provision of a resource as fundamental as clean water would be so problematic, it is reasonable now to suggest that the basic rights documents would have more explicitly included a right to water. A formulation appropriate to the existing human rights declarations might be:

> "All human beings have an inherent right to have access to water in quantities and of a quality necessary to meet their basic needs. This right shall be protected by law."

Would the recognition of the human right to water actually improve conditions worldwide? Perhaps not. The challenge of meeting human rights obligations in all areas is a difficult one, which has been inadequately and incompletely addressed. But the imperatives to meet basic human water needs are more than just moral, they are rooted in justice and law and the responsibilities of governments. It is time for the international community to reexamine its fundamental development goals. A first step toward meeting a human right to water would be for governments, water providers, and international organizations to guarantee all humans the most fundamental of basic water needs and to work out the necessary institutional, economic, and management strategies necessary for meeting them.

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Table 1

A Recommended Basic Water Requirement for Human Domestic Needs

Purpose	Recommended Commitment (liters per person per day)
Drinking Water (a)	5
Sanitation Services	20
Bathing	15
Food Preparation (b)	10

(a) This is a true minimum to sustain life in moderate climatic conditions and average activity levels.
(b) Excluding water required to grow food. A rough estimate of the water required to grow the daily food needs of an individual is 2700 liters.
Source: Gleick 1996

Table 2

Countries with an Estimated Per-Capita Domestic Water Use Below 100 Liters per Person per Day (lpcd) for the Year 2000

Country	2000 Population (millions)	2000 Estimated Domestic lpcd	Country	2000 Population (millions)	2000 Domestic lpcd
Gambia	1.24	3	Honduras	6.49	26
Haiti	7.82	3	Guinea	7.86	26
Djibouti	0.69	4	Indonesia	212.57	28
Somalia	11.53	6	Afghanistan	25.59	28
Mali	12.56	6	Cote D'Ivoire	15.14	28
Cambodia	11.21	6	Swaziland	0.98	29
Mozambique	19.56	7	Liberia	3.26	30
Uganda	22.46	8	El Salvador	6.32	30
Tanzania	33.69	8	India	1006.77	31
Ethiopia (and Eritrea)	69.99	9	Yemen	18.12	31
Albania	3.49	9	Paraguay	5.50	32
Bhutan	2.03	10	Uruguay	3.27	33
Chad	7.27	11	Togo	4.68	33
Central African Republic	3.64	11	Cameroon	15.13	33
Congo, DR (formerly Zaire)	51.75	11	Kenya	30.34	36
Nepal	24.35	12	Zimbabwe	12.42	38
Rwanda	7.67	13	Laos	5.69	38
Lesotho	2.29	13	Costa Rica	3.80	39
Burundi	6.97	14	Bolivia	8.33	41
Angola	12.80	14	Guyana	0.87	46
Bangladesh	128.31	14	Dominican Republic	8.50	48
Ghana	19.93	14	Equatorial Guinea	0.45	49
Benin	6.20	15	Cyprus	0.79	51
Sierra Leone	4.87	15	Morocco	28.98	51
Guatemala	12.22	15	Pakistan	156.01	55
Myanmar	49.34	15	Thailand	60.50	58
Papua New Guinea	4.81	17	China	1276.30	59
Burkina Faso	12.06	17	Mongolia	2.74	61
Cape Verde	0.44	17	Botswana	1.62	61
Sri Lanka	18.82	18	Oman	2.72	62
Fiji	0.85	19	Singapore	3.59	65
Senegal	9.50	20	Netherlands	15.87	67
Niger	10.81	20	Tunisia	9.84	73
Congo	2.98	23	Sudan	29.82	73
Belize	0.24	23	Zambia	9.13	81
Guinea-Bissau	1.18	23	Trinidad and Tobago	1.34	83
Malawi	10.98	24	Ecuador	12.65	84
Jamaica	2.59	24	Jordan	6.33	94
Nigeria	128.79	24	Gabon	1.24	96
Madagascar	17.40	26	Algeria	31.60	97
			Syria	16.13	98

These data come from reported domestic water **use** for various years (from Gleick 1998) and the United Nations medium 2000 population projections. Improvements are needed in collection of water-use data (see text).

Bridging the divide

Exploring the relationship between human rights and conflict management

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Introduction

This paper focuses on the relationship between the fields of human rights and conflict management. It highlights their contradictory and complementary nature and argues that interaction between these fields should take place to a far greater extent than is currently the case. Scholars and practitioners have devoted little attention to the question of how the disciplines of human rights and conflict management relate to one another. As they view conflict from different perspectives, actors in the two fields have traditionally worked separately. At times their efforts may be at odds, as methods and roles can differ considerably from one discipline to the other. Indeed, where human rights and conflict management have been considered in conjunction with one another, this is generally done to show how imperatives of peace and justice are — or can be — in conflict with one another. The fields are often perceived as being in contradiction or competition. Nevertheless, human rights actors and conflict management practitioners have a common interest in promoting sustainable peace with justice. They also frequently operate in the same environment, as many conflicts involve human rights violations of some sort, and activities by actors in the one field may impact on efforts by actors in the other field. It therefore is necessary to explore the relationship between human rights and conflict management in more depth, and to examine whether and how they can contribute positively to one another.

This paper asserts that the two fields are far from being mutually exclusive. It argues that human rights and conflict management practitioners ought to understand one another's fields much better than they do at present, that dialogue and interaction is needed between the fields, and that insights, skills and practices from the one field can strengthen activities in the other field. The main argument is that a synergy exists between the two fields which, if left untapped, complicates and undermines processes that work towards peace, justice, and reconciliation. With regard to conflict management, the paper argues that without a proper understanding of the human rights dimension in conflicts, conflict management is bound to be unsustainable. Not only are efforts to protect and implement human rights essential to the constructive management of conflict, but institutionalised respect for human rights is also a primary form of conflict prevention. Moreover, processes that aim to resolve conflict must take place within a framework in which fundamental rights and freedoms are considered non-negotiable. Concerning the human rights field, this paper argues that conflict management can contribute to the protection and promotion of human rights in a variety of ways. There is much scope for dialogue, negotiation and accommodation in dealing with conflicts. Conflict management can offer alternative and innovative methods of addressing conflicts over rights issues, and can also enhance the capacity of human rights actors to protect rights effectively.

This paper flows from work that the Centre for Conflict Resolution (CCR) has been engaged in since 1997. At that time, the United Nations Centre for Human Rights in Geneva commissioned CCR to draft a handbook on human rights, minorities, and conflict management. CCR's review of existing literature and training programmes identified a failure in theory and practice to link the two fields. There was a clear need to examine how the fields of human rights and conflict management could positively impact on one another. Its research for the handbook led CCR to establish a human rights and conflict management training programme in 1999. This occasional paper draws on the manuscript prepared for the United Nations and on insights gained from CCR's training programme.[1]

The links between human rights and conflict management will be explored in four sections in this paper. The first section sets out the tensions between the two fields and explains why they are not better integrated. The second section focuses on the relationship between human rights and conflict management through six analytical propositions that highlight the complementarity between the fields. They are the following:

- Human rights abuses are both symptoms and causes of violent conflict.
- A sustained denial of human rights is a structural cause of high-intensity conflict.[2]
- Institutionalised respect for rights and structural accommodation of diversity is a primary form of conflict prevention.
- For the effective and sustainable resolution of intra-state conflict, the prescriptive approach of human rights actors must be combined with the facilitative approach of conflict resolution practitioners.
- Whereas human rights and justice per se are non-negotiable, the application and interpretation of rights and justice are negotiable in the context of a negotiated settlement.
- Conflict management can function as an alternative to litigation in dealing with rights-related conflicts.

The third section of the paper highlights two practical implications of the relationship between human rights and conflict management: the relevance of human rights training for conflict resolution practitioners; and of conflict resolution training for human rights actors. The fourth section records insights acquired from CCR's experience to date in linking human rights and conflict management. It should be noted that this occasional paper does not discuss the Human Rights and Conflict Management Programme of CCR but only sets forth lessons learned since the Programme started. Information on the Programme is provided in a separate box, as are a few exercises developed by the Programme.

Terms and definitions

A primary assumption underlying this occasional paper is that conflict is a natural, normal and inevitable part of life. This implies that conflict as a social and political phenomenon cannot be eliminated, prevented, or resolved. The challenge is to manage it in a constructive way that allows for the expression of discord and legitimate struggle without violence. One can, however, speak of the resolution and prevention of a specific conflict concerning a particular issue or set of issues. By the term "conflict management" I therefore mean addressing, containing, and limiting conflict in such a way that its escalation into a more violent mode is avoided. By "conflict resolution" I therefore mean addressing the causes of a particular conflict and resolving these so that the conflict comes to an end.

A distinction is thus made between the management of conflict as a general phenomenon and the resolution of a specific conflict. Another distinction made here is between "normal" conflict and "violent" or "destructive" conflict. Considering conflict as natural and inevitable means that conflict in itself is not bad or inherently violent. This paper will refer to "violent" or

"destructive" conflict if direct, physical violence is involved, and will simply use the term "conflict" if violence is not an issue. Where the term "prevention" is used, it refers to the prevention of violent conflict. This paper focuses mostly on intra-state conflict rather than inter-state conflict.

"Human rights" are understood here as fundamental rights and freedoms that belong to every person on the basis of his or her inherent dignity as a human being. The primary human rights framework informing this paper is comprised of the Universal Declaration of Human Rights (adopted by the UN General Assembly in 1948) and the African Charter on Human and Peoples' Rights (adopted by the Organisation of African Unity in 1981.) The paper uses the term "human rights" to include civil, political, economic, social, and cultural rights reflected in international and regional instruments, including the fundamental freedoms of speech and expression; belief and worship; and the freedoms from fear and from want. Civil and political rights relate to the freedom and equality of individual citizens, and protect them against unwarranted interference and abuse of power by the state. Examples of such rights include the rights to life, equality, and due process. Social, economic, and cultural rights are concerned with the welfare and well-being of humans. They relate to the socio-economic conditions in which people live and to their participation in cultural life. Examples include the rights to work, an adequate standard of living, education, and the right to take part in the cultural life of a community. This paper considers human rights as universal in nature, as they are derived from the dignity of human beings, but acknowledges that the meaning and relative importance of rights is at times interpreted differently in different social, cultural, and political contexts.

I. The central problem: contradiction and competition?

The lack of integration between the fields of human rights and conflict management is due to a variety of factors. Actors in both arenas have traditionally operated separately in conflict situations, largely because they view conflict from different perspectives. Human rights actors are generally concerned with the application of objective standards to determine issues of justice and establish the extent to which parties have upheld or violated such standards. Conflict management practitioners, on the other hand, seek to reconcile the needs, interests, and concerns of disputant parties in a constructive way, rather than trying to determine who is right and who is wrong. This fundamental difference in perspective creates certain tensions between the two fields. It also leads the two types of actors to emphasise different values, goals, and strategies in their approach to peace and conflict (Arnold 1998, Baker 1996, and Kunder 1998).

Arguably the best known in this context is the "peace versus justice" debate, which has unfolded in various cases all over the world. Conflict management practitioners generally prioritise peace as a basis for justice, arguing that the cessation of violence and resolution of intra-state conflict is a precondition for the establishment of a viable and enduring system of justice. They usually accept that this may necessitate negotiating with parties responsible for atrocities. Human rights actors, however, focus more directly on justice as the foundation for a lasting peace. Their primary concerns are with holding perpetrators accountable, restoring the rule of law, and building democratic institutions. While many conflict resolution practitioners share these concerns, the two fields often differ on the relative priority and importance attached to the various imperatives. As Baker puts it, "[they] share a common concern to end conflict, but favour different strategies in achieving it" (Baker 1996: 565).

The peace versus justice debate played itself out dramatically in the context of Bosnia-Herzegovina, when an anonymous author in a leading human rights journal accused the international human rights movement of prolonging the Balkan war. He claimed that the human rights community had been increasing the death, suffering and destruction in its pursuit of a perfectly just and moral peace that would bring "justice for yesterday's victims of atrocities,"

but instead made "today's living the dead of tomorrow" (Anonymous 1996: 259). Soon after this, an influential human rights scholar hit back, rejecting the charge that human rights actors disrupt peace processes. She argued that "the human rights community's articulation of concern, identification and analysis of the facts, and pressure for protection against abuses cannot be subject to the vagaries of international politics or the particulars of negotiations" (Gaer 1997: 7-8). The moral and strategic dilemma of how to balance peace and justice is now a regular feature where a settlement is being negotiated in intra-state conflict.

Human rights actors and conflict management practitioners also differ in their approaches to dealing with conflict. Because of their focus on human rights standards that bind parties to specific behaviour and impose obligations on states to respect rights, human rights actors often adopt an adversarial approach in seeking redress for grievances, and explicitly point out the wrongs committed by states and non-state actors. They may seek recourse through the legal system, and/or may denounce parties in public. In contrast, many conflict management practitioners utilise more co-operative approaches with a view to maintaining or restoring relationships between parties and reaching mutually agreeable outcomes. The normative orientation of human rights actors also means that they may attribute blame, whereas conflict management practitioners usually refrain from judging disputing parties. In addition, human rights actors can be strict or rigid in their endeavours to uphold and abide by human rights norms, whereas conflict management practitioners are more flexible in their search for a resolution that meets the needs and interests of different parties.

Overall, human rights actors are more focused on principles, whereas conflict management practitioners are more pragmatically oriented. Baker has also suggested that the difference between the two sets of actors is one of outcome versus process. In her view, conflict management practitioners are primarily concerned with processes that facilitate dialogue between the parties, whereas human rights advocates are preoccupied with the contents of the parties' agreements (Baker 1996: 568). However, it would be far-fetched to argue that conflict management practitioners are not concerned with the outcome of negotiation processes. Rather, the difference lies in human rights actors being more prescriptive, and conflict management practitioners being more facilitative, in their respective approaches to outcomes. In this sense, the former could be considered "outcome advocates", in that they advocate a particular type of outcome (one that emphasises constitutionalism and the legal protection of rights). The latter, on the other hand, could be termed "process advocates", as they favour a specific kind of process in reaching an outcome (one that is facilitative, all-inclusive, participatory, and develops trust between parties).

Differences between the two sets of actors may also arise over the question of whether and how human rights concerns should be raised in negotiation processes, and whether parties responsible for human rights violations should be excluded from negotiations. Conflict management practitioners aim to make the negotiation process as inclusive as possible in order not to alienate any party that has the potential to derail the process, irrespective of that party's human rights record. Experience indicates that any peace process that does not include all stakeholders is less likely to hold firm. The decision by former South African President Mandela to involve two armed factions in Burundi in the Arusha peace process of 2000, in spite of their earlier exclusion, was based on this concern.[3] Human rights actors, on the other hand, generally wish to exclude perpetrators from such processes, because their inclusion may grant them undue legitimacy and political influence in the post-conflict situation. This, for example, was the motivation for excluding the then President of the Republika Srpska (the Bosnian Serb Republic), Radovan Karadzic, and the chief military commander of the Army of the Republika Srpska, Ratko Mladic, from the Dayton peace process in 1996, following their indictment by the International Criminal Tribunal for the Former Yugoslavia (Holbrooke 1998:107).[4] Human rights actors are keen to raise rights abuses as issues that need to be addressed in a negotiation process and the resulting settlement, whereas conflict management practitioners may try to frame such concerns in ways that make the parties concerned less defensive. In the eyes of

human rights activists, however, such an approach may render a negotiation process illegitimate, because justice is deemed non-negotiable and because it may put potential and former victims at continued risk.

A final difference relates to the roles that the actors play in times of conflict and how they position themselves in relation to conflicting parties. Human rights actors are geared towards advocacy, monitoring, and investigation, whereas conflict management practitioners tend to play a more facilitative role in bringing parties together and assisting them to communicate with each other. Actors in both arenas have to take care to ensure that the functions they fulfil and the activities they undertake are in line with their primary roles. Combining roles that are contradictory rather than complementary may well affect their credibility and continued participation in specific processes, especially if the different roles have conflicting principles or objectives. For example, it can be argued that the South African Truth and Reconciliation Commission (TRC) was caught between the roles of a facilitator and an advocate, which put the body under continual tension. It also affected the TRC's credibility as different political constituencies saw the Commission primarily in one role (as a facilitator or an advocate) and objected to the other (Parlevliet 1998: 13).[5] Indeed, the mediating role of a conflict management intervenor may be compromised if he or she is perceived to criticise or blame a particular party because of human rights concerns. For example, the Burundian peace process was put under severe pressure when the mediator, former South African President Mandela, incurred the wrath of the Burundian government through his harsh criticisms concerning political prisoners and their conditions in jail.[6]

It should be acknowledged that neither human rights actors nor conflict resolution practitioners are neutral where issues of rights and justice are concerned. However, while the latter may express their values, they ought to refrain from publicly criticising parties if they wish to maintain their trust and involvement in a negotiation process. As a rule, conflict resolution practitioners carefully guard their impartiality so as to ensure their acceptability to all parties. In contrast, human rights actors will not only express their values, but may also denounce parties guilty of human rights violations. In this sense, they have no compunction about taking sides in a conflict, something conflict resolution practitioners are keen to avoid.

The differences between the two fields in goals, values, roles, focus, and strategies are summarised in the chart below.

The above discussion indicates that several major differences between human rights actors and conflict management practitioners hinge on their different interpretation of moral issues in terms of strategies, focus, and approach. In the words of Nherere and Ansah-Koi, "human rights complicate the conflict resolution process by either bringing in, or, exacerbating the moral dimension in a conflict" (Nherere and Ansah-Koi 1990: 34). To conclude from the above, however, that the fields of human rights and conflict management are necessarily in contradiction or competition with one another, would be wrong. Here, this paper starkly contrasts the two perspectives for illustrative purposes. In reality, the two groups often overlap and share many objectives. Peace processes generally reflect elements of both approaches and often include aspects of both in the form of power-sharing arrangements, institution-building, and mechanisms to uphold accountability (Kunder 1998).

There is also an increasing awareness that peace and justice are inextricably linked. As Baker puts it, "peace is no longer acceptable on any terms; it is intimately linked with the notion of justice. Conflict resolution is not measured simply by the absence of bloodshed; it is assessed by the moral quality of the outcome" (Baker 1996: 566). Nathan posits "the establishment of peace with justice" as the primary goal of efforts to prevent and end civil wars [Original italics] (Nathan 2000b: 191). Moreover, the reality of intra-state conflict necessitates a combination of the two perspectives. If, for example, the hard-line position — that those responsible for rights abuses cannot be involved in negotiations — was adhered to, there could no negotiated settlements in civil wars. After all, it is in the nature of civil wars that no one party can be

absolved from responsibility for human rights violations. Consequently, no party would qualify as a legitimate participant in peace negotiations, yet resolving intra-state conflict without their involvement is impossible. South Africa and Mozambique are obvious examples in this regard.

The tensions discussed above highlight that it would be difficult to merge the two fields and that there are strong arguments to keep the fields separate. Nevertheless, they also underline the importance of building greater mutual understanding, as actors in both fields have an interest in achieving sustainable peace with justice, and their activities can profoundly affect one another. Human rights and conflict management need not be mutually exclusive. Their differences provide all the more reason for exploring the relationship between the fields and examining how co-operation between them can help to promote their common goals. Moreover, knowledge of each other's field is necessary for actors in both disciplines to constructively manage the tensions that exist between them.

Figure 1: Differences between human rights actors and conflict management practitioners (adapted from Baker 1996: 567)[7]

	Conflict management practitioners	**Human rights actors**
Goal	Peace as the precondition for systemic justice (justice through peace)	Transitional justice as precondition for sustainable peace (peace through justice)
	Aiming for the cessation of violence and resolution of conflict so that relati0onships between parties can be repaired and structural causes of conflict can be addressed	Aiming for holding perpetrators accountable, restoring the rule of law, and building democratic institutions
Approach Strategies	Co-operative	Adversarial
	Include all relevant parties in the peace process	Exclude parties responsible for gross human rights violations from the peace process
	Flexible: conflict resolution is negotiable - negotiated outcome must be acceptable to local actors and appropriate to local conditions	Strict: justice is not negotiable - outcome must be in line with international human rights standards
	Refrain from judging and criticising parties, especially in public	Judge parties and attribute blame
	Focus on needs, interests, concerns of parties in order to reach mutually agreeable outcomes	Focus on the protection of rights and the extent to which parties have upheld international, regional and domestic human rights standards
Focus	Pragmatic focus	Focus on principles
	Facilitative approach towards outcome and issues	Prescriptive approach towards outcome and issues
	Process advocate; concerned with relationships and dialogue	Outcomes advocate; concerned with constitutionalism and protection of rights
Roles	Facilitator, convenor, reconciler, mediator	Advocate, monitor, investigator, lawyer
Values	Need to remain impartial with respect to all parties	Need to speak out against injustice and human rights violations and denouncing parties responsible

II. Linking human rights and conflict management: Six propositions

1. Human rights abuses are both symptoms and causes of violent conflict

The relationship between human rights abuses and conflict is a useful starting point for assessing how the fields of human rights and conflict management are linked. Violent and destructive conflict can lead to gross human rights violations, but can also result from a sustained denial of rights over a period of time. In other words, human rights abuses can be a cause as well as a consequence, or symptom, of violent conflict. The symptomatic nature of human rights violations is well known, as news agencies continually report on armed conflict around the world and recount its consequences in terms of loss of life and the mass movements of people trying to escape from violence and destruction. The 1994 genocide in Rwanda, in which some 800 000 people died in just 100 days, stands as one of the most chilling illustrations of the scope of atrocities that conflict can generate. The protracted conflicts in Angola and Sudan demonstrate that this kind of abuse does not only flare up in the short-term: in both countries, the population has experienced decades of human rights violations resulting from the wars taking place. One could argue that a culture of abuse has become entrenched (Lamb 2000: 35). At times, specific human rights abuses have deliberately been used as a strategy of war to fight and intimidate opponents and terrorise civilians. The mutilation and amputation of people's hands and other body parts by the rebels of Foday Sankoh's Revolutionary United Front in Sierra Leone is a case in point, as was the systematic use of rape in "ethnic cleansing" in Bosnia.[8] Human rights may also be affected in more indirect ways, through, for example, the destruction of people's livelihoods or the refusal of belligerent parties to allow humanitarian relief activities in areas under their control.

The causal nature of human rights violations, on the other hand, can be illustrated by the case of South Africa under the former apartheid regime. A sustained denial of human rights gave rise to high-intensity conflict, as the state's systemic oppression of the civil and political liberties of the majority of the population, and its restraints on their social, economic, and cultural rights, resulted in a long-lasting armed liberation struggle. Jarman argues that the situation in Northern Ireland was similar. Claims of systematic abuse of the civil and political rights of the Catholic nationalist community after partition in 1921 (related to the manipulation of electoral boundaries, voting rights, access to housing and employment) led to the rise of non-violent civil rights movement in the 1960s. When this failed to generate an adequate response and reforms, violent conflict erupted (Jarman, personal communication). Numerous conflicts have been caused by human rights issues such as limited political participation, the quest for self-determination, limited access to resources, exploitation, forced acculturation, and discrimination (Nherere and Ansah-Koi 1990). For example, the conflict in the Delta Region in Nigeria is not only due to the oil-related pollution in the traditional living areas of the Ogoni people, but also to the fact that they seek a larger degree of autonomy and greater control of the oil production and profit (Rubin and Asuni 1999; Douglas and Ola 1999). Rights-related concerns also motivated the uprising of the Banyamulenge Tutsi minority in Eastern Zaire in 1996 and their overthrow of Mobutu. These included, among other things, discrimination at the hands of Mobutu's regime over three decades, the decision of a provincial governor to expel this minority from Zaire where they had lived for 200 years, and Mobutu's support for Hutu Interahamwe (militia) who had been involved in the Rwandan genocide (Nathan (2000b: 192). It should be noted here that denial of human rights does not only occur through active repression, but can also come about through the inability of the state to realise the rights of its citizens, especially in the socio-economic domain. Such "passive violation" also deepens social cleavages and rivalries, thus enhancing the potential for destructive conflict. In several African countries, this is reflected in the way in which access to the political system is highly contested: in societies marked by abject poverty, control of the state is often the only way to achieve economic security.[9]

For both human rights actors and conflict management practitioners, it matters whether gross human rights violations resulting from conflict is the main concern, or whether the focus is on conflict resulting from a denial of human rights. The problems to be addressed are different and so are the desired outcomes. If human rights violations as a symptom of conflict are the issue, the primary objective is to protect people from further abuses. International humanitarian law is an important instrument in this regard, as it seeks to limit the excesses of war and to protect civilians and other vulnerable groups. Activities of intermediaries are then aimed at mitigating, alleviating, and containing the destructive manifestation of conflict. They include peacekeeping, peacemaking, peace-enforcement, humanitarian intervention, humanitarian relief assistance, human rights monitoring, negotiating cease-fires, and the settlement of displaced persons.

On the other hand, when human rights violations are causing violent conflict, the main objective of activities by both human rights and conflict management actors is to reduce the level of structural violence through the transformation of the structural, systemic conditions that give rise to violent conflict in a society. Galtung (1969: 168-170) introduced the term structural violence to refer to situations where injustice, repression, and exploitation are built into the fundamental structures in society, and where individuals or groups are damaged due to differential access to social resources built into a social system.[10] As explained further below, human rights standards are primary instruments in this regard, as the protection and promotion of human rights are essential in addressing structural causes of conflict. Activities can include peacemaking, peace-building, reconciliation, development and reconstruction, institution-building, and accommodation of diversity by protecting minorities. Thus, whereas direct, physical violence is the main concern when one focuses on human rights violations as symptoms of destructive conflict, considering rights violations as a cause relates to structural violence. The desired outcome of the former is peace in the sense of an absence of direct violence — so-called negative peace. However, in the case of the latter the goal is to achieve positive peace. This refers to the absence of structural violence, or, framed differently, the presence of social justice, including harmonious relationships between parties that are conducive to mutual development, growth, and the attainment of goals (Galtung 1969; Webb 1986; Yarn 1999: 347-348).[11] The above discussion is summarised in Figure 2.

Figure 2: The causal relationship between human rights violations and conflict

	Human rights abuses as symptom	**Human rights abuses as cause**
	Gross human rights violations as a consequence of violent conflict	Violent conflict as a consequence of sustained denial of human rights
	DIRECT VIOLENCE	STRUCTURAL VIOLENCE
Problem to address	Protecting people from gross human rights violations stemming from destructive conflict	Addressing the structural problems that give rise to destructive conflict
Activities	Peacekeeping, peacemaking, human rights monitoring, settlement of displaced people, humanitarian assistance	Peacemaking, peacebuilding, reconciliation, institution-building, development ad reconstruction, protection of rights, accommodation of diversity
Desired outcome	Cessation of hostilities, en to or prevention of abuses, ceasefire agreements	Negotiated settlement, political and socio-economic justice, mechanisms to manage societal conflict constructively
	NEGATIVE PEACE	POSITIVE PEACE

The figure above shows that the distinction between human rights violations as a symptom and as a cause of destructive conflict relates specifically to the focus and the aim of interventions, not to different scenarios. In other words, both aspects of the human rights/conflict relationship can be present in the same situation; this is generally the case in civil wars.

Moreover, it should be noted that these aspects are closely related in a number of ways, even though the distinction between causes and symptoms is made here for analytical purposes. The ways in which human rights abuses as both a cause and a symptom of violent conflict are related are briefly mentioned here, and will be discussed further below. First, violent, high-intensity conflicts are largely manifestations of deeper-lying, structural problems. If the latter are not addressed, people's frustration, anger, and dissatisfaction may rise to such an extent that they mobilise to confront real or perceived injustice. In other words, in situations where human rights violations occur as a consequence of conflict, a sustained denial of rights often lies at the heart of that conflict (as exemplified by the case of South Africa under the apartheid regime). Second, activities aimed at conflict mitigation and alleviation can have an impact on the prospects for longer-term efforts towards peacebuilding and conflict resolution. If the symptoms of conflict are effectively and constructively addressed, this can provide a basis for parties to work on the more structural issues, particularly if trust has developed between them. Third, the desired outcomes for human rights abuses as a cause or symptom of destructive conflict, influence one another. Negotiated agreements that address the symptoms of violent conflict — thus pursuing negative peace — must include provisions for future processes towards institution-building and transformation if they are to be sustainable. If they are merely concerned with ending hostilities but do not address the core causes underlying the conflict, they will only be of temporary value. Fourth, efforts to achieve positive peace are fundamentally tied to the ability of parties to end hostilities and to prevent violations of human rights. Peacebuilding processes and efforts to alter structural conditions in society are long-term undertakings. Securing negative peace is necessary to create the space and stability for such processes to take effect.

2. A sustained denial of human rights is a structural cause of high-intensity conflict

Having observed that a sustained denial of rights generally leads to conflict, it is necessary to analyse why it is a cause of rebellion and civil strife. One conflict management perspective on human rights, put forth by Galtung and Wirak (1977), provides an important theoretical explanation in this regard. This explanation is based on human needs theory as propounded by Burton (1990) and applied by Azar (1986) in his analysis of protracted social conflict. (See also Miall et al 1999.) Burton and Azar focus on the question of how the frustration of human needs generates conflict. Needs, defined by Burton as universal motivations that are an integral part of human beings, relate in this perspective to both material and non-material concerns. They include not only goods such as food and shelter; identity, recognition, and personal growth also constitute human needs (Burton 1990: 37-38; and Miall et al 1999: 47-48). Burton distinguishes needs from values and interests. He defines values as the "norms, customs and beliefs associated with particular social communities" and interests as the "vocational, avocational, political and economic aspirations of individuals or groups" (Ibid.). The primary difference between these three concepts lies in their degree of negotiability. Interests are negotiable; one can bargain over them and they can be exchanged against one another. However, values and needs are generally not negotiable — they cannot be traded or bargained away. Thus, whereas interests tend to be transitory in nature, needs and values have a more permanent character, as needs constitute universal drives for the motivation and mobilisation of people, and values are closely related to the identity of individuals or groups. Needs are so fundamental to human survival, subsistence and development that people will consistently seek ways of meeting them — even if they are frustrated or oppressed. In other words, when individuals or groups find that their needs and values are denied, they will behave in ways that express their frustration, or they will refuse to submit to practices and policies that are not acceptable to them (Ibid.).[12]

In the human rights field, the concept of needs has mostly been considered in relation to socio-economic rights. Needs are primarily conceived of in terms of material and social goods such as food, shelter, clothing, medical care, and schooling (Claude and Weston 1992: 137-211). As indicated above, however, they are understood in a broader sense in the conflict management field. Galtung and Wirak (1977) have highlighted the relevance of this conceptualisation of human needs for human rights in a way that is further explained by human rights scholars Claude and Weston (1992). Galtung and Wirak suggest that needs relate to security, welfare, freedom, and identity. Security- and identity-related needs have an individual and a collective dimension. Security-related needs pertain to protection against attack and destruction, as well as physical and mental preservation. Needs involving welfare fall within the physiological, ecological, and socio-cultural domain (e.g., food, shelter, clean environment, education, cultural preservation), whereas freedom-related needs are concerned with mobility, exchange, politics, and work. Identity-related needs are concerned with self-expression, self-actualisation, affection, association, support, and recognition (Galtung and Wirak 1977).[13] This conceptualisation of needs largely corresponds with the view of Max-Neef (1991: 17), who identifies nine fundamental human needs in the context of human development: subsistence, protection, affection, understanding, participation, leisure, creation, identity, and freedom.

This approach helps to shed light on the relationship between human rights and basic human needs. From this perspective, all needs give rise to certain rights, which help secure the goods or services necessary to meet these needs. As Galtung and Wirak (1977: 254) put it, "[human rights are] instrumental to the satisfaction of … needs". A comparison of the needs listed above with rights contained in the Universal Declaration of Human Rights and the African Charter on Human and Peoples' Rights, shows that all rights relate to several needs. Rights can be seen as the means to satisfy fundamental human needs; their implementation addresses such needs. For example, the right to take part in the cultural life of a community would meet needs of participation, affection, identity, and understanding. Self-determination, usually conceived of in terms of rights, is a collective need for identity, freedom, and security (Claude and Weston 1992: 142).[14] In the words of Osaghae (1996: 172), "human rights are ... an instrument of individual and collective struggle to protect core interests".[15] Here he echoes Galtung's and Wirak's (1977: 258) conclusion that "the rights are the means, and the satisfaction of needs is the end".[16] The South African Constitutional Court recognised this connection between rights and needs when it ruled that "the right of access to adequate housing is entrenched because we value human beings and want to ensure that they are afforded their basic human needs. A society must seek to ensure that the basic necessities of life are provided to all if it is to be a society based on human dignity, freedom and equality" (Chaskalson 2000b).[17]

The direct relationship between rights and needs explains why a sustained denial of rights may cause violent conflict in a society: such denial means a long-term frustration of needs, and people will persist in seeking ways to address their needs if these are not met. If this is possible through peaceful, constructive avenues, individuals or groups will generally engage in conventional forms of political action in order to bring about change. If, however, they are marginalised or excluded, they may eventually resort to armed resistance in the belief that this is the only way to bring about the transformation of society. It is important to note that such exclusion or victimisation can be either real or perceived as such by groups. The latter is often the case when groups experience frustration in realising their political and economic expectations. Such perceived deprivation can also make groups more disposed to violence as a way of achieving their goals (Azar 1986; Gurr 1970: 23).

Deprivation of needs through the sustained denial of rights is a structural cause of violent conflict, because it is generally embedded in structures of governance, in terms of how the state is organised, institutions operate, and society functions. For example, a particular social group may, on the basis of its identity, be systematically barred from participating in the political process through certain laws or policies. Or a state may be characterised by a consistent lack of development in those regions where the majority of inhabitants are members of a social group

other than the politically dominant group. Long-standing grievances over land and other resource allocations can also constitute structural causes of destructive conflict. Nathan identifies four critical structural conditions in Africa: authoritarian rule; exclusion of minorities from governance; socio-economic deprivation combined with inequity; and weak states that lack the institutional capacity to manage conflicts constructively (Nathan 2000b: 188-192). (See also Azar 1986: 30.) The United Nations Secretary-General, Kofi Annan, lists the following as "key structural risk factors that fuel violent conflict": inequity (disparities amongst identity groups), inequality (policies and practices that institutionalise discrimination), injustice (lack of the rule of law, ineffective and unfair law enforcement, inequitable representation in institutions serving the rule of law) and insecurity (lack of accountable and transparent governance and human security) (Annan 2001: 24 par. 100). Each of the causes highlighted by these authors can be traced back to human rights concerns related to security, identity, well-being, and freedom as discussed by Galtung and Wirak. Osaghae (1996: 172) thus argues that "the human rights approach to conflict management [recognises] that conflicts arise from inequalities, discrimination, domination, exclusion and injustices which attend the competition among people and groups for scarce political, social, and economic resources and benefits." The role of the state and issues of governance are essential in this regard as the way the state is organised determines whether needs are frustrated or satisfied: it allows or denies groups access to the resources or processes necessary to address their needs. The state may deny needs out of unwillingness (because it perceives calls for wider political participation, autonomy, or self-determination as a threat) or inability (due to weak state structures, poor societal infrastructure, or lack of resources).

According to Nathan, these structural conditions create tensions in society that provide fertile ground for violent conflict. He suggests that they give rise to a societal propensity to violence, and as such pose a fundamental threat to human security and the stability of the state [Original emphasis] (Nathan 2000b: 192-194). This propensity stems from the non-negotiable character of needs and is enhanced if several structural problems are present simultaneously; for example, when discrimination in one area coincides with marginalisation in another. A pattern of negative interaction between social groups — as manifested in hostility, fear, prejudices, and violent skirmishes occurring over a period of time — can also contribute to a propensity to violence. Thus, the outbreak of destructive conflict in the form of direct, physical violence is generally a symptom of deeper-lying structural problems. For example, violent protests in Mauritius in February 1999 following the death of a popular singer in a police cell, were largely related to a sense of exclusion and socio-economic discrimination felt by certain communities on the island (Republic of Mauritius 2000, Matadeen Report). The Commission of Inquiry established to look into these events concluded in its report that "they are symptoms of latent social problems in the country; they represent the smouldering flames underneath the ashes that may spark off any time. One year after the situation the country is still potentially explosive. The country is sitting on a powder keg. Any minor incident can provide the spark" (Matadeen Report, Chapter 9).

In other words, the absence of justice is often the primary reason for the absence of peace. The presence of justice, on the other hand, can lead to both positive and negative peace (Galtung 1969; Nathan 2000b: 190-191). (See also Harris and Reilly 1998: 20-22.) Thus, a sustained denial of human rights can be a fundamental cause of high-intensity conflict. Violence manifested in such conflict often reflects that needs are frustrated, legitimate aspirations are denied, and obvious injustices are present.

3. Institutionalised respect for human rights and the structural accommodation of diversity is a primary form of conflict prevention

The principle of rights protection and promotion as a form of conflict prevention was recognised in the preamble of the Universal Declaration of Human Rights. It states, "it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law ..." (Preamble, Universal

Declaration of Human Rights, United Nations General Assembly Resolution 217A (III), UN Doc A/810 1948). The analysis above explains why this is the case. If the sustained denial of rights is a structural cause of high-intensity conflict, it follows that the sustained protection of rights is essential for dealing with conflict constructively. It is especially critical to the effective prevention of destructive conflict, because it avoids the structural injustices and inequalities in society that give rise to violent conflict.

As the discussion above has highlighted, it is more important to focus on the structural causes of violence than on violence itself if we are to prevent violent conflict in any effective way. Violence, however significant from a humanitarian point of view, is invariably the outward manifestation of a structural crisis. As long as destructive structural conditions remain in place in a society, the potential for violence remains (Nathan 2000b: 193-195). In its efforts to prevent violent conflict, the international community generally seeks to keep a close eye on events that may have a destabilising impact on particular societies, such as a crop failure, a significant currency devaluation, an influx of weapons, or strikes. Extensive databases are thus constructed for the purpose of "early warning", and these monitor a range of factors and events that may trigger or escalate a conflict, so-called accelerators. (See, for example, Davies and Gurr 1998; Miall et al 1999: 94-127.) However, a single event may have very different consequences in different contexts, depending on the structural conditions present. For example, a crop failure or the arrest of a political opponent may lead to the outbreak of violence in some states but go largely unnoticed in others, because they intensify structural tensions in the former but not in the latter (Nathan 2000b: 192-195 and Annan 2001: 7 par. 7). In other words, focusing on emergencies or crises where violence has started to occur, is not sufficient to prevent violent conflict. Relevant in this regard is the distinction the Carnegie Commission for the Prevention of Deadly Conflict has made between operational and structural prevention of violent conflict (Carnegie Commission 1997: 39-102).[18] The former entails actions that can be employed when violence is imminent, and includes diplomatic interventions, fact-finding missions, and preventive deployment of military and civil contingents. Operational prevention therefore aims to prevent latent conflicts with the potential for violence from degenerating into serious armed conflicts. Structural prevention, on the other hand, is meant to address the "deep-rooted socio-economic, cultural, environmental, institutional and other structural causes that underlie the immediate political symptoms" of violent conflicts (Annan 2001: 2). In the case of operational prevention, prevention amounts to fire-fighting; in structural prevention, it means removing the logs that catch fire.

The protection and promotion of human rights addresses structural causes of violent conflict by working towards the satisfaction of basic human needs. Institutionalising respect for human rights — through, for example, constitutional endorsement of fundamental human rights, the independence of the judiciary, and an independent human rights commission — may ensure that such protection is sustained over a period of time and becomes a matter of state policy. It helps prevent high-intensity conflict by limiting the power of the state, affording citizens protection against abuse of rights, and allowing them a large measure of freedom and participation. It is noteworthy in this respect that the introduction of a Bill of Rights was specifically recommended in Nigeria in the 1950s in order to reduce tensions between regions and ethnic groups (Osaghae 1996: 180-181). Root causes can be addressed through measures designed to promote political pluralism, enhance transparency and accountability in governance, enable people to associate freely with groups of their choice, encourage economic growth and equity, facilitate equal access to employment, education, and health care, and strengthen the capacity of the state.

It should be recognised that the state in developing countries may not have the resources necessary for the full implementation of institutionalised respect for rights. Consequently, structural tensions may only be alleviated to a limited extent, which means that the potential for violence remains. The case of South Africa is relevant, as continuing socio-economic deprivation and poverty is an important factor undermining societal stability. The emphasis by

the President of the Constitutional Court, Judge Chaskalson, on the need to devote more attention to the realisation of socio-economic rights before dignity, equality, and freedom will be achieved, can be seen in this light (Chaskalson 2000a; 2000b). It should be noted that some degree of structural tension exists in all complex and heterogeneous societies, but the effects thereof are largely determined by the extent to which a specific society has effective and appropriate coping mechanisms. This is related to, among other things, the available resources and societal norms for dealing with dissatisfaction and dissent. Where a transparent and representative system of governance exists with legitimate institutions, there is a greater capacity to manage such tensions in a constructive way (Annan 2001: 7 par. 7; Webb 1986: 431). Therefore, institutionalised respect for human rights also means that mechanisms are developed within state structures that provide consensual and acceptable ways for dealing with discontent, thus limiting the need to resort to violence. Respect for rights thus enhances the capacity of the state to engage in constructive conflict by facilitating dialogue and participatory decision-making.

Specific attention must be devoted to the structural accommodation of diversity, which means formally entrenching inclusiveness and respect for diversity in the political system, state institutions, and the law (Nathan 2000b: 200-201). This is particularly important, because identity groups tend to be the primary actors in intra-state conflict. A strong sense of identity is often the core around which social groups are mobilised in order to raise grievances related to needs deprivation.[19] The former High Commissioner for National Minorities (HCNM) of the Organisation for Co-operation and Security in Europe (OSCE), Max van der Stoel, emphasised that "the protection of persons belonging to national minorities has to be seen as essentially in the interests of the state and of the majority. As a rule, peace and stability are best served by ensuring that persons belonging to national minorities can effectively enjoy their rights" (Van der Stoel 1999: 73). It is interesting to note his acknowledgement that his work as High Commissioner involved many human rights aspects, and that his activities "may have some positive effect on implementing the rights of persons belonging to national minorities and building respect for human rights in general" (Idem: 69). He emphasised, however, that "this [was] not the purpose of the HCNM's work, which is to try to prevent violent conflict" (Ibid.). Nevertheless, he was effectively working towards conflict prevention through ensuring that minorities could enjoy their rights. This goes to show how the protection of rights is an essential form of conflict prevention. It also highlights how closely linked the fields of human rights and conflict management are in reality.

The accommodation of diversity must entail more than a mere recognition of formal equality between various groups in society. Efforts to treat people from different groups equally can amount to systematically precluding members from disadvantaged groups. Writing on Nigeria, Osagae (1996: 184-186) suggests that that the principle of non-discrimination is most applicable when all groups are similar in size and have reasonably similar levels of development. If, on the other hand, political parties are organised along ethnic lines and the political system is based on a "winner-takes-all" approach, minorities will be completely and permanently excluded from governance in a formal democracy. In such situations of democratic majoritarianism, minorities may come to believe that political institutions and processes do not sufficiently meet their needs and interests, making them more inclined to violence as a means of expression and objection (Nathan 2000b: 200-201; Eide 1995: 97-100). The perception of marginalisation will be even more enhanced in contexts where political power implies privileged access to economic opportunities and resources, which, as UN Secretary-General Kofi Annan (1998: 3, par. 12) has pointed out, is the case in many African countries. Indeed, the fact that the state is often not neutral, but rather controlled by a particular group pursuing its own interests, highlights the need to ensure that respect for the rights of identity groups is institutionalised. Structural accommodation of diversity protects identity groups against biased use of the state machinery by those who control the state.

There are various mechanisms available to this end. These include constitutional rights regarding language, religion, and culture, forms of power-sharing (such as federalism, proportional representation, decentralisation in which the local or regional units have a large degree of autonomy), and so on. As the OSCE High Commissioner for National Minorities points out, realising the aspirations of identity groups does not necessarily require a territorial arrangement (i.e., secession), but can be realised through legislation providing for the preservation of identity in the areas of culture, education, and language. Other measures include guarantees of effective participation in public decision-making processes, and carefully constructed electoral processes (Van der Stoel 1999: 73-75). At the very least, respect for diversity must be ensured through the formal acknowledgement that identity groups have a right to exist, a right to protect their language and culture, and to participate in public affairs on an equal basis with others. In sum, the process of institutionalising respect for human rights should be concerned not only with individual rights, but also with group rights.

4. For the effective and sustainable resolution of intra-state conflict, the prescriptive approach of human rights actors must be combined with the facilitative approach of conflict management practitioners

The previous discussion has highlighted how the human rights perspective is deeply concerned with substantive issues related to the distribution of political power and economic resources, security, and identity. In the context of negotiation processes aimed at ending a long-term violent conflict in a society, this generally translates into a prescriptive approach towards the outcome or product of negotiations. The outcome must be in line with human rights standards and must embrace constitutionalism and the legal protection of rights. While these are also concerns of conflict management practitioners, the latter generally adopt a more facilitative approach towards the outcome. Their emphasis tends to be more on a particular kind of process — one that is aimed at establishing dialogue, developing relationships, and building trust between the parties. There is great awareness within the conflict management field that the quality of the outcome depends on the process used to achieve it. A process that is flawed in the eyes of involved parties contaminates the product by making its legitimacy questionable, hence undermining its sustainability. If, for example, some parties have experienced a peace process as exclusive, they will not feel that their concerns have been heard, nor will they feel confident that their interests have been taken into account in the settlement reached. Consequently, they have little incentive to co-operate with the implementation of that settlement, and may be inclined to obstruct it. They are also more likely to resort to violence in order to guarantee attention for their case. The point here is not that one aspect is more important than the other; rather, that process and product are so intertwined that they impact on one another, both negatively and positively, and should therefore both be given careful consideration. The sustainability of an agreement depends both on the substance of the outcome and on the process by which it was agreed upon.

The process used in resolving issues between parties is especially significant in the context of intra-state conflict where many groups, all with different needs, values and interests, co-exist within the same territory. The conflictual nature of their relationships may originally stem from their different access to political and economic resources, but it is deepened by feelings of hostility, mistrust, and fear that have become entrenched over long periods of time. In some cases, such polarisation and enemy images become a driving dynamic in fuelling continuous conflict, with violence countering violence, leading Sisk to speak of the “self-perpetuating nature of civil wars” (Sisk 1997: 187). Others have also recognised the significant role of perceptions, emotions, and relationships in contemporary conflicts. Nathan stresses that high-intensity conflict evokes and is fuelled by a range of strong emotions, including fear, insecurity, anger, a sense of grievance, and suspicion. These emotions make the parties resistant to negotiations and inhibit progress once talks are underway because parties view their differences as irreconcilable and fear that a settlement will entail unacceptable compromises. They lack

confidence in negotiations as a means of achieving a satisfactory outcome, even if they are unlikely to gain an outright victory on the battlefield (Nathan 1999: 1; and personal communication). Nathan therefore speaks of the "psycho-political dynamics" of civil conflict, a term that reflects that the subjective dynamics of conflict originate from objective conditions related to power and political relationships, such as exclusion, marginalisation, and persecution (Nathan 1999: 19-20). (See also Lederach 1997: 12-15)[20]

Because the negative character of relationships between groups is both a product and a further cause of conflict, attention needs to be devoted simultaneously to addressing root causes and building positive relationships between parties. As long as relationships remain fiercely adversarial, parties — being locked in positions of fear and suspicion —will be reluctant to engage in negotiations towards a settlement. The development of trust between parties in the course of negotiations is therefore essential; as three authors have put it, "negotiations tend to focus on issues, but their success depends on people" (Bloomfield, Nupen and Harris 1998: 63).

Process issues relate to questions of who participates in negotiations; ground rules for talks; the time-table; the structure of the discussion; the size of negotiating delegations and how representation is organised; how deadlocks are addressed; how decisions are made; where the process takes place; and what to do about issues that fall beyond the scope of the process. Whether intervention by a third-party is required is also an important consideration. Depending on the outcome of this assessment, questions arise about whether such an intervening body should be of a governmental, intergovermental, or non-governmental nature, and about the facilitation techniques the intervenor will use. For example, many interventions in African civil wars have been conducted by intergovernmental organisations, both regional and global. These have often relied on a top-down approach where the leaders of parties are coaxed and bullied into negotiations through the use of "carrots and sticks". Nathan has argued, however, that the use of power and coercion by external intervenors in civil wars is problematic. It may well increase the intransigence of parties by heightening their insecurity and causing resentment towards solutions that are imposed on them. A confidence-building approach is therefore likely to yield a more positive result, also with a view to the psycho-political dynamics of conflict referred to above (Nathan 1999). This is a style of mediation that is oriented towards raising the parties' confidence in each other, in negotiations, and in the mediator. It entails non-coercive facilitation of communication and joint problem-solving between parties by an intermediary who has their consent, is not a party to the conflict, and who seeks to facilitate an agreement in an even-handed way and on terms acceptable to the parties. Nathan argues that this approach "render[s] mediation a non-threatening venture and mitigate[s] the pathology of mistrust" (Nathan 1999: 22).[21] Moreover, a process that takes place on this basis also builds norms of dialogue, accommodation, and co-operation among political actors, thus laying the foundation for future political relations between groups and individuals. In other words, the process by which the product is agreed upon should, ideally, embody the values that are to be contained in the settlement, as this will enhance its sustainability.

The emphasis on addressing root causes and building relationships given here implies that the resolution of intra-state conflict is a lengthy process. Short-term interventions are likely to be stop-gap measures with limited long-term effect. The reality of civil wars defies "quick-fixes", as the issues involved are manifold, complex, and deep-rooted, and situations have degenerated over long periods of time. This also means that local actors must play central roles in devising both the product and the process. Local ownership pre-empts the build-up of resentment against solutions imposed by foreign actors. Moreover, local actors have a deep understanding of the causes, dynamics, and issues underlying violent conflict in their context. They are most aware of the needs and interests of various parties, and can thus help to develop an agreement that is appropriate and acceptable in the local context. Most importantly, local ownership of the process is necessitated by basic human needs such as freedom, identity, and especially participation. If such needs are not met when addressing root causes of violent conflict, the foundation is laid for renewed conflict in the future.

Combining the prescriptive focus from the human rights field with the facilitative emphasis from the conflict management field will ensure that peacemaking and peacebuilding processes, both in form and content, are in line with universal human rights standards, and will develop relationships between parties that provide a basis for future co-existence.

5. Whereas human rights and justice per se are non-negotiable, the interpretation and application of rights and justice are negotiable in the context of a negotiated settlement.

Many human rights advocates tend to consider human rights and justice as absolute concepts. Human rights and freedoms, as enshrined in the Universal Declaration of Human Rights and the African Charter on Human and Peoples' Rights, are fundamental and therefore not negotiable. Rights reflect internationally and/or nationally agreed-upon norms of behaviour between individuals, groups of people, and between the state and its citizens. Moreover, the close relationship between rights and needs as explained above underlines the non-negotiable character of fundamental rights and freedoms. Rights thus set the parameters for the management of conflict.

However, within this framework, there is great scope for variation in how rights are realised in terms of, for example, the electoral system, form of government, degree of autonomy of regional units, constitutional arrangements, and the precise formulation of a Bill of Rights. A useful distinction in this regard is between needs and satisfiers. Basic human needs are considered finite and are generally understood to be the same in all cultures and throughout time. What changes over time and across cultures is the way or the means by which those needs are satisfied. Thus, whereas basic human needs are not negotiable, the possible satisfiers are, and these will vary depending on the context (Max-Neef 1991: 16-28). Similarly, fundamental rights and freedoms are not negotiable, but the manner in which they are recognised is indeed negotiable. There are many different ways in which rights relating to participation, equality, freedom, identity, well-being, and security can be realised without undermining the substance and significance of those rights. Institutionalised respect for human rights, as discussed earlier, strongly points to democratic governance as the necessary basis for the sustainable and effective prevention of destructive conflict and the management of normal political and social conflict. Yet there is no single form of democracy that applies across the globe. On the contrary, the shape and form of democratic institutions has developed according to political, cultural, and historical conditions.

The political structure of the state (i.e., federalism, decentralisation), the form of the state's legislature and executive, and the electoral system are three broad areas of constitutional design that warrant examination in this regard. This entails considering different forms of power-sharing arrangements, federalism and autonomy, parliamentary versus presidential government, electoral system design, and the structure and procedures of legislative bodies, among others (Reilly et al. 1998: 133-259). It is essential that the details of such structural arrangements are worked out by local actors through inclusive negotiations so as to enhance the suitability and sustainability of the mechanisms adopted. Institutions that are transplanted from other contexts or imposed by external intervenors, however democratic they may be, tend to have little staying power, because they may be inappropriate or considered illegitimate by the local population. The importance of local actors in shaping the institutions that regulate their society suggests that the implementation of rights is negotiable and depends on the context, even though the rights themselves are not negotiable.

The same argument can be applied to the concept of justice. Justice is as non-negotiable as human rights are; it is, without doubt, the foundation for a sustainable peace. Yet, the interpretation of "justice" is invariably disputed and the form in which justice is shaped in a particular case, is negotiable. Within the human rights field, there has been extensive debate on the forms justice can take in a transitional situation with regard to accountability for violations committed during the conflict. In exploring the legal, ethical, and political aspects of the quest

for justice in transitional situations, questions of punishment and/or pardon, and of establishing the truth and/or establishing criminal responsibility, have received much attention. Much research has focused on various mechanisms for transitional justice — such as truth commissions, war crimes tribunals, and/or purges — and their respective virtues and drawbacks. (See Hayner 1994; 2001; Kritz 1996; Mendez 1997; McAdam 1997; Roht-Arriaza 1995; Baehr 1996; and Bronkhorst 1995.)

Nevertheless, whether the discussion emphasises retributive or restorative justice, in both cases the "justice" concerned is mainly backward-looking. This preoccupation with the past is flawed in several respects. Firstly, it hinges in part on the assumption that holding perpetrators accountable will end a culture of impunity. There is insufficient evidence to support this thesis. Secondly, the threat of prosecution and accountability can inhibit the resolution of the conflict because it can be "a clear disincentive for actors in an armed conflict to give up their resort to violence," as Mendez acknowledges (Mendez 1997: 273). This is not to argue that a blanket amnesty is appropriate or necessary, but rather to acknowledge that the process of addressing past human rights violations must take into consideration the need to consolidate a young and volatile democracy and the need to end hostilities between parties. Thirdly, it raises the impression that justice is dependent on dealing with past atrocities, whereas justice is concerned with both the past and the future. Justice does not only relate to the human rights violations committed during a violent conflict, but equally to transforming unjust structures and to entrenching respect for human rights in state institutions and the societal infrastructure. Bringing those responsible for abuses to book is only one way of establishing the rule of law, legitimising state institutions, and rehabilitating victims in a post-conflict society. Other measures that secure future justice should be taken as seriously and pursued as vigorously. In South Africa, for example, human rights organisations worked hard for the development of an appropriate Bill of Rights and for the establishment of a range of independent bodies tasked with supporting constitutional democracy. (These have become known as the "Chapter Nine" institutions after the relevant chapter in the Constitution (Republic of South Africa, The Constitution, Act 108 of 1996).[22]

Thus, while the attainment of justice is related to the pursuit of accountability for past abuses, it is also dependent on wider processes of transformation, redistribution, and reform. This was the conclusion of a conference focusing on the integration of human rights in peace processes organised by the Fund for Peace and the United States Institute of Peace in 1997. The conference emphasised that the scope and definition of human rights should be expanded to include at least four components: transitional justice (in the sense of prosecutions and/or truth-telling); mechanisms to ensure the personal freedom and security of civilians and identity groups during the transition; mechanisms to prevent the outbreak of future hostilities (including constitutional reforms, restructuring of the government, security forces, and judicial system); and mechanisms aimed at broader social, political, and economic reform (targeting social and economic inequities, redistribution, discrimination, etc.) (Kunder 1998: 4-5). Jean Arnault, the Special Representative of the UN Secretary-General and Chief of Mission for the UN Mission to Guatemala, noted:

> If a "just peace" is understood as focusing on the issue of criminal or moral accountability for past abuses by the leaders of both factions, if the test is a sort of purge and sanction test, obviously the peace process in Guatemala would not meet the criteria ... On the other hand, if the test ... is a comprehensive blueprint that includes not only the end of war, not only human rights provisions, not only institutional changes that consolidate observation of rights, but also socio-economic issues, the bridging of the gap between the ... minority and majority, if this is the test ... [then] the peace process in Guatemala is one of the strongest statements that has ever emerged from the negotiation of an internal armed conflict (Arnault, as quoted in Kunder 1998: 4).

This is not to deny that accountability for past abuses is important and should be given serious consideration in the context of negotiating a settlement. Past human rights violations can undermine future reconstruction by fuelling resentment, triggering revenge, and reinforcing a message of impunity. Rather, the point here is that this is only one aspect of implementing justice, and that justice has multiple components that should be taken into account. Even if rights and justice are non-negotiable, there is no single, absolute way in which they should be applied or implemented in each context. The human rights priorities of local actors should inform their interpretation and application in each case. This approach does not diminish the critical value of human rights and justice, but ensures that these are implemented in line with the needs and circumstances of particular contexts — within the internationally accepted framework of human rights. It also encourages paying more attention to the question of how justice can be built into settlements in a prospective way (ensuring the protection of rights in a structural, institutional manner) rather than overemphasising its retrospective aspects. Admittedly, human rights actors may take issue with this approach, especially because it has taken so long for human rights issues to be explicitly accepted on the agenda in peace processes. However, it may be a matter of assessing how one makes the most progress: fighting so much over one step forward that one gets stuck — or possibly taking one step back in order to ensure that the path forward remains open.

6. Conflict management can function as an alternative to litigation in dealing with rights-related conflicts [23]

Ury, Brett, and Goldberg distinguish three general approaches for dealing with conflict, namely power-based, rights-based, and interest-based (Ury, Brett and Goldberg 1988: 7-15).

- The power-based approach entails the exercise of power over a weaker party, in which power is defined as the ability to inflict costs on or provide rewards to another party in an attempt to coerce it to do something it would not otherwise do (Ibid.). For example, strikes or demonstrations are actions where power is used to deal with conflict. Peace-enforcement, in the sense of physically separating parties in conflict by international armed forces, is another mechanism that uses power to regulate conflict.
- A rights-based approach to conflict is based on the use of an organisation or society's laws, norms, and values to determine who is right (Ibid.) The legitimacy of parties' claims is decided through the application of an independent set of criteria, made up of formal or informal standards of justice and fairness. This approach often involves using the judicial system to resolve or regulate the conflict. For example, an employee believes that she was unfairly dismissed sues her employer; two countries lay claim to the same territory and bring a case before the International Court of Justice to determine whose it is.
- An interest-based approach to conflict seeks to reconcile the interests and needs of parties with one another. In this approach, parties work together in an effort to negotiate their differences and agree on an outcome that meets their respective interests and needs. Such negotiations are less focused on the positions taken by the parties (what they say they want as the outcome), but rather on the underlying concerns that motivate parties to adopt their positions. It must be noted that even though this approach is called "interest-based" in the literature, it focuses on both the interests and needs of parties.

These three approaches should be assessed to determine which is most appropriate in a specific conflict. Advantages and disadvantages may arise according to the resources that are necessary for implementing a specific approach, and the effect of a particular approach on the relationship between parties. They may also involve parties' satisfaction with the outcome, meaning how well the outcome addresses their concerns, as well as the recurrence of the dispute, referring to the sustainability of the outcome. The use of rights-based methods to deal with conflicts over rights is well established. Cases of sexual harassment, assault, or discrimination are often settled through the use of the judicial system. In some instances, human rights actors may use power —

broadly defined as mentioned above — to deal with human rights issues.[24] Letter-writing campaigns by Amnesty International on behalf of political prisoners can be seen in this regard; pressure is brought to bear on another party (a state) in order to force it to release prisoners or at least provide them with better treatment. Publicising the human rights record of a particular state or denouncing a party for its abusive practices are other ways in which human rights advocates may use their power of persuasion or pressure. Of course, in these cases, the use of "power" takes place within a human rights context. Calling public attention to torture is only possible because an international standard that prohibits the use of torture and any other inhumane, degrading, or humiliating treatment exists. While human rights actors are more inclined to take rights- and power-based approaches when dealing with conflict, conflict management practitioners emphasise the value of interest and needs-based methods. Because of their co-operative nature, focus on the interests and needs of parties and emphasis on joint problem-solving, these methods tend to reduce the strain on relationships and make parties more satisfied with the outcome, thus reducing the chances of renewed conflict. At times, they may also use less resources, both material (financial) and emotional (psychological stress).

In addressing conflicts over rights, actors are not confined to using rights-based methods in order to ensure that human rights are protected. There may be constraints on the use of this approach for safeguarding rights in certain environments. In South Africa, for example, the courts are generally overburdened and it often takes a long time before a case reaches trial or a courtroom. The current crisis in the Legal Aid Board system, moreover, has resulted in many lawyers being unwilling to represent indigent accused because of the low rates of payment and long delays before payments are received. Since November 1999, the scope of work undertaken by the Legal Aid Board has been narrowed, resulting in the effective preclusion of access to legal representation for particular types of problems, including divorce and most civil litigation (suing for damages, which could potentially include many human rights cases). Some non-governmental legal organisations bring human rights cases to court, but they tend to focus on high-profile, precedent-setting cases, as their resources have to be spent strategically. Litigation also often takes more time and resources than people can afford. In short, access to the judicial system is limited for many South Africans —especially for those in marginalised positions who are most vulnerable to violations of their rights. In such a context, it is important to find alternative ways of protecting rights or facilitating access to rights.

Interest and needs-based methods, such as mediation and negotiation, can assist in this regard. In the latter, parties negotiate directly with one another to seek a solution to the conflict, whereas in the former, an outside intermediary assists parties in communicating with one another and engaging in joint problem-solving. While focusing on the interests and needs of parties, such methods can ensure that parties reach an outcome that is in line with the relevant legislation, upholds the rights of parties, meets their interests, and satisfies their needs. This approach requires willingness on the part of parties to negotiate their differences and an awareness of the constitutional and legislative framework within which they must reach agreement — or that they are assisted by a third-party who is a skilled facilitator, negotiator, and mediator. Additionally, this approach can restore, maintain, or even strengthen the relationships between parties as trust develops between them; they may discover that their interests are not mutually exclusive. It can also build their understanding of the value and meaning of rights, because this approach often involves getting parties to understand why rights exist and why it is in their interests to respect rights.

Mediation and negotiation may also assist in balancing conflicting rights. If the rights of both parties are in conflict with one another, negotiation and/or mediation can be a way of reaching an outcome that meets both parties' needs and interests. For example, in the case of land redistribution to people who have been dispossessed of their land, their rights to the land must be balanced against those of the current land-owner. A rights-based approach to the resolution of such a conflict would involve getting a court to decide whether a rightful claim to the land exists. The court would then make a finding on the basis of evidence that is placed before it,

e.g., old title deeds, oral history of the parties, whether the claimants are rightful descendants, and so on. Negotiation and mediation can play a role when it comes to determining the award to be made to the claimant, by exploring whether the underlying interests and needs of both parties can be reconciled. For example, if monetary considerations play a large role, compensation may be a feasible means of resolving this conflict. If the claimants require the land for cultural or religious reasons (for example, access to burial sites), it may be possible to provide them with access (for the purpose of visiting and tending to the graves of their ancestors, for example) without necessarily transferring the ownership of the land. If the main concern is with cultivating and living off the land, providing alternative land may be an option. No definitive answer can be given in an example like this, because the outcome of such a mediation or negotiation process depends on the needs and interests of parties from case to case. In South Africa, the Restitution of Land Rights Act sets out various options for consideration by the parties (Republic of South Africa, Restitution of Land Rights Act, Act 22 of 1994, as amended). In determining an award, the outcome is negotiated or mediated within this framework. The conflict in this example is separated into two stages, in which the first (deciding on the validity of the claim) uses a rights-based approach, and the second uses an interest-based approach. In this way, the rights of both parties are balanced against one another and their interests and needs are taken into account.

It is not that interest and needs-based approaches are necessarily better than rights-based methods in dealing with conflicts over rights issues. Rather, the above discussion is meant to highlight the existence of different approaches to dealing with conflict. Actors addressing rights-related conflict need not rely exclusively on a rights-based approach. Interest and needs-based methods can also promote the protection of rights. Thus, litigation and mediation should be seen as options on a spectrum of conflict management techniques. In each case, actors must carefully consider the different approaches available and determine which is most appropriate. Moreover, as the above example illustrates, within one conflict, different approaches can be used to resolve different parts of the conflict. There may be good reasons for utilising litigation in a particular situation. These may include the gravity of the human rights violation, the need to uphold a standard, or the precedent-setting nature of the case. The power balance between the parties may also be so skewed so as to warrant the intervention of the courts in order to protect the victim. If, on the other hand, the parties will continue to interact, interest and needs-based approaches may be more suitable, as these are less confrontational and adversarial. Moreover, because the outcomes of interest and needs-based processes are not imposed on parties, but rather agreed upon by them, they are less likely be to resented by one party. A key point worth repeating is that negotiation or mediation of rights-related conflict takes place within set parameters consisting of constitutional and international human rights standards; these processes do not require a compromise of fundamental principles.

Negotiating over interests and needs within a human rights framework may be especially relevant on a grassroots level where the limitations of the judicial system are most acutely experienced. It also seems particularly applicable to countries where socio-economic conditions pose constraints on the use of the judicial system (although not exclusively so, as is indicated by the extensive use of alternative dispute resolution — the legal term for negotiation and mediation — in the United States of America, the United Kingdom, and Australia). The question may arise as to whether an interest and needs-based approach to resolving rights-related conflicts is mostly applicable to individual cases, rather than to situations where human rights violations are committed on a wide-spread and systematic scale or where there is a particular pattern of abuses. In the latter cases, one may seek to obtain a legal judgement that acts as a precedent and inhibits further violations of that kind. In mediations, agreements reached often only apply to a particular case and carry little weight beyond that case. No general legal rule is laid down that can prevent such abuses from recurring. In other words, agreements reached in a mediation process usually do not set a precedent, and therefore have limited deterrent value. For example, if several farm-owners demolish informal housing of farm workers living on their farms and each of these cases is mediated separately, there is little to

stop another farm-owner from demolishing informal structures on his or her land as well. However, if one of the initial cases were taken to court, resulting in a clear judgement that the destruction constitutes a criminal act, then other farmers will think twice before trying the same thing. Another question for consideration is whether the use of mediation or negotiation in conflicts over rights is confined to democratic contexts. These are questions that require further examination. Generally, the use of mediation and negotiation in conflicts over rights as an alternative to judicial proceedings depends on many factors. These include the nature of the rights involved, the gravity and scale of human rights violations, the nature of the dispute, the parties involved, and the competence and legitimacy of the courts.

The six propositions laid out above have many implications for a variety of actors, including governmental bodies and intergovernmental agencies. Clearly there is a need for dialogue between the fields of human rights and conflict management in order to gain an understanding of one another's mission, guiding principles and methods, and to strengthen efforts towards peace, justice, and reconciliation. Closely related is the need to pursue an integrated approach in dealing with conflicts involving issues of rights. Many conflicts cannot be addressed solely from either a human rights or a conflict management resolution perspective. The two fields should be considered in conjunction with one another because of the close relationship between human rights and conflict management. For example, the high level of xenophobia in South Africa necessitates an integrated approach on the part of the various bodies that deal with migrants, asylum-seekers and refugees. Considering xenophobia only from a human rights point of view fails to engage the needs and interests that make South Africans so reluctant to accept foreigners in their midst. At the same time, focusing exclusively on such concerns with a view to resolving specific disputes between locals and foreigners may give insufficient consideration to the rights of the latter. Only a combination of the two perspectives can ensure that strategies are developed for resolving xenophobia-related conflicts in ways that uphold the rights of various parties, while taking their needs and interests into account as well.

III. Enhancing understanding

In the previous section, this paper argued for the need for human rights actors and conflict management practitioners to be more familiar with each other's principal concerns and methods. In this section, the paper discusses training as a strategy to enhance mutual understanding between and effectiveness of both sets of actors.

1. Conflict management practitioners should be trained in human rights awareness and instruments.

As argued above, there are strong reasons why actors in the conflict management field should acquire greater understanding of human rights and be more knowledgeable about human rights instruments. Conflict management must take place within a framework in which human rights are non-negotiable. While there is much scope for dialogue, negotiation, and accommodation within that framework, practitioners must be aware of its parameters in order to ensure that their interventions are in line with fundamental rights and freedoms. Moreover, instruments such as the Universal Declaration or the African Charter provide internationally accepted principles of freedom, fairness, and respect. Actors within the conflict management field can use such standards to gain a different perspective on possible solutions, assess different options, or lay the foundation for agreements. Human rights standards thus provide practitioners and parties to a conflict with objective measures for understanding the moral and legal consequences of their actions. Individual parties may not always realise that certain activities or practices are violating the rights of other parties. Practitioners with human rights knowledge can assist such parties in making them aware of their obligations and how respect for rights can help to resolve conflictual issues (Arnold 1998: 3-4). Moreover, human rights serve to protect all parties, which

means that respect for human rights is pragmatically in everyone's interests (groups, individuals, and political parties). It has also been suggested that, in the context of a peace process, conflict management actors can help conflicting parties understand that supporting human rights may enhance their domestic and international stature, legitimacy, and negotiation position, thus prompting their co-operation with the process (Kunder 1998: 6).

A primary reason for training conflict management actors in human rights is that they need to understand the relationship between rights and conflict, and in particular the conflict-causing potential of rights denial, or they will not act effectively. Their analysis of a conflict helps conflict management practitioners to determine an intervention strategy. If they are insufficiently aware of the conflict's human rights aspects they may focus more on the manifest, visible, issues that trigger conflict rather than on the structural causes that underlie violent conflict. As indicated earlier, such an approach is likely to be unsustainable; it may merely buy some time before destructive conflict erupts (again). If, however, human rights concerns are identified early on as core causes of conflict, practitioners are more able to integrate these into a negotiation process from the outset, and can develop agreements that address structural inequities.

They can also help parties understand the long-term ramifications of agreements that do not abide by human rights standards. In some situations, parties may be reluctant to accept that their conflict relates to issues of rights. To give an example, this was the case in a conflict in two informal settlements in Cape Town in which South African residents forcibly evicted Angolans and Namibians living in their midst and destroyed their houses and belongings. In an intervention conducted by the Centre for Conflict Resolution, the local residents strongly objected to the possibility that their actions were, at least in part, motivated by xenophobia. In their view, their concerns had nothing to do with prejudices about 'others' or perceptions of threat, but were related only to criminal activities in which the foreigners were allegedly involved. In the course of the process, however, this perspective was challenged by other parties who had also been involved in the conflict in one way or another. Mediators from CCR were able to start building an understanding of the foreigners' rights on the part of the South African residents, and to raise their awareness of why fundamental rights should be upheld.[25] The mediation process thus involved a degree of education, even though this had not been the primary purpose of the intervention. Nevertheless such education was necessary for the success and sustainability of the intervention. Had the mediators not been aware of the relevant human rights standards, the intervention would have been weakened. It would have been superficial to try to sort out the evictions without giving due consideration to the constitutional framework that lays down fundamental rights of all persons in South Africa and getting parties to understand the parameters of that framework.

It should be noted that the relevance of human rights knowledge for conflict resolution practitioners does not only apply in situations where a denial of human rights is a cause of high-intensity conflict. It also applies to instances where gross human rights violations occur as a consequence of violent conflict. In these cases, intervenors must be aware of the rules and instruments that can help to regulate or mitigate conflict. In its 1993 assessment of five large UN field operations (called The Lost Agenda), the international non-governmental organisation Human Rights Watch noted that human rights were often integrated only to a limited extent into peacekeeping efforts, to the detriment of these operations. Only in El Salvador were human rights a high priority in the UN mission. According to Human Rights Watch, the deployment of human rights monitors as part of the peacekeeping mission limited human rights violations and contributed to the peace process by strengthening the prospects for a lasting peace (Human Rights Watch 1993: 1-35). The Sudanese People's Liberation Army (SPLA) in southern Sudan is reportedly engaged in a similar initiative; it wants to have chaplains, trained in human rights standards, located throughout the territory under its control in an effort to limit and prevent abuses of rights.[26] And in co-operation with various actors in Lesotho, the Lesotho Network for Conflict Management is trying to negotiate a National Peace Accord or "Harmony Pact" to

guide the behaviour and activities of various parties — including political parties, security forces, traditional authorities, churches, labour, business, and civil society — before and during the next elections in 2002. The Accord is based on respect for human rights (especially civil-political rights) and seeks to limit the potential for violent conflict before and during the elections.[27] In this context, it is important to note that the integration of human rights concerns into efforts to regulate and mitigate violent conflict in the short term, will lay the foundation for their inclusion in activities geared towards the long-term resolution of structural causes of conflict.

Knowledge of human rights and an understanding of the language of rights is also important for conflict management practitioners because they need to liaise with human rights organisations in situations where both sets of actors are involved. Human rights actors can alert conflict management practitioners if a situation seems to be deteriorating; mounting human rights violations are widely acknowledged as an early warning sign of imminent conflict. Serving as indicators of communities or states in distress, the occurrence and frequency of human rights violations signal the need for timely intervention and constructive methods to address social, political and economic inequities. Conflict management practitioners also need to assure human rights actors that their concerns will be addressed during a peace process, and how this will be undertaken. If they fail to do so, they risk critical, public statements by human rights actors that may affect the process negatively. Moreover, human rights actors are often aware of solutions used in other countries to manage certain rights issues, or they can provide "lessons learned" from elsewhere that may assist the process. Finally, conflict management practitioners need to be able to explain to human rights actors how and why a certain agreement came about, if it is "less than ideal," as Arnold (1998: 3-4) puts it.

2. Human rights actors and humanitarian agencies should be trained in conflict management skills

As much as conflict management practitioners must learn about human rights, human rights actors can also benefit from training in conflict management. They often work in volatile environments characterised by tension, polarisation and violence. They frequently deal with people who are coming to terms with loss, anger and fear, and who may be so distressed, anxious or afraid that facilitated communication is essential to ensure that substantive dialogue can take place about what happened. Human rights activists also often have to deal with conflict in the course of implementing their mandate. For example, gaining access to prisoners, to potential witnesses, or to sites where gross human violations have allegedly occurred, often involves some degree of negotiation. Human rights actors may also encounter officials or non-state actors who try to impede or thwart their work for fear of outside scrutiny, or because human rights activities are seen as "subversive". In addition, human rights actors may be called upon to intervene in conflicts or facilitate meetings with several parties, especially if they enjoy respect in communities because of their principled and independent stance (Arnold 1998: 2-3). This may apply to non-governmental actors, but also to governmental or constitutional bodies. For example, the legislation governing the South African Human Rights Commission provides for the use of mediation to resolve human rights complaints received by the Commission (Republic of South Africa, Act 54 of 1994: section 8).

Techniques for crisis intervention, negotiation and facilitation, problem-solving skills and communication skills are useful for human rights actors. Communication skills are particularly relevant, as these can help defuse tension and prevent confrontation. Conflict management training also enables human rights actors to frame rights issues in terms of interests, meaning that they can explain to others why it is in their interests to respect rights. This enables human rights actors to convey the importance of upholding rights without resorting to bland and categorical statements along the lines that rights must be protected. People are generally more willing and capable of understanding rights issues if these are explained in relation to their own needs and interests, than if they encounter a prescriptive or adversarial stance about what rules

apply and what action should or should not be undertaken. For example, insisting to the police that they have to respect human rights may get them to comply but does not necessarily build their understanding of why this is necessary and important. On the contrary, it may cause resentment if rights are perceived as impeding their work and benefiting suspects. However, when it is explained exactly how they can benefit from rights protection, they are more likely to make a genuine effort to comply with an instruction to uphold rights. Such an explanation could include the following points: respecting human rights has the potential to improve their relationships with the communities in which they work; it may strengthen their service delivery; and it may limit civil claims against the police. It would also be important to stress that police officials themselves are also protected by rights. Similarly, defence forces may know that they have to abide by the Geneva Conventions because that is the law, but their compliance is more likely if they understand how international humanitarian law could also benefit them, should they be taken as prisoners of war, etc.

In this sense, the arguments in favour of a confidence-building approach to mediation rather than a power-based one can be extended to the realm of human rights work. Because it relies on coercion to obtain the "co-operation" of parties, power-based mediation often hardens the resistance of parties and leads to resentment against solutions imposed upon them. In contrast, a confidence-building approach seeks to obtain the co-operation of parties through dialogue, relationship-building and the development of trust. As such, it is more likely to secure a lasting agreement (Nathan 1999). Similarly, a confidence-building approach to the protection and promotion of rights tends to make parties less defensive. This approach involves raising human rights concerns in a constructive and non-confrontational way, and developing relationships between parties. In this respect, it is noteworthy that the United Nations High Commissioner for Refugees and the Centre for Common Ground (CCG) in Angola are training internally displaced persons in human rights and negotiation skills. The combination of human rights education with conflict resolution stems from the realisation that "teaching people about their rights without building a capacity to talk about, defend and present those rights in a non-adversarial way is like giving a fisherman a net with gaping holes. Rights have to be respected and if they are not, individuals must be able to demand respect in an appropriate way, i.e. non-violent and strategic" (Utterwulghe 2001: 3-4).[28]

In cases of mediation, such a confidence-building approach is generally preferable. In a human rights context, on the other hand, the most appropriate communication style should probably be assessed on a case-by-case basis in light of the specific situation and the objectives pursued. There may be situations in which human rights actors have to take a strong, confrontational stance in order to emphasise that certain practices are illegal and wholly unacceptable, and that universal standards have to be upheld. Training in conflict management theory and practice helps human rights actors reflect on how their attitude, behaviour and communication style can escalate or defuse conflictual situations. Based on this awareness, they can then determine how best to address certain rights concerns.

The skills mentioned above are as relevant for humanitarian agencies as they are for human rights actors. The humanitarian context is pre-eminently one where the fields of human rights and conflict management intersect. Whether their mandate is to protect refugees, internally displaced people and children, or provide immediate relief, or restore essential services, humanitarian agencies are constantly dealing with conflict. For example, extensive assistance to displaced people often provokes tension amongst local populations because of scarce resources. Aid to civilians in areas under the control of insurgents can feed suspicions of supporting the enemy or pursuing a political agenda, which need to be managed. Mass movements of people require negotiation around issues of settlement, integration, and repatriation. Conflict is also highly likely to erupt in situations where many people of different cultural, ethnic, religious and political backgrounds are thrown together in a confined area, such as a refugee camp. Many acknowledge that humanitarian intervention in war zones is inevitably politicised and that the

organisations involved play a number of conflict management roles (Miall et al. 1999: 145-147; Anderson 1996).

Bodies like the United Nations High Commissioner for Refugees (UNHCR) and the International Committee of the Red Cross (ICRC) may not be conflict-management organisations, but they have to manage conflict continuously in the implementation of their humanitarian mandates (see, for example, Nathan 2000a). For example, the ICRC has had to negotiate ceasefires with belligerent parties at times in order to reach populations affected by the fighting. In 1998, a group of Namibians from the Caprivi region fled to Botswana following violent clashes with government forces, after the group had allegedly called for secession of the region. The group applied for asylum in Botswana on grounds of political persecution, but the Namibian government demanded their extradition to face charges of treason. The regional office of the UNHCR was then asked to intervene in order to resolve the situation (Africa Confidential Vol. 40, No. 1, 8 January 1999). Similarly, the UNHCR office in northern Kenya facilitated an agreement in 1997 between Oromo refugees and local communities after conflicts over livestock had led to fighting and loss of life. In other words, an organisation such as the UNHCR must address certain types of conflict in order to fulfil its mandate. Thus, training in conflict management skills enhances the capacity of humanitarian bodies to perform their mandated functions and allows them to develop appropriate strategies for conflict situations that they regularly encounter in the execution of their primary humanitarian duties in complex and volatile environments.

IV. Insights gained from linking human rights and conflict management in practice

The previous sections have sought to highlight the analytical, political and strategic linkages between human rights and conflict management and have emphasised the importance of bridging the gap between the two fields. Since 1999, the Centre for Conflict Resolution has made an effort to do so in practice through its Human Rights and Conflict Management Training Programme (HRCMP). This programme was established in order to explore, understand, and promote the relationship between human rights and conflict management.[29] CCR's work in this area challenges the tendency in the literature to make a firm distinction between the two fields, as it confirms the existence of extensive linkages between the arenas of human rights and conflict management. This section of the occasional paper records a number of insights acquired from CCR's experience to date, some of which relate specifically to human rights education. More information on the programme itself can be found in a separate box (see page pp. 6-7).

1. The relationship between human rights and conflict is dialectical.

This paper has shown how gross human rights violations can occur as a consequence of violent conflict, and how a sustained denial of human rights can lead to violent conflict. In working with various organisations in the fields of human rights and conflict management, it has transpired that the relationship between human rights and conflict is more than twofold, especially if one considers "conflict" more broadly than high-intensity conflict. For example, the protection and enforcement of human rights can also lead to conflict. Enforcing the rights of marginalised or disadvantaged groups can threaten the status quo, and may challenge prescribed notions of inferiority and superiority, as well as traditional power relations. The realisation of women's rights in traditionally patriarchal societies constitutes a prime example in this regard. The enforcement of rights can also require societal transformation in the sense of redistribution, as is the case in post-apartheid South Africa where the equality, dignity and rights of all racial groups are now acknowledged. Such change brings the potential for conflict. In this regard, it sometimes seems as if rights are seen as a "pie" with limited "slices"; if the previously denied

rights of a specific group are acknowledged, other groups whose rights were previously upheld may perceive this as automatically reducing or limiting their own rights.

Other aspects of the rights/conflict relationship include the possibility that conflict may arise over different interpretations of one single human right and in situations where different rights have to be balanced against one another. Moreover, when expectations about the realisation of rights are not met, this can give rise to conflict. In a training workshop with local conflict resolution organisations, for example, participants shared their impression that human rights education provided by others had at times increased the potential for conflict in the impoverished areas where they operated. In their view, as people became more aware of their rights, the discrepancy between the rights they were supposed to have and the lack of realisation thereof, especially in the socio-economic domain, became glaringly obvious. Conflict resolution fieldworkers felt that rights education had in fact exacerbated existing tensions in these communities by making people more acutely aware of the structural inequities and inequalities in South African society. While acknowledging the importance of human rights education, these fieldworkers grappled with the question of how to deal with the resulting tension and its negative manifestations (fights, threats, intimidation, etc.). They also indicated a need to discuss this potentially negative effect of such education with human rights organisations, so that joint strategies could be developed for addressing tension and ensuring that rights education would not take place in a vacuum.

These additional aspects of the rights/conflict relationship further underscore the importance of dialogue between the two fields, as they demonstrate the complexities that looking at human rights and conflict management in conjunction may reveal.

2. It may be appropriate to target human rights actors and conflict management practitioners separately for training and capacity-building. However, when developing strategies for dealing with complex issues, it is necessary to bring actors from both fields together.

At its inception, the HRCMP intended to bring practitioners from the two fields together in joint training workshops in order to facilitate “cross-fertilisation”, but we soon realised that the needs of prospective trainees differ considerably. Human rights actors generally have a strong need to develop their capacity to deal with conflict in a constructive manner while undertaking activities towards rights protection and promotion. For them, it is important to learn how communication skills, negotiation, problem-solving, and facilitation can strengthen their work. Building their understanding of interest-based conflict resolution also enables them to frame human rights issues in terms of the interests of parties and to assess on a case-by-case basis whether litigation or mediation would be most suitable in a particular situation. The needs of conflict management practitioners, on the other hand, relate more to developing an understanding of the meaning and value of human rights for their work, and identifying human rights aspects in conflicts. They need to be familiar with the constitutional and legislative frameworks, and must be able to conduct their interventions in line with the human rights instruments relevant to the context in which they operate. For example, a conflict resolution practitioner mediating in a conflict over an eviction of a farm worker from a farm in South Africa needs to know what rights and procedures are provided for in the Extension of Security of Tenure Act.

Therefore, targeting actors in both fields separately is most appropriate for the purpose of capacity-building and training, because it allows for in-depth training courses that are tailored to the needs of the specific audience. Nevertheless, bringing practitioners from both fields together may be particularly relevant when developing strategies that require both human rights intervention and conflict management. Input from both perspectives is required to develop strategies for issues such as land reform, the question of traditional leadership in a constitutional democracy, xenophobia, and integrating human rights into peace processes, to name but a few. In such situations, a holistic and comprehensive approach must be adopted that integrates

insights, methods and values from both fields, and that ensures that conflicts are constructively addressed in ways that uphold human rights. The challenge of land reform in South Africa, for example, can only be tackled by combining human rights and conflict resolution perspectives, in seeking to reconcile the needs and interests of various parties within parameters laid down by the Constitution and legislation.

3. Communication and negotiation skills are of primary importance in building parties' awareness of human rights concerns and obtaining their co-operation in rights protection.

It is striking to see the impact that conflict management training can have on human rights actors. Communication and negotiation skills are pivotal in building the capacity and confidence of such actors to deal with conflicts and tension concerning rights, and to gain the co-operation of parties with whom they interact. Earlier in this paper, a confidence-building approach was proposed in the context of human rights work. This approach seeks to obtain the co-operation of parties through dialogue, relationship-building and the development of trust, by exploring the parties' needs and interests, and communicating about rights in terms of such interests and needs. Our experience to date indicates that such a confidence-building approach can be very useful for human rights actors, especially on a grassroots level. In South Africa, many human rights actors take an adversarial stance when encountering real or alleged human rights violations. This attitude generally stems from the country's past, in which most rights were denied and confrontation seemed the only way to challenge injustice. At present, it is at times enhanced by the knowledge that South Africa has a strong constitutional framework that endorses the rights of all people, irrespective of colour and other differentiating features. Human rights actors are therefore sometimes keen to "teach a lesson" to those who currently deny rights. The latter often include people or bodies who had little need to care for human rights in the past, such as the police or landowners, which turns the interaction between such actors and human rights activists into a potentially explosive one.

Exposing human rights activists to the theory and practice of conflict management challenges their adversarial attitude in confronting individuals or organisations allegedly responsible for human rights violations. It makes them aware of the negative consequences of that stance in terms of enhancing the potential for further conflict and for damaging the relationship between parties. For example, if a paralegal Advice Officer in a rural town harshly confronts a farmer about the illegal eviction of a farm worker, the farm worker may eventually be reinstated on the farmer's land. However, in fighting over the validity of the eviction, the relationship between the farmer and the farm worker may have deteriorated to such an extent that their effective co-operation and co-existence on the farm has become problematic. In the end, the farm worker's human rights are enforced, but her living situation may become unbearable.

The communication style adopted by human rights actors thus greatly influences the extent to which other parties are willing to co-operate on issues of human rights. The example used above might develop very differently if the human rights worker takes a different approach and engages the farmer in a more co-operative manner. Negotiation skills are also relevant in this regard, because they enable human rights actors to identify the needs and interests of parties and to address issues of human rights in relation to these. In this example, the farmer might have evicted the farm worker on the basis of specific concerns of which the farm worker and the Advice Officer were not necessarily aware. At the same time, he might be ignorant of the legislative framework that grants the farm worker certain rights. Most likely, he is also unfamiliar with the farm worker's needs and interests that made her determined to remain on the farm. A negotiation process might explore whether the needs and interests of both parties are mutually exclusive, or whether they can be reconciled. It allows for human rights issues to be raised in relation to parties' needs and interests. This may assist in gaining their understanding of human rights concerns and ensuring their co-operation with a conflict resolution process. Engaging parties in such a non-adversarial way makes parties less defensive and more inclined to seek a solution that serves both parties' needs and interests, and that is respectful of rights.

Thus, communication and negotiation skills are essential in building parties' awareness of human rights concerns and obtaining their co-operation in rights protection.

4. Conflict resolution is imperative in human rights education and training for participants and trainers.

Traditional human rights education generally focuses on making people aware of their rights and the various instruments and mechanisms available for the protection and promotion of human rights. However, building people's knowledge of rights and enhancing their capacity to identify rights is not necessarily sufficient to ensure that they will be able to enjoy those rights. They also need to gain the capacity and confidence to exercise those rights. The discussion above has already highlighted the usefulness of conflict resolution skills in the areas of negotiation, communication and mediation, in ensuring respect for human rights. Problem-solving skills are also relevant, especially in contexts where serious constraints prevent the full realisation of rights. Problem-solving skills enable people to identify obstacles that exist in their environment and to generate a variety of options that can be employed for the implementation of rights. They also enhance people's ability to assess what actions they can undertake on their own account, individually or within their communities, rather than relying solely on the state for the implementation of rights.

Including conflict resolution in human rights training and education is not only beneficial to participants, but also to trainers. The Education and Training Officers of the South African Human Rights Commission (SAHRC), for example, encounter conflict on a continuous basis in the training environment. A needs assessment conducted by the HRCMP for the Commission's National Centre for Human Rights Education and Training indicated that significant tension surrounds issues such as homosexuality, sexism, racism, the abolition of the death penalty, the illegality of corporal punishment, abortion, tolerance towards different religions, xenophobia, and so on. The SAHRC trainers often face negative attitudes and sometimes downright hostility from the various audiences with whom they work, because the content of their training challenges people's stereotypes and prejudices. Conflict resolution can help human rights trainers and educators to address such conflict in the training environment and to deal with extreme points of view and strong emotions generated by human rights issues. Again, it is not much use overriding people's opinions and telling them how they ought to feel on certain issues and what the law says, as this often simply fuels resentment and hostility. Rather, trainers and educators must engage their audiences in ways that make them willing to question their own assumptions and perspectives, and this is facilitated by the use of conflict resolution skills. Conflict resolution can thus build the ability and confidence of trainers and educators in managing the tensions and conflicts that arise in the context of training and education of human rights.

5. In training settings, it is at times more strategic to raise human rights indirectly rather than directly

We have found that it is sometimes preferable to raise human rights indirectly in training workshops through notions of "human dignity" and "basic human needs" rather than framing issues directly in terms of "rights". Participants may know of human rights, but do not necessarily have much understanding of what they mean and why they are relevant. Human rights are often seen as legal, abstract concepts with little bearing on the daily lives of people. Participants often find it easier to relate to concepts such as human dignity and basic human needs, which they can link immediately to social, political, economic, and cultural concerns. These concepts thus enable human rights issues to be grounded in the experiences of participants and assist in "demystifying" human rights, as will be illustrated below.

Moreover, human rights are still sometimes seen as subversive or problematic by state officials and politicians. For example, the police may believe that the rights afforded to individuals

accused of breaking the law essentially protect criminals and complicate the maintenance of law and order. The government of a country may consider an identity group's right to self-determination subversive, viewing it as threatening the unity of the state. The perception of rights as problematic can lead to defensiveness and hostility. Mentioning "human rights" in certain contexts can cause participants to "shut off" and distance themselves from training and education. Engaging people in discussions about human dignity or basic human needs is generally less threatening, and may ensure that they engage more substantially in training of audiences that consider rights as difficult. A final reason for opting for an indirect approach to rights education relates to the claim that rights are a Western concept. When discussing rights in an African environment, the question is often raised as to what extent human rights are Western or Northern inventions that have little relevance in Africa. Concepts such as needs and dignity, however, are easily located in the local context. Most cultures have a notion of "dignity" included in their norms, customs, and world view. These concepts are therefore helpful in illustrating that human rights are not unrelated to the African context, even though some major human rights instruments were originally drawn up in the West.

The concept of human dignity helps participants in HRCMP workshops reflect on any violations that they may have endured and draws out their ideas as to how people should relate to one another. Many participants relate the concept to civil and political concerns (such as respect, equality, tolerance, exclusion, or discrimination), but some have also linked it to socio-economic issues. In one workshop, for example, participants sketched vividly how a lack of water could undermine the dignity of people in various ways, by limiting the degree of hygiene available to them, forcing them to stand in long queues in the scorching sun, and provoking tensions amongst people. Through the notion of human dignity, a basis is created for discussing rights, the relevance of rights for the protection of people's dignity, the responsibilities of state and citizens, and the consequences of insufficient respect for rights. It has proved to be an excellent way of building participants' understanding of the origins of human rights instruments such as the South African Bill of Rights, the Universal Declaration of Human Rights, the African Charter of Human and Peoples' Rights, and others. At the end of one training workshop, for example, a Regional Director of the Independent Complaints Directorate commented that he had found the human dignity exercise most useful, because "it showed the purpose of why human rights are codified and protected — for humankind."[30]

As indicated above, the concept of basic human needs has also been useful in building participants' understanding of human rights. The idea of human beings having needs that are fundamental to their survival and development generally resonates immediately with workshop participants. Needs can be introduced through, for example, a discussion of causes of conflict in a particular country or region, through the idea of human security, or by getting participants to generate a list of what people need in order to feel safe and secure. Needs can then be related to rights, and the surprise of participants at finding the close link between rights and needs is often palpable when they compare the list of needs they have generated with an instrument like the African Charter. The idea of needs can also help participants to grasp the relationship between direct and structural violence, or manifest and latent conflict. It enables them to recognise these dynamics in their own country. For example, following a training session, one Member of Parliament from a country in Southern Africa indicated that he had never realised the extent to which the tensions in his country were of a structural nature, and what fertile ground this provided for violent conflict. In another case, a Deputy Minister expressed his astonishment at realising that rights had a direct, practical significance for dealing with and preventing conflict. Indeed, the concept of needs has been particularly helpful in building people's understanding of the consequences of denying rights in terms of increasing the potential for conflict.

The concepts of human dignity and needs thus provide a basis for talking about human rights in a way that helps participants grasp the meaning, value, and relevance of rights. Introducing rights in such an indirect way is not meant to diffuse rights or lessen their importance. Rather, it is a strategy aimed at building understanding of and appreciation for human rights in a way that

ensures that human rights education "sinks in" and does not alienate those participating in training and education.

V. Conclusion

This occasional paper has shown that there are so many links between human rights and conflict management that it does not make sense to contemplate these fields in isolation from one another. Human rights are relevant in the generation, manifestation, resolution and prevention of destructive conflict, and must therefore be taken into account throughout the whole conflict management process. At the same time, skills and insights from the conflict management field can make a contribution to the protection and promotion of rights by strengthening the capacity of human rights actors to deal with conflict over rights issues. The six propositions discussed here, as well as their practical implications and the insights acquired by CCR, constitute compelling reasons for actors in human rights and conflict management to explore how they can co-operate with and support one another given their common goal of reaching an enduring and just peace.

The propositions discussed undoubtedly require greater specificity and nuance in different contexts, and they should be pursued through further research and analysis. Nevertheless, it appears that the fields of human rights and conflict management are far more complementary than contradictory. Certain tensions do indeed exist between them, to the extent that activities or attitudes by one type of actors may negatively affect efforts by actors in the other field. These tensions perhaps demonstrate that the two fields cannot or should not be merged, or that human rights actors cannot become conflict management experts and vice versa. However, these tensions should not cause actors in each field to remain withdrawn from one another as if they were competitors in the pursuit of a sustainable peace. On the contrary, they should be seen as creative differences that prompt human rights actors and conflict management practitioners to interact with one another and understand the mission, methods, and principles guiding each other. This tension encourages them to seek ways of contributing to one another's activities and optimising their efforts towards peace, justice, and reconciliation. Insufficient recognition of the close relationship between human rights and conflict management is detrimental to the objectives pursued by both fields. Peace and justice are inextricably linked. The absence of justice generally leads to an absence of peace. Thus, the fields of human rights and conflict management are inextricably linked.

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NOTES

1. The UN Centre for Human Rights eventually decided not to publish the Handbook due to internal restructuring. However, it remained strongly supportive of the manuscript, and encouraged CCR to seek publication elsewhere. The manuscript will be published by the University of Notre Dame Press (Indiana, USA) in 2003. It is currently being updated and revised. The following people contributed to the Handbook: Kent Arnold, Guy Lamb, Michelle Parlevliet, and Jeremy Sarkin.

2. In the classification used by the Interdisciplinary Research Program on Causes of Human Rights Violations (PIOOM) based in Leiden (the Netherlands), "high-intensity conflict" refers to open warfare among rival groups and/or mass destruction and displacement of sectors of the civilian population, in which 1 000 or more people are killed in a 12-month period. (Jongman 2000). The terms "high intensity", "violent" and "destructive" conflict are used here interchangeably.

3. Mandela has been quoted as saying "this process should be all inclusive — not only government, National Assembly and political parties, but also rebel groups on the ground … these are the people

slaughtering civilians … and unless we include them in the negotiations it will be difficult to stop the violence." See http://usinfo.state.gov/regional/af/security/a0022203.htm.

4. In Africa, the debate on whether or not to exclude parties responsible for gross human rights violations has been particularly heated regarding Sierra Leone and the leader of the Revolutionary United Front, Foday Sankoh. (See Human Rights Watch 1999.)

5. On the one hand, the TRC was supposed to act as a non-partisan facilitator, bringing together different actors and parties to share and discuss their views on the past. On the other hand, the TRC, as a body that was to assert the Rule of Law and build a human rights culture, was expected to pass moral judgement on the past and to denounce apartheid as wrong.

6. "Mandela steps up pressure for Burundi to release political prisoners," 13 June 2000; and "Mandela leaves Burundi with prison issue unresolved," both from Hirondelle News Agency, 14 June 2001; at http://www.hirondelle.org.

7. The chart provided in this paper is more extensive than Baker's and organises the information into several categories. Baker distinguishes between "conflict managers" and "democratizers", and identifies the following differences: importance of cultural values/ universal human rights values and standards; inclusive process/ exclusive process; goal is reconciliation/ goal is justice; pragmatic, confidence-building/ principles institutionalising law to build trust in the system; emphasis on process/ emphasis on outcome; moral equivalence of belligerents/ attributing blame; conflict resolution as negotiable/ justice as non-negotiable; political neutrality of outside actors/ outside mediators cannot be morally neutral (Baker 1996: 567).

8. On Sierra Leone, see Human Rights Watch (1999) and International Crisis Group (1999); on Bosnia, see the International Criminal Tribunal for the Former Yugoslavia, Foca Indictment (IT-96-23), at http://www.icty.org/indictment/english, and Amnesty International (1993).

9. Examples include Malawi, the Democratic Republic of Congo, Angola, Mozambique, and Zambia. See also Annan (1998: par. 12).

10. Galtung argues that violence exists when human beings are prevented from meeting their full potential. Direct or personal violence occurs when there is an actor that commits this violence (i.e., rape, murder and assault), and structural violence occurs where there is no such actor (i.e., poverty, homelessness and lack of health care). In the latter case, unequal access to power and resources is built into the social system, leading to unequal life chances for individuals or groups. See also Webb (1986: 431-434) for a further discussion of structural violence.

11. Yarn defines positive peace as a situation where states or non-state groups continually engage in the non-violent, constructive management of their differences with the goal of mutually satisfying relations. Yarn also argues that the notion is closely linked to "security" (lack of threats of violence or civil disorder and stable relations among stable societies) and "justice" (the stability is fair, equitable and cognisant of fundamental human rights.)

12. It must be noted that human needs theory has been criticised in the conflict management field. The criticism relates to, amongst other things, the "testability" of basic human needs; their existence cannot be proven. It has also been questioned whether needs are truly universal and fundamental in the sense of not changing over time and in different contexts, and whether a needs hierarchy exist. For critical commentaries on needs theory. See, for example, Mitchell (1990); Roy (1990).

13. Claude and Weston (1992: 138-144) elaborate on these categories of needs.

14. The Universal Declaration of Human Rights and the African Charter on Human and Peoples' Rights are included as appendices to this paper. The appropriateness of understanding rights in relation to needs is also reflected by considering the human rights model of McDougal, Lasswell and Chen, discussed by Weston and Claude (1992: 5-6). This model emphasises the values of respect, power, wealth, enlightenment, well being, skills, affection and rectitude as underlying human rights. These values closely relate to basic human needs as conceptualised in this paper.

15. Please note that Osaghae does not distinguish between interests and needs as I have done, following Burton and Azar. He uses the term "core interests" in referring to what have been called "needs" in this paper.

16. They highlight that the relationship is not a simple one: one single need may be satisfied through the implementation of several rights, and one right may satisfy several needs. This underscores the indivisible and interdependent nature of rights.

17. Constitutional Court of South Africa, judgement in Grootboom case, CT 11/00 — as quoted in (Chaskalson (2000b). The nexus between rights and needs has been criticised by some. Manji (1998) argues that the struggle for rights and justice in Africa became transformed and demobilised in post-colonial states as it was increasingly subsumed in the pursuit of "development" by the new nationalist leadership. The focus on development in newly independent states (with its emphasis on attending to the "basic needs" of the population) replaced the earlier popular mobilisation for accountability, democracy and justice. He asserts that this has led to the depoliticisation of poverty, which is no longer seen as a consequence of unjust and illegitimate structures of governance, but as something politically neutral that simply warrants technical expertise to help people cope with impoverishment. This justifies even less political pluralism and popular participation in public affairs. Manji also questions the concept of needs, arguing that they imply a degree of dependency, and portray people as "victims" of lack of development or as "beneficiaries" of aid, rather than as active social and political agents. In this paper, I use the concept of needs as related to security, welfare, freedom and identity, thus locating them in the political, social, economic and cultural domain.

18. The United Nations Secretary-General adopted this distinction in his report on the prevention of armed conflict; see Annan (2001.)

19. The term "identity group" is used here rather than "ethnic group" or "minority" in recognition of two factors. Not only can the identity around which a social group is organised be different from ethnicity (race, religion), but identity groups may also constitute the oppressed majority in a country rather than a minority (as was the case in South Africa during apartheid).

20. Lederach considers social-psychological perceptions critical to the dynamic that drives current conflicts. Other scholars who have written on the social-psychological dynamics of conflict and war include Volkan (1990, 1991); Montville (1990); Volkan, Montville, and Julius (1990).

21. Nathan does not argue against the use of leverage in negotiations per se, but emphasises that it should not be undertaken by the intervenor him- or herself, but rather by outside parties.

22. These state institutions include the Public Protector, the Human Rights Commission, the Commission on Gender Equality, the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (not yet established), the Auditor-General and the Electoral Commission.

23. I thank Judith Cohen-Robb for her comments on this section. She is the former Regional Manager of Lawyers for Human Rights in the Western Cape Province and currently Legislation Monitor and Parliamentary Liaison for the South African Human Rights Commission.

24. The definition of power used here is thus broader than that of realists who tend to equate power with force.

25. This case also illustrated a tension between the fields of human rights and conflict management. The South African residents were so adamant that their behaviour was not motivated by xenophobia, that they threatened to walk out of the process if xenophobia were raised as an issue in the conflict. This created a dilemma for the mediators: on the one hand, the intervention could only succeed with the involvement of all parties; on the other hand, not raising xenophobia as an issue would deny the experiences of the foreigners, who had experienced assault, harassment, threats, negative stereotyping, envy, etc. The intervention team then decided that it would not emphasise xenophobia in the beginning of the process, but would increasingly bring it in as the process evolved, so as to challenge the South African residents and build their awareness of what xenophobia involves.

26. Discussion with a senior Kenyan diplomat facilitating Track Two diplomacy in Sudan; March 2001, Cape Town.

27. Lesotho Network for Conflict Management (2001), Draft National Peace Accord, on file with author.

28. Utterwulghe is the Director of the Centre for Common Ground, Angola.

29. The HRCMP has been funded by the Royal Netherlands Embassy in Pretoria for the period 1999-July 2002.

30. The Independent Complaints Directorate is a statutory civilian body that monitors police conduct and investigates complaints about abuse of power by the police.

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Water is a catalyst for peace

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Opening Session, Stockholm Water Symposium Laureate Lecture
Monday 14 August 2000

Ladies and gentlemen, friends, distinguished colleagues.

A year has passed since we last met. It is always a deep and lasting pleasure for me to return to such a beautiful city and such an impressive gathering of people. Or to such an *impressive* city and *beautiful* gathering of people.

Before I offer my thoughts on dams, rivers, war and peace, let me first thank the Swedish Government and Royalty for playing a lead role in keeping water at the forefront of the global policy agenda, where it belongs. I also thank the leaders of the Stockholm Water Foundation, in particular, for recognition through your prestigious annual Water Prize.

I recently read what may be the first and certainly most eloquent words on the topic of environmental scarcity and water security. Mark Twain lived in a frontier California that was, a century ago, hot, drought- and flood-prone, mosquito-ridden, politically-unstable, economically stagnant -- a condition closely resembling many nations today. "In the West," he wrote, "whiskey’s for drinking, and water’s for fighting over."

As a devoted lover of Irish whiskey, I can confirm the truth behind the first part of his assertion. Indeed, I could wax eloquent and rhapsodise over the advantages of single malt as against blended, the merits of serving 'neat' or 'on the rocks.' But lest I encounter any disagreement, with no 'proof' at hand, I shall reserve my energies for later tonight.

It is the latter half of Twain’s then-unconventional now widely accepted hypothesis – that "water is for fighting over"-- which concerns us, and which I shall quite seriously test. For if true, it has grave implications for water security within and between all nations. It demands hypersensitive development of all rivers, lakes or aquifers which cross political boundaries. Yet it also requires a bit of caution: for I note that this "Water War" rhetoric escalated almost exactly as 'Cold War' rhetoric declined.

The shadow of scarcity

To be sure, scarcity alone is cause for concern. Though our planet is blue, less than 2.5 percent of our water is fresh, less than 33 percent of fresh water is fluid, less than 1.7 percent of all fluid waters run in our streams. And we have been stopping even these. This century we dammed our rivers at unprecedented rates of one per hour, and, since 1950, at an unprecedented scales of 40,000 dams more than four stories high.
As one who authorised the next stage of one of the largest dams in Africa I can say that nations built, and continue to build, for sound reasons. Dams store, use and divert water for consumption, irrigation, cooling, transportation, construction, mills, power and recreation. Dams remove water from the Ganges, Amazon, Danube or Columbia to grow cities on their banks. When it comes to parting -- or imparting -- the waters, dams are our oldest tool. Yet are they our *only* tool, or even our *best* option?

To pursue that question, the South Africa-based World Commission on Dams, which I chair, has undertaken an independent, comprehensive global review. For two years we have been "testing the waters." On Nov. 16 our Final Report will answer that question with authority. But just as water scarcity drove the construction of dams, scarcity also drives the Commission's work. There is no substitute for the water that sustains us; even my "*uisce bahara*" Irish for "water of life," must be offset with real H2O. We daily deplete what water remains, and it is no overstatement to call it "a crisis of biblical proportions." In Ecclesiastes, recall the passage:

> *One generation passeth away,*
> *and another generation cometh:*
> *but the earth abideth always....*
> *All rivers runneth to the sea,*
> *yet the sea is not full...*

The words are beautiful, haunting and, suddenly, anachronistic. For they are not true due to growth, change and developments during our lives. Even degraded rivers seldom totally *runneth* at all, but loiter in a chain of reservoirs. In some years our mightiest rivers -- Africa's Nile, Asia's Yellow, America's Colorado, Australia's Murray -- do not reach the sea.
As rivers shrivel, freshwater ecosystems can't *abideth.* As *another generation cometh* more people hunger and thirst for less food and water. Despite existing dams, pipes, canals and levees, 1.2 billion people, or one in five world-wide, lack access to safe drinking water. Three billion, or half the world, lack sanitation; millions *passeth away* from waterborne disease. Farmers compete with booming cities for water. In a decade we drain aquifers that took centuries to fill. In dry regions, saltwater pollutes groundwater miles from sea. In China, Mexico, India, water tables fall a metre a year, and the earth above subsides upon them. Worse, in 2025 we must find a fifth more water for 3 billion new people, shoved against the hard wall of finite supply. By then, one in three will struggle just to find water to drink and bathe, much less grow food.

This scarcity sounds bleak, and it is. But some see it as the brighter side of troubling water security issues. They say scarcity locks developed and developing nations in a fierce, competitive struggle in which governments must satisfy the thirst, hunger and

hygiene of a nation's restless millions, no matter the cost. It is their national interest. And thus, they maintain, when rivers cross borders and are consumed both within and between countries, water scarcity leads to water stress, which leads to water wars.

Trans-boundary waters

Indeed, never before have stakes been higher, players more numerous, the field more complex. In 1978 there were 214 international basins; with the break-up of the Soviet Union and formation of the Balkan states, there are now 261. These rivers cover 45.3 percent of the land surface of the earth, and carry 80 percent of its available fresh water. They cover 145 nations; and 21 nations, such as Bangladesh, lie entirely within a shared basin.

It is true that stress, tensions and disputes are inevitable, in and between nations. Water, or even sediment, used or diverted by you, upstream, is not available for me, struggling downstream. I am likely to get "tight jaws" over your plans to develop it. In anger we may exchange words, or lawsuits, or…much worse. In a number of so-called "hot spots" and "flashpoints" around the globe -- the Middle East, Southern Africa, South Asia or the Nile, water diplomats negotiate even as I speak.

Chorus of doom

A century after Mr Twain's lonely solo, the tune "water's for fighting over" has escalated into a global symphony, with drumbeat, full orchestra and halleluja chorus:
In 1991, my World Water co-Commissioner Asit Biswas predicted that "the political tensions between certain neighbouring countries over the use of international rivers, lakes and aquifers may escalate to the point of war, even before we move into the 21st Century."

Four years later, World Bank vice-president for environmentally sustainable development, my friend Ismail Serageldin warned, "wars of the next century will be over water," not oil.

"My fear is that we're headed for a period of water wars between nations," Klaus Töpfer, head of the UN Environment Programme, said recently. "Can we afford that, in a world of globalisation and tribalisation, where conflicts over natural resources and the numbers of environmental refugees are already growing?"

"Battles have been fought over water allocation in many other countries," asserts Mikhail Gorbachev. "The potential for a conflict over water is perhaps at its most serious in the Middle East where water supplies are extremely limited, political tensions traditionally run high, and water is just one of the issues that may divide countries."

With all due respect to my friends, *have* battles been fought over water? Is water scarcity a *casus belli*? *Does* it in fact divide nations? My own answer is no, no and no. I recognise the obvious value to sensational Water War rhetoric. Alarmists awaken people to the underlying reality of water scarcity, and rally troops to become more

progressive and interdependent. By contrast, to challenge or dispute that rhetoric is to risk making us passive or smug about the status quo, or delay badly needed innovations or co-operation against stress.

And yet I do challenge 'Water War' rhetoric. For there is no hard evidence to back it up. If the 'water's-for-fighting' chorus is off key, then its disharmony affects lives as well. It shifts energy and resources from local priorities to foreign affairs. It scares off investment where it is most in need. It inverts priorities, delays implementation of policy. And it forgets that water management is, ultimately, about real people. Mahatma Gandhi said, "When you are unsure of a course of action, remember the face of the poorest, weakest person in society and ask yourself what impact the action you are about to take will have on that person." More recently Nelson Mandela reiterated that democratic systems lose their validity if they fail to combat and eradicate poverty.

We thus would be well advised to remember that, for the poorest and weakest, *water's* for drinking, not fighting over. The poor are most affected by rhetoric, just as they are by war. It is easier to ignore their thirst than to divert attention to potential foreign threats, real or imagined. Easier, not better. To help the poor and weak, let us reform our unstable, consumptive, ultra-nationalistic habits to share our resource.
That requires a paradigm shift. In the past we have often overdeveloped trans-national waters based on the needs of top-down national strategic policies; perhaps we now must develop bottom-up national strategic policies based on the needs of our critical trans-national waters. This is not radical, or even unusual. It grows out of the history of conflict resolution on our border-crossing rivers; among the first was the USA.

USA's experience

Borders become battlegrounds whenever push of trade turns to shove of war over resources, like oil. No two nations share a larger border than the US and Canada. Half of that border consists of lakes, rivers, aquifers. A peaceful, watery border. But then, one century ago, a group of Montana farmers proposed to construct a few dams on the St. Mary’s River. No one ever asked the farmers, and voters, downstream in Canada for their opinion, or their consent, about the American dams.

In retaliation, Canada vowed to divert and drain another river, the Milk, before it flowed into the US. Sabres rattled. Diplomats assembled. Bellicosity mixed with patriotism and escalated into rumours of war.

Does this sound familiar? It should. The odds are that any of the 145 nations who share a common river will disagree with each other over the use of that river. And since ‘use’ almost invariably requires dams, dams become a critical focal point in almost every nation’s foreign policy. In wet or dry years, in rainy or arid climates, as people reduce rivers to trickles, foreign policy tests dams again and again:

Turkey's plans to build a complex of 20 dams on the Euphrates River, upstream from fast-growing and chronically drought-prone Syria, brought an exchange of tensions, leverage, and threats, like former Prime Minister Ozals' that Turkey might cut off the river's water.

On the Indus, Pakistan warned in no uncertain terms that water cut off by a dam upstream in India would lead to trouble; Indian warned back against flood damage from Pakistan's downstream dam.

The Nile River has been seen as another area of tension between both upstream and downstream countries.

On Parana River, Argentina fiercely opposed plans by Brazil and Paraguay to construct the world's biggest hydrodam because it would expropriate Argentina's own natural resources.

In the Middle East, the one thing that Israel's Prime Minister Barak, Jordan's King Abdullah and Palestinian leader Yasser Arafat can all agree upon is that failure to resolve territorial and self-determination issues could result in a conflict worse than all previously seen in the region, and water scarcity is a reflection of larger political problems.

The Historical Evidence

I have seen sovereign states and ethnic groups within nations go to war over every resource -- oil, land, humans, diamonds, gas, livestock, or gold -- but never, interestingly, over *renewable* resources, and never, in particular, over water development and dams. True, water has never been more scarce, and there is always a first time for anything. But there is also a difference between reaching a snapping point, and snapping; between being pushed to the brink of conflict over water and waging a water war.

For two years, the World Commission on Dams has explored that difference. We explore not only the role dams play *among* peoples and nations, but equally important, we examine the strategic role of dams *between* them, asking: Does our need for water divide us, or unite us?

The latest US policy -- a multi-million dollar agenda which grew out of a meeting of its intelligence, military diplomatic and executive officials -- asserts that competition over water and dams leads to conflict. But such a policy is betrayed by the country's own history. For like the other competitive nations, Canada and the US nearly went to war over water; they manoeuvred over rivers and dams, they went eyeball to eyeball, and then, like riparian nations everywhere have always done, they both blinked.

Why? There is of course no one clear or easy answer why peace broke out over water there, and elsewhere. No universal secret, no 'magic bullet' emerges. But there are rational clues, or principles, to consider as potential reasons. And all share one common denominator. Water.

Water: catalyst for co-operation

Indeed, just as rain does not start but rather cools and suppresses fire, so water, by its very nature, tends to induce even hostile co-riparian countries to co-operate, even as disputes rage over other issues. The weight of historical evidence demonstrates that organised political bodies have signed 3600 water related treaties since AD 805. Of seven minor water-related skirmishes in that time all began over non-water issues. Most dealt with navigation and borders, but since 1814 states have negotiated a smaller proportion of treaties over flood control, water management, hydropower projects and allocation for consumptive and non-consumptive use.

There are strategic reasons. Of all the 261 trans-boundary waters, in only a few cases: (1) is the downstream country utterly dependent on the river for water; (2) can the upstream country restrict the river's flow; (3) is there a legacy of antagonism between riparians; and (4) is the downstream country militarily stronger than upstream.

Another reason involves scale and focus. For water peace to emerge, negotiators think local, act local, and draft treaties that stem from local water project on a specific local river, lake or aquifer that straddles two or more nations. These appear to have more real and lasting authority than broad, vague, undefined agreements with far reaching scope but little impact. This does not mean that states should not ratify the UN Convention on Shared Water Courses, as such ratification would reflect a willingness to be bound by co-operative incentives, in which agreement over water leads to other things. North America's water treaties covering fisheries, acid rain, navigation, climate change, the Great Lakes, St. Lawrence and the Columbia Basin -- expanded directly from that tiny, focused accord between farmers a century ago.

Yet another reason involves communication: keep talking before, during and after a project. Prior notification of water development plans goes a long way towards water security. This does not mean nations must obtain consent, or permission, for national interest comes first. To notify is not to end water disputes, or potential for stress and tension. But it engages both, or all riparian parties, in a frank discussion from which "good faith negotiation" helps define where national interests, for a finite resource, compete and where, like a river or aquifer, they overlap and can be shared. In the treaty between Argentina and Brazil, the very principles that were at issue in the dispute -- prior notification and consultation -- were enshrined in the agreement that resolved it.

We must also consider gender in turning water into a catalyst for peace. In recent years I have been speaking of what I call the "feminisation of politics and policy." This is not a matter of quotas or tokenism. It is how women transform the decision making process, they see water less as a weapon, or as an economic resource than a basis for their family's health; water to women is something to share, not fight over.

Water also becomes a catalyst for peace over equity. Most treaties that allocate quantity or quality between states, or establish ground rules for management, reflect the principle of equity, or equitable use. This may seem odd, when there is not a perfect balance of power between nations. And the definition of equitable varies from case to case, and according to facts and circumstance. But in this regard water, a potentially renewable resource, can be a common denominator, a leveler in the search for equity. The

negotiated result may not be what a national spokesman or leader tells in the press. Between Pakistan and India, or the US and Mexico, both countries announced "they don't have the right to our water," then sat down and work out an equitable solution. Altruism and solidarity, as in the agreement between India and Bangladesh, can provide the basis for future collaboration, if the political will is there. Nations may vow war, then quietly broker equitable water for peace.

Stress and tension may be offset by the variety of options available. In some cases the benefits -- irrigation, consumption, power, even recreation -- derived from a shared water resource will vary between riparian states, and these needs become grounds for negotiation. Nepal wanted hydropower, India irrigation; South Africa's Johannesburg wanted urban consumption, Lesotho electricity. Those countries united to build dams that split one shared river into diverse benefits.
Water scarce regions, like the Middle East, give rise to a concept of "virtual water," in which grain imports bought with oil or high tech revenues, offsets the demand for irrigation dams. Desalination plants may be viable where rainfall can't match urban growth.

The mobility of currency, and purchasing power for water, acts as an incentive to make allies of former antagonists. Cash-for-water may also be a catalyst for peace when a third party like the World Bank or Export-Import Bank, or bilateral credit agencies, withhold funds for water development until competing riparian states resolve any and all disputes related to the water allocation.

International water law increasingly plays a role. Many countries are upstream in one case, downstream in another, sometimes with the same countries, or others. Exceptional midstream cases, like Gabcikovo-Nagymaros Dam between Hungary and the Czech Republic, shows the complexity and difficulty of legal compliance. But the more participatory the negotiations, the less likely tension over water will escalate, and those that do can resolve their disputes before the International Court of Justice, or the United Nations, with positive results.

No modern wars have been fought over actual use of water. But wars over other issues, like religion or oil, may and do lead to targeting of water supplies and projects. Yet even here water may bring countries together. Protocol I of the 1977 Geneva Convention relating to the Laws of War specifically prohibits any attack on "objects" indispensable to the survival of a civilian population such as food, drinking water installations and supplies or irrigation works, whatever the motives. Nor, for that matter, shall these be attacked if impacts release, or remove, dangerous volumes of water on civilian populations. This international law dimension reflects the feeling of urgency by the international community and no breach of this provision should be committed in the name of "total war," whether concerned with regional forces or with individual states. Breaching this law must be considered a war crime, whether employed by one side during the Gulf War fought over oil, or by the other during the bombing of Belgrade, fought over culture, ethnicity and religion.

A final reason is that there is something about water unique from other resources. Despite scarcity, water is renewable; water is dispersed. Water shifts with season and place. Water quantity changes human behaviour, and how a nation values it. Some

water rich countries come up short of supply, while some water poor countries feel they have an abundance to meet their demands. To cut off water is to cut off human life. We adapt.

I might speculate further that water, and water alone, has an intrinsic spiritual element lacking in oil, gold, gas, copper, uranium even diamonds. In nearly every culture, religious values are embedded in water, which baptises, purifies, bathes, cleanses. I will not include this reason here; this is a policy lecture, not a theological sermon.

Conclusion: Look Inward

For some of these reasons, nations repeatedly unite over water. In all cases, what could -- and by all indications, *should* -- erupt into violence and escalation over resource competition and environmental stress instead healed, like a scar or broken bone, into something stronger than before tensions flared. Hot words over resources were cooled by shared water. The first small water treaties spur later agreements over trade, weapons, transport, communications or fisheries.

Somehow nations resolve their trans-national water stress without the help of great powers. And yet when looking at potential water conflicts elsewhere in the world, superpowers appear to forget their own history. Insofar as Secretary of State seeks to foster the growth of these river-specific treaties through the United Nations, World Bank or International Court of Justice has done in the past, fine. Judicial or multi-lateral dispute settlements is the only way, if we are to move away from great power politics that verges on hegemony: "Water War" rhetoric should not replace the vacuum left by the Cold War's end.

For no nations have gone to war strictly over water and, even with supply running low, let me go on record to say that I doubt they ever will. That is not naivete, or even blind optimism. That is a belief -- based on our growing awareness of water scarcity weighed against the historical evidence of water as a catalyst for co-operation -- that we can infuse each generation who comes with the capacity, understanding and political will to experience, use and enjoy waters as much as our own generation has.

To that end, I recognise that the Swedish Government has declared its intention to increase water development capacity, not by launching some brash *new* global agenda, but through quiet co-operation among networks and institutions that already exist. The Global Water Partnership, Stockholm Environment Institute, Stockholm International Water Institute and the Swedish Environmental Research Institute -- each a dynamic, focused organisation in its own right -- have united to tackle international water issues under one roof: the Stockholm Water House. It will lead by example, respond to demand, be anchored by science, experience and the historical evidence. I applaud your initiative. This represents a great consensus about water and international changes in which scientists and humanists help national policy leaders rise above the purely consumptive instincts of private and individual self-interest.

Through such steady, bottom-up co-operation, informed by sound analysis -- rather than top-down agendas driven by alarmist rhetoric -- we may discover that all this time we

thought mankind could absolutely own water, the reverse is more accurate. Waters own us. Rivers cross, rush alongside and seep beneath our borders. They ignore passports, tariffs, and uniformed customs officials as they go. While we seek order and control and fortify our borders, waters meander freely, wantonly, in search of their destiny.

Rivers transcend borders divided by race, wealth, culture, politics, religion, ideology and the consumptive self-interest of nations. To ensure water security for all, the time has come in which humanity must transcend these borders as well.

Twain was exactly wrong. We may step outside to decide what to do about scarcity of whiskey. But as for water, it was never in the past, is not now and will not be in the future -- for fighting over. Water is for conserving. Water is for bathing. Water is for drinking. Water is for sharing. Water is the catalyst for peace.

I thank you.

Water and Sovereign compromise in Southern Africa

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{This is drawn from Peter Vale's forthcoming book "Politics and Security in Southern Africa: The Regional Dimension" to be published by Lynne Rienner Publishers. Boulder, Colorado.)

Preoccupied with defending the narrow interests of privileged minorities in selected states at specific moments, community in Southern Africa has been for the powerful, rarely ever for its people. However, political change in the region, especially the ending of apartheid, has opened the way towards alternative forms of inter-state exchange. Because much recent celebration has attached itself to a rediscovery of the region, we must map this particular interaction.

This is an important moment in the discussion. Let me explain why. Sites which offer an exchange of sovereignty are much in vogue in the Southern Africa: peace-parks[i], spatial development projects[ii] and the sharing of power grids[iii] are forcefully advanced as a rational way to resolve regional tensions, to dissolve ecological worries, to create jobs and to grow the region's economy. All these, it is often asserted, will deepen the prospects for regional peace and community. My impatience with this discussion is not with the idea of assuaging sovereignty: it will be clear from the foregoing chapters that I have a residual, rather than rational, sympathy with this idea. My concern however is with the purpose to which these new departures are being put. To be plain: they seek to empower the already empowered, and further weaken the already weakened.

Does this necessarily have to be so; the common husbandry of water by states is a good point of entry into an alternative understanding of the same issues. The region's states have recognised that drought, which has dogged its development for so long, does not recognise political boundaries. To write this is not to engage in some post-modern speculation on the nature of Southern African society in a new century, rather it addresses that real world much celebrated by policy pundits thus challenging, once again, Realism's claims that Critical Theory needs to be.., well.. Realistic! Until ways can be found to manage the consequences of drought[iv] and flooding[v] in the region, Southern Africa will remain -- as it has been for decades -- vulnerable to crop-failure and food-shortage[vi].

For some time, the question of 'water' has been part of the region's security discourse[vii]. Much of the orthodox, defence establishment thinking about water security turns on claims that, by 2025, several of southern Africa's states will face water stress -- Mozambique, Tanzania and Zimbabwe – while several others -- Lesotho (considered by many to be the region's water-rich country), South Africa (the region's economic hub, its anchor, its pivot: to use words which have already crossed our paths), Botswana (its most stable 'democracy') and Malawi – will suffer (what is termed) "absolute water

scarcity". Recently, these claims have come to be contested, with critics pointing out that these measures do not factor-in the region's abundant groundwater resources or water available from lakes[viii]. Neither do they consider that a great deal of the region's per capita daily water requirements are met, not by 'blue water' (surface water), but by 'green water', that is through the consumption of rain-fed agriculture[ix].

Estimates, like these, can only be what the term implies, a judgement, and an approximation. Moreover, there is no denying that millions of Southern Africans in all of the region's states already face both water stress and absolute water scarcity. My purpose is not to criticise the methodology or to question the science, however; rather, it is to point out how readily Realism translates state-centric, aggregated approximations into alarmist policy perspectives. So, the projected 'water scarcity' in the region has been translated by the use of metaphor: a view that population growth and changing climate will lead to inter-state conflict over "white gold"[x]. Rather than blindly accept this claim, we need, instead, to ask the question of whose interests are served by this thesis. Clearly, the language and state-centric, aggregate framing of water scarcity serves the status quo. In Southern Africa the formalised use of water has overwhelmingly served irrigation, mining, industry and settler households. It has taken from everyone else. Management of water, therefore, seeks to ensure continued supply to those who have already been privileged. In so doing, it deliberately side steps any questions pertaining to pre-existing conditions of scarcity borne of unequal access.

Expectedly, Critical Theory follows a different trajectory by suggesting, first, that the long-term implications of Southern Africa's coming water shortage represents both a conceptual and real-world challenge to policy-makers. This necessitates, secondly, a need to reconcile national borders, with real issues like access to fresh water. Here counter-facts play an informative role. Consider this one: if the region's political geography has turned on colonial boundaries, its economic geography has turned, as we have noted several times in these pages, on access to minerals. As a result, the symbols of its modernization – its industries and urban sprawls, developed mine-heads -- are all located far from adequate supplies of water. Satisfying their demand, then, has required the power of the state to harness water supply. Elaborate transfer schemes exist throughout the region. As population numbers in urban areas have grown and demands for diminishing resources of water increased, state-makers continue to turn to supply-oriented solutions. Faced with potential political opposition in their capital cities, leaders see 'supply' as a powerful assertion of the fact of the state and, of course, its political power. This fact not only buys votes, it also makes for influential coalitions: international capital, local industry, and, of course, the state. Moreover, this conceptualisation of water 'security' as equal to increased supply, sits nicely within the zero-sum calculations associated with orthodox Security Studies: the state and its means of production -- its mines, industries, plantations -- need securing. Hence, the policy option that is generated is instinctively drawn towards the colonial command: might is right. So, economically poor and land-locked Lesotho's single strategic asset, water, is mechanically set against the shortage of water in rich and developed South Africa -- and the following dismal conclusion drawn: conflict is inevitable and, given its power, South Africa's 'will' -- born of 'national interest' and strategic calculations -- will surely triumph. This averred certainty is buttressed by sets of arguments that point to South Africa's scientific and technical know-how: an approach that reduces complex social lifeworlds to narrow technicist and managerial reality. This construction reinforces the

idea that what is good for the powerful, is good for the region. What is most certain, however, is that this construction historically and presently reinforces sovereign claims in all southern African states.

With these thoughts as background, I will now report (as promised in the opening paragraphs of the chapter) on inter-state efforts to manage water resources in Southern Africa. In 1995, SADC Heads of State adopted a Protocol on Shared Water Course Systems that aimed to develop close co-operation for judicious and co-ordinated utilization of regional watercourses. Based on the Helsinki Rules on the use of international rivers and the Convention on Non-Navigable Rivers, the SADC's Protocol encourages regional conventions regulating the common utilization and management of the water resources of shared rivers. Viewed within a comparative frame, then, there is nothing new or revolutionary in Southern Africa's approach to this issue and, following international experience suggests that it will require time and effort before the benefits of the Protocol can be realised. This will require a range of political and legal adjustments, and new policy directions, to be crafted in each Southern African country. Additionally, connections between sustainable water resource management and agriculture, power generation, wildlife, protection of the environment, food security and the priorities of economic development must also follow before the full benefits of the protocol will be realised. As in other areas of policy-making, water resource management needs to be integrated and co-ordinated with plans for economic growth, development, and the environment. This drift in the argument suggests how national policies will have to be lined up before the region's people can enjoy the overall benefits of the sharing of joint water concourses and suggests how, by locating sovereignty at some distance from water itself, the implementation and development of sound community policy is encumbered.

Clifford Geertz's categorization helps us clearly understand the impossibility and contradictions inherent in this situation. Because states will determine their interests on this, as in other fields, their relations are cast in what we might call a holding bind. The successful implementation of the Protocol Shared Water Course Systems is only possible by a line up of national interests: a condition that, strictly speaking, is a contradiction in terms. The Epochalist nature of the holding bind -- states determine their own national interests -- entirely misses the deep sets of shared cross-border interests not only in water, but also in a multiplicity of life forces that stand at the base of the idea of community – that are networks of the local. The relationship is paradoxical: the impulses of the local community draw together through a myriad of shared interests around water and its conservation and multiple networks of the local – but the powerful practice of the global, resting on the idea of a sometimes distant nationalism, draws them apart. The very language of inter-state conflict and the tiered hierarchies between states, erase understanding of the multiple dependencies and interdependencies experienced by individuals and local communities across the region. For all its promise of progress, therefore, recent approaches to the management of water in Southern Africa appear to reinforce, not dismantle, the borders between the states that share a single water resource.

The prudent path both to security and community lies, I suggest, in the opposite direction than that programmed by states and their protocols: if Southern Africa wants lasting security and community, water must enjoy no sovereign value: no, this is wrong,

water must enjoy a pan-sovereign value - it must become the region's sole security referent, its only boundary. Putting water at the centre of the regional discourse will emphasise the communality of interests between the region's peoples, and reinforce the interests of the states in preserving their most vulnerable resource. This will anchor lasting community from which other forms of security will grow.

A central stumbling block in implementing these alternative policy options is the hold of old ways of thinking on the region's politics. As we have already noted, these might well acknowledge the centrality of water in the affairs of the region but immediately draw the issue towards closed security thinking: the resulting discourse turns water into an object of security – as we shall see in Chapter Seven, it "securitizes" water[xi] by means of Speech Act. This move emphasizes inter-state conflict above inter-state cooperation irrespective of the circumstances on the ground, and it is here that the lingering suspicion continues that water wars in Southern Africa are inevitable[xii]. The implication of this way of thinking about water in the region has already been experienced. Because it offers an insight into the life and death implications of ways of knowing Southern Africa, let us follow a case of conflict for a few short sentences.

Two sister states, Botswana and Namibia, have forcefully contested the ownership of a small uninhabited island in the Chobe River. Known as Kasikili in Namibia and Sedudu in Botswana, the dispute was settled before the International Court of Justice in The Hague but not without considerable anguish in the region[xiii]. It is worth momentarily pausing to consider this particular quarrel, before drawing a wider lesson. Certainly, the island's nominal landmass was the subject of the difference of opinion, with the waters of the Chobe River as a secondary issue. However, a closer inspection reveals that the conflict was over a wetland – it seems, therefore, a classic inter-state conflict over an ecological issue.[xiv] Now to the lesson: such tension suggests the way in which the haphazard construction of colonial boundaries - if used as security referents - draw out the darker side of the region's life. Recasting security in Southern Africa within the simple-minded binaries so loved by Realist theory returns the search for community back to the treacherous apartheid years - and ignores the hopeful break-throughs that have been made in the development of a common approach to water and its management.

The tension between the statist route to joint management of water resources and the alternative is most markedly illustrated in the relationship between South Africa and Lesotho. We have already noted that the destiny of the two countries are inseparable: lack of jobs in Lesotho will impact on South Africa, and economic decline in South Africa will corrode Lesotho's already spare economic base. The policy challenge is to nurture transnational development on both sides of the divide which nominally separates states-- but this cannot only be driven by states alone - especially when one, South Africa, is said to be strong and the other, Lesotho, is axiomatically assumed to be weak. To succeed over the longer-term, the management of water between these two states needs to be rooted in a shared sense of community. There are many instances of co-operation in the relations between Lesotho and South Africa: from inter-familial to informal sector linkages[xv] - in effect, social sites or multiple networks that recognise no border. In addition, as we have seen, there is cross-border co-operation between the states on drought relief and river basin management. But how the two can be drawn together remains caught in our paradox. Indeed, as shown in Chapter Five, South

Africa's 1998 "invasion" of Lesotho, paradoxically, demonstrated the weakness of the Lesotho 'state' paradoxically, reasserting its claims to sovereignty.

Spontaneous "border-crossings", like those between South Africa and Lesotho, suggest that quotidian communities of the local, below the state-level in pursuance of common societal goals are common forms of association in Southern Africa. We are midway through this chapter, and will now ask its most important question: why are issues, like access to water, the issues of life and death, removed from Essentialist associations and placed within Epochalist ones?

The recognition of interdependencies and multiple sites of social interaction have important implications for the study of security in the region and indeed elsewhere. Because this is so, I want to be clear about what it is that I am suggesting in this argument. My intention is not simply to broaden, as Barry Buzan might, the concept of security to include water while retaining the state as the primary security referent. To do this would be to securitize water -- this would deepen regional conflict and make the region further captive of the state that can best secure access to water, which is technically in a position to husband its distribution. As the work of the Copenhagen School has pointed out, efforts to broaden the security agenda are often nothing more than efforts to sustain military expenditure - in Southern Africa this move would foster further the one-directional discourse on security which inflicted such deep pain during the apartheid years. But neither is it my intention to simply switch the debate from military security to human security. The latter is an important issue, to be sure. The pioneering work done by the UNDP in stressing the idea of human security has helped to break the stranglehold that the military enjoyed over the security discourse in Southern Africa and elsewhere, too. But perversely it empowered the military: the expansion of the security discourse enabled the military to redefine is role in multiple new ways. Nevertheless, the power of the debate on human security has set the routine practices of strategic accounting into sharp focus: when set against Human Development Indices, military expenditure seems expensive and wasteful and, as countless studies suggest, goes no way to the eradication of poverty. For these reasons, critical approaches (as Ken Booth and I suggested in 1995[xvi]) must be strongly supportive of the efforts to propel the idea of human security to the forefront of the development agenda. However, to intentionally draw a strict and pedantic distinction, the debate on human security is a debate around development, not around security, nor community.

My interest, in contrast, is to shift the notion of regional security-through-community away from states towards new appreciations of community in which water (amongst other issues) will play the central organising role. To do this means that the region's scarce water resources will have to be drawn even closer to the lives of Southern Africa's people. How is this to be done? Helpful breakthroughs have been made in the region -- these, too, lie beyond the long-term framings associated with state power; for now, however, it seems they must be initiated by states. Changes in the governance of water in South Africa, in particular, have revealed a willingness to overturn preconceived ideas of community (and the importance of water as a community resource) in favour of a discourse of sharing. Because, as I will presently suggest, the state will not simply vanish in Southern Africa, I first want to report on this development.

Historically, the right to use water in South Africa was bestowed (an important adjective in this context) by the private and near absolute ownership of land, in accordance with the riparian principle rooted in European Law. This notion of ownership - itself embedded in contract theory - coincided with the racial politics that characterized the country's apartheid system. However, the advent of democracy enshrined a Bill of Rights that guarantees sufficient access to water to each citizen of the country (which South Africa's Department of Water Affairs & Forestry has set at a minimum of 25 litres a day within 200 metres of a person's home). The desirability of spreading limited resources of water more equitably, while protecting its ecological base has compelled all South Africans to recognise that long-established approaches to the management of water must change. A suite of policy initiatives has been introduced: these have been underpinned by three principal concerns - participatory governance, social equity, and environmental justice. Of particular importance has been the move towards a much greater focus on demand management and integrated water resource management on a catchment basis. These both have important implications for the idea of community. Without community involvement, either locally or in Southern Africa, it will not be possible to manage and protect water resources. South Africa's new Water Law obliges the responsible government minister, in allocating water under the new system, to take account of the water needs of the country's neighbours, a world first. This suggests the sense in which water can become a means to community.

The purpose of this critical reportage has been to suggest that natural systems respond to a different set of borders from those offered by state-makers, be they colonial or other. Watercourses are the focal point at which states can recognise their joint dependency on natural resources in achieving human security. This is an epistemological question, however. What practitioner's privilege, what theoreticians ignore, when they think about the issue will profoundly affect the region and its people. However compelling this insight, it will not be easy to effect change in this direction - like the proverbial generals planning for the next war, states are creatures of habit and their plans more readily reflect the past than present needs or anticipate the future. Experience suggests however, that supposedly-ingrained approaches to security issues can be altered if education and public discourse can be brought to bear on the world of ideas, first, and then on policy-makers. Indeed, Southern Africa's recent history teaches the powerful lessons of change as does the great changes. Were this not so, how can we account for the fact that apartheid ended, and that this particular discussion on security in Southern Africa could be framed in ways so patently different from that so frequently suggested by neo-Realist thinkers? And how can we explain the astonishing complexity of the region's social science that was once thought so simple? Whatever mainstream theory may suggest, agency can triumph over structure. So, it is possible to change security priorities in Southern Africa by thinking differently about what is to be secured. With the sure knowledge that this can happen, I turn towards a different kind of Southern Africa, a region without states at the base of community.

Notes

[i] See, for example, Duffy, "The Environmental Challenge to the Nation State, pp. 441-451; Relly, "No Boundaries for Wildlife," and Morton, Parks that Cross the Borderline. Also. "Miracle in Africa", *The Sunday Times*, Johannesburg, 30 September 2001.

[ii] On this see "Maputo Corridor to Benefit All Parties," *The Star*, Johannesburg, 5 June 1997; "Corridor to Maputo may Start in 1997," *The Saturday Star*, Johannesburg, 24 May 1997; "Maputo-netwerk Bring Groei in Mpumalanga, *Rapport*, Johannesburg, 25 May 1997; "Die Maputo-korridor moet Bewys daar is Nog Lewe in Afrika", *Beeld*, Johannesburg, 9 May 1996; South Africa-Mozambique. Development Corridor," p. 12480.

[iii] See "'Pooling of Electrical Power Benefits Southern Africa," *Business Day*, Johannesburg, 9 March 1998; "Eskom Lights the Way in Africa with Regional Power Grid," The *Sunday Times Business Times*, Johannesburg, 3 May 1998; "Power Pool needs Political Harmony."

[iv] On this Vale. A Drought Blind to the Horrors of War," pp. 51-52, 57.

[v] On the consequences of recent floods see Christie and Hanlon, *Mozambique & the Great Flood of 2000*.

[vi] The best publication in this issue remains Bryant ed, *Poverty, Policy and Food Security in Southern Africa*.

[vii] Solomon ed, *Sink or Swim?*

[viii] Larry Swatuk, "Southern Africa Through Green Lenses", in Vale et al., *Theory, Change and Southern Africa's Future*, pp. 272, 288.

[ix] RockstrÖm, "Green Water Security for the Food Makers of Tomorrow," pp. 71-18.

[x] See, for example, Solomon ed, *Sink or Swim?* .

[xi] There is a good summary of this approach in Ole Wæver. "Securitization and Desecuritization," in Lipschutz ed, *On Security*, pp. 46-86.

[xii] See Solomon and Turton eds, *Water Wars*.

[xiii] See Maluwa, "Disputed Sovereignty over Sidudu (or Kasikili) Island (Botswana-Namibia," pp. 18-22.

[xiv] For details, see, Larry A. Swatuk, "Environmental Co-operation for Regional Peace and Security in Southern Africa," in Conca and Dabelko ed. *Environmental Peacemaking*.

[xv] See Larry Swatuk and Peter Vale, "Sovereignty, States and Southern Africa's Future," in Thompson ed, *Critical Perspectives on Security and Sovereignty*, pp. 1-25.

[xvi] Booth and Vale, "Security in Southern Africa."

Water Wars in the Near Future?

Reconciling competing claims for the world's diminishing freshwater resources - the challenge of the next millennium

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1. INTRODUCTION

Water continues to be a catalyst for war and peace. One of the most pressing issues of the next millennium will be the management of the limited freshwater resources of the world. Since an important number of these resources are found in transboundary rivers, lakes and aquifers, the importance of international rules that govern allocation of these increasingly diminishing resources cannot be overemphasised.

The natural availability of water has decreased as a result of many different factors, and suddenly a number of regions are experiencing water scarcity, many for the first time. The problem can now be seen to be making itself felt at the level of international politics, as water scarcity leads to disputes between states, often resulting in violent conflict. As a result, water has taken on a strategic role for many states. Since the likelihood of discovering new sources of water for exploitation is slim, the alternative and perhaps the only way ahead must be the formulation of an international legal framework governing the use and allocation of scarce water resources, allowing for the equitable and efficient utilisation of shared watercourses.

This paper examines what legal framework, if any, exists to govern the uses of international watercourses, and the various attempts by the international community to arrive at a consensus over the factors to be taken into account when a conflict over water allocation occurs between states. The focus will be on the new United Nations framework convention on international watercourses adopted May 1997. The paper concludes that this instrument provides an important starting point for the exercise of preventive diplomacy in the area of transboundary water management.

2. LEGAL RESPONSE TO THE PROBLEM

As the potential for disputes over transboundary watercourses increase, there has never been a greater need for international legal guidelines regarding the rights and obligations of riparians in the use of their freshwater resources. Bilateral and regional agreements go some way towards addressing the issues on a small scale, but do not sufficiently approach the wider problem.

Are there rules of international law that govern the allocation and use of international watercourses? Theories of absolute territorial sovereignty, absolute territorial integrity

and limited territorial sovereignty have been advanced by States in their claims over transboundary waters. Rules of customary international law applying specifically to this area have evolved over the years. What are the rights and duties of riparian states in relation to their utilisation of transboundary watercourses, how can these rights be enforced, and can they be regulated?

2.1 The 1997 UN Convention on the Law of the Non-Navigational Uses of International Watercourses

In 1970, the General Assembly of the United Nations recommended that the International Law Commission of the United Nations (ILC) "take up the study of the law of the non-navigational uses of international watercourses with a view to its progressive development and codification". After close to a quarter century of study and deliberation, the ILC adopted a set of draft articles on the non-navigational uses of international watercourses. These were referred to the UN General Assembly to be used as a starting point for the drafting of a multilateral water convention. However, it would be the decision of States whether any instrument would result from the deliberations.

In 1996, the UN's Sixth Committee, convened as the Working Group of the Whole, commenced meetings on the Watercourses Draft Articles. The first two weeks of meetings revealed the extent of controversy that existed on key issues. At the end of this first session (November 1996), it was questionable whether States could agree on a text and some believed that agreement would never be reached. At the second two-week session (March/April 1997), following much debate, many proposals and inevitable compromise, the Working Group of the Whole took the unusual step of voting on a revised draft text. By a vote of 42 States for, 3 against and 18 abstentions, a final text was adopted by the Working Group of the Whole. Following is a summary of the voting record on that instrument.

TABLE 1: Voting Record / Working Group of the Whole / Text as a Whole

FOR (42)	AGAINST (3)	ABSTAINED (18)
Algeria, Austria, Bangladesh, Belgium, Brazil, Cambodia, Canada, Chile, Czech Republic, Denmark, Ethiopia, Finland, Germany, Greece, Holy See, Hungary, Iran, Italy, Jordan, Liechtenstein, Macedonia, Malawi, Malaysia, Mexico, Mozambique, Namibia, Netherlands, Nigeria, Norway, Portugal, Romania, South Africa, Sudan, Switzerland, Syria, Thailand, Tunisia, UK, USA, Venezuela, Vietnam, Zimbabwe	China, France, Turkey	Argentina, Bolivia, Bulgaria, Colombia, Ecuador, Egypt, India, Israel, Japan, Lebanon, Lesotho, Mali, Pakistan, Russia, Rwanda, Slovakia, Spain, Tanzania (130 States did not vote)

From the above summary, several observations can be drawn:

The issues central to the controversy in the Working Group arose in three key areas: (i) to what extent did States have to comply with the provisions of the Convention in existing and future watercourses agreements; (ii) what was to be the substantive content and relationship between the principles of equitable utilization and no significant harm (Articles 5 and 7); (iii) to what extent were States to be bound by dispute settlement

mechanisms? The compromise reached in each of these areas reveals a central ground acceptable to the majority of States.

On the first issue, the final text affords States substantial flexibility with respect existing and future watercourse agreements. States are free to "adjust the provisions" of the Convention to the particular characteristics of the watercourse involved, so long as the rights of other watercourse States are not affected by the Convention. The revised text of Article 3(1), Article 3(2), and Article 3(3) was endorsed by 36 States, rejected by 3 States, with 21 States abstaining from voting in the Working Group of the Whole. With respect to dispute settlement, once again States are afforded ample latitude, although the revised text is stronger than its predecessor and calls for compulsory fact-finding which, upon scrutiny, reveals a procedure closer to compulsory conciliation procedure.

On the crucial issue most relevant to this paper -- the substantive content and inter-relationship between Articles 5 and 7 -- the Working Group made substantial revisions to the formulation of the no significant harm rule contained in the ILC's Draft Article 7. The result makes the principle of equitable utilization the governing rule of the Convention. The no significant harm principle, significantly revised from its former versions contained in the 1991 and 1994 ILC Draft Articles, can be read as subsidiary to the substantive rule contained in Article 5. Article 7(2) provides: "Where significant harm nevertheless is caused to another watercourse State, the States whose use causes the harm shall, in the absence of agreement to such use, take all appropriate measures, having due regard for the provisions of articles 5 and 6, in consultation with the affected State, to eliminate or mitigate such harm and, where appropriate, to discuss the question of compensation." (emphasis added) These provisions replace the 1994 ILC Draft Article 7 which read: "States shall exercise due diligence to utilize an international watercourse in such a way as not to cause significant harm to other watercourse States." (emphasis added) However, the final texts of Articles 5, 6 and 7 were not accepted by all States. Following is a record of the voting on the package of these three provisions.

TABLE 2: Voting Record / Working Group of the Whole / Revised Articles 5 -7

FOR (38)	**AGAINST (4)**	**ABSTAINED (22)**
Algeria, Austria, Bangladesh, Belgium, Brazil, Canada, Chile, Denmark, Finland, Germany, Holy See, Hungary, Iran, Israel, Italy, Jordan, Korea, Liechtenstein, Malawi, Malaysia, Mexico, Mozambique, Myanmar, Namibia, Netherlands, Paraguay, Portugal, Romania, Russia, Switzerland, Syria, Thailand, Tunisia, UK, USA, Uruguay, Venezuela, Vietnam	China, France, Tanzania, Turkey	Argentina, Bolivia, Bulgaria, Colombia, Czech Republic, Ecuador, Egypt, Ethiopia, Greece, India, Japan, Lebanon, Macedonia, Mali, Mongolia, Pakistan, Rwanda, Slovakia, South Africa, Spain, Sudan, Zimbabwe (129 States did not vote)

The following observations can be drawn from the above summary of voting:

The fact that the vote on the substantive rules contained in Articles 5 and 7 was so closely divided is significant in itself. From such a result it can be deduced that both upstream and downstream States find strengths and weaknesses in the final formulation of the Articles. This could attest to the relative fairness of the compromise finally reached regarding the substantive rules: It favoured neither upstream nor downstream

States. Certainly, a primary rule of allocation based on "equitableness and reasonableness" should promote such an end.

The practical application of the substantive rules of the Convention is achieved under Article 6 which lists the factors which must be taken into account when deciding what an equitable and reasonable use of an international watercourse actually is. These include geographic, hydrographic, climatic, ecological and other natural factors, the social and economic needs of the watercourse states concerned, the population dependant on the watercourse, the effects of the use of the watercourse by one state on other watercourse states, existing and potential uses of the watercourse, conservation, protection, development and economy of use of the resources of the watercourse, and the availability of alternatives to a planned or existing use.

The final text adopted by the Working Group of the Whole was appended to a draft resolution put forward before the UN General Assembly by thirty-three States on 21 May 1997. On 23 May 1997 the UN General Assembly adopted the Convention on the Law of the Non-Navigational Uses of International Watercourses. Containing 37 articles with a 14-article Annex, the instrument was adopted by a vote of 104 States in favour, 3 against and 26 abstentions. The text was opened for signature on that date until 20 May 2000. Following is a record of the voting in the UN General Assembly on the adopted Resolution.

TABLE 3: Voting Record / UN General Assembly / 1997 Convention

FOR (104)	**AGAINST (3)**	**ABSTAINED (27)**
Albania, Algeria, Angola, Antigua & Barbuda, Armenia, Australia, Austria, Bahrain, Bangladesh, Belarus, Belgium, Botswana, Brazil, Brunei Darussalam, Burkina Faso, Cambodia, Cameroon, Canada, Chile, Costa Rica, Cote d'Ivoire, Croatia, Cyprus, Czech Republic, Denmark, Djibouti, Estonia, Federated States of Micronesia, Finland, Gabon, Georgia, Germany, Greece, Guyana, Haiti, Honduras, Hungary, Iceland, Indonesia, Iran, Ireland, Italy, Jamaica, Japan, Jordan, Kazakstan, Kenya, Kuwait, Laos, Latvia, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malawi, Malaysia, Maldives, Malta, Marshall Islands, Mauritius, Mexico, Morocco, Mozambique, Namibia, Nepal, Netherlands, New Zealand, Norway, Oman, Papua New Guinea, Philippines, Poland, Portugal, Qatar, Republic of Korea, Romania, Russian Federation, Samoa, San Marino, Saudi Arabia, Sierra Leone, Singapore, Slovakia, Slovenia, South Africa, Sudan, Suriname, Sweden, Syria, Thailand, Trinidad & Tobago, Tunisia, Ukraine, United Arab Emirates, UK, USA, Uruguay, Venezuela, Vietnam, Yemen, Zambia	Burundi, China, Turkey	Andorra, Argentina, Azerbaijan, Bolivia, Bulgaria, Colombia, Cuba, Ecuador, Egypt, Ethiopia, France, Ghana, Guatemala, India, Israel, Mali, Mongolia, Pakistan, Panama, Paraguay, Peru, Rwanda, Spain, Tanzania, Uzbekistan (33 States were absent)

The adoption of this framework convention, including the process with which this was achieved raises important issues relevant to the future management of international watercourses. The following observations can be made:

States have agreed that the 1997 UN Watercourses Convention provides important substantive and procedural rules to follow in their dealings over international watercourses. The overall aim of the instrument is to provide realistic means to prevent and/or resolve disputes over water. Despite controversy on some key issues, States have supported the adoption of this body of rules at two critical stages in the evolution of the final Convention: first, by the majority of States voting in the Working Group of the Whole, and secondly, by the majority of States voting at the UN General Assembly. Two important tests have yet to come: (i) will 35 States ratify the instrument so that it will come into force? (ii) will the Convention receive universal endorsement of the international community of States? Only the future will tell. However, regardless of whether these latter two tests are passed, it remains certain that States will refer to the 1997 UN Watercourses Convention in their dealings involving international watercourses.

2.2 The Importance and Relevance of the 1997 UN Watercourses Convention

The potential for international conflict over water is evident from the earlier discussion in this paper. The fact that the United Nations has now come forward with a framework convention offers States important rules and guidelines to prevent and resolve conflicts over water. The 1997 UN Watercourses Convention may not be perfect, but it is consistent with State practice and earlier efforts at codification of the rules relating to watercourse law.

One of the most notable contributions to the development of international water resources law has been made by the International Law Association (ILA). Over the past 40 years, the ILA has passed a number of resolutions, dealing with aspects concerning the substantive and procedural rules that apply to international drainage basins, the flow of water, flood control, marine pollution and groundwater. The most important product of the ILA's work, the 1966 Helsinki Rules on the Uses of the Waters of International Rivers (hereafter referred to as the Helsinki Rules), have been accepted by many countries involved with the integrated development of international river basins in Asia, Africa and Latin America.

The International Law Association, in its Helsinki Rules and all subsequent work on international watercourse law, has adopted the principle of equitable and reasonable use as the governing principle of water law. This principle is contained in Article IV of the Helsinki Rules, which provides that "each basin state is entitled, within its territory, to a reasonable and equitable share in the beneficial uses of an international drainage basin." (emphasis added)

As with the approach adopted in the 1997 UN Watercourses Convention, under the ILA's approach, "[w]hat is a reasonable and equitable share … is to be determined in the light of all the relevant factors in each particular case." Unlike the UN's approach, however, the ILA includes harm as one of the factors to be considered in the overall assessment.

This distinction is important since, under the ILA's approach, it is clear that a use which causes significant harm could be justified under the principle of equitable utilization. The same is not quite so evident in the approach adopted in the 1997 UN Watercourses Convention, although States could argue that read together, Articles 5-7 mean this. In practice, adopting equitable use, as compared with no significant harm, as the governing rule can yield quite different results. The no significant harm rule acts as a veto on

future development and tends to protect the status quo (i.e., the prior appropriations of the State first to develop). This can result in an inequity to the often less developed State.

A case in point would be Ethiopia's situation on the Blue Nile where Egypt could effectively preclude the development of new uses by Ethiopia on the grounds that these would cause significant harm to Egypt's existing uses. The principle of equitable use would require that all relevant factors be considered in the assessment of a reasonable and equitable use in each particular case. Thus, Ethiopia could be entitled to cause even significant harm to Egypt's existing uses, should that result in the most equitable use of the waters of the Nile. Equally, Egypt could claim protection for its existing uses under the same principle. A compromise would have to be worked out. Clearly, competing economic interests connected to the development of international watercourses could best be reconciled under an approach that promoted a balancing of all relevant factors, and not by a rule that protects one State's pre-existing uses at all costs.

The best way to arrive at a compromise in a conflict of uses over freshwater is by agreement. States appear willing to do this. An important case in point is the regional convention adopted in Helsinki on the Protection and Use of Transboundary Watercourses and International Lakes 1992. This agreement was concluded under the auspices of the UN Economic Commission for Europe (UN/ECE), a unique pan-European forum for co-operation and sustainable development, focusing primarily on the environment, transport, trade, statistics and energy. The Helsinki Convention, adopted by 20 European countries and the European Union, deals with the prevention, control and reduction of long-range transboundary impacts relating to international watercourses and lakes, with a large emphasis on environmental protection and conservation. Amongst its aims are the protection and ecologically sound and rational management of transboundary waters, reasonable and equitable use of transboundary waters, and the conservation and restoration of ecosystems.

In July 1997, the first meeting of the parties to the Helsinki Convention was held, and the Helsinki Declaration was adopted. The main statements of the Declaration included that there should be close co-operation at all levels - regional, sub-regional, national, provincial and local - and that all ECE member countries should be encouraged to ratify the Helsinki Convention , along with any conventions or agreements under its umbrella. The first meeting also adopted a Work Plan 1997-2000, which sets forth a series of programme areas such as the setting up of joint bodies, giving assistance to countries with economies in transition, setting up a system of integrated management of water and related ecosystems, control of land based pollution, and the prevention, control and reduction of water related diseases.

The Helsinki Convention demonstrates how an entire range of problems related to transboundary water development and management can be addressed in a comprehensive and cooperative fashion. One thing is clear, however, the States party to that agreement have agreed to stringent guidelines and obligations. This is not something that can be assumed to be imposed as obligations on unwilling third parties. It is in this light that the strength of the flexibility of the 1997 UN Watercourses Convention can best be appreciated. Where States cannot agree on detailed measures for managing their international watercourses, the substantive rules of the UN Convention provide solid rules for determining the rights and duties of States regarding the fundamental question of "who gets what". The purposes of the 1997 UN Watercourses

Convention and the 1992 Helsinki Convention are very different. While the former seeks to provide rules to determine the legitimacy of new and increased uses, generally, the latter is a more specific that it is directed at limiting adverse transboundary impact. These goals are very different and each instrument must be considered in its particular context.

The importance of the UN Convention has recently been expressly recognized by the International Court of Justice (ICJ) in the only decision involving an international watercourses rendered by the Court over the last 60 years. Hungary and Slovakia had a dispute over the use of the Danube. Although the case revolved around interpretation of a treaty, the Court referred to general principles of international law and stated: "Modern development of international law has strengthened the principle expressed in the River Oder case that 'the community of interest' in a navigable river becomes the basis of a common legal interest for non-navigational uses of international watercourses."

The Court refers to Hungary's right to "an equitable and reasonable share of the natural resources of the Danube" and cites the new UN Watercourses Convention. This is important as it highlights the Court's recognition of the principle of equitable and reasonable utilization and the evolution of a body of rules applicable to international watercourses. In its decision, the ICJ determined that the 1977 Treaty between the Parties remained in force and recommended that they negotiate on how that agreement might be implemented. Hungary and Slovakia continue to attempt to reach agreement on this matter.

3. CONCLUSIONS

Water will be one of the most important natural resources of the future. How it is managed will affect not only the lives and well-being of billions of people, but determine national economic policy and strategy in many regions of the world. Insufficient access to clean and useable freshwater already impacts national prosperity adversely in most parts of the world. Where freshwater resources transcend national boundaries, cooperative and integrated management is a major challenge, subject to many obstacles. The potential for international conflict over water is great. One of the essential mechanisms necessary to prevent "water wars" is the establishment of clear "rules of the game". The 1997 UN Watercourses Convention goes a long way in achieving this purpose. The governing principle of reasonable and equitable utilization levels the playing field and offers every State an opportunity to have its situation put forward. All relevant factors must be weighed in the assessment of an equitable use. Clearly, the preferred resolution is one arrived at by agreement. Where each side knows that its concerns must be considered in the context of the overall picture, compromises will be easier to reach. The recent spate of international treaties relating to transboundary waters endorses the approach adopted in the 1997 UN Watercourses Convention. For those watercourse States that voted against the Convention, or that are not party to watercourse agreements, the weight of the growing consensus of the international community of States will carry persuasive force. It is now left to the international community of States to endorse the rules outlined in the 1997 UN Watercourses Convention. This would be consistent with a significant State practice already in existence and contribute to the peaceful management of international watercourses around the world.

ANNEX: Why did China and Turkey vote against?

Mekong River (Cambodia, Laos, Thailand, Vietnam, Myanmar, China)
A new agreement replacing previous undertakings and commitments was concluded in 1995 between the four Lower Mekong states of Cambodia, Laos, Thailand and Vietnam. This agreement is mostly concerned with the maintenance of adequate volumes of water of suitable quality flowing at all times in the Mekong river and in its tributaries. The principle of reasonable and equitable utilisation is given priority in this accord, although the Parties also agreed to mitigate the harmful effects of water use. The agreement also creates a Mekong River Commission which is authorised to administer the provisions laid down in the Agreement. However, the real shortcoming of the Mekong Treaty is that is does not include Myanmar (Burma) and China, both upstream States on the Mekong. China plans to proceed with a series of ten dams on the upper stretches of the Mekong and this will clearly adversely affect the supply to downstream States. Since China has its own financing for the dams, the restrictions often imposed by international funding agencies, such as the World Bank, will not preclude China's unilateral move to development.

Tigris-Euphrates river (Turkey, Syria, Iraq, ..)
Four countries share the river basin of the Tigris-Euphrates river. Turkey is in the dominant position, having control of the headwaters of the river basin, and can therefore impose its rights as upstream riparian on the downstream riparians of Iraq and Syria. Both states are thus held hostage to the political will of Turkey, and as a result of their relative weak military position, are at the mercy of Turkey's unilateral acts of water utilisation. Various irrigation projects carried out by Turkey in the past have reduced the water quality downstream. Today an even bigger threat faces the downstream users.

Turkey has begun work on a large scale water management scheme, the Southeast Anatolian development programme (GAP), at a cost of over $32 billion. The project consists of 495 separate projects, including 22 dams on the Tigris and Euphrates rivers, 19 power stations and more than 1000 km of irrigation canals. Hailed as a success by Turkish President Suleyman Demirel, the GAP project "stands as a successful example of an integrated development project in an underdeveloped region". The benefits for Turkey are manifold - the production of 22% of Turkeys' hydroelectric power, and the irrigation of over 8.5 million hectares of land. The effects on the downstream riparian states of Iraq and Syria, however, are a source of concern. It is feared that once Turkey begins to fill the dams, downstream flow will be significantly reduced, with disastrous effects on downstream agriculture. In answer to Syria and Iraq's calls in 1992 for a greater minimum flow through their states, Turkish President Suleyman Demirel's reply was "We do not say we should share their oil resources. They cannot say they should share our water resources".

As well as the problem of the reduction in downstream flow, there are also worries that the small quantities of water actually reaching Iraq and Syria will be polluted with chemicals and saturated with saline from the irrigation schemes in Turkey, rendering it useless for human consumption. Since Iraq and Syria lack any military, political or economic leverage over Turkey, the States appear powerless to prevent the scheme from going ahead. As a form of retaliation, however, the states have supported minority Kurdish rebels operating against the Turks, which in turn has prompted Turkey to threaten to cut off the water flowing to Iraq and Syria. It is precisely actions such as these which may eventually lead to full-scale armed conflict.

Southern African water conflicts: are they inevitable or preventable?

Peter Ashton

In: Green Cross International,. 2000, *Water for peace in the Middle East and Southern Africa.* Green Cross International, Geneva; pp.94-98

THREE WATER-RELATED CONFLICTS IN SOUTHERN AFRICA

1. Water abstraction from the Okavango River (Angola, Namibia and Botswana)

The Namibian Department of Water Affairs has faced considerable public pressure to relieve the water shortages caused by recent droughts in Namibia. One potential option involved abstraction of some 17 Mm^3 of water per year from the Okavango River at Rundu, and its transfer via a 260 km long pipeline to the head of the Eastern National Water Carrier (ENWC) at the town of Grootfontein (Heyns, 1995; Heyns *et al*., 1998). The general location of the proposed pipeline and its position relative to the catchment of the Okavango River and Okavango Delta are shown in **Figure 1**.

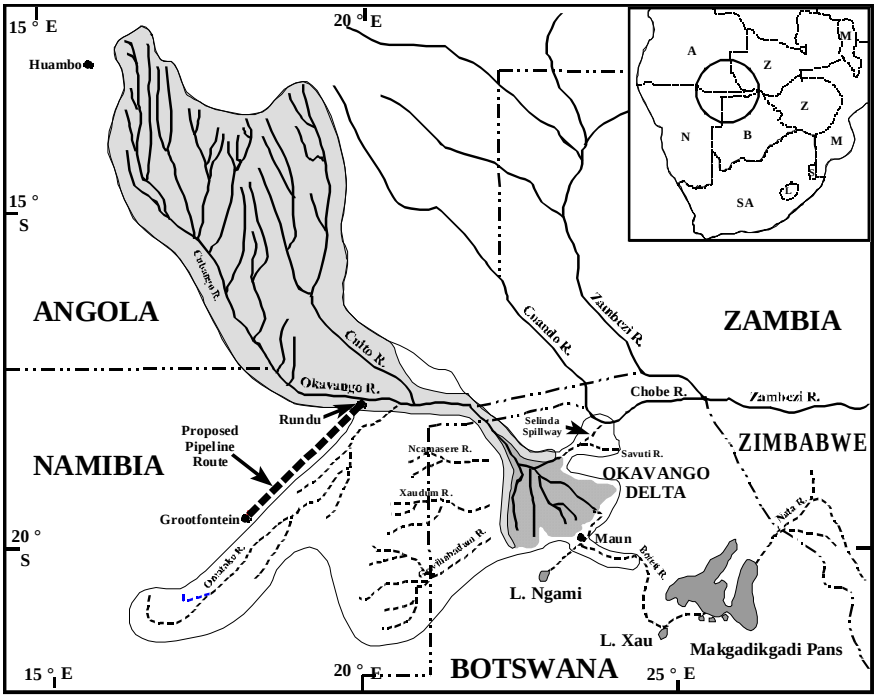

Figure 1: Sketch map of the Okavango River catchment, showing the locations of principal rivers and neighbouring countries in relation to the Okavango Delta. The proposed route of the water abstraction pipeline in Namibia is also shown. The shaded portion of the catchment represents the zone that provides surface runoff; the area indicated by the unshaded portion of the catchment appears not to have provided surface runoff in living memory. The subsidiary, seasonal Nata River system flowing into the Makgadikgadi Pans from Zimbabwe is located to the east of the Okavango Delta.

Three countries comprise the catchment of the Okavango Delta: Angola, Namibia and Botswana. Zimbabwe is part of the subsidiary Nata River system that flows into the Makgadikgadi Pans and is not considered to form part of the Okavango Delta catchment; consequently, Zimbabwe should not be involved in discussions concerning actions or activities that may affect the Okavango Delta (**Figure 1**).

Along the Okavango River, the international border between Namibia and Angola is located over the deepest portion of the river channel (the *Thalweg*). Thus, both Namibia and Angola consider that they have a "Riparian Right" to abstract water from this section of the Okavango River, if required to meet local or national needs. However, the proposed water abstraction scheme has raised concern in both Namibia and Botswana that the proposed abstraction scheme could have adverse consequences for the Okavango Delta in Botswana. As a result, it was important to all the countries concerned that the potential environmental impacts of the proposed water abstraction scheme should be assessed (Ashton, 1999).

Detailed hydrological evaluations of the proposed water abstraction scheme have shown that the proposed abstraction represents a reduction of approximately 0.32 % in the mean annual flow of the Okavango River at Rundu. The abstraction represents 0.17 % of the mean annual flow at Mukwe, downstream of the Cuito River confluence. Both of these quantities are very small when compared with the average annual volume of water that flows down the Okavango River each year (10,000 Mm^3 per year; Ashton & Manley, 1999). The adverse effects of the proposed water abstraction scheme would be insignificant along the Okavango River in Namibia, whilst outflows from the lower end of the Okavango Delta to the Thamalakane River in Botswana would be reduced by some 1.44 Mm^3/year (11 %). Additional studies have shown that these effects could be reduced by some 10-13 % if water abstraction was confined to a six-moth period during the falling limb of the hydrograph instead of continuous (year-round) withdrawal (Ashton & Manley, 1999).

Hydrological simulations have shown that the maximum likely loss of inundated area in the Okavango Delta would amount to approximately 7 km^2 out of a total area of some 8,000 km^2. This potential loss in inundated area would be concentrated in the lower reaches of the seasonal swamps and seasonally inundated grasslands, specifically in the lower reaches of the Boro, Gomoti, Santantadibe and Thaoge channels. However, these effects would be expressed as a shoreline effect, with the loss in area spread out along the shoreline and islands and would not be restricted to a specific area. This anticipated loss in inundated area is unlikely to have measurable impacts on environmental components in any specific area (Ashton & Manley, 1999).

In both Namibia and Botswana, the initial public perceptions of the proposed water transfer project were strongly negative (Ashton, 1999). The proposed water abstraction was seen as having the potential to adversely affect the tourism industry along the Okavango River in Namibia and in the Okavango Delta in Botswana, with a possible loss of income for local residents. However, the environmental assessment study found no "fatal flaws" that would prevent the water abstraction scheme from proceeding. Whilst the anticipated effects are more likely to be seen in the Okavango Delta in Botswana, rather than along the Okavango River in Namibia, the anticipated ecological implications of the scheme were small in spatial extent and would not be perceptible against the natural year-to-year variability in inundation of the Okavango Delta or outflows to the Thamalakane River (Ashton & Manley, 1999).

The overall outcome of the "technical" evaluations of the anticipated scale and severity of possible impacts indicated clearly that the impacts would be very small and, in most

areas, would not be measurable by conventional measurement techniques. However, it was also clear to the study team that the public perceptions were shaped by personal opinions and there was a relatively widespread rejection of the technical findings, (or a refusal to "believe the facts"), that were presented to the public. Therefore, if a decision is finally taken to proceed with the proposed water abstraction scheme, the public are likely to attribute to the project any and all adverse situations or circumstances that may arise, whether these may be caused by the project or by some other set of circumstances such as global climate change. Clearly, if this project, or any other water abstraction project, does indeed proceed, the governments of each of the basin countries (Angola, Namibia and Botswana) will have to openly demonstrate their support for the project.

2. Disputed ownership of Sedudu/Kasikili Island in the Chobe River (Namibia and Botswana)

The ownership of Sedudu/Kasikili Island in the Chobe River has been the subject of a formal dispute between the governments of Namibia and Botswana since 1996, when both governments agreed to submit their claims for sovereignty of the island to the International Court of Justice (ICJ) in The Hague (ICJ, 1999). Prior to this formalization of the dispute, the "ownership" of Sedudu/Kasikili Island had been disputed by local residents in Namibia and Botswana, as well as preceding colonial governments, since the Berlin Treaty of 1 July 1890 (Hangula, 1993; Fisch, 1999). A brief outline of the grounds for the dispute has been drawn from the official press communiqué that announced the International Court of Justice's decision to recognize the territorial claims of Botswana (ICJ, 1999). Two sketch maps show the geographical position of Sedudu/Kasikili Island and the locations of other islands whose ownership is also disputed (**Figure 2**), and some features of the local terrain and the positions of river channels surrounding Sedudu/Kasikili Island (**Figure 3**).

The island known as "Sedudu" in Botswana and "Kasikili" in Namibia, is approximately 3.5 km^2 in area and is located in the Chobe River (**Figure 3**). The Chobe River divides around the island, flowing to the north and south, and the island is flooded to varying depths for between three and four months each year, (usually beginning in March), following seasonal rains (ICJ, 1999).

On 29 May 1996, both Namibia and Botswana jointly submitted their cases for territorial sovereignty of Sedudu/Kasikili Island to the ICJ, asking the Court for a ruling based on the Anglo-German Berlin Treaty of 1890 and the principles of International Law (ICJ, 1999).

The historical origins of the dispute are contained in the Berlin Treaty of 1890, when the eastern boundaries of the Caprivi Strip along the Chobe River were defined in very vague terms as "the middle of the main channel" of the Chobe River, so as to separate the spheres of influence of Germany and Great Britain. In the opinion of the ICJ, therefore, the dispute centred on the precise location of the "main channel". Botswana contended that this is the channel running to the north of the island, whilst Namibia contended that the channel to the south of the island was the main channel (**Figure 3**). Since the terms of the Berlin Treaty did not define the location of the channel, the Court proceeded to determine which of the two channels could properly be considered to be the "main channel" (ICJ, 1999).

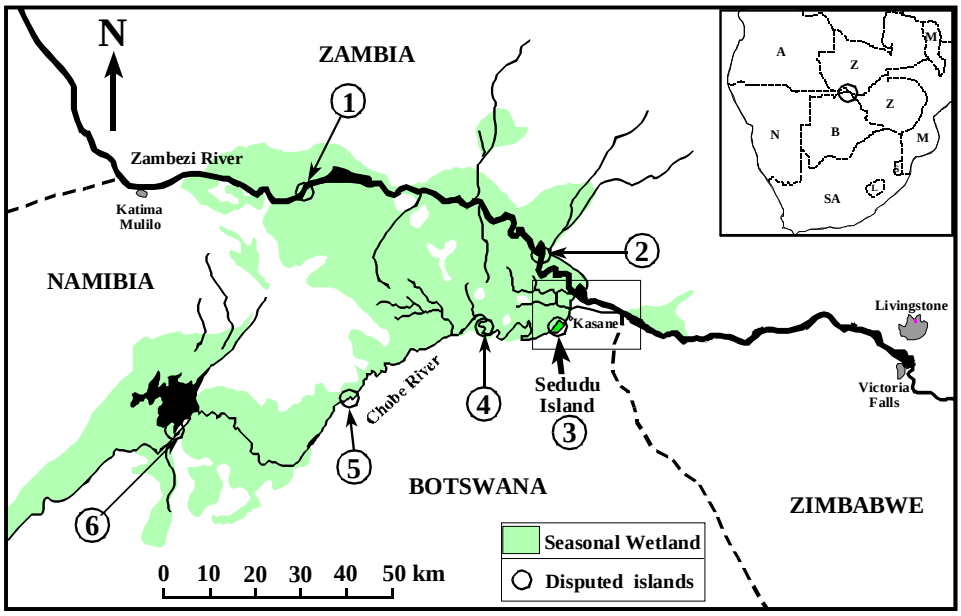

Figure 2: Sketch map of the Eastern Caprivi region of Namibia with the neighbouring territories of Zambia, Zimbabwe and Botswana, showing the general area of Sedudu/Kasikili Island in relation to the extensive wetland areas. Numbered arrows indicate the locations of the six islands whose ownership is disputed: 1 = Mantungu; 2 = Impalila; 3 = Sedudu/Kasikili; 4 = Kavula; 5 = Lumbo; 6 = Muntungobuswa. The inset box outlines the area around Sedudu/Kasikili Island that is shown in **Figure 3**.

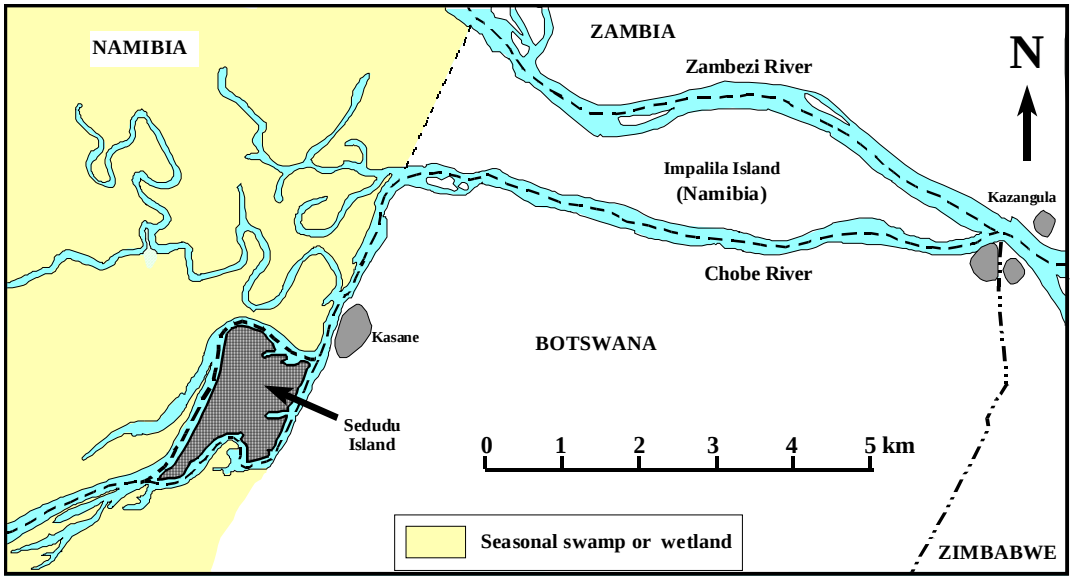

Figure 3: Expanded view of a portion of **Figure 2**, showing the position of Sedudu/Kasikili Island in relation to the Chobe and Zambezi rivers, and the locations of the "northern" and "southern" channels of the Chobe River flowing around Sedudu/Kasikili Island.

In order to achieve this, the ICJ considered both the dimensions (depth and width) of the two channels and the relative volumes of water flowing within these two channels, as well as the bed profile configuration and the navigability of each channel. The Court considered submissions made by both parties as well as information obtained from *in situ* surveys during different periods of seasonal flow. Against the background of the object and purpose of the Berlin Treaty, as well as the subsequent practices of the parties to the Treaty, the Court found that neither of the two countries had reached any prior agreement as to the interpretation of the Treaty nor the application of its provisions (ICJ, 1999).

In reaching its verdict, the Court also considered Namibian claims that local Namibian residents from the Caprivi area had periodically occupied Sedudu/Kasikili Island, since the beginning of the twentieth century, depending on seasonal circumstances as well as river flows and inundation levels. The Court considered that this occupation could not be seen to reflect the functional act of a state authority, even though Namibia regarded this "occupation" as the basis for claims for "historical occupation" of the island. The Court also found that this so-called "occupation" of Sedudu/Kasikili Island by Namibian residents was with the full knowledge and acceptance of the Botswana authorities and its predecessors (ICJ, 1999).

The final Court ruling was given in favour of Botswana, with the ICJ indicating that the northern channel around Sedudu/Kasikili Island would henceforth be considered as the "main" channel of the Chobe River. Accordingly, the formal boundary between Namibia and Botswana would henceforth be located in the northern channel of the Chobe River. Botswana and Namibia have agreed that craft from both countries will be allowed unimpeded navigation in both the northern and southern channels around Sedudu/Kasikili Island (ICJ, 1999).

The ICJ ruling is very welcome after a relatively long period of protracted debate and intermittent threats of military action, including formal military occupation of the island by the Botswana Defence Force. The Sedudu/Kasikili Island dispute provides an excellent example of a water-based conflict situation that reached a high level of tension, preventing resolution of the problem by the disputing parties, thus requiring an independent third party (the ICJ) to be called in to arbitrate the dispute. However, it is important for us to note that, like <u>all</u> other rivers, the Chobe River is a dynamic system where the shape and position of its channels will change over time. Natural processes of sediment deposition and erosion will continue to occur, each depending on the flow patterns in the river. Therefore, it is inevitable that the Chobe River will continue gradually to alter the position and configuration of its main channel in the future. Future changes in the position or shape of the main channel could possibly become a source of future dispute between the two countries.

In this example, the primary dispute between the two countries is one of territorial sovereignty rather than about access to water or to water-dependent resources. However, water is the physical driving force for changes to the aquatic system that forms the territorial boundary. Unless these two countries jointly develop a formal protocol to address this type of situation, similar cases of "water-related conflict" can be expected to occur in future.

There are still five islands in the Caprivi sector whose territorial sovereignty or "ownership" is contested; three of these islands are in the Chobe River and two are in the Zambezi River (**Figure 2**). Without wishing to pre-empt any options that may be considered by the countries concerned, we can anticipate that the legal principles upon

which any decision will be based are likely to follow the same principles and logic used to resolve the dispute over Sedudu/Kasikili Island.

3. Disputed territorial and other ancillary (water-related) rights along the lower Orange River (Namibia and South Africa)

The dispute between Namibia and South Africa over the lower reaches of the Orange River (**Figure 4**) has many similar elements to the Sedudu/Kasikili Island dispute between Namibia and Botswana. Once again, the primary issue is territorial sovereignty linked to the precise position of an international boundary, together with the historical "trajectory" that the boundary dispute has followed.

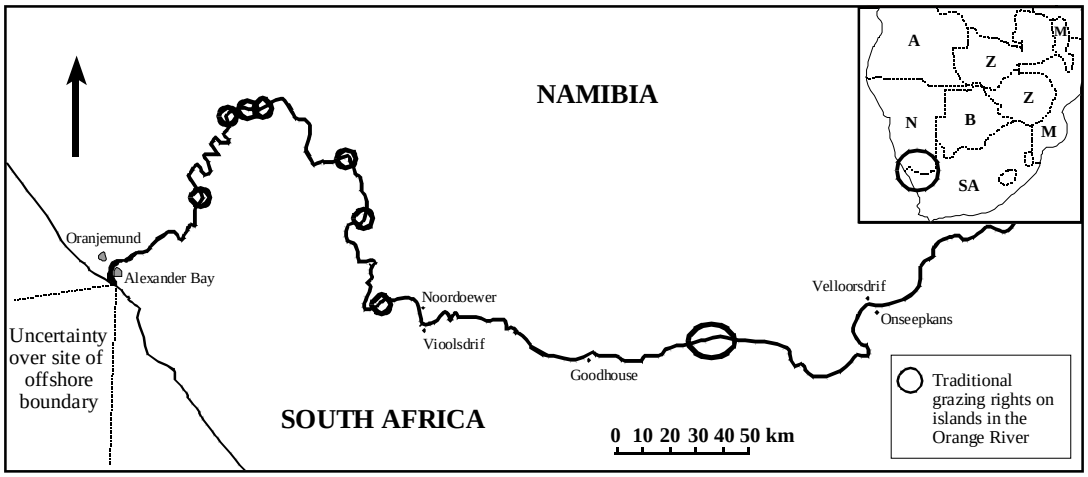

Figure 4: Sketch map showing the lower reaches of the Orange River that forms Namibia's southern boundary with South Africa, together with the locations of towns and the Atlantic Ocean coastline. Circles indicate the approximate positions of islands in the Orange River where grazing rights are now contested. The scale of uncertainty around the precise location of the offshore (marine) boundary between Namibia and South Africa is also shown.

However, there are several additional problems that centre on access to, or ownership of, resources derived from the Orange River or located in or near to the bed of the river. These are further confounded by the fact that the position of the marine offshore territorial boundary between Namibia and South Africa is dependent on the precise position of the land-based boundary at the river mouth. The Orange River undergoes regular flow cycles where the river mouth first tends to silt up during low flows and is then later opened when floods arrive. In the process, the precise location of the river mouth can change by up to two kilometres in response to the timing or size of both large and small flood events. Clearly, such a situation can pose enormous problems for officials tasked with demarcating national boundaries and deciding the positions of prospecting leases for the exploitation of offshore minerals such as oil, gas and diamonds, as well as for delimiting the catch areas of commercial fisheries.

Additional complicating factors are provided by the presence of important mineral deposits in the present bed of the river and in alluvial terraces marking earlier positions of the river bed, together with the traditional use of islands in the river as grazing grounds for stock owned by local residents. Since the discovery of diamonds at around the beginning of the twentieth century, large quantities of diamonds have been recovered from mining leases located on alluvial deposits in the present bed of the Orange River, and on gravel terraces marking former positions of the riverbed. This situation was

considered to be "manageable" because the boundary between Namibia and South Africa had been set by earlier colonial administrations as the high water mark on the north (Namibian) bank of the Orange River. In effect, therefore, the entire Orange River formed part of the territory of South Africa.

The lower reaches of the Orange River flow through a region that is predominantly desert or semi-desert and form a 535 km long linear oasis that also demarcates the boundary between Namibia and South Africa (**Figure 5**). Very few residents occupy the extremely arid country to the north and south of the Orange River. Those who do manage to live in this relatively inhospitable area are predominantly nomadic pastoralists who rely heavily on seasonal grazing areas along the riverbanks and on islands located in the river for grazing their small herds of livestock. Expanding mining activities and the development of associated infrastructure in this region has led to dramatic changes in the lifestyles of the local residents.

The original colonial powers (Germany and Great Britain) were never able to reach agreement as to the precise location of the territorial boundary between the two countries (Hangula, 1993). Great Britain insisted that the boundary should be formed by the "high water level of the north (Namibian) bank" whilst Germany (naturally) preferred the boundary to be located "in the centre of the main river channel". This boundary dispute persisted for decades, despite repeated attempts by both of the original colonial powers and, subsequently, by the South African Government since 1910, to reach an agreement (Hangula, 1993). Local residents on both sides of the river continued to exercise traditional grazing rights and South African miners continued to exploit alluvial diamond deposits in the riverbed. It was only in 1991, shortly after Namibian independence, that South Africa agreed to alter the position of the boundary from the north bank to the centre of the main river channel, to a position overlying the *Thalweg*. Both governments have appointed teams of specialists to define the precise position of the boundary line along the river bed (Hangula, 1993).

This decision follows the general principles of International Law governing the position of international boundaries located along river systems. Furthermore, the decision has allowed Namibia to claim its fair share of the resources (water, minerals, land) provided by, or linked to, the Orange River. However, the decision has also resulted in considerable confusion as to the validity of existing alluvial mining leases in the bed of the river, and has denied some local (South African) residents the right to graze their livestock on islands that now form part of Namibian territory. These facets of the dispute will need to be resolved fairly and speedily if the problem is not to become a lingering administrative nightmare. Similarly, it will be essential for the governments of both countries to reach consensus as to the geographical position of the Orange River mouth so that a mutually acceptable position for the offshore marine boundary can be demarcated. The rational exploitation of important offshore deposits of oil, gas and diamonds, as well as the important pelagic and benthic fishing grounds, will depend on the successful outcome of these negotiations.

In this example, the primary dispute between the two countries is again one of territorial sovereignty, though it also includes aspects that relate to the access to water or resources located within or next to a waterway. Yet again, water is a physical driving force for change (particularly to the mouth of the Orange River); this change influences the position of the territorial boundary. Both countries must now jointly develop a formal protocol to address this specific situation so as to prevent prolonging the present uncertainties.

The Helsinki Rules on the Uses of the Waters of International Rivers

Adopted by the International Law Association at the fifty-second conference, held at Helsinki in August 1966. Report of the Committee on the Uses of the Waters of International Rivers (London, International Law Association, 1967)

CHAPTER 1. GENERAL

Article I

The general rules of international law as set forth in these chapters are applicable to the use of the waters of an international drainage basin except as may be provided otherwise by convention, agreement or binding custom among the basin States.

Article II

An international drainage basin is a geographical area extending over two or more States determined by the watershed limits of the system of waters, including surface and underground waters, flowing into a common terminus.

Article III

A "basin State" is a State the territory of which includes a portion of an international drainage basin.

CHAPTER 2. EQUITABLE UTILIZATION OF THE WATERS OF AN INTERNATIONAL DRAINAGE BASIN

Article IV

Each basin State is entitled, within its territory, to a reasonable and equitable share in the beneficial uses of the waters of an international drainage basin.

Article V

I. What is a reasonable and equitable share within the meaning of article IV to be determined in the light of all the relevant factors in each particular case.

II. Relevant factors which are to be considered include, but are not limited to:
   1. The geography of the basin, including in particular the extent of the drainage area in the territory of each basin State;
   2. The hydrology of the basin, including in particular the contribution of water by each basin State;
   3. The climate affecting the basin;
   4. The past utilization of the waters of the basin, including in particular existing utilization;

5. The economic and social needs of each basin State;
6. The population dependent on the waters of the basin in each basin State;
7. The comparative costs of alternative means of satisfying the economic and social needs of each basin State;
8. The availability of other resources;
9. The avoidance of unnecessary waste in the utilization of waters of the basin;
10. The practicability of compensation to one or more of the co-basin States as a means of adjusting conflicts among uses; and
11. The degree to which the needs of a basin State may be satisfied, without causing substantial injury to a co-basin State.

III. The weight to be given to each factor is to be determined by its importance in comparison with that of other relevant factors. In determining what is reasonable and equitable share, all relevant factors are to be considered together and a conclusion reached on the basis of the whole.

Article VI

A use or category of uses is not entitled to any inherent preference over any other use or category of uses.

Article VII

A basin State may not be denied the present reasonable use of the waters of an international drainage basin to reserve for a co-basin State a future use of such waters.

Article VIII

1. An existing reasonable use may continue in operation unless the factors justifying its continuance are outweighed by other factors leading to the conclusion that it be modified or terminated so as to accommodate a competing incompatible use.

2. (a) A use that is in fact operational is deemed to have been an existing use from the time of the initiation of construction directly related to the use or, where such construction is not required, the undertaking of comparable acts of actual implementation.
(b) Such a use continues to be an existing use until such time as it is discontinued with the intention that it be abandoned.

3. A use will not be deemed an existing use if at the time of becoming operational it is incompatible with an already existing reasonable use.

CHAPTER 3. POLLUTION

Article IX

As used in this chapter, the term "water pollution" refers to any detrimental change resulting from human conduct in the natural composition, content, or quality of the waters of an international drainage basin.

Article X

1. Consistent with the principle of equitable utilization of the waters of an international drainage basin, a State:

(a) Must prevent any new form of water pollution or any increase in the degree of existing water pollution in an international drainage basin which would cause substantial injury in the territory of a co-basin State;
(b) Should take all reasonable measures to abate existing water pollution in an international drainage basin to such an extent that no substantial damage is caused in the territory of a co-basin State.

2. The rule stated in paragraph 1 of this article applies to water pollution originating:
(a) Within a territory of the State, or
(b) Outside the territory of the State, if it is caused by the State's conduct.

Article XI

1. In the case of a violation of the rule stated in paragraph 1 (a) of article X of this chapter, the State responsible shall be required to cease the wrongful conduct and compensate the injured co-basin State for the injury that has been caused to it.

2. In a case falling under the rule stated in paragraph 1 (b) of article X, if a State fails to take reasonable measures, it shall be required promptly to enter into negotiations with the injured State with a view towards reaching a settlement equitable under the circumstances.

CHAPTER 4 . NAVIGATION (Articles XII-XX)

CHAPTER 5. TIMBER FLOATING (Articles XXI-XXV)

CHAPTER 6. PROCEDURES FOR THE PREVENTION AND SETTLEMENT OF DISPUTES

Article XXVI

This chapter relates to procedures for the prevention and settlement of international disputes as to the legal rights or other interests of basin States and of other States in the waters of an international drainage basin.

Article XXVII

Consistently with the Charter of the United Nations, States are under an obligation to settle international disputes as to their legal rights or other interests by peaceful means in such a manner that international peace and security and justice are not endangered.
It is recommended that States resort progressively to the means of prevention and settlement of disputes stipulated in articles XXIX to XXXIV of this chapter.

Article XXVIII

1. States are under a primary obligation to resort to means of prevention and settlement of disputes stipulated in the applicable treaties binding upon them.

2. States are limited to the means of prevention and settlement of disputes stipulated in treaties binding upon them only to the extent provided by the applicable treaties.

Article XXIX

1. With a view to preventing disputes from arising between basin States as to their legal rights or other interest, it is recommended that each basin State furnish relevant and reasonably available information to the other basin States concerning the waters of a drainage basin within its territory and its use of, and activities with respect to, such waters.

2. A State, regardless of its location in a drainage basin, should in particular furnish to any other basin State, the interests of which may be substantially affected, notice of any proposed construction or installation which would alter the regime of the basin in a way which might give rise to a dispute as defined in article XXVI. The notice should include such essential facts as will permit the recipient to make an assessment of the probable effect of the proposed alteration.

3. A State providing the notice referred to in paragraph 2 of this article should afford the recipient a reasonable period of time to make an assessment of the probable effect of the proposed construction or installation and to submit its views thereon to the State furnishing the notice.

4. If a State has failed to give the notice referred to in paragraph 2 of this article, the alteration by the State in the regime of the drainage basin shall not be given the weight normally accorded to temporal priority in use in the event of a determination of what is a reasonable and equitable share of the waters of the basin.

Article XXX

In case of a dispute between States as to their legal rights or other interests, as defined in article XXVI, they should seek a solution by negotiation..

Article XXXI

1. If a question or dispute arises which relates to the present or future utilization of the waters of an international drainage basin, it is recommended that the basin States refer the question or dispute to a joint agency and that they request the agency to survey the international drainage basin and to formulate plans or recommendations for the fullest and most efficient use thereof in the interests of all such States.

2. It is recommended that the joint agency be instructed to submit reports on all matters within its competence to the appropriate authorities of the member States concerned.

3. It is recommended that the member States of the joint agency in appropriate cases invite non-basin States which by treaty enjoy a right in the use of the waters of an international drainage basin to associate themselves with the work of the joint agency or that they be permitted to appear before the agency.

Article XXXII

If a question or a dispute is one which is considered by the States concerned to be incapable of resolution in the manner set forth in article XXXI, it is recommended that they seek the good offices, or jointly request the mediation of a third State, of a qualified international organization or of a qualified person.

Article XXXIII

1. If the States concerned have not been able to resolve their dispute through negotiation or have been unable to agree on the measures described in articles XXXI and XXXII, it is recommended that they form a commission of inquiry or an ad hoc conciliation commission, which shall endeavor to find a solution, likely to be accepted by the States concerned, of any dispute as to their legal rights.

2. It is recommended that the conciliation commission be constituted in the manner set forth in the annex.

Article XXXIV

It is recommended that the States concerned agree to submit their legal disputes to an ad hoc arbitral tribunal, to a permanent arbitral tribunal or to the International Court of Justice if:

(a) A commission has not been formed as provided in article XXXIII, or
(b) The commission has not been able to find a solution to be recommended, or
(c) A solution recommended has not been accepted by the States concerned, and
(d) An agreement has not been otherwise arrived at.

Article XXXV

It is recommended that in the event of arbitration the States concerned have recourse to the Model Rules on Arbitral Procedure prepared by the International Law Commission of the United Nations at its tenth session b/in 1958.

Article XXXVI

Recourse to arbitration implies the undertaking by the States concerned to consider the award to be given as final and to submit in good faith to its execution.

Article XXXVII

The means of settlement referred to in the preceding articles of this chapter are without prejudice to the utilization of means of settlement recommended to, or required of, members of regional arrangements or agencies and of other international organizations.

Abstract:
Adopted by the UN General Assembly in resolution 51/229 of 21 May 1997 .
In accordance with article 34, the Convention was opened for signature at United Nations Headquarters in New York, on 21 May 1997 and will remain open to all States and regional economic integration organizations for signature until 21 May 2000.
Text: U.N. Doc. A/51/869

Convention on the Law of the Non-navigational Uses of International Watercourses, 1997

The Parties to the present Convention,

Conscious of the importance of international watercourses and the non-navigational uses thereof in many regions of the world,

Having in mind Article 13, paragraph 1 (a), of the Charter of the United Nations, which provides that the General Assembly shall initiate studies and make recommendations for the purpose of encouraging the progressive development of international law and its codification,

Considering that successful codification and progressive development of rules of international law regarding non-navigational uses of international watercourses would assist in promoting and implementing the purposes and principles set forth in Articles 1 and 2 of the Charter of the United Nations,

Taking into account the problems affecting many international watercourses resulting from, among other things, increasing demands and pollution,

Expressing the conviction that a framework convention will ensure the utilization, development, conservation, management and protection of international watercourses and the promotion of the optimal and sustainable utilization thereof for present and future generations,

Affirming the importance of international cooperation and good-neighbourliness in this field,

Aware of the special situation and needs of developing countries, Recalling the principles and recommendations adopted by the United Nations Conference on Environment and Development of 1992 in the Rio Declaration and Agenda 21,

Recalling also the existing bilateral and multilateral agreements regarding the non-navigational uses of international watercourses,

Mindful of the valuable contribution of international organizations, both governmental and non-governmental, to the codification and progressive development of international law in this field,

Appreciative of the work carried out by the International Law Commission on the law of the non-navigational uses of international watercourses,

Bearing in mind United Nations General Assembly resolution 49/52 of 9 December 1994,

Have agreed as follows:

PART I
INTRODUCTION

Article 1
Scope of the present Convention

1. The present Convention applies to uses of international watercourses and of their waters for purposes other than navigation and to measures of protection, preservation and management related to the uses of those watercourses and their waters.

2. The uses of international watercourses for navigation is not within the scope of the present Convention except insofar as other uses affect navigation or are affected by navigation.

Article 2
Use of terms

For the purposes of the present Convention:

(a) "Watercourse" means a system of surface waters and ground waters constituting by virtue of their physical relationship a unitary whole and normally flowing into a common terminus;

(b) "International watercourse" means a watercourse, parts of which are situated in different States;

(c) "Watercourse State" means a State Party to the present Convention in whose territory part of an international watercourse is situated, or a Party that is a regional economic integration organization, in the territory of one or more of whose Member States part of an international watercourse is situated;

(d) "Regional economic integration organization" means an organization constituted by sovereign States of a given region, to which its member States have transferred competence in respect of matters governed by this Convention and which has been duly authorized in accordance with its internal procedures, to sign, ratify, accept, approve or accede to it.

Article 3
Watercourse agreements

1. In the absence of an agreement to the contrary, nothing in the present Convention shall affect the rights or obligations of a watercourse State arising from agreements in force for it on the date on which it became a party to the present Convention.

2. Notwithstanding the provisions of paragraph 1, parties to agreements referred to in paragraph 1 may, where necessary, consider harmonizing such agreements with the basic principles of the present Convention.

3. Watercourse States may enter into one or more agreements, hereinafter referred to as "watercourse agreements", which apply and adjust the provisions of the present Convention to the characteristics and uses of a particular international watercourse or part thereof.

4. Where a watercourse agreement is concluded between two or more watercourse States, it shall define the waters to which it applies. Such an agreement may be entered into with respect to an entire international watercourse or any part thereof or a particular project, programme or use except insofar as the agreement adversely affects, to a significant extent, the use by one or more other watercourse States of the waters of the watercourse, without their express consent.

5. Where a watercourse State considers that adjustment and application of the provisions of the present Convention is required because of the characteristics and uses of a particular international watercourse, watercourse States shall consult with a view to negotiating in good faith for the purpose of concluding a watercourse agreement or agreements.

6. Where some but not all watercourse States to a particular international watercourse are parties to an agreement, nothing in such agreement shall affect the rights or obligations under the present Convention of watercourse States that are not parties to such an agreement.

Article 4
Parties to watercourse agreements

1. Every watercourse State is entitled to participate in the negotiation of and to become a party to any watercourse agreement that applies to the entire international watercourse, as well as to participate in any relevant consultations.

2. A watercourse State whose use of an international watercourse may be affected to a significant extent by the implementation of a proposed watercourse agreement that applies only to a part of the watercourse or to a particular project, programme or use is entitled to participate in consultations on such an agreement and, where appropriate, in the negotiation thereof in good faith with a view to becoming a party thereto, to the extent that its use is thereby affected.

PART II
GENERAL PRINCIPLES

Article 5
Equitable and reasonable utilization and participation

1. Watercourse States shall in their respective territories utilize an international watercourse in an equitable and reasonable manner. In particular, an international watercourse shall be used and developed by watercourse States with a view to attaining optimal and sustainable utilization thereof and benefits therefrom, taking into account the interests of the watercourse States concerned, consistent with adequate protection of the watercourse.

2. Watercourse States shall participate in the use, development and protection of an international watercourse in an equitable and reasonable manner. Such participation includes both the right to utilize the watercourse and the duty to cooperate in the protection and development thereof, as provided in the present Convention.

Article 6
Factors relevant to equitable and reasonable utilization

1. Utilization of an international watercourse in an equitable and reasonable manner within the meaning of article 5 requires taking into account all relevant factors and circumstances, including:

(a) Geographic, hydrographic, hydrological, climatic, ecological and other factors of a natural character;

(b) The social and economic needs of the watercourse States concerned;

(c) The population dependent on the watercourse in each watercourse State;

(d) The effects of the use or uses of the watercourses in one watercourse State on other watercourse States;

(e) Existing and potential uses of the watercourse;

(f) Conservation, protection, development and economy of use of the water resources of the watercourse and the costs of measures taken to that effect;

(g) The availability of alternatives, of comparable value, to a particular planned or existing use.

2. In the application of article 5 or paragraph 1 of this article, watercourse States concerned shall, when the need arises, enter into consultations in a spirit of cooperation.

3. The weight to be given to each factor is to be determined by its importance in comparison with that of other relevant factors. In determining what is a reasonable and equitable use, all relevant factors are to be considered together and a conclusion reached on the basis of the whole.

Article 7
Obligation not to cause significant harm

1. Watercourse States shall, in utilizing an international watercourse in their territories, take all appropriate measures to prevent the causing of significant harm to other watercourse States.

2. Where significant harm nevertheless is caused to another watercourse State, the States whose use causes such harm shall, in the absence of agreement to such use, take all appropriate measures, having due regard for the provisions of articles 5 and 6, in consultation with the affected State, to eliminate or mitigate such harm and, where appropriate, to discuss the question of compensation.

Article 8
General obligation to cooperate

1. Watercourse States shall cooperate on the basis of sovereign equality, territorial integrity, mutual benefit and good faith in order to attain optimal utilization and adequate protection of an international watercourse.

2. In determining the manner of such cooperation, watercourse States may consider the establishment of joint mechanisms or commissions, as deemed necessary by them, to facilitate cooperation on relevant measures and procedures in the light of experience gained through cooperation in existing joint mechanisms and commissions in various regions.

Article 9
Regular exchange of data and information

1. Pursuant to article 8, watercourse States shall on a regular basis exchange readily available data and information on the condition of the watercourse, in particular that of a hydrological, meteorological, hydrogeological and ecological nature and related to the water quality as well as related forecasts.

2. If a watercourse State is requested by another watercourse State to provide data or information that is not readily available, it shall employ its best efforts to comply with the request but may condition its compliance upon payment by the requesting State of the reasonable costs of collecting and, where appropriate, processing such data or information.

3. Watercourse States shall employ their best efforts to collect and, where appropriate, to process data and information in a manner which facilitates its utilization by the other watercourse States to which it is communicated.

Article 10
Relationship between different kinds of uses

1. In the absence of agreement or custom to the contrary, no use of an international watercourse enjoys inherent priority over other uses.

2. In the event of a conflict between uses of an international watercourse, it shall be resolved with reference to articles 5 to 7, with special regard being given to the requirements of vital human needs.

PART III
PLANNED MEASURES

Article 11
Information concerning planned measures

Watercourse States shall exchange information and consult each other and, if necessary, negotiate on the possible effects of planned measures on the condition of an international watercourse.

Article 12
Notification concerning planned measures with possible adverse effects

Before a watercourse State implements or permits the implementation of planned measures which may have a significant adverse effect upon other watercourse States, it shall provide those States with timely notification thereof. Such notification shall be accompanied by available technical data and information, including the results of any environmental impact assessment, in order to enable the notified States to evaluate the possible effects of the planned measures.

Article 13
Period for reply to notification

Unless otherwise agreed:

(a) A watercourse State providing a notification under article 12 shall allow the notified States a period of six months within which to study and evaluate the possible effects of the planned measures and to communicate the findings to it;

(b) This period shall, at the request of a notified State for which the evaluation of the planned measures poses special difficulty, be extended for a period of six months.

Article 14
Obligations of the notifying State during the period for reply

During the period referred to in article 13, the notifying State:

(a) Shall cooperate with the notified States by providing them, on request, with any additional data and information that is available and necessary for an accurate evaluation; and

(b) Shall not implement or permit the implementation of the planned measures without the consent of the notified States.

Article 15
Reply to notification

The notified States shall communicate their findings to the notifying State as early as possible within the period applicable pursuant to article 13. If a notified State finds that implementation of the planned measures would be inconsistent with the provisions of articles 5 or 7, it shall attach to its finding a documented explanation setting forth the reasons for the finding.

Article 16
Absence of reply to notification

1. If, within the period applicable pursuant to article 13, the notifying State receives no communication under article 15, it may, subject to its obligations under articles 5 and 7, proceed with the implementation of the planned measures, in accordance with the notification and any other data and information provided to the notified States.

2. Any claim to compensation by a notified State which has failed to reply within the period applicable pursuant to article 13 may be offset by the costs incurred by the notifying State for action undertaken after the expiration of the time for a reply which would not have been undertaken if the notified State had objected within that period.

Article 17
Consultations and negotiations concerning planned measures

1. If a communication is made under article 15 that implementation of the planned measures would be inconsistent with the provisions of articles 5 or 7, the notifying State and the State making the communication shall enter into consultations and, if necessary, negotiations with a view to arriving at an equitable resolution of the situation.

2. The consultations and negotiations shall be conducted on the basis that each State must in good faith pay reasonable regard to the rights and legitimate interests of the other State.

3. During the course of the consultations and negotiations, the notifying State shall, if so requested by the notified State at the time it makes the communication, refrain from implementing or permitting the implementation of the planned measures for a period of six months unless otherwise agreed.

Article 18
Procedures in the absence of notification

1. If a watercourse State has reasonable grounds to believe that another watercourse State is planning measures that may have a significant adverse effect upon it, the former State may request the latter to apply the provisions of article 12. The request shall be accompanied by a documented explanation setting forth its grounds.

2. In the event that the State planning the measures nevertheless finds that it is not under an obligation to provide a notification under article 12, it shall so inform the other State, providing a documented explanation setting forth the reasons for such finding. If this finding does not satisfy the other State, the two States shall, at the request of that other State, promptly enter into consultations and negotiations in the manner indicated in paragraphs 1 and 2 of article 17.

3. During the course of the consultations and negotiations, the State planning the measures shall, if so requested by the other State at the time it requests the initiation of consultations and negotiations, refrain from implementing or permitting the implementation of those measures for a period of six months unless otherwise agreed.

Article 19
Urgent implementation of planned measures

1. In the event that the implementation of planned measures is of the utmost urgency in order to protect public health, public safety or other equally important interests, the State planning the measures may, subject to articles 5 and 7, immediately proceed to implementation, notwithstanding the provisions of article 14 and paragraph 3 of article 17.

2. In such case, a formal declaration of the urgency of the measures shall be communicated without delay to the other watercourse States referred to in article 12 together with the relevant data and information.

3. The State planning the measures shall, at the request of any of the States referred to in paragraph 2, promptly enter into consultations and negotiations with it in the manner indicated in paragraphs 1 and 2 of article 17.

PART IV
PROTECTION, PRESERVATION AND MANAGEMENT

Article 20
Protection and preservation of ecosystems

Watercourse States shall, individually and, where appropriate, jointly, protect and preserve the ecosystems of international watercourses.

Article 21
Prevention, reduction and control of pollution

1. For the purpose of this article, "pollution of an international watercourse" means any detrimental alteration in the composition or quality of the waters of an international watercourse which results directly or indirectly from human conduct.

2. Watercourse States shall, individually and, where appropriate, jointly, prevent, reduce and control the pollution of an international watercourse that may cause significant harm to other watercourse States or to their environment, including harm to human health or safety, to the use of the waters for any beneficial purpose or to the living resources of the watercourse. Watercourse States shall take steps to harmonize their policies in this connection.

3. Watercourse States shall, at the request of any of them, consult with a view to arriving at mutually agreeable measures and methods to prevent, reduce and control pollution of an international watercourse, such as:

(a) Setting joint water quality objectives and criteria;

(b) Establishing techniques and practices to address pollution from point and non-point sources;

(c) Establishing lists of substances the introduction of which into the waters of an international watercourse is to be prohibited, limited, investigated or monitored.

Article 22
Introduction of alien or new species

Watercourse States shall take all measures necessary to prevent the introduction of species, alien or new, into an international watercourse which may have effects detrimental to the ecosystem of the watercourse resulting in significant harm to other watercourse States.

Article 23
Protection and preservation of the marine environment

Watercourse States shall, individually and, where appropriate, in cooperation with other States, take all measures with respect to an international watercourse that are necessary to protect and preserve the marine environment, including estuaries, taking into account generally accepted international rules and standards.

Article 24
Management

1. Watercourse States shall, at the request of any of them, enter into consultations concerning the management of an international watercourse, which may include the establishment of a joint management mechanism.

2. For the purposes of this article, "management" refers, in particular, to:

(a) Planning the sustainable development of an international watercourse and providing for the implementation of any plans adopted; and

(b) Otherwise promoting the rational and optimal utilization, protection and control of the watercourse.

Article 25
Regulation

1. Watercourse States shall cooperate, where appropriate, to respond to needs or opportunities for regulation of the flow of the waters of an international watercourse.

2. Unless otherwise agreed, watercourse States shall participate on an equitable basis in the construction and maintenance or defrayal of the costs of such regulation works as they may have agreed to undertake.

3. For the purposes of this article, "regulation" means the use of hydraulic works or any other continuing measure to alter, vary or otherwise control the flow of the waters of an international watercourse.

Article 26
Installations

1. Watercourse States shall, within their respective territories, employ their best efforts to maintain and protect installations, facilities and other works related to an international watercourse.

2. Watercourse States shall, at the request of any of them which has reasonable grounds to believe that it may suffer significant adverse effects, enter into consultations with regard to:

(a) The safe operation and maintenance of installations, facilities or other works related to an international watercourse; and

(b) The protection of installations, facilities or other works from wilful or negligent acts or the forces of nature.

PART V
HARMFUL CONDITIONS AND EMERGENCY SITUATIONS

Article 27
Prevention and mitigation of harmful conditions

Watercourse States shall, individually and, where appropriate, jointly, take all appropriate measures to prevent or mitigate conditions related to an international watercourse that may be harmful to other watercourse States, whether resulting from natural causes or human conduct, such as flood or ice conditions, water-borne diseases, siltation, erosion, salt-water intrusion, drought or desertification.

Article 28
Emergency situations

1. For the purposes of this article, "emergency" means a situation that causes, or poses an imminent threat of causing, serious harm to watercourse States or other States and that results suddenly from natural causes, such as floods, the breaking up of ice, landslides or earthquakes, or from human conduct, such as industrial accidents.

2. A watercourse State shall, without delay and by the most expeditious means available, notify other potentially affected States and competent international organizations of any emergency originating within its territory.

3. A watercourse State within whose territory an emergency originates shall, in cooperation with potentially affected States and, where appropriate, competent international organizations, immediately take all practicable measures necessitated by the circumstances to prevent, mitigate and eliminate harmful effects of the emergency.

4. When necessary, watercourse States shall jointly develop contingency plans for responding to emergencies, in cooperation, where appropriate, with other potentially affected States and competent international organizations.

PART VI
MISCELLANEOUS PROVISIONS

Article 29
International watercourses and installations in time of armed conflict

International watercourses and related installations, facilities and other works shall enjoy the protection accorded by the principles and rules of international law applicable in international and non-international armed conflict and shall not be used in violation of those principles and rules.

Article 30
Indirect procedures

In cases where there are serious obstacles to direct contacts between watercourse States, the States concerned shall fulfil their obligations of cooperation provided for in the present Convention, including exchange of data and information, notification, communication, consultations and negotiations, through any indirect procedure accepted by them.

Article 31
Data and information vital to national defence or security

Nothing in the present Convention obliges a watercourse State to provide data or information vital to its national defence or security. Nevertheless, that State shall cooperate in good faith with the other watercourse States with a view to providing as much information as possible under the circumstances.

Article 32
Non-discrimination

Unless the watercourse States concerned have agreed otherwise for the protection of the interests of persons, natural or juridical, who have suffered or are under a serious threat of suffering significant transboundary harm as a result of activities related to an international watercourse, a watercourse State shall not discriminate on the basis of nationality or residence or place where the injury occurred, in granting to such persons, in accordance with its legal system, access to judicial or other procedures, or a right to claim compensation or other relief in respect of significant harm caused by such activities carried on in its territory.

Article 33
Settlement of disputes

1. In the event of a dispute between two or more Parties concerning the interpretation or application of the present Convention, the Parties concerned shall, in the absence of an applicable agreement between them, seek a settlement of the dispute by peaceful means in accordance with the following provisions.

2. If the Parties concerned cannot reach agreement by negotiation requested by one of them, they may jointly seek the good offices of, or request mediation or conciliation by, a third party, or make use, as appropriate, of any joint watercourse institutions that may have been established by them or agree to submit the dispute to arbitration or to the International Court of Justice.

3. Subject to the operation of paragraph 10, if after six months from the time of the request for negotiations referred to in paragraph 2, the Parties concerned have not been able to settle their dispute through negotiation or any other means referred to in paragraph 2, the dispute shall be submitted, at the request of any of the parties to the dispute, to impartial fact-finding in accordance with paragraphs 4 to 9, unless the Parties otherwise agree.

4. A Fact-finding Commission shall be established, composed of one member nominated by each Party concerned and in addition a member not having the nationality of any of the Parties concerned chosen by the nominated members who shall serve as Chairman.

5. If the members nominated by the Parties are unable to agree on a Chairman within three months of the request for the establishment of the Commission, any Party concerned may request the Secretary-General of the United Nations to appoint the Chairman who shall not have the nationality of any of the parties to the dispute or of any riparian State of the watercourse concerned. If one of the Parties fails to nominate a member within three months of the initial request pursuant to paragraph 3, any other Party concerned may request the Secretary-General of the United Nations to appoint a person who shall not have the nationality of any of the parties to the dispute or of any riparian State of the watercourse concerned. The person so appointed shall constitute a single-member Commission.

6. The Commission shall determine its own procedure.

7. The Parties concerned have the obligation to provide the Commission with such information as it may require and, on request, to permit the Commission to have access to their

respective territory and to inspect any facilities, plant, equipment, construction or natural feature relevant for the purpose of its inquiry.

8. The Commission shall adopt its report by a majority vote, unless it is a single-member Commission, and shall submit that report to the Parties concerned setting forth its findings and the reasons therefor and such recommendations as it deems appropriate for an equitable solution of the dispute, which the Parties concerned shall consider in good faith.

9. The expenses of the Commission shall be borne equally by the Parties concerned.

10. When ratifying, accepting, approving or acceding to the present Convention, or at any time thereafter, a Party which is not a regional economic integration organization may declare in a written instrument submitted to the Depositary that, in respect of any dispute not resolved in accordance with paragraph 2, it recognizes as compulsory ipso facto and without special agreement in relation to any Party accepting the same obligation:

(a) Submission of the dispute to the International Court of Justice; and/or

(b) Arbitration by an arbitral tribunal established and operating, unless the parties to the dispute otherwise agreed, in accordance with the procedure laid down in the annex to the present Convention.

A Party which is a regional economic integration organization may make a declaration with like effect in relation to arbitration in accordance with subparagraph (b).

PART VII
FINAL CLAUSES

Article 34
Signature

The present Convention shall be open for signature by all States and by regional economic integration organizations from 21 May 1997 until 20 May 2000 at United Nations Headquarters in New York.

Article 35
Ratification, acceptance, approval or accession

1. The present Convention is subject to ratification, acceptance, approval or accession by States and by regional economic integration organizations. The instruments of ratification, acceptance, approval or accession shall be deposited with the Secretary-General of the United Nations.

2. Any regional economic integration organization which becomes a Party to this Convention without any of its member States being a Party shall be bound by all the obligations under the Convention. In the case of such organizations, one or more of whose member States is a Party to this Convention, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under the Convention. In such cases, the organization and the member States shall not be entitled to exercise rights under the Convention concurrently.

3. In their instruments of ratification, acceptance, approval or accession, the regional economic integration organizations shall declare the extent of their competence with respect to the matters governed by the Convention. These organizations shall also inform the Secretary-General of the United Nations of any substantial modification in the extent of their competence.

Article 36
Entry into force

1. The present Convention shall enter into force on the ninetieth day following the date of deposit of the thirty-fifth instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations.

2. For each State or regional economic integration organization that ratifies, accepts or approves the Convention or accedes thereto after the deposit of the thirty-fifth instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the ninetieth day after the deposit by such State or regional economic integration organization of its instrument of ratification, acceptance, approval or accession.

3. For the purposes of paragraphs 1 and 2, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by States.

Article 37
Authentic texts

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

ANNEX

ARBITRATION

Article 1

Unless the parties to the dispute otherwise agree, the arbitration pursuant to article 33 of the Convention shall take place in accordance with articles 2 to 14 of the present annex.

Article 2

The claimant party shall notify the respondent party that it is referring a dispute to arbitration pursuant to article 33 of the Convention. The notification shall state the subject matter of arbitration and include, in particular, the articles of the Convention, the interpretation or application of which are at issue. If the parties do not agree on the subject matter of the dispute, the arbitral tribunal shall determine the subject matter.

Article 3

1. In disputes between two parties, the arbitral tribunal shall consist of three members. Each of the parties to the dispute shall appoint an arbitrator and the two arbitrators so appointed shall designate by common agreement the third arbitrator, who shall be the Chairman of the tribunal. The latter shall not be a national of one of the parties to the dispute or of any riparian State of the watercourse concerned, nor have his or her usual place of residence in the territory of one of these parties or such riparian State, nor have dealt with the case in any other capacity.

2. In disputes between more than two parties, parties in the same interest shall appoint one arbitrator jointly by agreement.

3. Any vacancy shall be filled in the manner prescribed for the initial appointment.

Article 4

1. If the Chairman of the arbitral tribunal has not been designated within two months of the appointment of the second arbitrator, the President of the International Court of Justice shall, at the request of a party, designate the Chairman within a further two-month period.

2. If one of the parties to the dispute does not appoint an arbitrator within two months of receipt of the request, the other party may inform the President of the International Court of Justice, who shall make the designation within a further two-month period.

Article 5

The arbitral tribunal shall render its decisions in accordance with the provisions of this Convention and international law.

Article 6

Unless the parties to the dispute otherwise agree, the arbitral tribunal shall determine its own rules of procedure.

Article 7

The arbitral tribunal may, at the request of one of the Parties, recommend essential interim measures of protection.

Article 8

1. The parties to the dispute shall facilitate the work of the arbitral tribunal and, in particular, using all means at their disposal, shall:

(a) Provide it with all relevant documents, information and facilities; and

(b) Enable it, when necessary, to call witnesses or experts and receive their evidence.

2. The parties and the arbitrators are under an obligation to protect the confidentiality of any information they receive in confidence during the proceedings of the arbitral tribunal.

Article 9

Unless the arbitral tribunal determines otherwise because of the particular circumstances of the case, the costs of the tribunal shall be borne by the parties to the dispute in equal shares. The tribunal shall keep a record of all its costs, and shall furnish a final statement thereof to the parties.

Article 10

Any Party that has an interest of a legal nature in the subject matter of the dispute which may be affected by the decision in the case, may intervene in the proceedings with the consent of the tribunal.

Article 11

The tribunal may hear and determine counterclaims arising directly out of the subject matter of the dispute.

Article 12

Decisions both on procedure and substance of the arbitral tribunal shall be taken by a majority vote of its members.

Article 13

If one of the parties to the dispute does not appear before the arbitral tribunal or fails to defend its case, the other party may request the tribunal to continue the proceedings and to make its award. Absence of a party or a failure of a party to defend its case shall not constitute a bar to the proceedings. Before rendering its final decision, the arbitral tribunal must satisfy itself that the claim is well founded in fact and law.

Article 14

1. The tribunal shall render its final decision within five months of the date on which it is fully constituted unless it finds it necessary to extend the time limit for a period which should not exceed five more months.

2. The final decision of the arbitral tribunal shall be confined to the subject matter of the dispute and shall state the reasons on which it is based. It shall contain the names of the members who have participated and the date of the final decision. Any member of the tribunal may attach a separate or dissenting opinion to the final decision.

3. The award shall be binding on the parties to the dispute. It shall be without appeal unless the parties to the dispute have agreed in advance to an appellate procedure.

4. Any controversy which may arise between the parties to the dispute as regards the interpretation or manner of implementation of the final decision may be submitted by either party for decision to the arbitral tribunal which rendered it.

Revised

Protocol on Shared Watercourses in the Southern African Development Community (SADC)

PREAMBLE

We, the Heads of State or Government of:

The Republic of Angola
The Republic of Botswana
The Democratic Republic of the Congo
The Kingdom of Lesotho
The Republic of Malawi
The Republic of Mauritius
The Republic of Mozambique
The Republic of Namibia
The Republic of Seychelles
The Republic of South Africa
The Kingdom of Swaziland
The United Republic of Tanzania
The Republic of Zambia
The Republic of Zimbabwe

BEARING in mind the progress with the development and codification of international water law initiated by the Helsinki Rules and that the United Nations subsequently adopted the United Nations Convention on the Law of the Non-Navigational Uses of International Watercourses;

RECOGNISING the relevant provisions of Agenda 21 of the United Nations Conference on Environment and Development, the concepts of environmentally sound management, sustainable development and equitable utilisation of shared watercourses in the SADC Region;

CONSIDERING the existing and emerging socio-economic development programmes in the SADC Region and their impact on the environment;

DESIROUS of developing close co-operation for judicious, sustainable and co-ordinated utilisation of the resources of the shared watercourses in the SADC Region;

CONVINCED of the need for co-ordinated and environmentally sound development of the resources of shared watercourses in the SADC Region in order to support sustainable socio-economic development;

RECOGNISING that there are as yet no regional conventions regulating common utilisation and management of the resources of shared watercourses in the SADC Region;

MINDFUL of the existence of other Agreements in the SADC Region regarding the common utilisation of certain watercourses; and

IN ACCORDANCE with Article 22 of the Treaty, have agreed as follows:

Article 1
Definitions

1. For the purposes of this Protocol the following terms shall have the meanings ascribed to them hereunder:

"Agricultural use" means use of water for irrigation purposes;
"Domestic use" means use of water for drinking, washing, cooking, bathing, sanitation and stock watering purposes;
"Emergency situation" means a situation that causes or poses an imminent threat of causing serious harm to Watercourse States and which results suddenly from natural causes, such as torrential rains, floods, landslides or earthquakes or from human conduct;
"Environmental use" means the use of water for the preservation and maintenance of ecosystems;
"Industrial use" means use of water for commercial, electrical power generation, industrial, manufacturing and mining purposes;
"Management of a shared watercourse" means
(i) planning the sustainable development of a shared watercourse and providing for the implementation of any plans adopted; and
(ii) otherwise promoting the rational, equitable and optimal utilisation, protection, and control of the watercourse;
"Navigational use" means use of water for sailing whether it be for transport, fishing, recreation or tourism;
"Pollution of a shared water course" means any detrimental alteration in the composition or quality of the waters of a shared watercourse which results directly or indirectly from human conduct;
"Regulation of the flow of the waters of a shared watercourse" means the use of hydraulic works or any other continuing measure to alter, vary or otherwise control the flow of waters of a shared watercourse;
"Shared watercourse" means a watercourse passing through or forming the border between two or more Watercourse States;
"Significant Harm" means non-trivial harm capable of being established by objective evidence without necessarily rising to the level of being substantial;
"State Party" means a member of SADC that ratifies or accedes to this Protocol;
"Watercourse" means a system of surface and ground waters consisting by virtue of their physical relationship a unitary whole normally flowing into a common terminus such as the sea, lake or aquifer;
"Watercourse State" means a State Party in whose territory part of a watercourse is situated.

2. Any other term defined in the Treaty and used in this Protocol shall have the same meaning as ascribed to it in the Treaty.

Article 2
Objective

The overall objective of this Protocol is to foster closer cooperation for judicious, sustainable and co-ordinated management, protection and utilisation of shared watercourses and advance the SADC agenda of regional integration and poverty alleviation. In order to achieve this objective, this Protocol seeks to:

a) promote and facilitate the establishment of shared watercourse agreements and Shared Watercourse Institutions for the management of shared watercourses;

b) advance the sustainable, equitable and reasonable utilisation of the shared watercourses;

c) promote a co-ordinated and integrated environmentally sound development and management of shared watercourses;

d) promote the harmonisation and monitoring of legislation and policies for planning, development, conservation, protection of shared watercourses, and allocation of the resources thereof; and

e) promote research and technology development, information exchange, capacity building, and the application of appropriate technologies in shared watercourses management."

Article 3
General Principles

For the purposes of this Protocol the following general principles shall apply:

1. The State Parties recognise the principle of the unity and coherence of each shared watercourse and in accordance with this principle, undertake to harmonise the water uses in the shared watercourses and to ensure that all necessary interventions are consistent with the sustainable development of all Watercourse States and observe the objectives of regional integration and harmonisation of their socio-economic policies and plans.

2. The utilisation of shared watercourses within the SADC Region shall be open to each Watercourse State, in respect of the watercourses within its territory and without prejudice to its sovereign rights, in accordance with the principles contained in this Protocol. The utilisation of the resources of the watercourses shall include agricultural, domestic, industrial, navigational and environmental uses.

3. State Parties undertake to respect the existing rules of customary or general international law relating to the utilisation and management of the resources of shared watercourses.

4. State Parties shall maintain a proper balance between resource development for a higher standard of living for their people and conservation and enhancement of the environment to promote sustainable development.

5. State Parties undertake to pursue and establish close co-operation with regard to the study and execution of all projects likely to have an effect on the regime of the shared watercourse.

6. State Parties shall exchange available information and data regarding the hydrological, hydro geological, water quality, meteorological and environmental condition of shared watercourses.

7. a) Watercourse States shall in their respective territories utilise a shared watercourse in an equitable and reasonable manner. In particular, a shared watercourse shall be used and developed by Watercourse States with a view to attain optimal and sustainable utilisation thereof and benefits therefrom, taking into account the interests of the Watercourse States concerned, consistent with adequate protection of the watercourse for the benefit of current and future generations.

   b) Watercourse States shall participate in the use, development and protection of a shared watercourse in an equitable and reasonable manner. Such participation, includes both the right to utilise the watercourse and the duty to co-operate in the protection and development thereof, as provided in this Protocol.

8. a) Utilisation of a shared watercourse in an equitable and reasonable manner within the meaning of Article 7(a) and (b) requires taking into account all relevant factors and circumstances including:

      (i) geographical, hydrographical, hydrological, climatical, ecological and other factors of a natural character;
      (ii) the social, economic and environmental needs of the Watercourse States concerned;

(iii) the population dependent on the shared watercourse in each Watercourse State;
(iv) the effects of the use or uses of a shared watercourse in one Watercourse State on other Watercourse States;
(v) existing and potential uses of the watercourse;
(vi) conservation, protection, development and economy of use of the water resources of the shared watercourse and the costs of measures taken to that effect; and
(vii) the availability of alternatives, of comparable value, to a particular planned or existing use.

(b) The weight to be given to each factor is to be determined by its importance in comparison with that of other relevant factors. In determining what is an equitable and reasonable use, all relevant factors are to be considered together and a conclusion reached on the basis of the whole.

9. State Parties shall deal with planned measures in conformity with the procedure set out in Article 4 (1).

10 a) State Parties shall, in utilising a shared watercourse in their territories, take all appropriate measures to prevent the causing of significant harm to other Watercourse States.

b) Where significant harm is nevertheless caused to another Watercourse State, the State whose use causes such harm shall, in the absence of agreement to such use, take all appropriate measures, having due regard for the provisions of paragraph (a) above in consultation with the affected States, to eliminate or mitigate such harm and, where appropriate, to discuss the question of compensation.

c) Unless the Watercourse States concerned have agreed otherwise for the protection of the interests of persons, natural or juridical, who have suffered or are under a serious threat of suffering significant transboundary harm as a result of activities related to a shared watercourse, a Watercourse State shall not discriminate on the basis of nationality or residence or place where the injury occurred, in granting to such persons, in accordance with its legal system, access to judicial or other procedures, or a right to claim compensation or other relief in respect of significant harm caused by such activities carried on in its territory.

Article 4
Specific Provisions

1. Planned Measures

a) Information concerning planned measures

State Parties shall exchange information and consult each other and, if necessary, negotiate the possible effects of planned measures on the condition of a shared watercourse.

b) Notification concerning planned measures with possible adverse effects

Before a State Party implements or permits the implementation of planned measures which may have a significant adverse effect upon other Watercourse States, it shall provide those States with timely notification thereof. Such notification shall be accompanied by available technical data and information, including the results of any environmental impact assessment, in order to enable the notified States to evaluate the possible effects of the planned measures.

c) Period for reply to notification

(i) Unless otherwise agreed, a State Party providing a notification under paragraph (b) shall allow the notified States a period of six months within which to study and evaluate the possible effects of the planned measures and to communicate the findings to it;

(ii) This period shall, at the request of a notified State for which the evaluation of the planned measures poses difficulty, be extended for a period of six months.

d) Obligations of the notifying State during the period for reply

During the period referred to in paragraph (c), the notifying State:

i) shall co-operate with the notified States by providing them, on request, with any additional data and information that is available and necessary for an accurate evaluation; and

ii) shall not implement or permit the implementation of the planned measures without the consent of the notified States.

e) Reply to Notification

The notified States shall communicate their findings to the notifying State as early as possible within the period applicable pursuant to paragraph (c). If a notified State finds that implementation of the planned measures would be inconsistent with the provisions of Article 3 (7) or (10), it shall attach to its finding a documented explanation setting the reasons for the findings.

f) Absence of reply to notification

i) If, within the period applicable pursuant to paragraph (c), the notifying State receives no communication under (e), it may, subject to its obligations under Article 3 (7) and (10), proceed with the implementation of the planned measures, in accordance with the notification and any other data and information provided to the notified States.

ii) Any claim to compensation by a notified State which has failed to reply within the period applicable pursuant to paragraph (c) may be offset by the costs incurred by the notifying State for action undertaken after the expiration of the time for a reply which would not have been undertaken if the notified State had objected within that period.

g) Consultations and negotiations concerning planned measures

i) If a communication is made under paragraph (e) that implementation of the planned measures would be inconsistent with the provisions of Article 3 (7) or (10), the notifying State and the State making the communication shall enter into consultations and, if necessary, negotiations with a view to arriving at an equitable resolution of the situation.

ii) The consultations and negotiations shall be conducted on the basis that each State must in good faith pay reasonable regard to the rights and legitimate interests of the other States.

iii) During the course of the consultations and negotiations, the notifying State shall, if so requested by the notified State at the time it makes the communication, refrain from implementing or permitting the implementation of the planned measures for a period of six months unless otherwise agreed.

h) Procedures in the absence of notification

i) If a State Party has reasonable grounds to believe that another Watercourse State is planning measures that may have a significant adverse effect upon it,

the former State may request the latter to apply the provisions of paragraph (b). The request shall be accompanied by a documented explanation setting forth its grounds.

ii) If the State planning the measures finds that it is not under an obligation to provide a notification under paragraph (b), it shall so inform the other State, providing a documented explanation setting forth the reasons for such finding. If this finding does not satisfy the other State, the two States shall, at the request of that other State, promptly enter into consultations and negotiations in the manner provided in sub-paragraphs (i) and (ii) of paragraph (g).

iii) During the course of the consultations and negotiations, the State planning the measures shall, if so requested by the other State at the time it requests the initiation of consultations and negotiations, refrain from implementing or permitting the implementation of those measures for a period of six months unless otherwise agreed.

i) Urgent implementation of planned measures

i) In the event that the implementation of planned measures is of the utmost urgency in order to protect public health, public safety or other equally important interests, the State planning the measures may, subject to paragraphs 7 and 10 of Article 3, immediately proceed to implementation, notwithstanding the provisions of paragraph (d) and sub-paragraph (iii) of paragraph (g).

ii) In such case, a formal declaration of the urgency of the measures shall be communicated without delay to the other Watercourse States referred to in paragraph (b) together with the relevant data and information.

(iii) The State planning the measures shall, at the request of any of the States referred to in paragraph (ii), promptly enter into consultations and negotiations with it in the manner indicated in sub-paragraphs (i) and (ii) of paragraph (g).

2. Environmental Protection and Preservation

a) Protection and preservation of ecosystems

State Parties shall, individually and, where appropriate, jointly, protect and preserve the ecosystems of a shared watercourse.

b) Prevention, reduction and control of pollution

i) State Parties shall, individually and, where appropriate, jointly, prevent, reduce and control the pollution and environmental degradation of a shared watercourse that may cause significant harm to other Watercourse States or to their environment, including harm to human health or safety, to the use of the waters for any beneficial purpose or to the living resources of the watercourse.

ii) Watercourse States shall take steps to harmonise their policies and legislation in this connection.

iii) State Parties shall, at the request of any one or more of them, consult with a view to arriving at mutually agreeable measures and methods to prevent, reduce and control pollution of a shared watercourse, such as:
a) setting joint water quality objectives and criteria;

b) establishing techniques and practices to address pollution from point and non-point sources;
c) establishing lists of substances the introduction of which, into the waters of a shared watercourse, is to be prohibited, limited, investigated or monitored.

c) Introduction of alien or new species

State Parties shall take all measures necessary to prevent the introduction of species, alien or new, into a shared watercourse which may have effects detrimental to the ecosystems of the watercourse resulting in significant harm to other Watercourse States.

d) Protection and preservation of the aquatic environment

State Parties shall individually and, where appropriate, in co-operation with other States, take all measures with respect to a shared watercourse that are necessary to protect and preserve the aquatic environment, including estuaries, taking into account generally accepted international rules and standards.

3. Management of Shared Watercourses

a) Management

Watercourse States shall, at the request of any of them, enter into consultations concerning the management of a shared watercourse, which may include the establishment of a joint management mechanism.

b) Regulation

i) Watercourse States shall co-operate, where appropriate, to respond to needs or opportunities for regulation of the flow of the waters of a shared watercourse.

ii) Unless otherwise agreed, Watercourse States shall participate on an equitable and reasonable basis in the construction and maintenance or defrayal of the costs of such regulation works as they may have agreed to undertake.

c) Installations

i) Watercourse States shall, within their respective territories, employ their best efforts to maintain and protect installations, facilities and other works related to a shared watercourse.

ii) Watercourse States shall, at the request of any of them which has reasonable grounds to believe that it may suffer significant adverse effects, enter into consultations with regards to:

a) the safe operation and maintenance of installations, facilities, or other works related to a shared watercourse; and
b) the protection of installations, facilities or other works from wilful or negligent acts or the forces of nature.

iii) Shared watercourses and related installations, facilities and other works shall enjoy the protection accorded by the principles and rules of international law applicable in international and non-international armed conflict and shall not be used in violation of those principles and rules.

4. Prevention and Mitigation of Harmful Conditions

a) State Parties shall individually and, where appropriate, jointly take all appropriate measures to prevent or mitigate conditions related to a shared watercourse that may be harmful to other Watercourse States, whether resulting from natural causes or

human conduct, such as floods, water-borne diseases, siltation, erosion, salt-water intrusion, drought or desertification.

b) State Parties shall require any person intending to use the waters of a shared watercourse within their respective territories for purposes other than domestic or environmental use or who intends to discharge any type of waste into such waters, to first obtain a permit, licence or other similar authorisation from the relevant authority within the State concerned. The permit or other similar authorisation shall be granted only after such State has determined that the intended use or discharge will not cause significant harm on the regime of the watercourse.

5. Emergency Situations

State Parties shall, without delay, notify other potentially affected States, the SADC Water Sector Co-ordinating Unit and competent international organisations of any emergency situation originating within their respective territories and promptly supply the necessary information to such affected States and competent organisations with a view to co-operate in the prevention, mitigation, and elimination, of harmful effects of the emergency.

Article 5
Institutional Framework For Implementation

1. The following institutional mechanisms responsible for the implementation of this Protocol are hereby established -

a) SADC Water Sector Organs
   i) the Committee of Water Ministers;
   ii) the Committee of Water Senior Officials;
   iii) the Water Sector Co-ordinating Unit; and
   iv) the Water Resources Technical Committee and sub-Committees.

b) Shared Watercourse Institutions

c) The Committee of Water Ministers shall consist of Ministers responsible for water.

d) The Committee of Water Senior Officials shall consist of the Permanent Secretaries or officials of equivalent rank responsible for water.

e) The Water Sector Coordinating Unit which shall be the executing agency of the Water Sector shall be headed by a Co-ordinator appointed by the State Party responsible for coordinating the Water Sector, and he or she shall be assisted by such supporting staff of professional, administrative and secretarial personnel as the Coordinator may deem necessary.

2. The SADC Water Sector Organs shall have the following functions:

a) The Committee of Water Ministers
   i) Oversee and monitor the implementation of the Protocol and assist in resolving potential conflicts on shared watercourses.
   ii) Guide and co-ordinate cooperation and harmonisation of legislation, policies, strategies, programmes and projects.
   iii) Advise the Council on policies to be pursued.
   iv) Recommend to Council the creation of such other organs as may be necessary for the implementation of this Protocol.
   v) Provide regular updates to the Council on the status of the implementation of this Protocol.

b) The Committee of Water Senior Officials

i) Examine all reports and documents put before them by the Water Resources Technical Committee and the Water Sector Co-ordinating Unit.
ii) Initiate and advise the Committee of Water Ministers on policies, strategies, programmes and projects to be presented to the Council for approval.
iii) Recommend to the Committee of Water Ministers the creation of such other organs as may be necessary for the implementation of this Protocol.
iv) Provide regular updates to the Committee of Water Ministers on the status of the implementation of this Protocol.

c) The Water Sector Co-ordinating Unit
i) Monitor the implementation of this Protocol.
ii) Liaise with other SADC organs and Shared Watercourse Institutions on matters pertaining to the implementation of this Protocol.
iii) Provide guidance on the interpretation of this Protocol.
iv) Advise State Parties on matters pertaining to this Protocol.
v) Organise and manage all technical and policy meetings.
vi) Draft terms of reference for consultancies and manage the execution of those assignments.
vii) Mobilise or facilitate the mobilisation of financial and technical resources for the implementation of this Protocol.
viii) Annually submit a status report on the implementation of the Protocol to the Council through the Committee of Water Ministers.
ix) Keep an inventory of all shared watercourse management institutions and their agreements on shared watercourses within the SADC Region.

d) The Water Resources Technical Committee
i) Provide technical support and advice to the Committee of Water Senior Officials through the Water Sector Co-ordinating Unit with respect to the implementation of this Protocol.
ii) Discuss issues tabled by the Water Sector Co-ordinating Unit and prepare for the Committee of Water Senior Officials.
iii) Consider and approve terms of reference for consultancies, including the appointment of consultants.
iv) Recommend to the Committee of Water Senior Officials any matter of interest to it on which agreement has not been reached.
v) Appoint working groups for short-term tasks and standing sub-committees for longer term tasks.
vi) Address any other issues that may have implications on the implementation of this Protocol.

3. Shared Watercourse Institutions

a) Watercourse States undertake to establish appropriate institutions such as watercourse commissions, water authorities or boards as may be determined.

b) The responsibilities of such institutions shall be determined by the nature of their objectives which must be in conformity with the principles set out in this Protocol.

c) Shared Watercourse Institutions shall provide on a regular basis or as required by the Water Sector Co-ordinating Unit, all the information necessary to assess progress on the implementation of the provisions of this Protocol, including the development of their respective agreements.

4. State Parties undertake to adopt appropriate measures to give effect to the institutional framework referred to in this Article for the implementation of this Protocol.

Article 6
Shared Watercourse Agreements

1. In the absence of any agreement to the contrary, nothing in this Protocol shall affect the rights or obligations of a Watercourse State arising from agreements in force for it on the date on which it became a party to the Protocol.
2. Notwithstanding the provisions of paragraph 1, parties to agreements referred to in paragraph 1 may harmonise such agreements with this Protocol.
3. Watercourse States may enter into agreements, which apply the provision of this Protocol to the characteristics and uses of a particular shared watercourse or part thereof.
4. Where a watercourse agreement is concluded between two or more Watercourse States, it shall define the waters to which it applies. Such an agreement may be entered into with respect to an entire shared watercourse or any part thereof or a particular project, programme or use except insofar as the agreement adversely affects, to a significant extent, the use by one or more other Watercourse States of the waters of the watercourse, without their express consent.
5. Where some but not all Watercourse States to a particular shared watercourse are parties to an agreement, nothing contained in such agreement shall affect the rights or obligations under this Protocol of Watercourse States that are not parties to such an agreement.
6. Every Watercourse State is entitled to participate in the negotiation of and to become a party to any watercourse agreement that applies to the entire shared watercourse, as well as to participate in any relevant consultations.
7. A Watercourse State whose use of a shared watercourse may be affected to a significant extent by the implementation of a proposed watercourse agreement that applies only to a part of the watercourse or to a particular project, programme or use is entitled to participate in consultations on such an agreement and, where appropriate, in the negotiation thereof in good faith with a view to becoming a party thereto, to the extent that its use is thereby affected.

Article 7
Settlement Of Disputes

1 State Parties shall strive to resolve all disputes regarding the implementation, interpretation or application of the provisions of this Protocol amicably in accordance with the principles enshrined in Article 4 of the Treaty.

2. Disputes between State Parties regarding the interpretation or application of the provisions of this Protocol which are not settled amicably, shall be referred to the Tribunal.
3. If a dispute arises between SADC on the one hand and a State Party on the other, a request shall be made for an advisory opinion in accordance with article 16(4) of the Treaty.

Article 8
Signature

This Protocol shall be signed by the duly authorised representatives of the Member States.

Article 9
Ratification

This Protocol shall be ratified by the signatory States in accordance with their constitutional procedures.

Article 10
Entry Into Force

This Protocol and any subsequent amendments thereof shall enter into force thirty (30) days after the deposit of the instruments of ratification by two-thirds of the Member States listed in the Preamble.

Article 11
Accession

This Protocol and any subsequent amendments thereof shall remain open for accession by any Member State.

Article 12
Amendment

1. An amendment to this Protocol shall be adopted by a decision of three quarters of the Summit members who are a party to this Protocol.
2. A proposal for any amendment to this Protocol may be made to the Executive Secretary by any State Party for preliminary consideration by the Council, provided however, that the proposed amendment shall not be submitted to the Council for preliminary consideration until all Member States have been duly notified of it and a period of three (3) months has elapsed after such notification.

Article 13
Withdrawal

1. Any State Party may withdraw from this Protocol upon the expiration of twelve (12) months from the date of giving to the Executive Secretary, a written notice to that effect.
2. Any State Party that has withdrawn pursuant to paragraph 1 shall cease to enjoy all rights and benefits under this Protocol upon the withdrawal becoming effective, but shall remain bound by the obligations herein for a period of twelve (12) months from the date of giving notice to the date the withdrawal becomes effective.

Article 14
Termination

This Protocol may be terminated by a decision of three quarters of members of the Summit.

Article 15
Depositary

1. The original of this Protocol and all instruments of ratification and accession shall be deposited with the Executive Secretary, who shall transmit certified copies to all Member States.
2. The Executive Secretary shall register this Protocol with the Secretariats of the United Nations and the Organisation of African Unity.

Article 16
Protocol on Shared Watercourse Systems in the SADC Region

1. Upon entry into force of this Protocol, the Protocol on Shared Watercourse Systems in the Southern African Development Community (SADC) Region, which entered into force on 29th September 1998, shall be repealed and replaced by this Protocol.

The rights and obligations of any State Party to the Protocol on Shared Watercourse Systems in the SADC Region, which does not become a party to this Protocol, shall remain in force for twelve (12) months after this Protocol has entered into force.

In witness whereof, we, the Heads of State or government, or duly authorised representatives, of SADC Member States have signed this Protocol.

Done at Windhoek, this 7th day of August 2000 in three original texts in the English, French and Portuguese languages, all texts being equally authentic.

(Signed by Angola, Botswana, Lesotho, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe; not signed by DR Congo.)

Course B

Conflict Prevention and Cooperation in International Water Resources

Course reader

Part 3

Conflict

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The Four Horsemen of the Apocalypse
The structural cause of violence in Africa

By Laurie Nathan

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Introduction

"The 'CNN factor' tends to mobilise pressure at the peak of the problem — which is to say, at the very moment when effective intervention is most costly, most dangerous and least likely to succeed." Kofi Annan, then United Nations Under-Secretary-General for Peacekeeping, 1996 (quoted in Evans, 1997, 12).

Since the end of the Cold War, there has been considerable progress towards the achievement of peace and stability in southern Africa. Nevertheless, much of the African continent remains afflicted by appalling levels of underdevelopment, poverty and internecine conflict. At the time of writing, Sierra Leone, Angola, the Democratic Republic of Congo, Uganda, Somalia, Sudan, Burundi and a host of other countries are wracked by violence. The notion of an African Renaissance, promoted by South African President Thabo Mbeki, may represent a compelling vision but it does not reflect the current reality or the foreseeable future.

The international community's efforts to stem and reverse the tide of war in Africa derive in large measure from humanitarian concerns about massive human suffering, especially when the "drama" of war is depicted graphically by CNN and other media. However, the moral impulse to alleviate suffering does not constitute a sufficient basis for action. External interventions must also be based on a pragmatic assessment of their potential effectiveness. Such assessment obviously depends on the specific history and context of the countries and regions in crisis. Less obviously, perhaps, it depends on how the problems of "conflict" and "crisis", and the desired goal of "peace", are conceived at a more general level.

This is not a question of idle theorising while Africa burns. Every intervention by foreign actors is based on a set of theoretical assumptions, whether or not those assumptions are explicit and sound. If the problem or the remedy is misconceived, then peace endeavours may be ineffectual or counter-productive. Since the international community has not achieved great success in peacemaking and peacebuilding on the continent, this paper adopts a radical stance, both in the sense of challenging conventional wisdoms, and in the sense of focusing on the causes of intra-state crises.

The first part of this paper presents a conceptual framework for understanding conflict, peace and crisis. I argue that violence may be a central concern from a humanitarian perspective, but that for analytical and strategic purposes, it should be regarded as a symptom of intra-state crises. These crises arise from four structural conditions in particular: authoritarian rule; the exclusion of minorities from governance; socio-economic deprivation combined with inequity; and weak states that lack the institutional capacity to manage normal political and social conflict. These conditions — the "four horsemen of the apocalypse" — are the primary causes of large-scale violence. Sustainable peace is possible only if they are addressed in a meaningful way. The second part of this paper considers the strategic implications of this argument, and outlines ten propositions relating to peacemaking and peacebuilding in Africa. The argument is illustrated mainly with examples from South Africa and from the Zairean rebellion of 1996.

Rethinking conflict, peace and crisis

Many people and organisations regard conflict as an intrinsically negative dynamic. In the discourse of the United Nations (UN), the term "conflict" usually refers to armed hostilities between or within states (e.g., Boutros-Ghali, 1992; United Nations, 1998). This perspective is inaccurate and misleading. Daily newspapers are filled with stories about political, social, economic and institutional conflict that is not violent. Conflict is inevitable, commonplace and ubiquitous in all societies that comprise diverse groups. Whether these groups are defined by ethnicity, religion, ideology or class, they have different interests, needs and values. Most importantly, they have unequal access to power and resources. These differences necessarily give rise to competition and conflict, without leading inexorably to violence. Conflict is also a natural consequence of major reform, and of popular pressure for fundamental political or economic change.

Our general understanding of conflict has a critical bearing on our response to its emergence in specific situations. If we consider conflict to be inherently destructive, then our efforts are bound to be directed towards suppressing or eliminating it. Such efforts are more likely to heighten than lower the level of tension. On the other hand, if we view conflict as normal and inescapable, then the challenge lies in managing it constructively. States that are stable are not free of conflict. Rather, they are able to deal with its various manifestations in a stable and consensual manner.

In the national context, conflict management is the essential, ongoing business of governance. It is the formal responsibility of the executive, parliament, the judiciary, the police, local authorities and other state structures. Crises arise when states do not have the institutional capacity to fulfil this responsibility. Where a state lacks the resources and expertise to resolve disputes and grievances, manage competition and protect the rights of citizens, individuals and groups may resort to violence. If the state is too weak to maintain law and order, then criminal activity and private security arrangements may flourish. Somalia and Liberia are often cited as typical examples of this problem in Africa, but they are better seen as extreme cases on a continuum of weak states throughout the continent.

Crises also arise when states lack popular legitimacy, either because they are wholly authoritarian under minority rule or because they exclude ethnic minorities from full participation in a democratic political system. Oppressed and marginalised communities may seek to resolve the crisis through armed rebellion. Hostilities are likely to be intense and sustained because the stakes are so high: exclusion from formal governance may have a profoundly negative impact on physical security, basic rights, cultural identity, economic opportunity and access to resources.

Just as our understanding of conflict informs the nature of peace initiatives, so too does our notion of "peace". For the governments and inhabitants of stable Western democracies, this concept is not problematic. Defined as the absence of widespread physical violence, peace is deemed to be an unqualified good in terms of orderly politics and the sanctity of life. Since civil wars lead to extensive suffering and loss of life, it would seem obvious that the prevention and termination of warfare is a paramount goal.

The protagonists in a civil war have an entirely different outlook, however. Oppressed groups may prize freedom and justice more than peace. They may consequently be prepared to provoke and endure a high level of physical violence in order to achieve the rights of citizenship. In so far as mass resistance threatens the status quo, peace serves the interests of the ruling elite and its foreign sponsors. In these circumstances, the cessation of hostilities is less a goal in its own right than an outcome of the belligerents' willingness to reach a political settlement that addresses the substantive causes of violence.

Put differently, the absence of justice is frequently the principal reason for the absence of peace. Acute injustice invariably leads to popular struggles that are met in turn by repression. Foreign powers that support dictators in the interests of "stability" (as in the case of Western support for

former President Mobutu of Zaire) are simply postponing the inevitable conflagration. Both ethically and analytically, the primary goal of external and local endeavours to prevent and end civil wars is therefore best formulated as the establishment of peace with justice. This formulation reflects Johan Galtung's (1996) concept of peace as encompassing both "negative peace" (defined as the absence of personal violence) and "positive peace" (defined as the absence of structural violence or the presence of social justice). In situations of systemic injustice, the attainment of peace entails radical change rather than the preservation of order.

The goal of "peace with justice" is neither simplistic nor absolute. In the course of negotiating the termination of a civil war, the adversaries have substantially different positions on the content of a just settlement. These differences relate to the tension between the aspirations of the majority and the fears of minorities; the redistribution of limited resources like land; the debate over amnesty versus prosecution in respect of past human rights violations; the future composition of the security forces; and the accommodation of "villains" who might otherwise thwart a transition to democracy. The disputant parties are obliged to compromise their maximalist demands in order to resolve these tensions. What matters greatly is whether the various parties and their constituencies consider the final settlement to be sufficiently just.

Justice in the socio-economic sphere is no less important than in the political arena. Where underdevelopment is coupled with extreme inequality, sporadic acts of violence may occur as expressions of anger, frustration and fear. The pattern of urban riots in African countries suggests that the risk of violence increases when poor socio-economic conditions deteriorate rapidly and suddenly (as a result, for example, of a currency devaluation or a structural adjustment programme imposed by the International Monetary Fund); when government is corrupt and unresponsive to the needs of citizens; and when poverty and unemployment are linked to an inequitable distribution of wealth. The violent street protests in Zimbabwe during 1997-8 have been attributed to these factors (e.g., Mandaza, 1997; Mtetwa, 1998). In 1998, Archbishop Desmond Tutu issued the following warning to the South African government: "The surest recipe for unrest and turmoil is if the vast majority have no proper homes, clean water, electricity, good education and adequate health care … If the disadvantaged, the poor, the homeless and unemployed become desperate, they may use desperate means to redress the imbalance" (Cape Times, 27 February 1998).

Whereas political actors equate a crisis with actual or imminent hostilities (e.g., Boutros-Ghali, 1992, 16-17, 33; Eliasson, 1995), intra-state crises and violence are better understood as related but distinct phenomena. A society that is vulnerable to being overwhelmed by violence is a society that is already in deep crisis. As indicated above, violence is typically a manifestation of a structural crisis, being either a deliberate and organised reaction thereto or a spontaneous and sporadic outcome thereof. Michael Brecher (1996, 128) draws a similar distinction at the inter-state level: "In short, a crisis can erupt, persist and terminate with or without violence. War does not eliminate or replace crisis. Rather, crisis is accentuated by war. Viewed in these terms, war is a continuation of crisis by other means."

The distinction between intra-state crises and violence can be illustrated by the Banyamulenge uprising that began in eastern Zaire in 1996 and resulted in the overthrow of Mobutu. The international community regarded the rebellion as a major political and humanitarian crisis. The UN Secretary-General and a number of Western states and relief agencies called for the rapid deployment of a multinational military force to protect the Hutu refugees from Rwanda who were housed in refugee camps in eastern Zaire (Evans, 1997, Chapter 2). For the Banyamulenge, a minority Tutsi community, the components of the crisis lay elsewhere: a provincial governor's decision to expel them from Zaire where they had lived for two hundred years; the revocation of their citizenship in 1981; the genocide perpetrated against the Tutsi minority in neighbouring Rwanda in 1994; and the brutality and neglect of Mobutu's reign over three decades. For the Tutsi government of Rwanda, which orchestrated and drove the insurrection in Zaire, the principal threat was Mobutu's support for the genocidal Interahamwe and the presence of these Hutu militia in the refugee camps (Evans, 1997; Solomon, 1997). The

rebellion was thus an attempt, albeit unsuccessful, to resolve a set of crises of significant proportions.

In conclusion, an intra-state crisis can be defined as a set of structural conditions that pose a fundamental threat to human security and the stability of the state, and that create the potential for large-scale violence. To summarise, the critical structural conditions in Africa are authoritarian rule; the marginalisation of ethnic minorities; socio-economic deprivation and inequity; and weak states that lack the institutional capacity to manage political and social conflict effectively. The potential for violence rises when these conditions are present simultaneously, mutually reinforcing and exacerbated by other structural problems. In Africa, such problems include the lack of coincidence between nation and state as a result of the colonial imposition of borders; the colonial legacy of divide-and-rule ethnic policies; unstable civil-military relations; land, environmental and demographic pressures; arms supplies and other forms of foreign support to authoritarian regimes; the debt burden; and the imbalance in economic power and trade between the South and the North.

Strategic implications

The preceding discussion on peace, conflict and crisis has a range of implications for strategy in general and for determining appropriate courses of action in specific situations. These implications are considered below in the form of ten propositions relating to peacemaking and peacebuilding. The propositions are organised around the focus, timing, type and form of intervention by the UN and other international actors.

Focus of intervention

1. It is necessary to focus more on the structural causes of violence than on violence per se.

This assertion runs directly counter to the conventional approach to "early warning" and "crisis prevention". In the realm of international politics, early warning is primarily concerned with the initiation and escalation of intra- and inter-state hostilities. Former UN Secretary-General Boutros Boutros-Ghali (1992, 15-16) declared that the aim of early warning is to "assess whether a threat to peace exists and to analyse what action might be taken by the United Nations to alleviate it". According to International Alert (1996), the goal is to predict trends toward an intensification of violence in order to protect vulnerable sectors of society against gross human rights violations, terror and genocide.

The early warning/action model proposed by John Davies and Ted Gurr (1998, 4-5) regards the structural causes of violence as "background conditions" or "tensions". These form the basis for "long-term risk assessment" of a "potential crisis" and point to opportunities for pre-crisis development aid, peacebuilding or peacemaking initiatives. "Dynamic early warning" is intended to identify "accelerator events" that exacerbate the tensions and indicate the possibility that a "full-blown crisis" or "conflagration" will occur "within the coming months or weeks". Accelerator events can include arms acquisitions, incidents of aggressive posturing or low-intensity violence, a crop failure, a major currency devaluation, and new repressive or discriminatory policies.

The early warning model's emphasis on large-scale violence reflects a misdiagnosis of the problem. It implies that the outbreak of hostilities is the worst-case scenario when, as illustrated by the Banyamulenge uprising and many other rebellions against authoritarian rule, resort to violence may be an act of desperation in response to a perceived worst-case scenario. On humanitarian grounds alone, Zaire fell into the category of "worst case scenario" prior to the 1996 rebellion: state hospitals and health facilities were virtually non-existent; preventable and curable diseases accounted for at least 50% of all deaths; child and maternal mortality rates were among the highest in the world; and inflation reached 24 000% in 1994 (Shearer, 1999).

Paradoxically, the international community's preoccupation with hostilities and its lesser concern with structural violence might contribute to oppressed communities becoming increasingly militant.

An emphasis on the proximate causes of violence similarly reflects a misreading of the core problem. Many countries may experience the events described as "accelerators" but they are not equally susceptible to being engulfed by violence as a result. It is scarcely conceivable that, say, Canada, Belgium or New Zealand would be plunged into civil war following a crop failure, a currency devaluation, or even the introduction of discriminatory policies. Accelerators lead to hostilities in certain states but not others precisely because they heighten the structural tensions that exist in the former. Whereas accelerator events may or may not provoke violence depending on the circumstances, these structural tensions give rise to a societal propensity to violence. By focusing on the proximate causes of hostilities and relegating structural issues to the status of "background conditions", the dynamic early warning model is oriented towards crisis reaction rather than crisis prevention.

The more severe the structural problems in a given country, the greater the number of potential accelerators, the greater the risk of violence posed by such events, and the more difficult the task of determining which events constitute early warning of an incipient civil war. Throughout the 1970s and 1980s, it could have been said with certainty that Zaire was a country in crisis and that some kind of explosion or implosion would occur in the future. Yet who could have predicted that the process that culminated in the fall of Mobutu would begin in October 1996 and be initiated by the Banyamulenge under the leadership of Laurent Kabila in response to a decision taken by a provincial governor?

Mass violence does not occur as an independent event. It is an outcome of historically dysfunctional political relationships and structural factors that undermine human security. It cannot be prevented or terminated unless these matters are addressed to the satisfaction of local actors. This cannot be done within a time-frame of weeks or months, as suggested by Davies and Gurr (1998, 4). As argued further below, early warning and action are much too late if they are triggered by the proximate causes of violence. By this stage, the situation may have deteriorated and enmity may have mounted to the point that the momentum towards protracted warfare is irreversible.

2. It is necessary to distinguish between the symptoms and causes of intra-state crises.

Through peace operations, emergency relief and ongoing humanitarian aid, the international community mobilises substantial resources in response to violence, starvation and other symptoms of intra-state crises. While these endeavours may serve to mitigate suffering, the crises and their symptoms will persist for as long as the underlying causes prevail. UN Secretary-General Kofi Annan makes this point in respect of palliative measures in central Africa: "In the Great Lakes region, immense sums have been spent on humanitarian relief in recent years, though this assistance is often perceived by countries in the region as having very little impact on the issues that lie at the heart of the problems there. Many fear that the assistance may come at the expense of efforts to address root causes ..." (United Nations, 1998, 14).

Moreover, where a specific issue of concern is misdiagnosed in terms of the distinction between causes and symptoms, strategic interventions may be misdirected. This argument can be applied to the question of armaments. Many local and foreign organisations attach a high priority to disarmament in Africa on the grounds that the abundance of weapons and other forms of militarisation promote a culture of violence, divert resources from development and perpetuate conflict. A key thesis is that disarmament can release scarce resources for socio-economic programmes and thereby enhance human security (e.g., United Nations, 1998, 7).

This thesis ignores the fact that disarmament is least likely to occur where the problems of weaponry and military spending are greatest, namely in situations of crisis. National and regional crises create a security vacuum that state and non-state actors seek to fill through

violence for purposes of maintaining power, contesting power, self-protection or economic subsistence. Demilitarisation is contingent on filling the security vacuum through legitimate political processes and institutions. Good governance is thus a necessary (though not sufficient) condition for demilitarisation.[1] Development, human security and state stability cannot be achieved in the absence of this condition. In other words, the positive causal relationship is between good governance, security and disarmament (see Berdal, 1996; 'Bayo Adekanye, 1997; Nathan, 1998a).

It is no coincidence that the process of light weapons disarmament in Mali followed the ending of military rule and the resolution of the Taureg rebellion in that country (see Poulton and Youssouf, 1998). Similarly, the demilitarisation of the South African state flowed in the first instance from the reformist policies of former President De Klerk and then accelerated dramatically with the advent of democracy (see Nathan and Philips, 1992; Nathan, 1998b). Conversely, civil society in South Africa remains highly militarised, in the form of violent crime and privatised security, chiefly because the state has neither overcome the chronic weakness of its police service nor alleviated poverty and socio-economic inequity. Statistics for the period 1995-6 reveal a high correlation between crime and unemployment, and between crime and a shortage of police resources, in different provinces of South Africa (Batchelor, 1998). It should be added that the argument outlined above relates to demand-side factors, and does not detract from the need for tighter controls and more restrictive policies on the part of arms-exporting countries.

Timing of intervention

3. Intra-state crises cannot be resolved quickly and easily.

Early warning/action models that seek to avert the initiation or escalation of hostilities within a matter of months or weeks fail to appreciate the complexity of intra-state crises. Anarchy, civil war and genocide are not remotely similar to a violent incident (such as a house burglary), which might be thwarted by prompt action before or at the moment of occurrence. They are social phenomena whose causes, dynamics and contested issues are multiple, deep-rooted and intractible. As a result, the prospect of preventing large-scale violence at short notice is exceedingly small.

A serious disagreement between two parties around a single parochial issue, such as a wage dispute between management and workers, is often hard to resolve. The challenge is immeasurably greater where the scope of the conflict is national; the underlying causes are structural; there is a history of intermittent violence; there are many local parties that have apparently irreconcilable values and perspectives on a host of issues; neighbouring states and foreign powers play a destructive role; and the roots of the conflict include the colonial legacy of divisive ethnic policies and arbitrary demarcation of borders.

In authoritarian states and under conditions of anarchy, it may be extremely difficult to identify credible leaders. The status and bargaining power of the protagonists may derive from military strength rather than popular support, reinforcing tendencies to violence and raising doubts about the legitimacy of agreements reached. Warlords who rely on banditry as a means of subsistence may have no political claims whatsoever. Similarly, ruling elites and rebel movements may have little interest in a negotiated settlement if they are able to accrue substantial wealth from the exploitation of natural resources in territories held by force.[2] Development projects that could provide an economic alternative to war are not viable while hostilities rage, and emergency aid may generate fierce competition among local actors and fuel the conflict.

Furthermore, the issues at stake relate to political, cultural or physical survival, and evoke deep feelings of fear, animosity and mistrust. Once mobilisation for killing has begun, the intensity of emotion and resolve is such that the belligerents are unlikely to be amenable to compromise or receptive to diplomatic efforts. Nor are they likely to be deterred by the threat or use of force if

they are already willing to die for their cause. Their resistance to external peace initiatives will be heightened if the foreign powers now engaged in peacemaking previously ignored or contributed to their plight. In all probability, the external initiatives will be pre-empted or overwhelmed by the rapidity and ferocity of local developments.

Most of these trends were evident in the Banyamulenge uprising of 1996. The orchestration of the rebellion by the government of Rwanda was clearly influenced by the failure of the international community to deal with the fundamental security threat posed by the Interahamwe. France, which vociferously promoted the idea of a multinational military mission to protect the Hutu refugees in eastern Zaire, was viewed with particular disdain in the light of its previous military support to both Mobutu and the Rwandese forces responsible for the genocide in 1994. Discussion about a multinational mission was still underway when the "crisis", as defined by the international community, was resolved: the majority of refugees returned to Rwanda, and Mobutu fled the country as the rebels seized Kinshasa (Evans, 1997, Chapter 2).

The UN's second operation in Somalia (UNOSOM II) in 1993 provides a more dramatic example of the limitations of "quick fix" solutions to intra-state crises. The launch of the operation was heralded by Madeleine Albright, then Ambassador of the United States to the UN, as "an unprecedented enterprise aimed at nothing less than the restoration of an entire country as a proud, functioning and viable member of the community of nations" (quoted in Jan, 1996, 3). Given the severity of inter-clan rivalry and the total collapse of the Somali state, this goal was patently unattainable within the designated time-frame of nine months. In the comparatively less complicated cases of Mozambique and South Africa, formal negotiations, which followed lengthy periods of indirect talks, were conducted over 27 months and four years respectively.

The UN undertook a comprehensive analysis of conditions in Somalia only after the mission was well underway, it did not comprehend the magnitude and complexity of the crisis, and its misjudgements regarding the authority and legitimacy of local leaders contributed to numerous set-backs (Friedrich Ebert Stiftung et al., 1995). Driven by schedules set in New York and lacking a thorough grasp of traditional reconciliation processes, the UN worked against rather than with indigenous forms of conflict management (Menkhaus, 1996; Jan, 1996). Following the use of force by the UN against certain Somali factions, the organisation became too discredited to pursue its mediation efforts, and left Somalia in ignominy.

4. Intra-state crises do not end with the cessation of warfare.

In spite of a professed commitment to "post-conflict peacebuilding", the UN and other international actors are preoccupied with emerging and full-blown civil wars. The "CNN factor" referred to at the beginning of this paper does not only entail passivity until a crisis finally explodes. In the aftermath of a war, external actors move too quickly to the next conflagration. In South Africa, for example, foreign donors substantially reduced their transitional financial aid after the country's second democratic election in 1999. Notwithstanding a history of three centuries of oppression and exploitation, South Africa was perceived to have largely accomplished its transition to democracy within a five-year period!

Just as a crisis precedes the outbreak of violence, so that crisis persists long after a peace agreement has been reached. During the Liberian civil war, regional enforcement operations led to as many as fourteen short-lived peace accords between 1990 and 1995 (Nyakyi, 1998). Nor is the crisis over when a democratically elected government has been installed. The introduction of democracy in southern African states has not in itself resolved the structural problems of weak states, underdevelopment, socio-economic inequity and unstable civil-military relations. The Democratic Republic of Congo (formerly Zaire), whose war since 1998 has been unprecedented in regional scope, demonstrates unequivocally that intra-state crises will endure for as long as the conditions that threaten human security and engender violence prevail (see Shearer, 1999).

Type of intervention

5. Peacebuilding strategies are the only viable means of preventing and resolving a crisis.

The type of intervention most commonly associated with early warning is preventive diplomacy. In An Agenda for Peace, Boutros-Ghali (1992, 11-19) defined preventive diplomacy as "action to prevent disputes from arising between parties, to prevent existing disputes from escalating into conflicts and to limit the spread of the latter when they occur." The aim is to "resolve disputes before violence breaks out" or "if conflict breaks out, to act swiftly to contain it and resolve its underlying causes." The relevant strategies include confidence-building measures, fact-finding, early warning, preventive military deployment and the creation of demilitarised zones.

These strategies may succeed in forestalling violence in an inter-state dispute, but they are scarcely likely to avert a looming civil war. The complexity of internal crises puts them way outside the category of a "dispute" whose causes can be dealt with through confidence-building or military deployment. Stephen Stedman (1995) argues that the post-Cold War enthusiasm for preventive diplomacy rests on the false assumption that there are easy solutions to the kind of disaster that afflicted Somalia, Yugoslavia and Rwanda. The post-mortem assertions that these disasters could have been pre-empted by more robust international action ignore the financial costs of such action, as well as the risk, not only of failure, but also of exacerbating the situation. In any event, counter-factual assertions are inherently speculative and unprovable.

Michael Lund (1995, 161-162) claims that Stedman ignores those cases where preventive diplomacy has indeed kept political disputes from degenerating into armed hostilities and enabled the relatively peaceful management of potentially violent ethnic and national disputes. He contends that such cases include "US and European pressure on Zaire's President Mobutu to step down" and "Congo's transition from autocracy". Yet neither of these examples supports Lund's claim. Mobutu did not step down as a result of diplomatic pressure; he fled the capital as his army was routed by the rebels; and the Democratic Republic of Congo has been wracked by intense fighting over the past five years.

The strategies that properly address the root causes of intra-state crises and violence encompass institutionalising respect for human rights, political pluralism and the rule of law; accommodating minorities and ethnic diversity; strengthening the capacity of state structures; and promoting economic growth and equity. Although Boutros-Ghali (1992, 32-38) described these measures as "post-conflict peacebuilding", they should equally be regarded as "pre-conflict" imperatives. Boutros-Ghali later observed that peacebuilding could be undertaken as a preventative measure (United Nations, 1995), but the term "post-conflict peacebuilding" remains prevalent in the discourse of the UN (e.g., United Nations, 1998, 14). The notion of "pre-conflict" and "post-conflict" scenarios is inadequate, moreover, since one of the essential elements of peacebuilding is the on-going management of social and political conflict through good governance. The most appropriate peacebuilding strategies depend on the circumstances of each country. For example, development and institutional capacity-building are priorities in emerging democracies, but may be counter-productive in authoritarian states.

6. Good governance requires efficiency and effectiveness on the part of state institutions.

Good governance is not limited to the cardinal features of democracy: free and fair elections, accountability, transparency and respect for pluralism and human rights. It also entails efficiency and effectiveness in fulfilling the functions of the state. These qualities are missing in most African countries, which lack the skills, expertise, infrastructure and resources to meet the welfare and other security needs of citizens. In the absence of the requisite institutional capacity, the values and principles of democracy will not be realised, the security vacuum will not be filled, and resort to force by the state and sectors of civil society may consequently become commonplace.

By way of example, adherence to the rule of law presupposes the existence of a competent and fair judiciary, police service and criminal justice system. The expectation that police personnel should respect human rights is unrealistic if they have not been trained in techniques other than use of force. Democratic civil-military relations depend not only on the organisational culture of the armed forces, but also on the expertise of departments of defence and parliamentary defence committees. Illegal trafficking in small arms will not be stemmed through policy and legislative measures if governments are unable to control the movement of people and goods across their borders. In these and other areas, the building of capacity is necessarily a long-term endeavour.

By way of further example, foreign politicians and analysts have expressed unease over the continued deployment of the South African army in an internal policing role. This concern relates to the politicisation of the armed forces and to the militarisation of government's law and order function. These considerations are well known to a South African audience and are captured in official documents (e.g., Republic of South Africa, 1996, 37-38). Nevertheless, the practical problem of an inefficient, corrupt and poorly trained police service, unable to cope with the high incidence of violent crime, necessitates on-going military deployment.

7. Political stability requires structural accommodation of diversity.

Western states attach great importance to multi-party democracy as a vital component of peacemaking and peacebuilding in Africa. The core assumption is that this system serves the interests of all political parties and their constituencies. If a party loses an election, its ability to protect and advance the interests of its constituency may be somewhat diminished but is not entirely undermined. Elections thus provide for a stable transfer of power according to the changing preferences of voters.

In many African countries, the core assumption is invalid. Where political parties are organised along ethnic lines and the electoral system is based on the principle of "winner-takes-all", political arrangements that guarantee formal equality may reinforce existing inequalities. Minorities may be excluded completely and permanently from parliament and other structures of governance.[3] The negative impact is severe because, as noted earlier, access to political power determines economic opportunity, resource distribution and physical security. The de facto result may be as deleterious to minorities as outright oppression.

Minorities, whether they hold power in an authoritarian state or are marginalised in a democracy, may consequently believe that violence is their only means of survival. In some instances they may oppose democratic norms for ideological or venal reasons. Yet it is often the case that they have no faith in these norms for the ironic but pragmatic reason that they have little to gain and everything to lose in a democracy. In order to prevent and resolve crises that emanate from inter-group conflict, democratic majoritarianism must therefore be tempered by structural accommodation of diversity.

Structural accommodation encompasses formal means of entrenching inclusiveness and respect for diversity in the political system, state institutions and the law. It aims to protect minorities against abuse of power and provide them with some access to power. These goals can be met through mechanisms that do not negate the aspirations of the majority or undermine the fundamental tenets of democracy. In the case of post-apartheid South Africa, such mechanisms include an electoral system based on proportional representation; a government of national unity; the integration of apartheid and liberation armies; constitutional protection of human rights, including rights related to language, culture and religion; and the authority of independent courts to overrule Cabinet and Parliament where legislation or executive decisions are inconsistent with the Constitution.[4]

Form of intervention

8. Peacemaking and peacebuilding are primarily the responsibility of local rather than foreign actors.

International organisations and foreign powers should abandon the illusion that they are responsible for resolving intra-state crises. For better or worse, this function must be undertaken principally by local actors. Peacemaking and peacebuilding are not sustainable unless their form and content are shaped and embraced by these actors. While individuals and groups embroiled in conflict are obviously concerned about physical and economic security, they also crave respect, acknowledgement and affirmation. They want to be involved in decisions that affect their lives, and they resent being treated as the object of some other body's plans. The success of South Africa's transition to democracy arguably lies less in the details of its negotiated settlement than in the fact that those details were determined exclusively by South Africans.

In many African civil wars, however, international mediators tend to focus more on solutions than process. They press for rapid results and endeavour to win the parties' consent to their proposals. The most extreme version of this approach entails the application of coercive leverage through sanctions or military force. Whatever the utility of leverage in a given situation, mediators undermine their credibility and effectiveness when they take such steps. In addition to alienating the targeted party, they are unlikely to achieve any outcome that requires the long-term co- operation of that party (see Nathan, 1999). Accords concluded under duress will have scant value in the absence of a genuine commitment to peace and reconciliation. Democracy cannot logically or practically be imposed on a society.

In light of the above, external interventions should be reoriented from the delivery of products to the facilitation of processes. In the context of peacemaking, this would entail supporting national dialogue and problem-solving rather than prescribing solutions based on Western models. In the case of peacebuilding, efforts should be directed towards strengthening the capacity of government and civil society through the transfer of skills and knowledge. Literally and metaphorically, teaching local communities to build bridges is more useful than building bridges for them. The process is even more useful if it draws on local expertise and is not reliant on foreign technology. It is nevertheless useless if communities want dams rather than bridges. The greatest need for capacity-building in African states is in the spheres of national and local governance.[5]

9. International actors should practise what they preach.

International organisations and foreign powers that promote democratic norms in Africa are themselves obliged to adhere to these norms. They undermine democratic principles and incur resentment and resistance from African leaders and communities when they operate without any semblance of respect for local actors. All too often, they appear to regard Africans as objects rather than as actors. They dash to the scene of a humanitarian crisis, competing with each other to provide food and bright ideas, equipped with only a superficial understanding of local dynamics, knowing and learning nothing about local cultures, and then vanish just as suddenly when violence breaks out elsewhere.

The World Bank and the International Monetary Fund (IMF) insist that countries that receive their grants and loans should abide by the principles of democracy, accountability and respect for human dignity. Nevertheless, these institutions have imposed macro-economic policies on debtor countries; they have aggravated poverty through structural adjustment programmes; they are accountable more to their Northern "shareholders" than to recipient governments in the South; and they are not held accountable for their mistakes and failed policies (see, for example, Hanlon, 1996). Between 1976 and 1994, violent protests against IMF actions occurred in 26 debtor countries (Ferraro and Chenier, 1994, 288).

10. Foreign actors should do no harm.

It follows from the preceding section that the design of every external intervention in an intra-state crisis should include a rigorous assessment of the potential for that intervention to fuel conflict, intensify inequality, or otherwise exacerbate the structural causes of violence. The desire to do good should be secondary to the imperative of not causing harm. In certain instances, this imperative may raise excruciating dilemmas, exemplified by the presence of the genocidal militia in the Zairean refugee camps in 1995-6. In that case, humanitarian agencies had no middle option between either supporting the refugees and thereby supporting the militia, or abandoning the refugees altogether (see Evans, 1997).

In other cases, the imperative of not causing harm should pose no dilemma at all. The provision of foreign aid and armaments to tyrants like Mobutu makes a mockery of pious declarations of good intent. There may be uncertainty about the best means of dislodging dictators but there is no uncertainty about the implications of propping them up. The most significant contribution that the international community could make to peacemaking and peacebuilding in Africa would be to attend to the ways in which foreign powers and multinational bodies provoke and heighten tension and violence. The critical issues in this regard include injudicious arms sales; political and economic support for authoritarian regimes; the debt crisis; structural adjustment programmes; and global trade relations.

Conclusion

The thrust of this paper is that large-scale violence in the national sphere should be viewed as a manifestation of intra-state crises that arise from four structural conditions: authoritarian rule; the marginalisation of minorities; relative socio-economic deprivation; and weak states.[6] A host of vexing questions warrant more serious consideration. For example, what are the roots of these conditions and what is the relationship between them? Are weak states and underdevelopment a consequence of authoritarian rule, or is the tendency to authoritarianism a product of weak states and underdevelopment? Should conflict related to scarce resources, demographic pressures and artificial borders be regarded as a primary cause of violence or as a result of poor governance and conflict management? Are domestic and regional solutions to these problems inescapably limited by the global imbalance in political and economic power?

These and related questions are probably best answered with reference to specific countries and sub-regions. Whatever the answers though, the essential point is that intra-state crises and violence cannot be prevented or resolved without tackling their root causes in a meaningful way. There are no easy and obvious solutions, and the dilemmas and obstacles are many and formidable. Early warning and preventive diplomacy in response to the proximate causes of hostilities are generally much too late. By that stage, conditions are likely to have deteriorated and bellicosity to have escalated to the point that warfare is inevitable.

The international community's preoccupation with large-scale violence is not simply a product of compelling real-time media coverage, as implied by the notion of the "CNN factor." As summarised in Table 1, the preoccupation with violence is built into the conceptual and policy framework of international actors. It should be replaced with an alternative approach that focuses on the structural causes of violence.

Table 1: Distinction between conventional and alternative approaches to early warning and intra-state crises

Phenomena	Conventional classification	Alternative classification
Large scale violence	Crisis	Manifestation of a crisis
Structural tensions/root causes of violence	Background conditions for long term risk assessment	Early warning for crisis prevention + resolution
Accelerator events	Early warning for crisis prevention	Early warning for crisis reaction
Peace	Absence of physical violence	Presence of political + social justice

Notes

1. The term "good governance" is used by the International Monetary Fund mainly with reference to macro-economic policy. As discussed further in this paper, it is intended here to cover the essential elements of democracy, as well as efficiency and effectiveness in the state's performance of its basic functions.

2. Some commentators have argued that commercial interests, rather than the structural factors emphasised in this paper, are the driving force behind many of the civil wars in Africa. It cannot be disputed that the accumulation of wealth (through mining of minerals and diamond smuggling, for example) has contributed to the perpetuation of hostilities and inhibited the conclusion of peace settlements in Angola, Sierra Leone and the Democratic Republic of Congo. In these and other civil wars, however, commercial interests were not the cause of hostilities in the first instance. Nor does the pursuit or frustration of such commercial interests give rise to a societal propensity to large-scale violence.

3. It is for this reason that "exclusion of minorities" is treated as a structural problem separate from "authoritarian rule" (in which the majority of the population is subjugated).

4. A further argument against multi-party democracy, articulated chiefly by officials from non-democratic regimes, is that this system is a Western construct unsuited to the culture and ethnic diversity of African countries. The argument usually confuses the form of democracy, which must be adapted to local circumstances, with the essence of democracy, which seeks to entrench the rights and freedoms for which millions of Africans have struggled. For an exemplary statement on democracy, see the African Charter on Human and Peoples' Rights, adopted by the Organisation of African Unity's Assembly of Heads of State and Government in 1981 (see Amnesty International, 1991).

5. The emphasis on the state, here and elsewhere in this paper, has been criticised on the grounds that it ignores both the importance of civil society and the oppressive character of many African states. South Africa provides a good example of non-governmental actors making a positive contribution to peacemaking and peacebuilding. Nevertheless, the security and conflict management functions of the state cannot be performed by civil society in a remotely adequate fashion. A viable state is required, at the very least, to protect people against criminal activity and acts of violence by sectors of civil society. The fact that African states are frequently the main threat to the security of their citizens constitutes an argument for democracy rather than an argument against the state.

6. I acknowledge the omission in this paper of any discussion on the structural and physical violence to which women in Africa are subjected. Gender-based violence in situations of both war and peace is so severe and widespread as to justify the term "crisis". It is also significant

that women are generally excluded from negotiation and mediation initiatives in African civil wars. These problems, raised mainly by women's organisations, warrant serious attention from all political actors.

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and Stephen B. Goldberg

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Chapter 1

Three Approaches to Resolving Disputes

Interests, Rights, and Power

It started with a pair of stolen boots. Miners usually leave their work clothes in baskets that they hoist to the ceiling of the bathhouse between work shifts. One night a miner discovered that his boots were gone.[1] He couldn't work without boots. Angry, he went to the shift boss and complained: "Goddammit, someone stole my boots! It ain't fair! Why should I lose a shift's pay and the price of a pair of boots because the company can't protect the property?"

"Hard luck!" the shift boss responded. "The company isn't responsible for personal property left on company premises. Read the mine regulations!"

The miner grumbled to himself, "I'll show them! If I can't work this shift, neither will anyone else!" He convinced a few buddies to walk out with him and, in union solidarity, all the others followed.

The superintendent of the mine told us later that he had replaced stolen boots for miners and that the shift boss should have done the same. "If the shift boss had said to the miner, 'I'll buy you a new pair and loan you some meanwhile,' we wouldn't have had a strike." The superintendent believed that his way of resolving the dispute was better than

the shift boss's or the miner's. Was he right and, if so, why? In what ways are some dispute resolution procedures better than others?

In this chapter, we discuss three ways to resolve a dispute: reconciling the interests of the parties, determining who is right, and determining who is more powerful. We analyze the costs of disputing in terms of transaction costs, satisfaction with outcomes, effect on the relationship, and recurrence of disputes. We argue that, in general, reconciling interests costs less and yields more satisfactory results than determining who is right, which in turn costs less and satisfies more than determining who is more powerful. The goal of dispute systems design, therefore, is a system in which most disputes are resolved by reconciling interests.

Three Ways to Resolve Disputes

The Boots Dispute Dissected

A dispute begins when one person (or organization) makes a claim or demand on another who rejects it.[2] The claim may arise from a perceived injury or from a need or aspiration.[3] When the miner complained to the shift boss about the stolen boots, he was making a claim that the company should take responsibility and remedy his perceived injury. The shift boss's rejection of the claim turned it into a dispute. To resolve a dispute means to turn opposed positions—the claim and its rejection—into a single outcome.[4] The resolution of the boots dispute might have been a negotiated agreement, an arbitrator's ruling, or a decision by the miner to drop his claim or by the company to grant it.

In a dispute, people have certain interests at stake. Moreover, certain relevant standards or rights exist as guideposts toward a fair outcome. In addition, a certain balance of power exists between the parties. Interests, rights, and power then are three basic elements of any dispute. In resolving a dispute, the parties may choose to focus their attention on one or more of these basic factors. They may seek to (1) reconcile

their underlying interests, (2) determine who is right, and/or (3) determine who is more powerful.

When he pressed his claim that the company should do something about his stolen boots, the miner focused on rights—"Why should I lose a shift's pay and the price of a pair of boots because the company can't protect the property?" When the shift boss responded by referring to mine regulations, he followed the miner's lead and continued to focus on who was right. The miner, frustrated in his attempt to win what he saw as justice, provoked a walkout—changing the focus to power. "I'll show them!" In other words, he would show the company how much power he and his fellow coal miners had—how dependent the company was on them for the production of coal.

The mine superintendent thought the focus should have been on interests. The miner had an interest in boots and a shift's pay, and the company had an interest in the miner working his assigned shift. Although rights were involved (there was a question of fairness) and power was involved (the miner had the power to cause a strike), the superintendent's emphasis was on each side's interests. He would have approached the stolen boots situation as a joint problem that the company could help solve.

Reconciling Interests

Interests are needs, desires, concerns, fears—the things one cares about or wants. They underlie people's positions—the tangible items they *say* they want. A husband and wife quarrel about whether to spend money for a new car. The husband's underlying interest may not be the money or the car but the desire to impress his friends; the wife's interest may be transportation. The director of sales for an electronics company gets into a dispute with the director of manufacturing over the number of TV models to produce. The director of sales wants to produce more models. Her interest is in selling TV sets; more models mean more choice for consumers and hence increased sales. The director of manufacturing

wants to produce fewer models. His interest is in decreasing manufacturing costs; more models mean higher costs.

Reconciling such interests is not easy. It involves probing for deep-seated concerns, devising creative solutions, and making trade-offs and concessions where interests are opposed.[5] The most common procedure for doing this is *negotiation,* the act of back-and-forth communication intended to reach agreement. (A procedure is a pattern of interactive behavior directed toward resolving a dispute.) Another interests-based procedure is *mediation,* in which a third party assists the disputants in reaching agreement.

By no means do all negotiations (or mediations) focus on reconciling interests. Some negotiations focus on determining who is right, such as when two lawyers argue about whose case has the greater merit. Other negotiations focus on determining who is more powerful, such as when quarreling neighbors or nations exchange threats and counterthreats. Often negotiations involve a mix of all three—some attempts to satisfy interests, some discussion of rights, and some references to relative power. Negotiations that focus primarily on interests we call "interests-based," in contrast to "rights-based" and "power-based" negotiations. Another term for interests-based negotiation is *problem-solving negotiation,* so called because it involves treating a dispute as a mutual problem to be solved by the parties.

Before disputants can effectively begin the process of reconciling interests, they may need to vent their emotions. Rarely are emotions absent from disputes. Emotions often generate disputes, and disputes, in turn, often generate emotions. Frustration underlay the miner's initial outburst to the shift boss; anger at the shift boss's response spurred him to provoke the strike.

Expressing underlying emotions can be instrumental in negotiating a resolution. Particularly in interpersonal disputes, hostility may diminish significantly if the aggrieved party vents her anger, resentment, and frustration in front of the blamed party, and the blamed party acknowledges the validity of such emotions or, going one step further, offers an

apology.[6] With hostility reduced, resolving the dispute on the basis of interests becomes easier. Expressions of emotion have a special place in certain kinds of interests-based negotiation and mediation.

Determining Who Is Right

Another way to resolve disputes is to rely on some independent standard with perceived legitimacy or fairness to determine who is right. As a shorthand for such independent standards, we use the term *rights.* Some rights are formalized in law or contract. Other rights are socially accepted standards of behavior, such as reciprocity, precedent, equality, and seniority.[7] In the boots dispute, for example, while the miner had no contractual right to new boots, he felt that standards of fairness called for the company to replace personal property stolen from its premises.

Rights are rarely clear. There are often different—and sometimes contradictory—standards that apply. Reaching agreement on rights, where the outcome will determine who gets what, can often be exceedingly difficult, frequently leading the parties to turn to a third party to determine who is right. The prototypical rights procedure is adjudication, in which disputants present evidence and arguments to a neutral third party who has the power to hand down a binding decision. (In mediation, by contrast, the third party does not have the power to decide the dispute.) Public adjudication is provided by courts and administrative agencies. Private adjudication is provided by arbitrators.[8]

Determining Who Is More Powerful

A third way to resolve a dispute is on the basis of power. We define power, somewhat narrowly, as the ability to coerce someone to do something he would not otherwise do. Exercising power typically means imposing costs on the other side or threatening to do so. In striking, the miners exercised power by imposing economic costs on the company. The

exercise of power takes two common forms: acts of aggression, such as sabotage or physical attack, and withholding the benefits that derive from a relationship, as when employees withhold their labor in a strike.

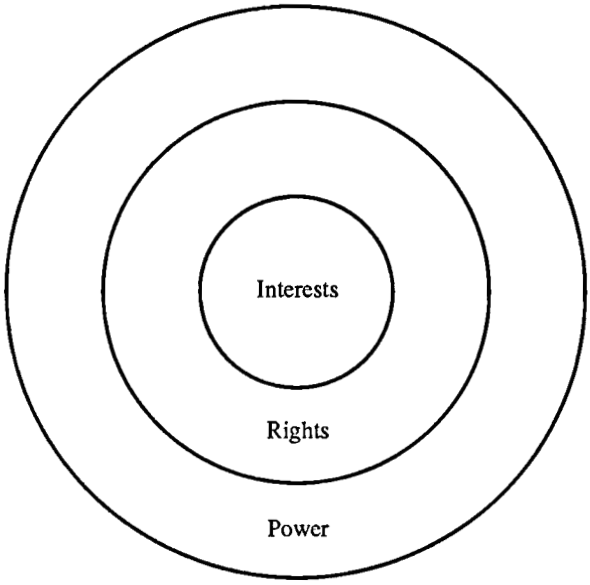
In relationships of mutual dependence, such as between labor and management or within an organization or a family, the question of who is more powerful turns on who is less dependent on the other.[9] If a company needs the employees' work more than employees need the company's pay, the company is more dependent and hence less powerful. How dependent one is turns on how satisfactory the alternatives are for satisfying one's interests. The better the alternative, the less dependent one is. If it is easier for the company to replace striking employees than it is for striking employees to find new jobs, the company is less dependent and thereby more powerful. In addition to strikes, power procedures include behaviors that range from insults and ridicule to beatings and warfare. All have in common the intent to coerce the other side to settle on terms more satisfactory to the wielder of power. Power procedures are of two types: power-based negotiation, typified by an exchange of threats, and power contests, in which the parties take actions to determine who will prevail.

Determining who is the more powerful party without a decisive and potentially destructive power contest is difficult because power is ultimately a matter of perceptions. Despite objective indicators of power, such as financial resources, parties' perceptions of their own and each other's power often do not coincide. Moreover, each side's perception of the other's power may fail to take into account the possibility that the other will invest greater resources in the contest than expected out of fear that a change in the perceived distribution of power will affect the outcomes of future disputes.

Interrelationship Among Interests, Rights, and Power

The relationship among interests, rights, and power can be pictured as a circle within a circle within a circle (as

Figure 1. Interrelationships Among Interests, Rights, and Power.



in Figure 1). The innermost circle represents interests; the middle, rights; and the outer, power. The reconciliation of interests takes place within the context of the parties' rights and power. The likely outcome of a dispute if taken to court or to a strike, for instance, helps define the bargaining range within which a resolution can be found. Similarly, the determination of rights takes place within the context of power. One party, for instance, may win a judgment in court, but unless the judgment can be enforced, the dispute will continue. Thus, in the process of resolving a dispute, the focus may shift from interests to rights to power and back again.

Lumping It and Avoidance

Not all disputes end with a resolution. Often one or more parties simply decide to withdraw from the dispute. Withdrawal takes two forms. One party may decide to "lump

it," dropping her claim or giving in to the other's claim because she believes pursuing the dispute is not in her interest, or because she concludes she does not have the power to resolve it to her satisfaction. The miner would have been lumping his claim if he had said to himself, "I strongly disagree with management's decision not to reimburse me for my boots, but I'm not going to do anything about it." A second form of withdrawal is avoidance. One party (or both) may decide to withdraw from the relationship, or at least to curtail it significantly.[10] Examples of avoidance include quitting the organization, divorce, leaving the neighborhood, and staying out of the other person's way.

Both avoidance and lumping it may occur in conjunction with particular dispute resolution procedures. Many power contests involve threatening avoidance—such as threatening divorce—or actually engaging in it temporarily to impose costs on the other side—such as in a strike or breaking off of diplomatic relations. Many power contests end with the loser lumping her claim or her objection to the other's claim. Others end with the loser engaging in avoidance: leaving or keeping her distance from the winner. Similarly, much negotiation ends with one side deciding to lump it instead of pursuing the claim. Or, rather than take a dispute to court or engage in coercive actions, one party (or both) may decide to break off the relationship altogether. This is common in social contexts where the disputant perceives satisfactory alternatives to the relationship.

Lumping it and avoidance may also occur before a claim has been made, thus forestalling a dispute. Faced with the problem of stolen boots, the miner might have decided to lump it and not make a claim for the boots. More drastically, in a fit of exasperation, he might have walked off the job and never returned.

Which Approach Is "Best"?

When the mine superintendent described the boots dispute to us, he expressed a preference for how to resolve dis-

putes. In our language, he was saying that on the whole it was better to try to reconcile interests than to focus on who was right or who was more powerful. But what does "better" mean? And in what sense, if any, was he correct in believing that focusing attention on interests is better?

What "Better" Means: Four Possible Criteria

The different approaches to the resolution of disputes—interests, rights, and power—generate different costs and benefits. We focus on four criteria in comparing them: transaction costs, satisfaction with outcomes, effect on the relationship, and recurrence of disputes.[11]

Transaction Costs. For the mine superintendent, "better" meant resolving disputes without strikes. More generally, he wanted to minimize the costs of disputing—what may be called the transaction costs. The most obvious costs of striking were economic. The management payroll and the overhead costs had to be met while the mine stood idle. Sometimes strikes led to violence and the destruction of company property. The miners, too, incurred costs—lost wages. Then there were the lost opportunities for the company: a series of strikes could lead to the loss of a valuable sales contract. In a family argument, the costs would include the frustrating hours spent disputing, the frayed nerves and tension headaches, and the missed opportunities to do more enjoyable or useful tasks. All dispute resolution procedures carry transaction costs: the time, money, and emotional energy expended in disputing; the resources consumed and destroyed; and the opportunities lost.[12]

Satisfaction with Outcomes. Another way to evaluate different approaches to dispute resolution is by the parties' mutual satisfaction with the result. The outcome of the strike could not have been wholly satisfactory to the miner—he did not receive new boots—but he did succeed in venting his frustration and taking his revenge. A disputant's satisfaction depends largely on how much the resolution fulfills the interests that led her to make or reject the claim in the first place.

Satisfaction may also depend on whether the disputant believes that the resolution is fair. Even if an agreement does not wholly fulfill her interests, a disputant may draw some satisfaction from the resolution's fairness.

Satisfaction depends not only on the perceived fairness of the resolution, but also on the perceived fairness of the dispute resolution procedure. Judgments about fairness turn on several factors: how much opportunity a disputant had to express himself; whether he had control over accepting or rejecting the settlement; how much he was able to participate in shaping the settlement; and whether he believes that the third party, if there was one, acted fairly.[13]

Effect on the Relationship. A third criterion is the long-term effect on the parties' relationship. The approach taken to resolve a dispute may affect the parties' ability to work together on a day-to-day basis. Constant quarrels with threats of divorce may seriously weaken a marriage. In contrast, marital counseling in which the disputing partners learn to focus on interests in order to resolve disputes may strengthen a marriage.

Recurrence. The final criterion is whether a particular approach produces durable resolutions. The simplest form of recurrence is when a resolution fails to stick. For example, a dispute between father and teenage son over curfew appears resolved but breaks out again and again. A subtler form of recurrence takes place when a resolution is reached in a particular dispute, but the resolution fails to prevent the same dispute from arising between one of the disputants and someone else, or conceivably between two different parties in the same community. For instance, a man guilty of sexually harassing an employee reaches an agreement with his victim that is satisfactory to her, but he continues to harass other women employees. Or he stops, but other men continue to harass women employees in the same organization.

The Relationship Among the Four Criteria. These four different criteria are interrelated. Dissatisfaction with outcomes may produce strain on the relationship, which contributes to the recurrence of disputes, which in turn increases

transaction costs. Because the different costs typically increase and decrease together, it is convenient to refer to all four together as the costs of disputing. When we refer to a particular approach as "high-cost" or "low-cost," we mean not just transaction costs but also dissatisfaction with outcomes, strain on the relationship, and recurrence of disputes.

Sometimes one cost can be reduced only by increasing another, particularly in the short term. If father and son sit down to discuss their conflicting interests concerning curfew, the short-term transaction costs in terms of time and energy may be high. Still, these costs may be more than offset by the benefits of a successful negotiation—an improved relationship and the cessation of curfew violations.

Which Approach Is Least Costly?

Now that we have defined "better" in terms of the four types of costs, the question remains whether the mine superintendent was right in supposing that focusing on interests is better. A second question is also important: when an interests-based approach fails, is it less costly to focus on rights or on power?

Interests Versus Rights or Power. A focus on interests can resolve the problem underlying the dispute more effectively than can a focus on rights or power. An example is a grievance filed against a mine foreman for doing work that contractually only a miner is authorized to do. Often the real problem is something else—a miner who feels unfairly assigned to an unpleasant task may file a grievance only to strike back at his foreman. Clearly, focusing on what the contract says about foremen working will not deal with this underlying problem. Nor will striking to protest foremen working. But if the foreman and miner can negotiate about the miner's future work tasks, the dispute may be resolved to the satisfaction of both.

Just as an interests-based approach can help uncover hidden problems, it can help the parties identify which issues are of greater concern to one than to the other. By trading off issues of lesser concern for those of greater concern, both

parties can gain from the resolution of the dispute.[14] Consider, for example, a union and employer negotiating over two issues: additional vacation time and flexibility of work assignments. Although the union does not like the idea of assignment flexibility, its clear priority is additional vacation. Although the employer does not like the idea of additional vacation, he cares more about gaining flexibility in assigning work. An agreement that gives the union the vacation days it seeks and the employer flexibility in making work assignments would likely be satisfactory to both. Such joint gain is more likely to be realized if the parties focus on each side's interests. Focusing on who is right, as in litigation, or on who is more powerful, as in a strike, usually leaves at least one party perceiving itself as the loser.

Reconciling interests thus tends to generate a higher level of mutual satisfaction with outcomes than determining rights or power.[15] If the parties are more satisfied, their relationship benefits, and the dispute is less likely to recur. Determining who is right or who is more powerful, with the emphasis on winning and losing, typically makes the relationship more adversarial and strained. Moreover, the loser frequently does not give up, but appeals to a higher court or plots revenge. To be sure, reconciling interests can sometimes take a long time, especially when there are many parties to the dispute. Generally, however, these costs pale in comparison with the transaction costs of rights and power contests such as trials, hostile corporate takeovers, or wars.

In sum, focusing on interests, compared to focusing on rights or power, tends to produce higher satisfaction with outcomes, better working relationships and less recurrence, and may also incur lower transaction costs. As a rough generalization, then, an interests approach is less costly than a rights or power approach.

Rights Versus Power. Although determining who is right or who is more powerful can strain the relationship, deferring to a fair standard usually takes less of a toll than giving in to a threat. In a dispute between a father and teenager over curfew, a discussion of independent standards such

as the curfews of other teenagers is likely to strain the relationship less than an exchange of threats.

Determining rights or power frequently becomes a contest—a competition among the parties to determine who will prevail. They may compete with words to persuade a third-party decision maker of the merits of their case, as in adjudication; or they may compete with actions intended to show the other who is more powerful, as in a proxy fight. Rights contests differ from power contests chiefly in their transaction costs. A power contest typically costs more in resources consumed and opportunities lost. Strikes cost more than arbitration. Violence costs more than litigation. The high transaction costs stem not only from the efforts invested in the fight but also from the destruction of each side's resources. Destroying the opposition may be the very object of a power contest. Moreover, power contests often create new injuries and new disputes along with anger, distrust, and a desire for revenge. Power contests, then, typically damage the relationship more and lead to greater recurrence of disputes than do rights contests. In general, a rights approach is less costly than a power approach.

Proposition

To sum up, we argue that, in general, reconciling interests is less costly than determining who is right, which in turn is less costly than determining who is more powerful. This proposition does not mean that focusing on interests is invariably better than focusing on rights and power, but simply means that it tends to result in lower transaction costs, greater satisfaction with outcomes, less strain on the relationship, and less recurrence of disputes.

Focusing on Interests Is Not Enough

Despite these general advantages, resolving *all* disputes by reconciling interests alone is neither possible nor desirable. It is useful to consider why.

When Determining Rights or Power Is Necessary

In some instances, interests-based negotiation cannot occur unless rights or power procedures are first employed to bring a recalcitrant party to the negotiating table. An environmental group, for example, may file a lawsuit against a developer to bring about a negotiation. A community group may organize a demonstration on the steps of the town hall to get the mayor to discuss its interests in improving garbage collection service.

In other disputes, the parties cannot reach agreement on the basis of interests because their perceptions of who is right or who is more powerful are so different that they cannot establish a range in which to negotiate. A rights procedure may be needed to clarify the rights boundary within which a negotiated resolution can be sought. If a discharged employee and her employer (as well as their lawyers) have very different estimations about whether a court would award damages to the employee, it will be difficult for them to negotiate a settlement. Nonbinding arbitration may clarify the parties' rights and allow them to negotiate a resolution.

Just as uncertainty about the rights of the parties will sometimes make negotiation difficult, so too will uncertainty about their relative power. When one party in an ongoing relationship wants to demonstrate that the balance of power has shifted in its favor, it may find that only a power contest will adequately make the point. It is a truism among labor relations practitioners that a conflict-ridden union-management relationship often settles down after a lengthy strike. The strike reduces uncertainty about the relative power of the parties that had made each party unwilling to concede. Such long-term benefits sometimes justify the high transaction costs of a power contest.

In some disputes, the interests are so opposed that agreement is not possible. Focusing on interests cannot resolve a dispute between a right-to-life group and an abortion clinic over whether the clinic will continue to exist. Resolution will likely be possible only through a rights contest, such

as a trial, or a power contest, such as a demonstration or a legislative battle.

When Are Rights or Power Procedures Desirable?

Although reconciling interests is generally less costly than determining rights, only adjudication can authoritatively resolve questions of public importance. If the 1954 Supreme Court case, *Brown* v. *Board of Education* (347 U.S. 483), outlawing racial segregation in public schools, had been resolved by negotiation rather than by adjudication, the immediate result might have been the same—the black plaintiff would have attended an all-white Topeka, Kansas public school. The societal impact, however, would have been far less significant. As it was, *Brown* laid the groundwork for the elimination of racial segregation in all of American public life. In at least some cases, then, rights-based court procedures are preferable, from a societal perspective, to resolution through interests-based negotiation.[16]

Some people assert that a powerful party is ill-advised to focus on interests when dealing regularly with a weaker party. But even if one party is more powerful, the costs of imposing one's will can be high. Threats must be backed up with actions from time to time. The weaker party may fail to fully comply with a resolution based on power, thus requiring the more powerful party to engage in expensive policing. The weaker party may also take revenge—in small ways, perhaps, but nonetheless a nuisance. And revenge may be quite costly to the more powerful if the power balance ever shifts, as it can quite unexpectedly, or if the weaker party's cooperation is ever needed in another domain. Thus, for a more powerful party, a focus on interests, within the bounds set by power, may be more desirable than would appear at first glance.

Low-Cost Ways to Determine Rights and Power

Because focusing on rights and power plays an important role in effective dispute resolution, differentiating rights

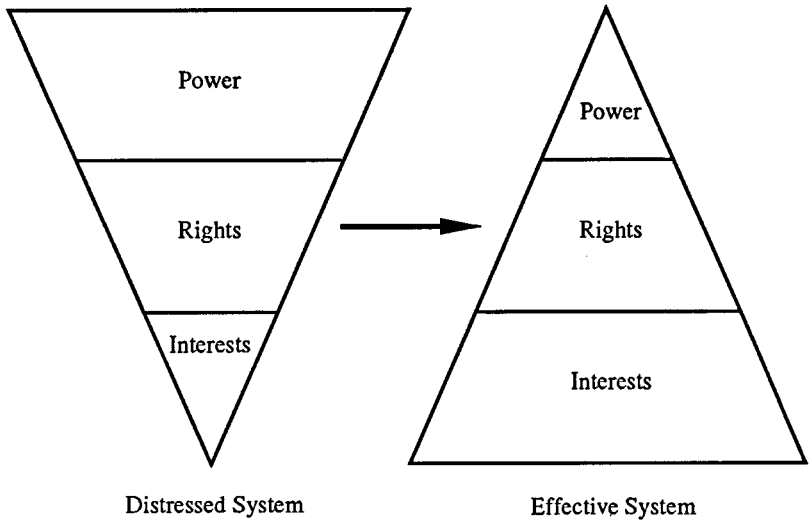
and power procedures on the basis of costs is useful. We distinguish three types of rights and power procedures: negotiation, low-cost contests, and high-cost contests. Rights-based negotiation is typically less costly than a rights contest such as court or arbitration. Similarly, power-based negotiation, marked by threats, typically costs less than a power contest in which those threats are carried out.

Different kinds of contests incur different costs. If arbitration dispenses with procedures typical of a court trial (extensive discovery, procedural motions, and lengthy briefs), it can be much cheaper than going to court. In a fight, shouting is less costly than physical assault. A strike in which workers refuse only overtime work is less costly than a full strike.

The Goal: An Interests-Oriented Dispute Resolution System

Not all disputes can be—or should be—resolved by reconciling interests. Rights and power procedures can sometimes accomplish what interests-based procedures cannot. The problem is that rights and power procedures are often used where they are not necessary. A procedure that should be the last resort too often becomes the first resort. The goal, then, is a dispute resolution system that looks like the pyramid on the right in Figure 2: most disputes are resolved through reconciling interests, some through determining who is right, and the fewest through determining who is more powerful. By contrast, a distressed dispute resolution system would look like the inverted pyramid on the left in Figure 2. Comparatively few disputes are resolved through reconciling interests, while many are resolved through determining rights and power. The challenge for the systems designer is to turn the pyramid right side up. It is to design a system that promotes the reconciling of interests but that also provides low-cost ways to determine rights or power for those disputes that cannot or should not be resolved by focusing on interests alone. The chapters that follow discuss how a designer might go about creating such a system.

Figure 2. Moving from a Distressed to an Effective Dispute Resolution System.



Notes

Chapter One

1. In order to steer between the Scylla of sexist language and the Charybdis of awkward writing, we have chosen to alternate the use of masculine and feminine pronouns.

2. This definition is taken from Felstiner, W.L.F., Abel, R. L., and Sarat, A. "The Emergence and Transformation of Disputes: Naming, Blaming, Claiming." *Law and Society Review,* 1980-81, *15,* 631-654. The article contains an interesting discussion of disputes and how they emerge.

3. See Felstiner, W.L.F., Abel, R. L., and Sarat, A. "The Emergence and Transformation of Disputes: Naming, Blaming, Claiming." *Law and Society Review,* 1980-81, *15,* 631-654.

4. In speaking of resolving disputes, rather than processing, managing, or handling disputes, we do not suggest that resolution will necessarily bring an end to the fundamental conflict underlying the dispute. Nor do we mean that a dispute once resolved will stay resolved. Indeed, one of our criteria for contrasting approaches to dispute resolution is the frequency with which disputes recur after they appear to have been resolved. See Merry, S. E., "Disputing Without Culture." *Harvard Law Review,* 1987, *100,* 2057-2073; Sarat, A. "The 'New Formalism' in Disputing and Dispute Processing." *Law and Society Review,* 1988, *21,* 695-715.

5. For an extensive discussion of interests-based negotiation, see Fisher, R., and Ury, W. L. *Getting to Yes.* Boston: Houghton Mifflin, 1981. See also Lax, D. A., and Sebenius, J. K. *The Manager as a Negotiator.* New York: Free Press, 1986.

6. Goldberg, S. B., and Sander, F.E.A. "Saying You're Sorry." *Negotiation Journal,* 1987, *3,* 221-224.

7. We recognize that in defining rights to include both legal entitlements and generally accepted standards of fairness, we are stretching that term beyond its commonly understood meaning. Our reason for doing so is that a procedure that uses either legal entitlements or generally accepted standards of fairness as a basis for dispute resolution will focus on the disputants' entitlements under normative standards, rather than on their underlying interests. This is true of adjudication, which deals with legal rights; it is equally true of rights-based negotiation, which may deal with either legal rights or generally accepted standards. Since, as we shall show, procedures that focus on normative standards are more costly than those that focus on interests, and since our central concern is with cutting costs as well as realizing benefits, we find it useful to cluster together legal rights and other normative standards, as well as procedures based on either.

8. A court procedure may determine not only who is right but also who is more powerful, since behind a court decision lies the coercive power of the state. Legal rights have power behind them. Still, we consider adjudication a rights procedure, since its overt focus is determining who is right, not who is more powerful. Even though rights, particularly legal rights, do provide power, a procedure that focuses on rights as a means of dispute resolution is less costly than a procedure that focuses on power. A rights-based contest, such as adjudication, which focuses on which disputant ought to prevail under normative standards, will be less costly than a power-based strike, boycott, or war, which focuses on which disputant can hurt the other more. Similarly, a negotiation that focuses on normative criteria for dispute resolution will be less costly than a negotiation that focuses on the disputants' relative capacity to injure each other. Hence, from our cost perspective, it is appropriate to distinguish procedures that focus on rights from those that focus on power.

9. Emerson, R. M. "Power-Dependence Relations." *American Sociological Review,* 1962, *27,* 31-41.

10. Hirschman, A. O. *Exit, Voice, and Loyalty: Responses to Declines in Firms, Organizations and States.* Cambridge, Mass.: Harvard University Press, 1970. Exit corresponds with avoidance, loyalty with lumping it. Voice, as we shall discuss later, is most likely to be realized in interests-based procedures such as problem-solving negotiation and mediation.

11. A fifth evaluative criterion is procedural justice, which is perceived satisfaction with the fairness of a dispute resolution procedure. Research has shown that disputants prefer third-party procedures that provide opportunities for outcome control and voice. See Lind, E. A., and Tyler, T. R. *The Social Psychology of Procedural Justice.* New York: Plenum, 1988; Brett, J. M. "Commentary on Procedural Justice Papers." In R. J. Lewicki, B. H. Sheppard, and M. H. Bazerman (eds.), *Research on Negotiations in Organizations.* Greenwich, Conn.: JAI Press, 1986, 81-90.

We do not include procedural justice as a separate evaluation criterion for two reasons. First, unlike transaction costs, satisfaction with outcome, effect on the relationship, and recurrence, procedural justice is meaningful only at the level of a single procedure for a single dispute. It neither generalizes across the multiple procedures that may be used in the resolution of a single dispute nor generalizes across disputes to construct a systems-level cost. The other costs will do both. For example, it is possible to measure the disputants' satisfaction with the outcome of a dispute, regardless of how many different procedures were used to resolve that dispute. Likewise, it is possible to measure satisfaction with outcomes in a system that handles many disputes by asking many disputants about their feelings. Second, while procedural justice and distributive justice (satisfaction with fairness of outcomes) are distinct concepts, they are typically highly correlated. See Lind, E. A., and Tyler, T. R. *The Social Psychology of Procedural Justice.* New York: Plenum, 1988.

12. Williamson, O. E. "Transaction Cost Economics: The Governance of Contractual Relations." *Journal of Law*

and Economics, 1979, *22,* 233-261; Brett, J. M., and Rognes, J. K. "Intergroup Relations in Organizations." In P. S. Goodman and Associates, *Designing Effective Work Groups.* San Francisco: Jossey-Bass, 1986, 202-236.

13. For a summary of the evidence of a relationship between procedural and distributive justice—that is, satisfaction with process and with outcome—see Lind, E. A., and Tyler, T. R. *The Social Psychology of Procedural Justice.* New York: Plenum, 1988. Lind and Tyler also summarize the evidence showing a relationship between voice and satisfaction with the process. For evidence of the effect of participation in shaping the ultimate resolution beyond simply being able to accept or reject a third party's advice, see Brett, J. M., and Shapiro, D. L. "Procedural Justice: A Test of Competing Theories and Implications for Managerial Decision Making," unpublished manuscript.

14. Lax, D. A., and Sebenius, J. K. *The Manager as Negotiator.* New York: Free Press, 1986.

15. The empirical research supporting this statement compares mediation to arbitration or adjudication. Claimants prefer mediation to arbitration in a variety of settings: labor-management (Brett, J. M., and Goldberg, S. B. "Grievance Mediation in the Coal Industry: A Field Experiment." *Industrial and Labor Relations Review,* 1983, *37,* 49-69), small claims disputes (McEwen, C. A., and Maiman, R. J. "Small Claims Mediation in Maine: An Empirical Assessment." *Maine Law Review,* 1981, *33,* 237-268), and divorce (Pearson, J. "An Evaluation of Alternatives to Court Adjudication." *Justice System Journal,* 1982, *7,* 420-444).

16. Some commentators argue that court procedures are always preferable to a negotiated settlement when issues of public importance are involved in a dispute (see, for example, Fiss, O. M. "Against Settlement." *Yale Law Journal,* 1984, *93,* 1073-1090), and all agree that disputants should not be pressured into the settlement of such disputes. The extent to which parties should be encouraged to resolve disputes affecting a public interest is, however, not at all clear. See Edwards, H. T. "Alternative Dispute Resolution: Panacea or Anathema?" *Harvard Law Review,* 1986, *99,* 668-684.

Course B

Conflict Prevention and Cooperation in International Water Resources

Course reader

Part 4

Practice

Table of contents

'When push comes to shove'

The failure of international mediation in African civil wars

Laurie Nathan

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Six strategic principles of mediation:
- mediators should not be partisan
- the parties must consent to mediation and the choice of the mediator
- conflict cannot be resolved quickly and easily
- the parties must own the settlement
- mediators should not apply punitive measures
- mediation is a specialised activity

This article constitutes work-in-progress and the author welcomes critical feedback prior to submission to an academic journal. An earlier draft was presented at the African Mediation Seminar, Independent Mediation Service of South Africa and Centre for Conflict Resolution, Johannesburg, 3 - 5 November 1998.

Introduction

Over the past two decades, there have been numerous attempts to end civil wars in Africa through mediation. Most of the mediation initiatives were unsuccessful, with one or more of the protagonists spurning negotiations, being unwilling or unable to reach a settlement in the course of mediation, or subsequently violating the terms of a peace agreement. The factors that might account for the failure in each case include the history, nature and causes of the conflict; the goals and conduct of the disputants; the role of foreign powers and neighbouring states; and the style and methods of the mediator. This article focuses on the mediator's strategy and tactics as variables that enhance or diminish the prospect of success. I present a critique of power-based mediation and propose that a confidence-building approach is more likely to yield a positive result.

The main argument is that the key to effective mediation lies in understanding, managing and transforming the 'psycho-political dynamics' of conflict which make adversaries resistant to negotiations. Notwithstanding the varying causes and features of conflict, these dynamics can be described in general terms: the parties regard each other with deep mistrust and animosity; they believe that their differences are irreconcilable; they consider their own position to be non-negotiable; and they fear that a settlement will entail unacceptable compromises. These visceral concerns are intense where large-scale killing has occurred and where identity, security, freedom and justice are at stake. The concerns are both a product of conflict and obstacles to its

resolution. They give rise to a profound lack of confidence in negotiations as a means to achieving a satisfactory outcome, even when the cost of hostilities is high and there is no possibility of outright victory.

Mediation is quintessentially a method of mitigating the concerns through the presence and support of an intermediary who is not party to the conflict, who enjoys the trust of the disputants, and whose goal is to help the disputants forge agreements which they find acceptable. By virtue of these characteristics, the intermediary serves as both a buffer and a bridge between the antagonists, ameliorating the anger and suspicion that prevent them from addressing, in a co-operative manner, the substantive issues in dispute. The parties' common trust in the mediator offsets their mutual distrust and raises their confidence in negotiations. This is the basic logic and potential of mediation. Professional domestic mediators employ various procedural techniques in order to realise that potential.

State and multinational mediators, in contrast, frequently disregard the logic of mediation and resort to coercive diplomacy. Insensitive to the emotional content of conflict and inattentive to the procedural dimensions of constructive conflict resolution, they rely on power to compel the adversaries towards a settlement. This approach is invariably ineffectual or counter-productive. By rendering mediation a threatening endeavour, it heightens the insecurity and intransigence of the parties and inhibits them from co-operating with the mediator. It may also result in the mediator becoming a party to the conflict. The history of peacemaking in African civil wars provides little support for the academic thesis that international mediation requires the exercise of political power. This thesis does not account for the many failures of powerful mediators and for the success of mediators who lack power.

In this article, the critique of power-based diplomacy and motivation for a confidence-building model is based on six 'strategic principles' of mediation: mediators should not be partisan; the parties must consent to mediation and the choice of the mediator; conflict cannot be resolved quickly and easily; the parties must own the settlement; mediators should not apply punitive measures; and mediation is a specialised activity. These principles are explored with reference to mediation initiatives in African civil wars, the academic literature on international mediation, and the experience of community mediation conducted by the Centre for Conflict Resolution (CCR) in Cape Town.(1) The final section seeks to consolidate the argument on empirical and theoretical grounds.

The six strategic principles are intended to capture the essence of effective mediation in intra-state crises without over-simplifying a complex endeavour or negating the necessity for mediators to be flexible, creative and responsive to changing circumstances. Since conflict differs from one situation to another, evolves over time and is driven by social actors, a mechanical or formulaic approach to peacemaking is bound to fail. Nevertheless, the validity of the principles as general propositions can be demonstrated by describing the consequences of their application and lack of application in specific cases, and by explaining these consequences in terms of the psycho-political dimension of conflict.

I define 'mediation' as a process of dialogue and negotiation in which a third party helps disputants, with their consent, to manage or resolve their conflict. In the context of civil war, the process is deemed 'successful' when it leads to the termination of hostilities and the advent of democratic governance. 'Confidence-building mediation' indicates a style of mediation that is oriented towards raising the parties' confidence in each other, in negotiations and in the mediator. The emphasis is on facilitating dialogue and joint problem-solving rather than on pressurising the disputants to reach a settlement. The reasons for adversaries' resistance to negotiations are referred to as 'psycho-political dynamics'. This term is meant to indicate that the resistance derives from individual and group concerns which are both political and psychological in nature, and which although subjective, are usually justified by objective conditions.

Six strategic principles

Mediators must not be partisan

Individuals and groups embroiled in serious conflict regard each other with extreme suspicion and antagonism. They are reluctant to engage in dialogue even when they are contemplating privately the possibility of a settlement. Alternatively, they might enter into talks but be unable to move beyond mutual recriminations. Through the presence and support of a trusted third party, mediation can provide a comparatively calm and safe space for them to articulate and explore ways of meeting their respective concerns. Given their fear that the outcome of negotiations may be unfavourable, the disputants' trust in the mediator is a critical factor. Above all, they expect the mediator to be non-partisan and fair. At the onset of a mediation process, CCR invariably encounters questions from one or more of the parties regarding its motives and potential bias. Any display of bias while the mediation is underway will be viewed as a breach of trust and may scupper the process.

Absolute impartiality on the part of the mediator is obviously unattainable. CCR staff naturally have personal, cultural and professional values. They choose to become mediators for normative reasons, they are always concerned about power asymmetries and the equity of agreements reached, and they inevitably form an opinion of the antagonists in a specific dispute (see Odendaal 1998). However, one of CCR's professional values, declared expressly to the parties, is a commitment to facilitate the process in an even-handed manner. My colleague Andries Odendaal (1998: 12) describes this imperative as "technical impartiality", in contrast to "moral impartiality (which is impossible and unacceptable)". If CCR staff are unable for any reason to assume a non-partisan stance in a particular conflict, they will refrain from playing a mediating role.

A number of academics deny or downplay the importance of impartiality in international mediation (see, for example, Zartman and Touval 1992: 248 - 250; Bercovitch 1996: 253 - 254; Smith 1985). William Smith (1985) presents the following version of the argument. Whereas the impartiality of mediators in domestic settings stems from the fact that they have no extended relationship with the parties and no interest in the dispute beyond its peaceful resolution, states have little motivation to mediate in international conflicts other than because they have a relationship with the adversaries and an interest in the details of a settlement. International mediators are thus probably always biased to some degree. The bias may enhance the acceptability and effectiveness of the mediating state because the mediator's interest in its relationship with both disputants gives each of them a measure of leverage over it and vice versa. The less favoured party co-operates in the hope that the mediating state will extract concessions from the party with which that state has closer ties.

Smith's argument is conceptually and empirically incomplete. First, it does not consider critically the nature of the mediating state's interests, which may range from universal humanitarian concerns to more parochial, self-serving goals that a disputant party deems prejudicial. Second, the argument considers the question of bias primarily in terms of the mediator's interest in the conflict and prior relations with the disputants when, in fact, the problem may lie in the mediator's conduct during the peacemaking process. Third, Smith fails to distinguish between a partial mediator who is thrust on to the parties and one whom they accept without duress. There can be no objection if adversaries agree to use a mediator who is somehow affiliated to one of them, and in this regard no distinction need be drawn between international and domestic mediation. The parties will nevertheless expect a 'partial' mediator to behave in a substantially even-handed fashion.

At an empirical level, Smith (1985) disregards the fact that international mediators may succeed precisely because of their lack of bias. This was the case with the mediation conducted between 1990 and 1992 by Sant' Egidio, a Catholic lay community, in the Mozambican civil war; according to Father Angelo Romano (1998: 7), "our strength was exactly not having to defend any vested interest in the country but the one of a solid peace". The importance of Sant'

Egidio's impartiality is stressed by officials who participated in the peace talks on behalf of Frelimo (Madeira 1998: 8) and Renamo (Domingos 1998: 5). Hizkias Assefa (1987: 167) makes the same point with regard to the successful mediation undertaken in 1971 - 1972 by the World Council of Churches and the All African Council of Churches in the Sudanese civil war. A facilitator of the peace accord concluded between the African National Congress (ANC) and the Inkatha Freedom Party (IFP) in South Africa in 1994 attaches similar weight to the "non-partisanship" and "objectivity" of the mediation team which was led by Washington Okumu, a Kenyan businessman and academic, and supported by the local Consultative Business Movement (Coleman 1994).

Conversely, as illustrated by the following examples, a mediator's acceptability and effectiveness may be diminished greatly by its partisanship. Since 1993 the Inter-Governmental Authority on Development (IGAD) has attempted to mediate in the civil war in Sudan. While the member states of this east African formation have a legitimate interest in ending the war because of its destabilising regional impact, three of them have been involved in bilateral military conflicts with Khartoum. Ethiopia, Eritrea and Uganda provide military support to Sudanese rebel movements, while Khartoum sponsors extremist groups engaged in terrorist activities in each of these countries (see Deng 1997; Africa Confidential 37 (8), 12 April 1996; Africa Confidential 38 (15), 18 July 1997). Francis Deng (1997) observes that these antagonisms have raised questions about the credibility of the mediating body have undermined the initiative.

In 1989 Liberia was plunged into war when rebels led by Charles Taylor sought to oust Samuel Doe who had seized power in a coup ten years earlier. Five members of the Economic Community of West African States (ECOWAS) formed a Standing Mediation Committee to broker a ceasefire. When its initial peacemaking bid failed, the mediation committee established a military force known as ECOMOG (ECOWAS Ceasefire Monitoring Group). Over the next six years, the role of ECOWAS alternated between mediation, peace enforcement and peacekeeping. ECOMOG became embroiled in the fighting, prolonging the war and contributing to wider regional instability. Dominated by Nigeria, which had backed the despotic Doe, ECOMOG destroyed its claim to neutrality by targeting Taylor and arming rival factions (see Howe 1996/ 1997; Ofuatey-Kodjoe 1994; Sesay 1995; Nyakyi 1998). According to Anthony Nyakyi (1998), former Special Representative of the UN Secretary-General to Liberia, the enmity between Taylor and Nigeria became the main impediment to securing a lasting peace agreement.

When the elected Hutu government in Burundi collapsed in 1996, Pierre Buyoya and the predominantly Tutsi army assumed power through a coup. Neighbouring states immediately imposed sanctions on the country with the endorsement of former President Nyerere of Tanzania, the official mediator for Burundi. While the Buyoya regime pursued negotiations and forged a partnership with some of its internal opponents, it resisted the external peace process led by Nyerere. It called repeatedly for his resignation as the mediator on the grounds that he was anti-Tutsi. The tension between Buyoya and Nyerere, and the controversy around the embargo threatened to overshadow the conflict in Burundi itself (see International Crisis Group 1998: 36 - 50; Van Eck 1997; Evans 1997:33 - 39; Mthembu-Salter 1998).

In 1993 the second United Nations (UN) operation in Somalia (UNOSOM II) was launched with a mandate that included the promotion of political reconciliation among warring Somali factions. After Pakistani peacekeepers were killed in an ambush, the UN embarked on a military campaign against General Aideed, the faction leader deemed responsible. In their bid to hunt him down, UN forces bombed a house and killed over fifty clan members. Ken Menkhaus (1996: 59) asserts that these efforts to arrest or marginalize warlords "failed to account for the deep-rooted notion of collective responsibility in Somali political culture ... Actions taken against a clan's militia leader were seen by Somalis not as justice done to an errant individual, but as a hostile action against the entire clan". Having compromised its impartial standing, the UN became too discredited to pursue its mediation efforts and departed Somalia in ignominy (see Menkhaus 1996; Jan 1996).

In several of the situations outlined above, enforcement measures may well have been warranted. A strong case can be made for punitive international action in response to coups and systemic violation of human rights. Yet regardless of whether such action is justified, a mediating body which resorts to coercion will be mistrusted by the targeted party as surely as a soccer team mistrusts a biased referee. It sacrifices its status as an 'honest broker' and becomes a party to the conflict. As argued further below, enforcement and mediation functions should be performed by different actors.

While the application of sanctions or force is unambiguously partisan, bias is also a matter of perception. How a party feels about a mediator providing support to its opponent, for example, depends on the nature of that support, the party's confidence in the mediator and its assessment of prejudice to its own interests. In the case of Mozambique, a Frelimo official recalls that although his government's trust in the mediators was threatened by their inclination to assist Renamo as the weaker party, "their good sense prevailed and they were most of the time perceived as neutral and as uninterested parties" (Madeira 1998: 8). Elsewhere, active and prospective mediators have been rejected by a disputant on the grounds of bias: the Movement for Colonial Freedom as a mediator in Sudan in 1970 (Assefa 1987: 94); South Africa, Zimbabwe and Kenya as potential mediators in Mozambique in the early 1990s (Madeira 1998: 4; Hume 1994:32 - 43); Ethiopia and Egypt in the case of Somalia in 1993 - 1995 (Menkhaus 1996: 49); and Egypt and Libya in Sudan in 1998 - 1999 (IRIN Update No. 601).

Partisan interests also impede the mediation efforts of multinational bodies like the UN and the Organisation of African Unity (OAU). When these efforts are subject to decision-making by member states, the organisations function less as unified corporate actors than as diplomatic arenas in which the conflict is played out in an adversarial fashion (see Amoo 1993; Touval 1994). The organisation may be rendered impotent by divisions within its ranks or by the formal or informal veto of a state. For example, African countries prevented the UN Security Council from addressing the Liberian crisis for nearly three years after the outbreak of fighting in 1989 (Ofuatey-Kodjoe 1994: 270 - 271; Sesay 1995: 209). In addition, disparate interests within the mediating body can be exploited by the parties and exacerbate the conflict. According to Nyakyi (1998: 2), "the divisions among the key ECOWAS countries involved in Liberia, which supported different factions and failed to form a common policy on Liberia, was the underlying factor which emboldened the factions in their intransigence".

Smith (1985) acknowledges that a biased domestic mediator will be regarded with suspicion and hostility by the disfavoured party and may make the conflict more intractable. This logic applies equally to international mediators, particularly in civil wars where the stakes are especially high and feelings of hatred and mistrust are intense. The necessity for mediators to proceed with extreme caution in these circumstances is captured by the concerns of a senior Tanzanian official who, while facilitating the Arusha peace process for Rwanda between 1992 and 1993, was so determined not to appear partisan that if he had breakfast with one of the parties he would make a point of having lunch with the other![(2)]

The parties must consent to mediation and the choice of mediator

Disputant parties tend to be most resistant to mediation when it is most required. Where the negative impact of a conflict is manifestly serious, independent observers might consider mediation to be an obvious means of resolving the immediate and underlying problems. The adversaries, however, are likely to hold entrenched positions and view the conflict in zero-sum terms. From their perspective, mediation entails talking to 'the enemy' and the prospect of compromising core values in order to reach a settlement. They may fear losing face in the eyes of their supporters, being outmanoeuvred by their opponent's negotiating tactics, and being pressurised by the mediator to dilute their goals.

Given these dynamics, CCR undertakes mediation only with the express consent of the disputants. The organisation may be approached in the first instance by one of the protagonists or by some authority with an interest in ending the conflict, but its staff will then meet with all

the parties to ascertain their willingness to engage in mediation under CCR's auspices. This procedure gives the disputants some power over the mediator and enhances their confidence in the process. They can select a mediator whom they trust and they can dismiss the mediator at any stage. The nature of the appointment and the possibility of dismissal heighten the mediator's accountability to the parties and reduce their fear of bias. There is the further potential benefit of setting an early precedent of decision-making by consensus since the parties have to agree on the selection of the mediator.

The voluntary character of mediation is so fundamental that it can be regarded as a defining feature of the process. Legal instruments like the UN Charter and the 1964 OAU Protocol of the Commission of Mediation, Conciliation and Arbitration afford parties a 'free choice of means' in the pacific settlement of international disputes; the principle implies that mediation requires the parties' consent and acceptance of the mediator (United Nations 1992: 33 - 45). Although these instruments relate to inter-state conflict, the principle applies equally to conflict at other levels. It is reflected in academic definitions of mediation (see, for example, Bercovitch 1996: 246), in commentary on the peacemaking function of the UN secretary-general (see, for example, Puchala 1993: 82 - 83), and in policy proposals on conflict resolution emanating from African quarters (see, for example, Othman 1998: 16).

In practice, however, the element of consent is frequently absent in international mediation. When an inter- or intra-state conflict escalates to the point of large-scale violence, third party countries and multinational bodies often assume the role of mediator and appoint envoys to that end without consulting the protagonists. The disputants may be resistant to negotiations, or they may be ready for talks but lack confidence in the host agency or its envoy. In either case the ensuing process lies substantially outside of their control and is likely to be perceived as an imposition. Mediation is thus rendered a threatening and disempowering activity rather than a co-operative and supportive venture.

The OAU's principal mechanism for addressing high-intensity conflict is the 'ad-hoc committee'. The committee is normally chaired by the head of state who holds the rotating presidency of the organisation, regardless of that person's competence as a mediator and acceptability to the parties. The other members usually include heads of state from countries bordering the conflict zone. The mediating body might consequently encompass partisan interests that undermine the integrity of the exercise. In the Western Saharan conflict, for example, one of the parties boycotted a meeting of the Committee of Wise Men because of the "hostile positions" of certain members who had "overlooked the most fundamental norms of honourable behaviour and impartiality" (quoted in Amoo 1993: 247 - 8). The problem is compounded where a strong state attempts to use the OAU's authority to legitimise its ambitions of regional dominance, as occurred with Nigeria during the civil war in Chad in the early 1980s (Amoo 1993: 247).

The most radical deviation from the principle of consent is the refusal of mediators to withdraw when a disputant rejects their involvement on the grounds of bias. A mediator's persistence in these circumstances becomes a significant secondary source of conflict and an obstacle to resolving the primary conflict. The Burundi situation, noted earlier, is an example of this scenario. The controversy surrounding the mediator eventually became so intense that in 1997 former President Nyerere offered to step down from this role at a meeting of the regional leaders who had appointed him. The leaders declined to accept the offer and ignored the Burundi regime's call for a "team of neutral mediators" (see IRIN Update No. 405, 1998).

Peacemakers naturally play uninvited roles where a party rejects negotiations, encouraging it to enter into talks or acting as an interlocutor. In contrast, where all the disputants are willing to engage in negotiations, enabling them to select the mediator is clearly preferable to imposing one on them. An intermediary could invite each protagonist to nominate a number of third parties to serve in that capacity, the matter being settled quickly if there are any common nominations. If this is not the case, further iterations would be required until, through a process of elimination, the disputants settled either for a balanced team of mediators or for a single

mediator who is not completely unacceptable to any of them. The same procedure could be followed where mediation is already underway and a party rejects the mediator. Although the rejection may be a pretext for avoiding talks, nothing would be lost by calling that party's bluff and inviting it to propose alternative or additional mediators.

The approach advocated here may be difficult to implement but it is no more difficult than any other aspect of mediation, and it is not without precedent. In the Mozambican peace process, for example, the choice of mediator was determined through negotiations between the disputants. When Sant' Egidio convened the first meeting of the belligerents in 1990, Renamo insisted that its patron, Kenya, be the mediator. Frelimo would accept Kenya only if its own ally, Zimbabwe, were a co-mediator. Renamo rejected such involvement by Zimbabwe. In the absence of trust between the parties, Renamo also dismissed Frelimo's proposal that they proceed without a mediator. Following shuttle diplomacy by members of the Sant' Egidio team, the parties agreed at the third round of talks to upgrade Sant' Egidio's status from 'observer' to 'mediator' (Hume 1994: 32 - 43).

Conflict cannot be resolved quickly and easily

CCR mediators are never able to facilitate swiftly and easily the resolution of serious conflict at community and municipal levels. The psycho-political dynamics of conflict and the underlying structural problems preclude simple solutions and rapid progress. The obstacles to peacemaking are far greater where the scope of the conflict is national, there is a history of large-scale violence, and the protagonists are fighting for their cultural or physical survival. Peacemaking in Africa is often further complicated by the legacy of the former colonial powers' divisive ethnic policies and by the lack of coincidence between nation and state as a result of the colonial demarcation of borders.

Without discounting the UN's mistakes in Somalia, Ken Menkhaus (1986) argues that objective circumstances rendered certain of the organisation's goals and strategies inherently incompatible and bound to generate conflict. Peacemakers were confronted by a host of "political dilemmas and thus a menu of very unpalatable options, all of which posed a high probability of failure. There were, in short, no easy and obvious reconciliation strategies" (Menkhaus 1996: 43). Whatever the peculiarities of Somalia, the dilemmas were not particular to that country. Mediation and reconciliation initiatives in civil wars typically require courting and affording recognition to groups responsible for gross human right violations. This is likely to be perceived as rewarding violence and will alienate sectors of society. On the other hand, excluding the groups will ensure their opposition to both the peace process and its outcome.

In the absence of democratic elections, and especially in conditions of anarchy, identifying credible leaders may be extremely difficult. The status and bargaining power of the protagonists may derive more from military strength than from popular support, reinforcing tendencies to violence and raising doubts about the legitimacy of agreements reached. Warlords who rely on banditry as a means of subsistence may have no political claims whatsoever. Similarly, ruling elites and rebel movements which derive substantial profit from the exploitation of natural resources in territory held by force may have little interest in peace. Development projects which could provide an economic alternative to war are not viable while hostilities rage, and emergency aid may give rise to fierce competition and fuel the conflict.

Once peace talks are underway, the parties and the mediator are confronted by the daunting task of forging a settlement that satisfies the aspirations of the majority, the fears of minorities and the security concerns of all groups. The key features of the new constitution and political system are central in this regard but they are not the only tough issues. Negotiations may become protracted and deadlocked over ceasefire arrangements, the cantonment of combatants, the composition of the post-settlement security forces, land restitution and the fate of individuals who committed atrocities. The parties will not reach consensus on these issues if they maintain their maximalist demands, but concessions to their opponents might entail a degree of risk, alienate their supporters and strengthen the hand of militants opposed to dialogue.

The complexity of intra-state conflict and peacemaking poses two main challenges to international mediators. First, they should acquire a thorough understanding of local history, politics, cultures and personalities before assuming a substantive role. Second, they should refrain from rushing the process and making precipitate interventions. However critical the situation, and however obvious the basis of a settlement might appear, they should not attempt to thrust solutions on the parties or pressurise them into signing an accord prematurely. As noted by Ambassador Jan Eliasson, the UN Special Representative in the war between Iran and Iraq, peacemaking in intractable conflicts entails "long-evolving, tireless efforts" in which "patience is the greatest bravery" (quoted in Puchala 1993: 87).

Mediators deployed by states and multinational bodies consistently ignore these challenges and pursue 'quick-fix' solutions. They may be justifiably concerned about the high level of fatalities, the expectations of their principals or the financial cost of a drawn-out engagement. Nevertheless, the mediators' confidence that they can quickly bring the parties to their senses through a combination of reason and leverage also reflects extreme naivety and arrogance. The hubris of that misplaced confidence is evident in an expression favoured by Henry Kissinger: "If you have them by their balls, their hearts and minds will follow" (quoted in Stedman 1991: 118). Underestimating the passion of the belligerents and the intricacies of the issues outlined above, such mediators are more likely to muddy the waters than make a positive contribution.

Conclusions of this kind have been drawn in respect of international mediation in the Sudanese civil war in the 1990s (Deng 1997: 28 - 29); the ECOWAS intervention in Liberia (Howe 1996/ 1997: 163 - 165; Ofuatey-Kodjoe 1994); and Kissinger's attempt to broker a settlement in former Rhodesia in 1976 (Stedman 1991: 85 - 123). According to Martin Meredith, "by ignoring the complexities of the conflict [Kissinger] ensured the eventual failure of the mission" (quoted in Stedman 1991: 119). In contrast, the credibility and effectiveness of the religious mediators in Sudan in the early 1970s was enhanced by their intimate knowledge of the nature and complexity of the conflict (Assefa 1987: 169).

The establishment of UNOSOM II in Somalia was heralded by Madelaine Albright, then US Ambassador to the UN, as "an unprecedented enterprise aimed at nothing less than the restoration of an entire country as a proud, functioning and viable member of the community of nations" (quoted in Jan 1996: 3). Given the severity of inter-clan rivalry and the total collapse of the Somali state, this goal was patently unattainable within the designated time-frame of nine months. In the comparatively less complicated cases of Mozambique and South Africa, formal negotiations which followed lengthy periods of indirect talks were conducted over twenty seven months and four years respectively. The UN undertook a serious analysis of conditions in Somalia only after the operation was well underway, it did not comprehend the magnitude of the crisis, and its misjudgements regarding the authority and legitimacy of local leaders contributed to numerous set-backs (Friedrich Ebert Stiftung et al. 1995). Driven by schedules set in New York and lacking a proper grasp of traditional reconciliation processes, the UN worked against rather than with indigenous forms of conflict management (Menkhaus 1996; see also Jan 1996).

In summary, a failure to appreciate the complexity of conflict leads inevitably to a flawed analysis and misguided strategy. The argument presented here relates largely to the structural dimensions of civil wars and to the inescapable dilemmas of peacemaking. The following section considers the problem of quick-fix solutions from the perspective of the disputants. Denying citizens the opportunity to be fully involved in political decision-making is a primary cause of civil wars. It makes no sense to reproduce the problem in efforts to resolve such conflicts.

The parties must own the settlement

It is not uncommon for independent observers to view a particular conflict as `senseless', the demands of one or more of the adversaries as entirely unreasonable, and the solution as fairly obvious. From the vantage point of a mediator, such views are misleading and unhelpful. Parties to high-intensity conflict are typically motivated by an acute sense of aggrievement, by real or imagined threats to their security, or by other unmet needs which they consider fundamental. A mediator who does not take seriously these concerns will not be taken seriously by the disputants. If the mediator attempts to thrust on the parties a solution which is inimical to their interests, they are likely to conclude that the mediator has sided with their opponent.

The process by which conflict is addressed matters greatly, not only because of the significance that the disputants attach to their substantive demands but also because individuals and groups want to be involved in decisions that affect their lives. They resent being treated as the object of some other body's plans. CCR is thus often called to mediate in situations where a community development project has been rejected by the beneficiaries on the grounds that the project was designed and implemented without consulting them. Basic human needs are not limited to material imperatives like food, shelter and physical safety; they also include respect, acknowledgement and affirmation.

These considerations are especially important in the context of civil war. The belligerent parties, intent on winning the war, are even more committed to avoiding defeat. They are determined to thwart efforts to force an outcome on them, regardless of whether such efforts stem from their enemy or a mediator. Moreover, from both a normative and a pragmatic perspective, the desired outcome of a negotiated settlement is a democratic dispensation. A democratic system, whose defining feature is the distribution and exercise of power on the basis of electoral mandates and the on-going consent of citizens, cannot logically or practically be imposed on a society.

Peacemakers may have compelling reasons for wanting to secure a settlement promptly. Romano (1985: 5) recalls that Sant' Egidio was put under strong pressure to end the Mozambican peace talks quickly since "every additional day more of war meant more killings". The mediators resisted this pressure on two grounds: "the pathology of memory" was a "heritage of almost a generation and could not be easily cancelled"; and "there is no use in forcing people to agree on anything. The only way the process could have been successful and the reason that made it successful was that all the actors involved gained ownership" (Ibid). In his study of the Mozambican talks, Cameron Hume (1994: 145) concludes similarly that "in any negotiations the parties [must] have the final word on how they negotiate and on what terms they settle".

CCR mediators regard it as axiomatic that agreements which are not shaped and embraced by the disputants have little chance of enduring. They consequently define their role as facilitating problem-solving by the protagonists rather than as solving problems for them. In order to reach the stage of co-operative problem-solving, the mediators seek to manage and transform the parties' fears and mutual antipathy with sensitivity and patience. They proceed at a pace with which the disputants feel comfortable, and take special care to avoid being seen as prescriptive.

State mediators, in contrast, tend to focus more on solutions than process. They endeavour to win the parties' consent to their proposals and press for rapid results. The most extreme version of this approach entails the application of sanctions or military force. As argued earlier, mediators undermine their credibility and effectiveness when they take such steps. In addition to alienating the targeted party, they are unlikely to achieve any outcome that requires the long-term co-operation of that party. Accords concluded under duress will have scant value in the absence of a genuine commitment to peace and reconciliation. During the Liberian civil war, for example, ECOMOG's enforcement operations led to as many as fourteen short-lived peace agreements between 1990 and 1995 (Nyakyi 1998: 1).

Less extreme versions of a peremptory approach can also have unhappy consequences, as illustrated by Henry Kissinger's bid to broker peace in former Rhodesia. According to Stephen

Stedman (1991: 85 - 125), Kissinger arrived in Southern Africa in April 1976 confident that his diplomatic skills and the strength of the United States would lead to success where others had failed. Insisting publicly that he was merely an interlocutor and would not be prescriptive, Kissinger had in fact devised a formula for majority rule. His objective, he later revealed, was to co-opt the programme of 'moderate evolutionary reform' and isolate the 'ideological radicals'. His immediate goal was to obtain Ian Smith's approval of the plan, through various threats and promises, before the US presidential election in November. The initiative was counter-productive. Kissinger's proposals emboldened the minority regime, were rejected by the liberation movements and culminated in what his British counterparts described as a "mess" (Stedman 1991: 105 - 106).

A mediator's declaratory proposals may be perceived as prejudicial even when made in good faith. This was the fate that befell the Declaration of Principles issued by IGAD in 1994. The document synthesised the main demands of the protagonists in the Sudanese conflict in order to specify the key elements for ensuring a lasting peace. It appeared to address the root causes of the war in a fair and pragmatic fashion. However, two of the principles were anathemas to the Sudanese government which denounced the mediators for abandoning their impartial stance (Deng 1997: 27). A Kenyan diplomat familiar with the process believes that IGAD's mistake was to project the synthesis as a formal declaration instead of circulating a draft discussion paper for the parties' consideration.[(3)]

In their typology of different modes of international mediation, William Zartman and Saadia Touval (1992: 252 - 258) distinguish between an interventionist style which entails 'persuasion with leverage' and a more passive approach in which the mediator is merely a conduit between the parties and abstains from making proposals. While it is hard to imagine an international mediator falling into the latter category, the former is laced with danger. The critical issue is not whether a mediator should advance proposals but how and when to do so. Aside from the obvious distinction between solicited and unsolicited advice, a disputant is more likely to react negatively to a recommendation from a mediator who has just assumed that role than from a mediator with whom a relationship of trust has been built. A disputant may be receptive to a mediator's ideas put privately, but may be unwilling to accept the same ideas made publicly for fear of losing face. A disputant party is also likely to differentiate between proposals borne of humanitarian concerns and those based on partisan interests.

The extent to which a mediator can be assertive without causing offence is a matter of judgement in a given situation. An emphasis on prudence and tact is therefore not a precise prescription but a more general question of orientation and style. The requisite discretion is illustrated perfectly by Count Folke Bernadotte, the UN Special Representative to Palestine in 1948:

"In the course of the truce negotiations, the two parties had made it quite clear that they expected to receive from me, during the period of the truce, an indication of my ideas as to a possible basis of settlement. This, in their opinion, was the raison d'être of the truce. Notwithstanding, therefore, the complete divergence of aims and the very short time left at my disposal, I decided to submit to the two parties a set of tentative suggestions, with the primary intention to discover whether there might be found at this stage a common ground on which further discussion and mediation could proceed" (quoted in Puchala 1993: 88).

Mediators should not resort to punitive action

Although the question of punitive action has been addressed, further comment is required because civil wars are characterised by the problem of one or more of the parties being implacably opposed to negotiations and intent on defeating its opponent through force. Where oppression and systematic abuse of human rights are features of an intra-state conflict, international or regional organisations might decide to apply enforcement measures against the offending party. As in the case of apartheid South Africa, sanctions can help to weaken an authoritarian regime to the point that it becomes receptive to a democratic settlement.

Alternatively, the aim might be to compel a belligerent, such as Unita in Angola, to adhere to the terms of a peace agreement.

Further comment is required also because many scholars and diplomats emphasise the importance of political leverage in international mediation, leading to the assertion that large states are more effective mediators than other actors (Smith 1985; Bercovitch 1996; Zartman and Touval 1992; Touval 1992). Touval (1994) maintains that the UN's lack of leverage contributes to its ineffectiveness as a mediator; its promises and threats have little credibility because the institution has no military and economic resources of its own. According to Cyrus Vance and David Hamburg (1997: 14), envoys of the UN secretary-general should be familiar with "techniques to pressure parties to negotiate (e.g. sanctions or threats of force)". Sam Amoo (1993: 243) bemoans the fact that the OAU is "endowed with very modest authority for conflict management; it has no coercive powers whatsoever" (Amoo 1993: 243).

This position is flawed in several respects. First, mediators can achieve a great deal where their credibility and authority emanate from moral stature rather than formal power. Such mediators have included the World Council of Churches and the All African Council of Churches in Sudan in 1971 - 1972 (Assefa 1987); the Community of Sant' Egidio in Mozambique in 1990 - 1992 (Hume 1994); and representatives of the UN secretary-general on many occasions (see Rivlin and Gordenker 1993). Romano (1998) attributes Sant' Egidio's success largely to the 'weakness' of non-governmental mediators who have no capacity to threaten the parties. This was also true of the mediators (Washington Okumu and the Consultative Business Movement) who brokered peace between the ANC and the IFP in 1994 on the basis of a personal rapport and religious affiliation between the lead mediator and the head of the IFP (Coleman 1994).

Second, sanctions and the threat or use of force do not easily deter people who are fighting for their survival and who are willing to die for their cause. Punitive action may even be counter-productive. As demonstrated by the ECOMOG mission in Liberia, peace enforcement operations can broaden, deepen and prolong hostilities (see Nyakyi 1998; Howe 1996/ 1997). Sanctions imposed on Burundi reportedly undermined Tutsi confidence in reconciliation; strengthened extremist positions within the army and the minority community by heightening their sense of vulnerability and persecution; and exacerbated economic deprivation and inequity which are counted among the root causes of the conflict (International Crisis Group 1998). The embargo gave the Buyoya regime a significant propaganda victory by creating the impression that the mediator was the main obstacle to securing a settlement (Mthembu-Salter 1998).

Third, general claims about the utility of leverage ignore a range of distinctions with regard to the nature, purpose and timing of external intervention. Consider, for example, a powerful actor supplying or terminating military aid to a belligerent party; attempting to bully it into peace talks through sanctions; offering it financial incentives to end hostilities; providing resources to sustain all-party talks; and serving as a guarantor in respect of agreements reached. These interventions are all covered by the term 'leverage' but they have such different political, strategic and psychological import that they cannot properly be regarded as examples of a single category. The problem is typified by the use of the idiom 'carrots and sticks' as a synonym for leverage (see, for example, Touval 1994: 55; Bercovitch 1996: 255; Vance and Hamburg 1997: 4). The idiom implies that rewards and punishments are similar or complementary strategies, yet it seems to be a trite observation that people react to coercion and encouragement in manifestly dissimilar ways.

The problem is also apparent in the claim by Jacob Bercovitch (1996) that 'directive strategies' in international mediation have led to a greater number of positive outcomes historically than 'communication-facilitation strategies' (52.3 per cent versus 32.2 per cent). The latter entail a fairly passive role by the mediator who serves mainly as a channel of communication between the parties. The former encompass more assertive efforts by the mediator to affect the content as well as the process of mediation. According to Bercovitch (1996: 225), "a mediator may achieve this by using a combination of 'carrots and sticks', providing incentives, offering rewards and punishments, issuing of ultimata, and introducing new proposals". This breakdown covers so

wide a spectrum of activities that it begs the key question: was the success of directive strategies due principally to incentives, ultimata, punishment or new proposals?

Fourth, and most important for present purposes, a mediating body will almost certainly fail to gain the confidence and co-operation of a disputant against whom it threatens or applies sanctions or force. As discussed earlier with respect to Somalia, Liberia and Burundi, such action destroys its credibility as a peace broker and make the mediator a party to the conflict. Giandomenico Picco (1994) argues similarly that when the institution of the UN secretary-general is involved in determining and managing the use of force, it compromises the impartiality that is critical to its function as a mediator; from the vantage point of suspicious combatants, the authority to order killing renders the institution no different from the major powers.

Fifth, even if leverage is required in a particular case, it does not have to be exercised by the mediator. Chris Mitchell (1993) points out that intra-state peacemaking seldom comprises a single activity pursued by a solitary agent; given the complexity of the enterprise and the variety of tasks that have to be performed, peacemaking should be viewed as a process to which different actors can contribute simultaneously or consecutively. The point is well illustrated by the Mozambican experience. Neighbouring states put pressure on their allies to engage in talks and acted as interlocutors prior to the commencement of negotiations (Zimbabwe in respect of Frelimo, and Kenya in respect of Renamo); a religious group was selected as the mediator (the Sant' Egidio team, which included an Italian parliamentarian); foreign powers provided logistical aid and technical advice to the mediators and the parties (chiefly Italy and the United States); the UN secretary-general and certain African presidents helped to resolve deadlocks at critical junctures; Italy funded Renamo's transformation from a rebel movement into a political party; and the UN managed the implementation of the settlement (see Hume 1994; Armon et al. 1998).

The severability of functions related to peacemaking is especially relevant to the question of enforcement. Picco (1994) thus proposes that the UN's management of force should not lie with the secretary-general but should rather be sub-contracted to a coalition of states, as occurred in the Gulf War; this would allow the secretary-general to be the 'good cop' negotiator, with the Security Council playing 'bad cop' if negotiations fail. Punitive action against those responsible for oppression and atrocities is not intrinsically inappropriate. The contention is rather that, where it is deemed necessary, it should be applied by some agency other than the active or prospective mediator.

Mediation is a specialised activity

The realisation of the confidence-building potential of mediation does not only depend on the will of the disputants and the strategic considerations discussed above. It is also a product of the mediator's personal attributes and skill. In CCR's experience, talented mediators have a rare combination of traits. A high level of sensitivity and empathy is needed to win the parties' trust and identify the concerns that underlie their formal demands. Mediators must also have sufficient self-confidence to control meetings when tempers flare and to avoid being bullied by powerful negotiators. At the same time, they must be able to keep their egos in check and refrain from becoming overly assertive when progress is slow. Flexibility and creativity are prized because conflict is dynamic and no two cases are identical.

These attributes contribute to the art of the mediator. Yet, while mediation is not a mechanical endeavour, neither is it an idiosyncratic and mystical affair as suggested by Arthur Meyer in 1960: "[The] task of the mediator is not an easy one. The sea that he sails is only roughly charted and its changing contours are not clearly discernible. He has no science of navigation, no fund inherited from the experience of others. He is a solitary artist recognising at most a few guiding stars and depending on his personal powers of divination" (quoted in Bercovitch 1996: 247).

In the four decades since Meyer described the 'loneliness of the long-distance mediator', domestic mediation has undergone substantial development in many countries. It can be regarded as a professional discipline in the sense that it encompasses a body of theory, comparative research, case studies and tested techniques. Whereas the principles explored earlier reflect the strategic dimensions of mediation, the techniques are the tactical elements that constitute the essence of the profession. They relate to diagnosing the causes of the conflict; engaging in shuttle diplomacy where adversaries refuse to talk directly to each other; designing and convening the mediation process; setting agendas and conducting meetings; identifying common ground between the parties; and generating options for resolving deadlocks. Many of the techniques are intended to overcome the psycho-political barriers to effective communication and co-operative problem-solving.

In contrast, states and multinational organisations do not view international mediation as a specialised enterprise. In major policy statements on peace and conflict, UN secretaries-general invariably present a perspective on early warning, military deployment and other topics but say little about mediation beyond asserting its importance (see, for example, Boutros-Ghali 1992; Boutros-Ghali 1995; Report of the UN Secretary-General 1998). While peace operations, sanctions and humanitarian aid are the subject of discussion among politicians, academics and activists, debates on mediation are largely confined to scholars and domestic practitioners. One such debate concerns the professionalisation of domestic mediation (see Morris and Pierre 1994), a question rarely posed in respect of international mediation.

In practice, the principal techniques of international mediation are persuasion, bargaining and the exercise of leverage. Mediation is thus indistinguishable from power-based diplomacy, its lack of finesse dramatised in Kissinger's belief, cited above, that "if you have them by their balls, their hearts and minds will follow". The tendency to construe mediation as 'tough diplomacy' leads to, and is reinforced by, the appointment of international mediators on the basis of their political stature rather than their disposition and competence as mediators. Lawrence Susskind and Eileen Babbit (1992: 46) make a similar observation:

"Many times the leaders of bystanding countries are tapped to play mediator roles because of their acceptability to the parties rather than their prior mediation experience. While all experienced diplomats understand at least the rudiments of mediation, most are not skilled in the art or science of the process."

In some instances international mediators are successful because of their inter-personal skills, the attractiveness of the 'carrots' they offer the parties and the 'ripeness' of the conflict for resolution. Yet the success rate might be higher if they were proficient in mediation techniques. It is not possible to adduce hard evidence in support of this proposition since failed peacemaking ventures cannot be replayed with a different mediator or style of mediation. Nevertheless, African diplomats have expressed discomfort at their lack of confidence and expertise when engaged in complex mediation, and a number of ambassadors and foreign affairs officials have called for comprehensive training in mediation and related skills.(4)

It is not intended here to imply that mediation should be rendered an elitist activity through formal accreditation and institutionalisation. The aim is rather to highlight the emphasis that professions place on specialist training and expertise. This emphasis does not diminish the value of informal mediation conducted regularly at local level by community leaders, elected officials, religious figures and others. By way of analogy, the fact that children learn from many sources does not detract from the need to train classroom teachers. Where mediation takes place in the context of civil war, the stakes and risks are high. It seems absurd that states and international bodies which would not deploy untrained soldiers, police or doctors in these situations, or in any other circumstances for that matter, readily utilise untrained mediators.

A structural solution to this problem might lie in establishing expert mediation units in the offices of the UN and OAU secretaries-general. The staff of these units could perform various peacemaking functions under the authority of the secretaries-general, and serve as advisors to UN agencies and to heads of state and senior diplomats engaged in high profile mediation. As

standing entities the units would have greater depth and continuity than ad hoc missions. A host of additional benefits might accrue if they operated independently of the plenary organs of the UN and the OAU. They could engage in low-profile mediation long before a conflict reaches crisis proportions and attracts the attention of these organs; their flexibility would not be constrained by official resolutions and the vested interests of member states, and they could make contact more easily with disputant parties which had acquired pariah status. Most importantly, their impartiality and lack of coercive power might make their efforts less threatening to the parties.

The proposal that the secretaries-general conduct mediation independently of formal power structures is radical but not original. It was raised by Boutros-Ghali (1992: 22 - 23) in respect of the UN, and has occasionally been implemented productively through UN envoys (see Rivlin and Gordenker 1993). Vance and Hamburg (1997: 7) recommend strengthening the UN secretary-general's authority and capacity to utilise special representatives and personal envoys, without being subjected to second-guessing from the Security Council, as a low-cost and low-risk means of averting and ending large-scale violence. They note dryly that the resistance of the United States and other governments to such recommendations has more to do with the relationship of the Security Council to the UN Secretariat than with the prevention and resolution of deadly conflict.

Power brokerage versus confidence-building mediation

The mainstream academic position on international mediation holds that the process is best understood and best pursued as a form of power brokerage (see Kleiboer 1996: 378 - 380). The key propositions in this regard are that a mediating body's political power, resources and exercise of leverage are critical to success; its impartiality is a less important consideration; and strong states are thus more effective mediators than other actors. The experience of mediation in African civil wars does not support these propositions. In this section I seek to consolidate the critique of the power thesis by arguing that the thesis lacks compelling evidence, that its theoretical assumptions are flawed, and that the psycho-political dynamics of conflict necessitate a confidence-building approach to mediation.

The dearth of evidence

The academic literature contains numerous long-standing disputes about the factors that contribute to the success or failure of international mediation. Kleiboer (1996: 375 - 376) maintains that a major reason for the difficulty in resolving these disputes lies in the failure of scholars to ground their position in solid empirical evidence; most of the research presented as evidence turns out to be based primarily on conjectures, opinions and ad hoc observations. This problem bedevils the power thesis and manifests itself in various ways.

First, writers cite mediation initiatives which purportedly corroborate their hypothesis but which, in truth, indicate the contrary. For example, Peter Carnevale and Sharon Arad (1992: 41 - 42) contend that Algeria's resolution of the Iran hostage crisis demonstrates the benefit of mediator bias. In support of this claim, they quote from the case study by Randa Slim (1992: 228): the mediators had "the required revolutionary credentials and the necessary international connections needed for the job". This comment hardly establishes bias. Slim (1992: 226) herself declares that Algeria's success was due largely to the fact that it "did not have so many interests at stake as to be subjectively perceived by either side as partial". Her broader point is that "the power of a small state as a mediator usually resides in its neutrality, and its fair treatment of all parties' basic interests and concerns" (1992: 229).

Zartman and Touval (1992: 249) illustrate their argument about the acceptability and success of biased mediators with reference to former Rhodesia: "In the Rhodesia/Zimbabwe mediation, the Africans' belief that British and US sympathies were with the white Rhodesians rendered British and US mediation promising and stimulated African cooperation". The evidence does not substantiate the peculiar logic of this assertion. Kissinger was unconcerned about his

acceptability to the liberation movements as he wished to exclude them from a settlement; he therefore avoided direct contact with their leaders, negotiating instead with the heads of neighbouring states who ultimately rejected his plan (Stedman 1991: 85 - 125). In the subsequent mediation led by David Owen and Cyrus Vance, the liberation movements objected to US involvement in the process the mediators were unable to bring the parties to the negotiating table, and their proposals influenced the parties' preferences in ways that reduced the likelihood of a settlement (Stedman 1991: 127 - 164).

Second, writers present conclusions that are inconsistent with their observations. For example, Touval (1994) argues that the UN's limitations as a mediator are so severe that it should refrain from mediating in complex international disputes and rather sponsor unilateral mediation by great powers or other states with a vested interest in the conflict. Yet Touval (1994: 46 - 50) recognises that disputants may be wary of such "meddling", that they sometimes choose a multilateral mediator in order to "deflect the pressure that a single state mediator might bring to force an undesired settlement", and that the UN inherits "orphan conflicts" that states are unwilling or unable to resolve. Touval (1992: 243 - 244) also notes that the United States has occasionally undertaken mediation under the aegis of an international organisation because of the protagonists' aversion to being seen to back down as a result of prodding by the United States.

In a quantitative study of mediation endeavours over several decades, Jacob Bercovitch and Allison Houston (1996: 27) discover that large government mediators have been outperformed by small states which in turn have been outperformed by regional bodies; institutions like the OAU, ECOWAS and the Contadora group consequently "appear to offer the best chances of successful outcomes in international mediation". Notwithstanding this verdict, Bercovitch and Houston (1996: 27) insist that large governments are more likely to be successful mediators than other actors! Despite observing that mediation is a useful tool by virtue of being low-key, voluntary and non-coercive, Bercovitch (1996) also claims that mediation is most productive when pursued through directive strategies which include threats and punishment. Elsewhere, Bercovitch (1992: 23) states that there is no evidence that the satisfaction of disputants is strongly associated with any specific kind of mediation strategy or mediator.

Third, scholarly theories rest on assumptions and appeals to 'logic' rather than rigorous evidence. For example, Touval (1992: 233) begins an essay on superpower mediation with the premise that "to be successful, mediators require leverage" but he concludes the essay as follows: "No attempt was made here to evaluate the effectiveness of American and Soviet mediation. We can assume that American and Soviet mediation was more effective than the mediation of other international actors. This almost follows from the quality of being superpowers: they possess superior resources and carry more influence than other states. However, this question clearly requires further research" (Touval 1992: 246). The assumption itself is misleading as Touval (1992: 241 - 243) shows that the United States and the Soviet Union adopted dissimilar styles of mediation: the US approach encompassed "brutal arm-twisting" and "powerful inducements" while the Soviets preferred "low-key diplomacy" to the "utilization of incentives and pressure". In the absence of an investigation into the relative efficacy of these different methods, Touval's premise and conclusion are entirely speculative.

Fourth, the credibility of quantitative studies is undermined where the authors fail to disclose the data on which their findings are based. It is not possible, for example, to ascertain and verify the facts which lead Bercovitch and Houston (1996) to claim that the OAU and ECOWAS are effective mediators and that directive strategies have been more fruitful than communication-facilitation strategies. These findings are surprising in the light of the cases considered in this article. In the Liberian civil war, as indicated previously, ECOWAS exacerbated the conflict, it secured fourteen short-lived peace accords over five years, and the process culminated in elections won by Charles Taylor who had launched the war and borne the brunt of ECOMOG's use of force. Should this experience be counted as fourteen successes, thirteen failures and one success, a single success or a single failure? There is no way of telling whether, let alone how, Bercovitch and Houston judged the case. Nor, as noted earlier, is there any way of telling

whether the success of directive strategies was due chiefly to rewards, punishment or the issuing of new proposals by the mediator.

Of the mediation efforts in African civil wars reviewed by this author, only the Lancaster House agreement on the independence of Zimbabwe provides support for the power thesis. Mediators who resorted to coercive leverage or otherwise behaved in a partisan manner were ineffectual or counter-productive in Burundi, Somalia, Liberia, Sudan in the 1990s and Zimbabwe prior to Lancaster House. In contrast, non-partisan mediators who had no formal political power were effective in Sudan in the 1970s, in Mozambique and in respect of the conflict between the ANC and the IFP in South Africa.

Determining the reasons for the failure of a mediation endeavour is admittedly a difficult undertaking. The outcome is always contingent on a range of contextual and procedural factors, of which the mediator's strategy and tactics are but one set (Bercovitch and Houston 1996). In civil wars in particular, peacemakers face a host of political dilemmas and structural problems that may confound their mission. In the final analysis, the responsibility for ending hostilities lies with the protagonists. Even the most accomplished mediator can do little if a party rejects negotiations. The converse is not true, however. Mediators who are inexperienced, biased, bullies or overly prescriptive are likely to squander opportunities for progress and exacerbate the conflict. These results emerge as trends from studies that demonstrate in a convincing fashion a causal relationship between the 'negative' actions of a mediator and the 'negative' reaction of the parties. As discussed below, a general explanation for that reaction lies in the psycho-political dynamics of conflict.

The flawed logic of power-based mediation

Zartman and Touval (1992: 252 - 258) identify three principal modes of mediation: communication, formulation and manipulation. The last of these may be necessary where a disputant does not regard its situation as one of stalemate and crisis. As a manipulator, "the mediator uses its power to bring the parties to an agreement, pushing and pulling them away from conflict and into resolution. ...The mediator may have to go so far as to improve the absolute attractiveness of the resolution by increasing the unattractiveness of continued conflict, which may mean shoring up one side or condemning another" (1992: 253). The aim of leverage based on power and resources is thus to worsen the dilemma of parties that reject mediation and to keep them in search of a solution (1992: 255). This position corresponds to the argument by Bercovitch and Houston (1996: 26) that "leverage or resources buttress the mediator's ability to facilitate a successful outcome through the balancing of power discrepancies and enhancing of co-operative behaviour" (Bercovitch and Houston 1996: 26).

The position does not take proper account of the psycho-political dynamics of conflict. Unlike a chess player moving inanimate objects across known space and according to fixed rules, a mediator is confronted by social actors with volition and intense feelings of hatred, frustration, fear and mistrust. These feelings give rise to decisions which are not irrational but which do not resemble the outcome of prudent cost-benefit analyses in a safe environment. The assumption that external manipulation can render negotiations an attractive option by driving a recalcitrant party to the brink of disaster underestimates the resolve of groups whose freedom or survival is at stake and whose members are willing to kill and die for their cause.

The visceral concerns that invoke opposition to negotiations cannot simply be dismissed as obduracy. The term 'psycho-political' is intended to indicate that the subjective dynamics of conflict derive from objective conditions and that the disputants consequently have good reason to resist pressure from all quarters. Whereas stable democracies manage competition over political power through regular elections which do not deprive the losers of their basic rights, civil wars take the form of a zero-sum struggle in which the belligerents are bent on destroying each other politically if not physically. In these circumstances, avoiding defeat is an absolute imperative and a settlement is viewed as synonymous with defeat. The protagonists are

therefore determined at all cost to thwart efforts to impose an outcome on them, regardless of whether such efforts stem from their enemy or a mediator.

The belligerents also have good reason to fear negotiations. Although the notion of 'win-win' solutions may have conceptual and psychological value when juxtaposed against the 'win-lose' disposition of the parties, it is not realistic in the context of civil war. A negotiated settlement invariably entails significant concessions by all the disputants and is best characterised as 'win/lose - win/lose'. As Lord Carrington put it at the Lancaster House conference on Zimbabwe, "it is illusory to think that any settlement can fully satisfy the requirements of either side" (quoted in Stedman 1991: 176). The settlement is likely to endure if all the parties regard the net result to be sufficiently positive. At the onset of talks, however, they cannot be certain that this will be the case.

The concessions will not only be unpalatable but may also pose considerable danger. Moderate leaders may be ousted by militants. A belligerent party which disarms pursuant to a ceasefire agreement may be vulnerable to attack if its opponent reneges on the agreement. A minority community that surrenders power may subsequently be marginalised or persecuted. A majority party's compromises may present a potential threat to the new dispensation, as in the ANC's decision to re-employ the leadership and members of the apartheid security forces. It is also possible that a party is so completely outmanoeuvred in the course of negotiations that a settlement constitutes a resounding political defeat. This scenario occurred with the Arusha accord for Rwanda in 1992 - 1993, arguably contributing to the genocide that followed in 1994 (Adelman and Suhrke 1996: 24 - 27).

Given the manifest dangers associated with intra-state conflict and its resolution, coercive leverage that heightens a party's insecurity is likely to make that party more rather than less intransigent. The leverage may in fact strengthen the domestic status of hardliners, enabling them to mobilise popular support against 'foreign aggression' and portray moderate positions as capitulation. These outcomes are hardly surprising since coercion is indisputably a cause of large-scale violence. As illustrated by Kissinger's mediation bid in former Rhodesia, manipulative strategies can also embolden and thereby reinforce the intransigence of the favoured party (Stedman 1991).

The negative effects of external coercion may be immaterial from a pragmatic perspective if the desired result requires neither the consent of the targeted party nor co-operation between the disputants. For example, as transpired in the Gulf War, an aggressor state (Iraq) can be compelled by superior force to vacate occupied territory (Kuwait). The situation is altogether different in civil wars where the belligerents have sizeable constituencies that inhabit the same territory. The permanent defeat of entire communities is seldom possible and their suppression cannot be maintained indefinitely. Barring the unlikely option of secession, their co-existence is inescapable. Enduring stability consequently requires a high level of positive interaction. Peacemaking and peacebuilding entail the parties accommodating each other's aspirations and fears in order to reach a settlement; the establishment of democratic governance; and long-term development efforts to address other causes of violent conflict. These are inherently co-operative and consensual ventures, the pursuit of which through force is self-defeating.

Even if sustained pressure eventually heightens the attractiveness of negotiations, the targeted party will view a mediator who applied such pressure as allied to its enemy. Without the trust and co-operation of all the disputants, a mediator cannot be effective. This fundamental point is not contested explicitly by the proponents of the power thesis, some of whom caution against mediators being too biased or exerting too much pressure (see, for example, Touval 1992: 240). Expressed as a caveat to the central hypothesis on the utility of power and leverage, the warning is inadequate: it provides no clarity on where or when a mediator should exercise caution, whereas the counter-productive impact of coercion and bias is abundantly clear. The warning is therefore regarded by this author as the primary analytical and prescriptive proposition on mediation in civil wars. The job of the mediator is not to push the parties to the brink of disaster

but rather to facilitate their withdrawal from the precipice by raising their confidence in negotiations.

The analytical limitations of the power thesis stem largely from its roots in a 'realist' perspective on international relations. Touval (1992: 232) outlines the paradigm as follows:

"Mediation is often thought of within the normative context of conflict resolution, or problem solving strategies... [H]owever, mediation will be discussed within a 'realist' framework of international politics, in the sense that states are rational actors, pursuing their self-interest, and assigning high priority to considerations of security, power, and the promotion of their influence. A core assumption within this framework is that mediation is a foreign policy instrument, employed by states in furtherance of their goals."

Realism seeks to explain the competitive behaviour of states in an anarchical system of international politics. It does not purport to explain the behaviour of social actors competing over the centralised authority of the state. The conduct of domestic adversaries does not conform to an idealised model of 'rational' state actors. Realism may thus account for the goals and modus operandi of state mediators without shedding light on the response of local parties. It might inform inter-state peacemaking aimed at restoring the independence of sovereign entities, but it offers no guidance on forging reconciliation between groups that are interdependent. These distinctions relate to different spheres of politics rather than to any dichotomy between normative and 'realist' considerations; in the case of national peacemaking, joint problem-solving is a pragmatic necessity. In short, a theory of effective mediation of intra-state conflict must be grounded in the dynamics of such conflict.

The cases discussed in this article indicate that the power thesis depicts accurately the motives and style of many state mediators but does not provide a valid perspective on the effectiveness of that style in the context of civil war. In this context, the thesis lacks explanatory and predictive power and its prescriptions are not justified.

The logic of confidence-building mediation

At the low end of the spectrum of civil wars 'ripe for resolution', one or more of the parties believes that its interests are best defended or advanced by perpetuating hostilities. There is no prospect of mediation in these circumstances. At the opposite end of the spectrum, informal contact between the parties generates sufficient trust for them to engage in formal talks without a mediator. The negotiations between the National Party (NP) and the ANC around the ending of apartheid in South Africa are an example of this uncommon scenario. In the middle range of the spectrum, the parties perceive their situation as one of stalemate and crisis but are reluctant to embark on negotiations because of the psycho-politics of conflict. The utility of mediation lies precisely in its potential to overcome this impasse by virtue of its intrinsic confidence-building function.

The confidence-building function of mediation derives from the distinctive features of the process: assistance to adversaries, with their consent, by an intermediary who enjoys their trust and is not a party to the conflict. Unlike an arbitrator who might rule in favour of one of the disputants, and unlike a partisan actor whose interests are inimical to those of a disputant, a mediator seeks to facilitate agreements in an even-handed fashion and on terms acceptable to the parties. Although these features do not eliminate the risks attached to negotiations, they render mediation a non-threatening venture and mitigate the pathology of distrust. Renamo thus agreed to engage in peace talks with Frelimo but refused to proceed without a mediator, insisting that a mediator would compensate for the absence of trust between the parties (Hume 1994: 33 - 34). In short, confidence-building reflects the basic logic of mediation.

Some writers maintain that a socio-psychological focus on improving relations between adversaries is a superficial response to intra-state crises. It disregards the structural causes of the crisis, neglects questions of justice and assumes incorrectly that conflict is merely a product of poor communication and mistaken perceptions (see, for example, Duffield 1997). The critique may be justified in specific instances, but at a more general level it ignores the links and overlap

between the subjective and objective dimensions of conflict. The former are significant because they pose serious obstacles to resolving the substantive issues in dispute. They preclude effective communication between the parties, let alone collaborative problem-solving. This matters greatly where the parties' co-operation is a pre-condition for ending hostilities and maintaining long-term stability. Defusing hostile emotions and promoting confidence on the one hand, and attending to structural problems on the other, should be viewed as complementary strategies. An analysis of these problems falls outside the scope of this article; for present purposes the point is that mediation should be regarded as a means of enabling local rather than external actors to formulate appropriate solutions.

Since the article has focussed exclusively on civil wars, no conclusions can be drawn about the validity of either the power thesis or a confidence-building model in respect of inter-state conflict. While most writers on international mediation do not distinguish between inter- and intra-state conflict (Kleiboer 1996: 360), the political dynamics are sufficiently different to warrant separate consideration or systematic comparison of mediation in the two domains. In contrast, this article's geographical focus on Africa does not limit the applicability of the argument to mediation in that region. The focus stems from the author's knowledge of the continent and provides a distinct and manageable set of cases. The set is nevertheless heterogeneous, embracing a rich diversity of political, social, cultural and historical conditions. If the psycho-political dynamics of conflict are inevitable products of serious adversity between social actors, then the motivation for a confidence-building approach has broad relevance to intra-state conflict.

Conclusion

The experience of peacemaking in African civil wars suggests that international mediators are ineffective, if not counter-productive, when they deviate from the logic of mediation and apply undue pressure on the parties. Individuals and groups tend to resist coercion under most circumstances. This is especially the case where disputants are in conflict over issues related to freedom, identity, justice, security and survival. While external pressure may be unavoidable because of a disputant's intransigence or aggression, a mediator who threatens a party will lose that party's trust and inhibit the resolution of the conflict.

It could be argued that inappropriate use of power is unavoidable where mediation is undertaken by governments, particularly strong governments. It might therefore be concluded that peacemaking by states, multinational bodies and non-state actors should be regarded as complementary, suitable in different settings or appropriate at different stages in the resolution of a conflict. This is a widely held view that has contributed to the proliferation and legitimacy of 'multi-track' initiatives in recent years (see, for example, Rupesinghe 1997).

The thrust of this article, however, is that international mediators diminish the prospect of ending conflict when they deviate from the principles of mediation and are unfamiliar with its techniques. Mediation is a specialised activity that is not a mystical affair, reducible to common sense or synonymous with power-based diplomacy. Assuming good faith on the part of the mediator, strategic and tactical errors are not inevitable. The stronger conclusion, then, is that international actors should acquire greater proficiency in the art and science of mediation. This could be achieved at little expense through comprehensive training; by deploying qualified mediators alongside prominent personalities involved in peacemaking; and by establishing expert mediation units within the UN and the OAU.

The concept of 'confidence-building' provides a better analytical basis than 'power brokerage' for understanding the function of mediation, the role of a mediator and the approach most likely to bear fruit in civil wars. Unlike the power thesis, the concept explains the achievements of non-powerful mediators and the negative impact of bias and excessive pressure. The tactics of confidence-building mediation entail the application of techniques to facilitate communication, understanding and accommodation. The strategic thrust is to promote the parties' confidence in

each other, in negotiations and in the mediator. Hume's (1994: 146) synoptic account of Sant' Egidio's mediation in Mozambique aptly summarises the approach:

"Both sides wanted to find an alternative to stalemate and destruction. The mediators helped the parties find that alternative. Because this conflict was essentially domestic, the solution had to be found in a new relationship between the parties. The mediators concentrated on developing mutual recognition and respect, rather than relying on outside leverage to push the parties together. Their first step was to begin a dialogue between the parties that could open the way to reconciliation. Eventually the parties could agree on their own solutions."

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Notes

1. The Centre for Conflict Resolution (CCR) is a non-profit organisation established by the University of Cape Town in 1968. Its mission is to contribute to a just and sustainable peace in South Africa and other African countries by promoting constructive, creative and co-operative approaches to the resolution of conflict and the reduction of violence.

2. Off-the-record comments by a Tanzanian official at the Africa Mediation Seminar, Independent Mediation Service of South Africa and Centre for Conflict Resolution, Johannesburg, 3 - 5 November 1998.

3. Off-the-record interview with Keynan diplomat, Johannesburg, 3 November 1998.

4. The discomfort noted here was raised with the author in 1997 by Tanzanian officials involved in facilitating the failed Arusha peace process for Rwanda in 1993 - 1994. As a result of their remarks, CCR designed a conflict resolution training course for senior African government officials. The participants frequently propose that such courses should be included in the formal training programmes of their departments.

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Course B

Conflict Prevention and Cooperation in International Water Resources

Course reader

Part 5

Strategy

Table of contents

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A version of this article in which text, figures, tables, and appendices are separate files may be found by following this link.

Perspective

Visions of Alternative (Unpredictable) Futures and Their Use in Policy Analysis

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ABSTRACT

The most critical task facing humanity today is the creation of a shared vision of a sustainable and desirable society, one that can provide permanent prosperity within the biophysical constraints of the real world in a way that is fair and equitable to all of humanity, to other species, and to future generations. Recent work with businesses and communities indicates that creating a shared vision is the most effective engine for

change in the desired direction, yet most effort in "futures modeling" has focused on extrapolating past trends rather than envisioning alternative futures. Science and economics as applied to policy are in conflict more often over alternative visions of the world than purely "scientific" disagreements. Likewise, governance has gotten bogged down in mediating short term conflicts between special interests rather than its more basic role of creating broadly shared visions that can guide dispute resolution.
This paper addresses the question of what policies are most appropriate for society now, given alternative visions of the future and the enormous uncertainty about the reality of the assumptions underlying these visions. Four specific visions are laid out as being representative of the major alternatives. For each vision the benefits of achieving the vision, the assumptions that would have to be true in order for it to be achieved, and the implications of it being attempted but not achieved are explored. It is argued that dealing with uncertainty about the nature of the world, its carrying capacity for humans, the impacts of climate change, and other aspects of its future can best be done at this level of future visions and assumptions, not at more detailed levels (like the parameter uncertainty in models). Application of this vision/uncertainty analysis can help us both to design the future society we want and to maximize the chances of our getting there safely.
KEY WORDS: alternative futures, change process, envisioning, public judgment, public policy analysis, uncertainty.
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INTRODUCTION

The world is at a critical turning point. There is significant uncertainty about how things will go in the next few years, but there is growing consensus that the decisions we make as a society, at this critical point, will determine the course of the future for quite some time to come. There is a tendency in thinking about the future to simply extrapolate past trends. If we have been getting materially richer in the past, then the future will be more of the same. If the environment has been deteriorating, then it will continue to do so. But one of the lessons we can learn from history is that trends do not continue smoothly. There are turning points and discontinuities that were impossible to predict from past trends. The dissolution of the Soviet Union, the Berlin Wall coming down, and landing a man on the moon are three examples.
What we are learning about the change process in various kinds of organizations and communities is that a necessary ingredient to move change in a particular direction is having a clear vision of the desired goal which is also truly shared by the members of the organization or community (Senge 1990, Wiesbord 1992, Wiesbord and Janoff 1995).
In another context, Yankelovich (1991) has described the crisis in governance facing modern societies as one of moving from public *opinion* to public *judgment.* Public opinion is notoriously fickle and inconsistent on those issues for which the public has not confronted the system-level implications of their opinions. Coming to judgment requires the three steps of: (1) consciousness-raising or awareness; (2) developing understanding or “working through;” and (3) resolution or action. A prerequisite for all three of these steps is bridging the gap between expert knowledge (what Yankelovich (citing Habermas) calls the "culture of technical control") and the public. Information in the modern world is compartmentalized and controlled by various technical elites who

do not communicate with each other. The result is that experts from various fields hold contradictory opinions and the public holds inconsistent and volatile opinions. Coming to judgment is the process of confronting and resolving these inconsistencies by dissolving the barriers between the mutually exclusive compartments into which information has been put. For example, many people in opinion polls are highly in favor of more effort to protect the environment, but at the same time, they are opposed to any diversion of tax revenues to do so. Coming to judgment is the process of resolving these conflicts and moving to action.

According to Yankelovich (1991), one of the most effective ways to start the dialogue and move quickly to public judgment is to present complex issues in the form of a relatively small number of "visions," which lay bare the conflicts and inconsistencies buried in the technical information. The decisions we face today about the future of the planet are by far the most complex we have ever faced, the technical information is daunting even to the experts, and we have very little time to come to public judgment.

To enhance the process, this paper lays out four future visions of the planet Earth. Each vision is described as a "future history:" a history of the Earth written from the vantage point of the year 2100. In this way, some of the details and colors of the visions can be articulated. The visions include both desired and undesired aspects, both hopes and fears, allowing a richer exploration of what the future may hold, and a conscious choice among complex alternatives.

THE IMPORTANCE OF ENVISIONING

Vision can change the world. In fact, it is one of the few things that really can. The problem is, it can change the world for either better or worse, and the distinction is embedded in the vision itself. A "better" world is one that corresponds to one's preferred vision, whereas a "worse" world corresponds to other, less desired visions. For example, Hitler had a very clear vision of his desired world, and was able to convince enough people in Germany of this vision to significantly change the world. It was most definitely not the vision of a desirable world for many others in Germany, however, nor in the rest of the world. They did not buy into Hitler's vision of a "1000-year Reich," and, fortunately, it did not prevail for very long.

The challenge for the current generation of humans is to develop a *shared* vision that is both desirable to the vast majority of humanity and ecologically sustainable. This paper is an attempt to contribute to a broad discussion on what our vision of the future is, should be, or can be. As Yogi Berra once said, "If you don't know where you're going, you end up somewhere else." We have to decide where we want to go, and balance that with where it is possible to go. Its the only way to change the world.

There are several elements one can combine under the heading of "vision," some of which are "positive," having to do with theories and understanding about how the world works, and some of which are "normative," having to do with how we would like the world to be. The relationship between positive and normative (like the relationships between basic and applied science or between mind and body, or logic and emotion) is best viewed as a complex interaction across a continuum, rather than a simple dichotomy. Likewise, the strict dichotomy between basic and applied science has often proven to be more a hindrance than a help in developing useful understandings of complex systems, as has the mind-body dichotomy.

Visionaries and theorists have often been characterized as mere impractical dreamers. People become impatient and desire action, movement, measurable change, and "practical applications." Yet we must recognize that action and change without an appropriate vision of the goal and analyses of the best methods to achieve it can be worse than counterproductive. In this sense, a compelling and appropriate vision can be the most practical of all applications. To some extent, we can change the way the world is by changing our vision of what we would like it to be (Jones 1977).

This need for vision applies to every aspect of human endeavor. Far from being immune to this need for vision, science itself is particularly dependent on it. In the words of Joseph Schumpeter (1954: 41),

"In practice we all start our own research from the work of our predecessors, that is, we hardly ever start from scratch. But suppose we did start from scratch, what are the steps we should have to take? Obviously, in order to be able to posit to ourselves any problems at all, we should first have to visualize a distinct set of coherent phenomena as a worthwhile object of our analytic effort. In other words, analytic effort is of necessity preceded by a preanalytic cognitive act that supplies the raw material for the analytic effort. In this book, this preanalytic cognitive act will be called Vision. It is interesting to note that vision of this kind not only must precede historically the emergence of analytic effort in any field, but also may reenter the history of every established science each time somebody teaches us to 'see' things in a light of which the source is not to be found in the facts, methods, and results of the preexisting state of the science."

Meadows (1996) notes that the processes of envisioning and goal setting are extremely important (at all levels of problem solving) and they are also very underdeveloped skills in our society. We must therefore begin to train people in the skill of envisioning and begin to construct shared visions if we hope to achieve a sustainable society. She begins this process by telling the personal story of her own discovery of the skill of envisioning, and her attempts to use the process of shared envisioning in problem solving. From this experience, she develops several general principles, including:

1. In order to effectively envision, it is necessary to focus on what one really wants, not what one will settle for. For example, the list below shows the kinds of things people really want, compared to the kinds of things they often settle for.

Really want	**Settle for**
Self-esteem	Fancy car
Serenity	Drugs
Health	Medicine
Human happiness	GNP
Permanent prosperity	Unsustainable growth

2. A vision should be judged by the clarity of its goals, not the clarity of its implementation path. Holding to the vision and being flexible about the path is often the only way to find the path.

3. Responsible vision must acknowledge, but not get crushed by, the physical constraints of the real world.
4. It is critical for visions to be shared, because only shared visions can be responsible.
5. Vision has to be flexible and evolving. Thus, the process of envisioning is at least as important as the particular visions themselves.

Probably the most challenging task facing humanity today is the creation of a shared vision of a sustainable and desirable society, one that can provide permanent prosperity within the biophysical constraints of the real world in a way that is fair and equitable to all of humanity, to other species, and to future generations. This vision does not now exist, although the seeds are there. We all have our own private visions of the world that we really want, and we need to overcome our fears and skepticism and begin to share these visions and build on them, until we have built a vision of the world that we want.

To contribute to that process, this paper lays out four visions of the future. Although there are an infinite number of possible future visions, I believe that these four visions embody some basic patterns within which much of this variation occurs. The visions are based on some critical assumptions about the way the world works, which may or may not turn out to be true. This format allows one to clearly identify these assumptions, access how critical they are to the relevant vision, and recognize the consequences if they are wrong.

FOUR VISIONS OF THE FUTURE

The four visions derive from two basic worldviews, whose characteristics are laid out in Table 1. These worldviews have been described in many ways (Bossel 1996), but an important distinction has to do with one's degree of faith in technological progress (Costanza 1989). The "technological optimist" world view is one in which technological progress is assumed to be able to solve all current and future social problems. It is a vision of continued expansion of humans and their dominion over nature. This is the "default" vision in our current Western society, one that represents continuation of current trends into the indefinite future. It is the "taker" culture, as described so eloquently by Daniel Quinn (1992) in *Ishmael*.

Table 1. Some characteristics of the basic worldviews.

Technological optimist	**Technological skeptic**
technical progress can deal with any future challenge	technical progress is limited and ecological carrying capacity must be preserved
competition	cooperation
linear systems with no discontinuties or irreversibilities	complex, nonlinear systems with discontinuties and irreversibilities
humans dominant over nature	humans in partnership with nature
everybody for themselves	partnership with others
market as guiding principle	market as servant of larger goals

There are two versions of this vision, however: one that corresponds to the underlying assumptions on which it is based actually being true in the real world, and one that

corresponds to those assumptions being false, as shown in Fig. 1. The positive version of the "technological optimist" vision I will call "Star Trek," after the popular TV series that is its most articulate and vividly fleshed-out manifestation. The negative version of the "technological optimist" vision I will call "Mad Max," after the popular movie of several years ago that embodies many aspects of this vision gone bad.

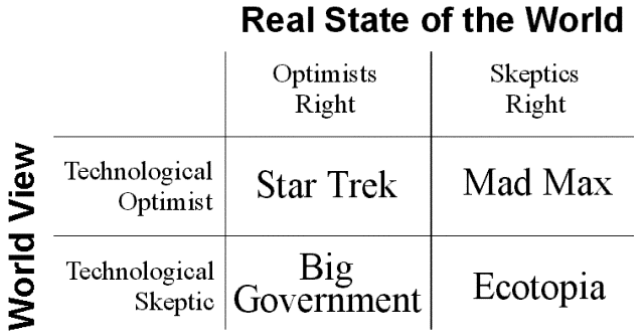

Fig. 1. Four visions of the future based on the two basic worldviews and two alternative real states of the world.

The "technological skeptic" vision is one that depends much less on technological change and more on social and community development. It is not in any sense "anti-technology." However, it does not assume that technological change can solve all problems. In fact, it assumes that some technologies may create as many problems as they solve, and that the key is to view technology as the servant of larger social goals rather than the driving force. The version of this vision that corresponds to the skeptics being right about the nature of the world I will call "Ecotopia," after the semipopular book of the late 1970s (Callenbach 1975). If the optimists turn out to be right about the real state of the world, then what I will call the "big government" vision will come to pass: Ronald Reagan's worst nightmare of overly protective government policies getting in the way of the free market. Each of these future visions is described here from the perspective of the year 2100. The visions are described as narratives with specific names and events, rather than as vague general conditions, in order to make them more real and vivid. They are, of course, only caricatures, but I hope that they capture the essence of the visions they represent.
(*Note: To help with a voluntary survey of attitudes toward these visions, please vote on each vision immediately after reading it's description. Click here to open the survey in a separate browser window. Click the "Submit" button on the survey form after you have completed voting on all four visions.*)

Star Trek: the default technological optimist vision

The turning point came in 2012, when scientists at Cal Tech finally confirmed the reality of what had once been thought to be a scientific hoax. The "cold fusion" that was crudely detected by scientists Flieshman and Ponds in Utah in the 1980s had been perfected and reemerged as the "warm fusion" that ultimately powered humanity to the stars. By 2012, things were really starting to get dicey on Earth. Population pressure was mounting, because of the ascendancy of Julian Simon's theory that more people were actually better for the planet. In his seminal work, Simon (1981) recognized that the real limiting factor was not technology or natural resources, but the number of

human brains working on solving problems. Those human brains came up with the solution just in the nick of time, in 2012. By then, natural resources were definitely being strained. The "greenhouse effect" caused by burning fossil fuel was beginning to cause some major disruptions, and warm fusion allowed a rapid reduction of global fossil fuel burning to practically zero by the year 2050, with eventual reversal of the greenhouse effect. Although warm fusion was not quite as convenient as cold fusion had promised to be, it was infinitely better and cheaper than any alternative, and was inexhaustible, to boot. The air pollution problem was essentially eliminated over the period from about 2015 to 2050, as cars were converted to clean-burning hydrogen, produced with energy from warm-fusion reactors. Electricity for homes, factories, and other uses came increasingly from warm fusion, so the old, risky nuclear-fission reactors were gradually decommissioned. Even some hydropower stations were eliminated, returning some great rivers to their wild state. In particular, the dams along the Columbia River in Oregon were completely eliminated by 2050, allowing the wild salmon runs and spawning grounds to be reestablished.

Although clean, unlimited energy allowed the impact of humans on the environment to be significantly lessened, the world was still getting pretty crowded. The solution, of course, was space colonies, built with materials taken from the moon and asteroids, and with energy from the new warm-fusion reactors. The initial space colonies were on the Earth's moon, the moons of Jupiter, and in free space in the inner solar system. From there, it was a relatively short step to launch some of the smaller space colonies off toward the closer stars. By 2050, about 10% of the total population of 20 billion was living in space colonies of one kind or another. Currently (year 2100), the total human population of 40 billion is split almost equally between Earth and extraterrestrial populations. The population of Earth is not expected to rise above about 20 billion, with almost all future growth coming in space-based populations. The prospects for near-light-speed space ships seems very good in the next few years, and some people are even speculating that faster than light space travel may actually be possible, and may one day allow colonization of distant stars and galaxies.

Because food production and manufacturing are mainly automated and powered by cheap warm-fusion energy, only about 10% of the population actually needs to work for a living. Most are free to pursue whatever interests them. Often the biggest technological and social breakthroughs have come from this huge population of "leisure thinkers." People also have plenty of time to spend with family and friends, and the four-child family is the norm ... .

Mad Max: the skeptic's nightmare

The turning point came in 2012, when the world's oil production finally peaked, and the long slide down started. There were many who said at the time that it was all a hoax or another "invented" crisis like the Arab oil embargo of 1973, but this time it was for real. The easy-to-get oil was simply exhausted and the price started to rise rapidly. All of the predictions about the rapidly rising price of oil causing new, cheaper alternatives to emerge just never came to pass. There *were* no cheaper alternatives, only more expensive ones. Oil was so important in the economy that the price of everything else was tied to it, and the alternatives just kept getting more expensive at the same rate. Even now, there is still lots of fossil fuel around in lower grade forms like coal and oil shale, but all of these alternatives are more expensive in real energy terms to extract and use, and they couldn't stop the slide (although they did make it a lot more gradual).

Solar energy continues to be the planet's major source, through agriculture, fisheries, and forestry, but direct conversion using photovoltaics never achieved the price : performance ratios to allow it to compete, even with coal. Rising oil prices caused the price of photovoltaics to shoot upward as well, because they were mostly constructed using fossil fuels. Of course, it didn't really matter anyway, because the greenhouse effect was really kicking in and the Earth's climate and ecological systems were in a complete shambles. If the oil crisis hadn't come first, the pollution crisis was not far behind. Rising sea level inundated most of the Netherlands, and big chunks of Bangladesh, Florida, Louisiana, and other low-lying coastal areas by about 2050.

Of course, once the financial markets figured out what was happening, the bubble really burst. The stock market crash of 2016 was an order of magnitude bigger than the 1929 crash. The Dow Jones average went from 3,584,000 to 448,000 in a little over three days in December, a loss of over 87% of its value. Although there was a brief partial recovery to about 1,500,000, it has been basically downhill ever since. Both the physical infrastructure and the social infrastructure have been gradually deteriorating, along with the natural environment. The human population has been on a long, downward spiral since the global "airbola" (airborne ebola) virus epidemic killed almost 25% of the human population in 2025-2026. The population was already weakened by regional famines and wars over water and other natural resources, but the epidemic came as quite a shock. The world population peaked in 2020 at almost 10 billion. More than 2 billion died in the epidemic in the course of a little over a year and a half. Since then, death rates have exceeded birth rates almost everywhere, and the current population of 4 billion is still decreasing by about 2% per year.

National governments have become weak, almost symbolic, relics. The world has been run for some time by transnational corporations intent on cutthroat competition for the dwindling resources. The distribution of wealth has become more and more skewed. The dwindling few with marketable skills work for global corporations at good wages and lead comfortable and protected lives in highly fortified enclaves. These people devote their lives completely to their work, often working 90-100 hour weeks and taking no vacation at all. The rest of the population survives in abandoned buildings or makeshift shelters built from scraps. There is no school, little food, and a constant struggle just to survive. The majority of the world's population lives in conditions that would make the flavellas of 20th century Rio seem luxurious. The almost constant social upheavals and revolutions are put down with brutal efficiency by the corporate security forces (governments are too broke to maintain armies anymore) ... .

Big Government: Reagan's worst nightmare

The turning point came in 2012, when the corporate charter of General Motors was revoked by the U.S. Federal Government for failing to pursue the public interest. Even though GM had perfected the electric car, it had failed to make its breakthrough battery technology available to other car makers, even on a licensing basis. It preferred, instead, to retain a monopoly on electric cars, to produce them exclusively in China with cheap labor, and to gouge the public with high prices for them. After a series of negotiations broke down, government lawyers decided to invoke their almost-forgotten power to revoke a corporation's charter and made the technology public property. This caused such a scare to run through corporate America that a complete rethinking of the corporate/public relationship took place, which left the government and the public with much more control over corporate behavior.

Even though "warm fusion" had been discovered in 2015 at Oak Ridge National Lab, strict government regulations had kept its development slow while the safety issues were being fully explored. No one wanted a repetition of the overly optimistic rush into nuclear fission energy that occurred in the late 20th century and that ended so disastrously. The Three-Mile Island and Chernobyl accidents were nothing compared to the meltdown of one of France's fission breeder reactors in 2005, which left almost 25% of the French countryside uninhabitable, killing over 100,000 people directly and causing untold premature cancer deaths throughout Europe. It therefore came as no surprise when warm-fusion energy got a very long and careful look, especially after early enthusiastic supporters started touting the claim: "Too cheap to meter," reminiscent of the early claims for fission energy. Government regulators were also careful to require that the new fusion power plants bore the full financial responsibility for their liability (unlike the earlier fission power plants whose liability was heavily subsidized by governments). This caused a much more careful (albeit slightly slower) development of the industry, with inherently safe reactor designs being the norm from the beginning.

Warm fusion's slowness in coming on line was balanced with high taxes on fossil energy to counteract the greenhouse effect and stimulate renewable energy technologies. Global CO_2 emissions were brought to 1990 levels by 2005 and kept there through 2030 with concerted government effort and high taxes, after which the new fusion reactors, along with new, cheaper photovoltaics gradually eliminated the need for fossil fuels. The worst predicted climate change effects were thus averted, even though there were some significant costs, such as the complete destruction of the city of New Orleans in the devastating hurricane "John" of 2020, which coincided with unseasonable fall flooding of the Mississippi River. Some attributed the severity of this storm and the river flooding to climate change effects, but it is likely that New Orleans was doomed by its precarious position below sea level on the river, and that it would have met the same fate eventually, regardless of climate change.

Government population policies that emphasized female education, universal access to contraception, and family planning managed to stabilize the global human population at around 8 billion, where it remained (give or take a few hundred million) for almost the entire 21st century. A stable population finally allowed many recalcitrant distributional issues to be resolved, and income distribution has become much more equitable worldwide. In 1992 (UNDP 1992), the richest one-fifth of the world's population received 82.7% of the world's income, while the poorest one-fifth received only 1.4%. By 2092, in contrast, the richest one-fifth received 30%, while the poorest one-fifth received 10% of the world's income. The income distribution "champagne glass" had become a much more stable and equitable "tumbler." Some libertarians decried this situation, arguing that it did not provide enough incentive for risk-taking entrepenures to stimulate growth. However, governments explicitly advocated slow or no-growth policies, preferring to concentrate instead on assuring ecological sustainability and more equitable distribution of wealth.

Stable human population also took much of the pressure off other species. The total number of species on Earth declined during the 20th century from about 3 million to a low of about 2.2 million in 2010. However, that number has stabilized and even recovered somewhat in the 21st century, as some species previously thought to be extinct were rediscovered, and some natural speciation of fast-growing organisms has occured. The current estimate of the number of species on Earth is about 2.5 million and

there are strict regulations in effect worldwide, not only to prevent any further loss, but also to encourage natural speciation ... .

Ecotopia: The low-consumption sustainable vision

The turning point came in 2012, when ecological tax reform finally was enacted almost simultaneously in the United States, the European Union, Japan, and Australia after long global discussions and debates, mostly over the internet. Coincidentally, it was the same year that Herman Daly won the Nobel Prize for Human Stewardship (formerly the prize for Economics; the title and goals were changed in 2005 to reflect the obsolesce of 20th century economics) for his work on sustainable development (Daly 1992). A broadly participatory global dialogue had allowed an alternative vision of a sustainable world to emerge and gain very wide popular support. People finally realized that governments had to take the initiative back from transnational corporations and redefine the basic rules of the game if their carefully constructed vision was ever going to come to pass. Some thought this could never happen because of the powerful vested interests in the system, and those interests certainly tried to derail it. Yet, democracies do bow to the will of the people when that will can be articulated clearly and consistently. The public had formed a powerful judgment against the consumer lifestyle and for a sustainable lifestyle. The proliferating corporate abuses certainly helped the cause, but what really seemed to do the trick was the work of a coalition of Hollywood celebrities and producers, led by Robert Redford, who got behind the idea and began making a series of movies and TV sit-coms that embodied the "sustainable vision." Not only did this help people to see the positive implications of the sustainable alternative, but it also suddenly became "cool" to be sustainable, and un-cool to continue to pursue the materialistic consumer lifestyle. The results were astounding. The slogan for the new revolution became the now-famous: "Sustainability, equity, efficiency!" The longer form of these principles was embedded in the revised constitutions of many countries as the three goals:

1) Insure that the scale of human activities within the biosphere is ecologically sustainable;
2) Distribute resources and property rights fairly: within the current generation of humans, between this and future generations, and between humans and other species; and
3) Efficiently allocate resources (as constrained and defined by 1 and 2), including both marketed and nonmarketed resources (especially ecosystem services).

The tax shift became the rallying cry to give the power of positive incentives back to sustainable activities and lifestyles, and to take it away from unsustainable consumer lifestyles. All depletion of natural capital was taxed at the best estimate of the full social cost of that depletion, with additional assurance bonds to cover the uncertainty about social costs. Taxes on labor and income were reduced for middle- and low-income people, with a "negative income tax" or basic life support for those below the poverty level. Ecological tariffs on goods produced in countries without ecotaxes were enacted simultaneously to level the playing field, along with major changes to national income accounting methods to allow a better assessment of the real quality of life (as opposed to mere economic income). The QLI (Quality of Life Index) came to replace the GNP as the primary measure of national performance. The reforms were brought on line gradually over the period from roughly 2012 to 2022 in the United States, European Union, Japan, Canada, and Australia, giving businesses ample time to adjust. The rest of

the world followed soon thereafter with almost all countries completing the reforms by 2050. They had very far-reaching effects.
Fossil fuels became much more expensive, and this both limited travel and transport of goods and encouraged the use of renewable alternative energies. Mass transit, bicycles, and sharing the occasional need for a car became the norm. Human habitation came to be structured around small villages of roughly 200 people, whether these were in the countryside or inside urban concentrations. The village provided most of the necessities of life, including schools, clinics, and shopping, all within easy walking distance. It also allowed for a real sense of "community," missing from late-20th century urban life. Other urban functions were within bicycle distance, and public transport connected communities to each other and to bigger centers where there were special functions like universities, specialized hospitals, and research facilities. Although these changes drastically reduced the GNP of most countries, they drastically increased the QLI. People recognized that GNP was really the "gross national cost," which needed to be minimized while the QLI was being maximized. In fact, the QLI : GNP ratio came to be used to measure efficiency at the national level.
Because of the reduction in consumption and waste, there was only moderate need for paid labor and money income. By 2050, the work week had shortened in most countries to 20 hours or less and most "full time" jobs became shared between two or three people. People could devote much more of their time to leisure, but rather than taking consumptive vacations far from home, they began to pursue more community activities (suc as participatory music and sports) and public service (such as day care and elder care). Some of this time was exchanged using community LETS (Labor Equivalent Trading Systems). LETS kept track of the hours you spent in community service, which you could redeem from someone else in the community who wanted to contribute a service you needed. For example, you could trade day care for piano lessons. Unemployment became an almost obsolete term, as did the distinction between work and leisure. People were able to do things they really liked much more of the time, and their quality of life soared (even as their money income plummeted). The distribution of income became an almost unnecessary statistic, because income was not equated with welfare or power, and the quality of almost everyone's life was relatively high.
Although physical travel decreased, people began to communicate electronically over a much wider web. The truly global community could be maintained without the use of consumptive physical travel ... .

DEALING WITH UNCERTAINTY AT THE LEVEL OF FUTURE VISIONS

How should society decide among these four visions? Does it even need to decide? Why not just let what happens happen, letting everyone have their own independent vision of the future as it suits them? Isn't that the essence of democracy: everyone being able to do exactly as they please? If everyone lived in their own completely isolated world where their actions and decisions had no effect on anyone else, this might be appropriate. A basic tenet of democracy is that individual rights are not to be limited *unless they impact the rights of others.* Yet we live in a very interconnected world, one that is becoming more and more interconnected every day as the human population grows. All of our futures are intertwined, and the actions and decisions of everyone

affect everyone else, both those alive today and those yet to be born. The essence of democracy in this "full world" context is *government by discussion and mutual value formation*. The key, as Yankelovich (1991) suggests, is coming to public judgment about the major value issues facing society, its goals and visions. This process can be accelerated by first laying out the options in the form of relatively well-articulated visions, as I have started to do here.

A TWO-TIER DECISION PROCESS: VALUE FORMATION AND DECISION MAKING

How does one integrate these goals and visions and their related forms of value into a social-choice structure that preserves democracy? A two-tiered conceptual model (Norton et al. 1998) makes value formation and reformation an endogenous element in the search for a rational policy for managing human activities. Fig. 2 outlines this process. Tier 1 is the "reflective" level, where social discourse and consensus is built about the broad goals and visions of the future, and the nature of the world in which we live. This consensus then motivates and mediates the second, or "action" tier, where various institutions and analytical methods are put in place to help achieve the vision. There is feedback between the two tiers, and the process of envisioning, goal setting, and value formation is an ongoing and critical one. There is a vital connection between value formation and decision making, but the very existence and necessity of tier 1 is often ignored. The "culture of technical control" (Yankelovich 1991) that dominates our current social decision making views the problem as merely a tier 2 implementation of fixed goals and values.

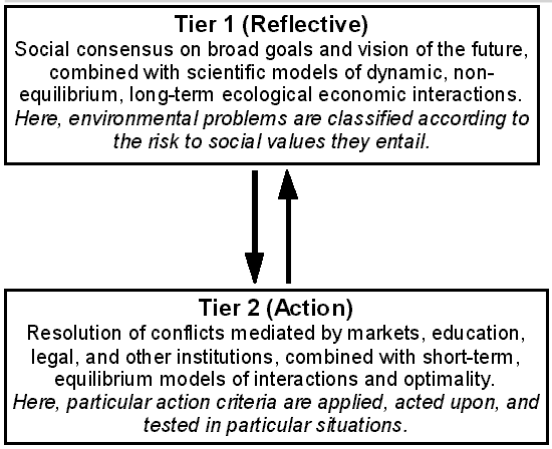

Fig. 2. Two-tiered social decision process (from Norton et al. 1998).

Conventional social-choice theory has, in general, also tended to avoid this issue of the connection between value formation and the decision-making process. As Arrow (1951:7) put it: "we will also assume in the present study that individual values are taken as data and are not capable of being altered by the nature of the decision process itself." But this process of *value formation through public discussion,* as Sen (1995) suggests, is the essence of democracy. Or, as Buchanan (1954:120) puts it: "The definition of democracy as 'government by discussion' implies that individual values can

and do change in the process of decision-making." Limiting our valuations and social decision making to a fixed set of goals based on fixed preferences prevents the needed democratic discussion of values and future options and leaves us with only the "illusion of choice" (Schmookler 1993).

PAYOFF MATRIX FORMULATION AND SURVEY

We can go further in elaborating the consequences of the four visions outlined here in an effort to come more quickly to public judgment. Three of the four visions are "sustainable," in the sense that they represent continuation of the current society (only Mad Max is not). However, one needs to take a closer look at their underlying worldviews, critical assumptions, and the potential costs if those assumptions are wrong. I have already set up the four visions with this in mind.

The worldview (and attendant policies) of the "Star Trek" vision is technological optimism and free competition, and its essential underlying assumption is unlimited resources, particularly cheap energy. The cost of pursuing this worldview and its policies if the assumption of unlimited resources is wrong is something like the "Mad Max" vision. Likewise, the worldview (and attendant policies) of the "Ecotopia" vision is technological skepticism and communitarianism (the community comes first), and its essential underlying assumption is that resources are limited and cooperation pays. The cost of pursuing this worldview and its policies if the assumption that resources are limited is wrong is the "Big Government" vision, in which a "community first" policy slows down growth relative to the "free market" Star Trek vision. Fig. 3 lays out these possibilities in the form of a "payoff matrix," in the same format as Fig. 1. Each of the four cells in the matrix indicates the "payoff" of pursuing the policy and worldview on the left, in combination with the real state of the world on the top.

Real State of the World

World View & Policy	**Optimists Right** (unlimited resources)	**Skeptics Right** (limited resources)
Technological Optimist (free competition)	Star Trek (positive) (2.3)	Mad Max (very negative) (-7.7)
Technological Skeptic (community first)	Big Government (slightly positive) (0.8)	Ecotopia (very positive) (5.1)

Fig. 3. Payoff matrix for technological optimism vs. skepticism.

To fill in the elements of the payoff matrix, one would need to discuss the four visions with a broad range of participants and then have them evaluate each vision in terms of its overall desirability. So far, I have conducted a preliminary (nonscientific) survey with 418 participants. [The Americans consisted of 17 participants in an Ecological Economics class at the University of Maryland, 260 attendees at a convocation speech at Wartburg College, Waverly Iowa (27 January 1998), and 39 via the World Wide Web. The Swedes consisted of 71 attendees at a Keynotes in Natural Resources Lecture

at the Swedish University of Agricultural Science, Uppsala (20 April 1999), and 31 attendees at a presentation at Stockholm University (22 April 1999).] The survey form is attached as Appendix 1. The respondents were read each of the four visions in turn, and were then asked: "For each vision, I'd like you to first state, on a scale of -10 to +10, using the scale provided, how comfortable you would be living in the world described. How desirable do you find such a world? I'm not asking you to vote for one vision over the others. Consider each vision independently, and just state how desirable (or undesirable) you would find it if you happened to find yourself there." They were also asked to give their age, gender, and household income range on the survey form. The surveys were conducted with groups from both the United States and Sweden. The results (mean ± one standard deviation) are shown in Table 2 for each of these groups and pooled.

Table 2. Results of a survey of desirability of each of the four visions on a scale of –10 (least desirable) to +10 (most desirable) for self-selected groups of Americans and Swedes. Standard deviations are given in parentheses after the means.

	Americans (*n*= 316)	**Swedes** (*n*= 102)	**Pooled** (*n*= 418)
Star Trek	**+2.38** (± 5.03)	**+2.48** (± 5.45)	**+2.48** (± 5.13)
Mad Max	**-7.78** (± 3.41)	**-9.12** (± 2.30)	**-8.12** (± 3.23)
Big Government	**+0.54** (± 4.44)	**+2.32** (± 3.48)	**+0.97** (± 4.29)
Ecotopia	**+5.32** (± 4.10)	**+7.33** (± 3.11)	**+5.81** (± 3.97)

Frequency distributions of the results are plotted in Fig. 4. The majority of those surveyed found the Star Trek vision positive (mean of +2.48 on a scale from -10 to +10). Given that it represents a logical extension of the currently dominant worldview and culture, it is interesting that this vision was rated so low. I had expected this vision to be rated much higher, and this result may indicate the deep ambivalence many people have about the direction in which society seems to be headed. The frequency plot and the high standard deviation also show this ambivalence toward Star Trek. The responses span the range from +10 to –10, with only a weak preponderance toward the positive side of the scale. This result applies to both the American and Swedish subgroups.

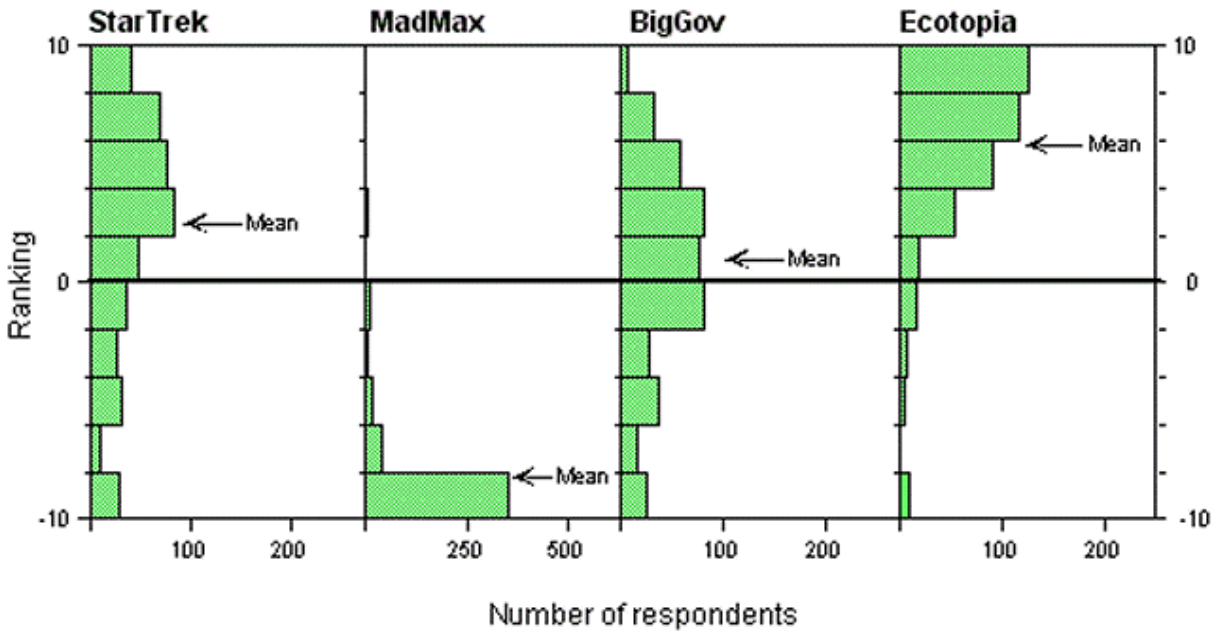

Fig. 4. Frequency distributions of the responses to the survey.

Those surveyed found the Mad Max vision very negative at -8.12 (only about 3% of participants rated this vision positive). This was as expected. The Americans seemed a bit less averse to Mad Max (-7.78) than the Swedes (-9.12), and with a larger standard deviation.

The Big Government vision was rated, on average, just positive at 0.97. Many found it appealing, but some found it abhorrent (probably because of the limits on individual freedom implied). There were significant differences between the Americans and Swedes, with the Swedes (+2.32 ± 3.48) being much more favorably disposed to Big Government, and with a smaller standard deviation than for the Americans (+0.54 ± 4.44). This also was as expected, given the cultural differences in attitudes toward government in the United States and Sweden. Swedes rated Big Government almost as highly as Star Trek.

Finally, most of those surveyed found the Ecotopia vision "very positive" (at 5.81), some wildly so, some only mildly so, but very few (only about 7% of those surveyed) expressed a negative reaction to such a world. Swedes rated Ecotopia significantly higher than did Americans, also as might be expected given cultural differences.

Some other interesting patterns emerged from the survey. All of the visions had large standard deviations, but (especially if one looks at the frequency distributions) the Mad Max vision was consistently very negative and the Ecotopia vision was consistently very positive. Age and gender seemed to play a minor, but interesting, role in how individuals rated the visions. Males rated Star Trek higher than did females (mean = 3.66 vs. 1.90, $P = 0.0039$). Males also rated Mad Max higher than did females (-7.11 vs. -8.20, $P = 0.0112$). The means were not significantly different by gender for either of the other two visions. Age was not significantly correlated with ranking for any of the visions, but the variance in ranking seemed to decrease somewhat with age, with younger participants showing a higher range of ratings than older participants.

Work is in progress to expand this survey and to conduct a scientific, random sample of the population, but the general conclusions are fairly insensitive to the exact results.

WORST CASE ANALYSIS

We find ourselves as a species facing the payoff matrix outlined in Fig. 3. What do we do? We can choose between the two worldviews and their attendant policies. We face pure and irreducible uncertainty concerning the real state of the world. Who knows whether or not "warm fusion" or something equivalent will be invented? Should we choose the Star Trek vision (and the optimist policies) merely because it is the most popular, or because it is the direction in which things seem to be heading already?

From the perspective of game theory, this problem has a fairly definitive answer. This is a game that can only be played once, and the relative probabilities of each outcome are completely unknown. In addition, we can assume that society as a whole should be risk averse in this situation. The mean values of the numerical rankings for each vision (from the preliminary survey, as summarized in Table 2, rounded to one decimal place) make it a bit easier to talk about. [Pooled rankings are used in the discussion, but the conclusions would be the same if using just the American or just the Swedish rankings. In fact, the conclusions are fairly insensitive to the exact values of the rankings, as long as Big Government is rated higher than Mad Max, and Star Trek and Ecotopia are rated higher than Big Government.] Star Trek was ranked, on average, at +2.5, Mad Max was –8.1, Big Government was +1.0, and Ecotopia was +5.8. One would look at each row in the matrix (corresponding to a policy set) to see the worst outcome for that policy set. For the optimist's policy, Mad Max (-8.1) is the worst case. For the skeptical policy set, Big Government (+1.0) is the worst case. One would then choose the policy set with the largest (most positive) worst case. +1.0 is much larger than –8.1, so we would choose the skeptic's policy. This is a standard "maximin" decision rule. If we choose the skeptic's policy set, the worst thing that can happen is Big Government, which is much better than the worst thing that can happen under the optimist's policy set (Mad Max). The conclusion that we should choose the skeptic's policy set is fairly insensitive to the specific values of the rankings. The rankings would have to change so that either Big Government or Ecotopia was rated worse than Mad Max to reverse this outcome. In fact, the way the payoff matrix is set up, Mad Max is the one really negative outcome and the one really unsustainable outcome. We should develop policies that assure us of not ending up in something like Mad Max, no matter what happens.

There are other considerations in favor of choosing the skeptic's policies. The skeptical policies do not close any options. One could still switch to the optimist's policies, once the real state of the world was shown to conform to that view. For example, if warm fusion or its equivalent were ever discovered, one could easily switch to the Star Trek vision from the Big Government vision. The reverse switch from Mad Max to Ecotopia could not be made, because the infrastructure would not be there. The skeptic's policies preserve options, the optimist's policies do not.

It should be pointed out as well that this is not a static, once-and-for-all decision. Both the players and the game are evolving and changing over time as our vision evolves and as we learn more. At the current moment, however, we have to decide on a set of general policies. The four visions I have laid out, I believe, summarize our current choices and fundamental uncertainties. One could also argue that the probabilities of each state of the world being correct are not completely unknown. If one could argue that the prospects for cheap, unlimited, nonpolluting energy were, in fact, very good, then the decision matrix would have to be weighted with those probabilities. If anything, the complete dependence of the Star Trek vision on discovering a cheap,

unlimited energy source argues for discounting the probability of its occurrence. It is like leaping off the top of the World Trade Center building and hoping that you can invent a parachute before you hit the ground. Better to wait until you have the parachute (and have tested it extensively) before you jump. By adopting the skeptic's policies, the possibility of this invention is preserved, but without utter dependence on it.

CONCLUSIONS

Designing a sustainable and desirable world in the presence of irreducible uncertainty requires the integration of a shared vision of that world with appropriate analysis and innovative implementation. This is the "full package" necessary to achieve sustainability. All three aspects of this task need much improvement, and their integration is lagging farthest behind. This paper briefly describes the importance of envisioning in coming to public judgment on the important policy decisions facing humankind at this critical juncture. It also argues that the major source of uncertainty is at this level of visions and worldviews, not in the details of analysis or implementation within a particular vision. By laying out four alternative "future histories" of the Earth, the critical assumptions and uncertainties underlying each vision can be more easily seen, and a rational policy set that assures sustainability can be devised. A cooperative, precautionary policy set that assumes limited resources is shown to be the most rational and resilient course in the face of fundamental uncertainty about the limits of technology.

RESPONSES TO THIS ARTICLE

Responses to this article are invited. If accepted for publication, your response will be hyperlinked to the article. To submit a comment, follow this link. To read comments already accepted, follow this link.

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APPENDIX 1

A Survey of Attitudes toward the Visions

I'd like you to participate in a survey about attitudes toward these four visions of the future. Your response will be tabulated and used to replace my "guesses" in the paper, and to enrich the analysis of the visions. For each vision, I'd like you to first state, on a scale of -10 to +10, using the scale provided: ***how comfortable would you be living in***

the world described? *How desirable do you find such a world? I'm not asking you to vote for one vision over the others. Consider each vision independently, and just state how desirable (or undesirable) you would find it if you happened to find yourself there. I've also left space for any comments and suggestions you have about each vision.*

Go to Survey

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Constitution of UNESCO (excerpt)

London, 16 November 1945

The Governments of the States Parties to this Constitution on behalf of their peoples declare:

That since wars begin in the minds of men, it is in the minds of men that the defences of peace must be constructed;

That ignorance of each other's ways and lives has been a common cause, throughout the history of mankind, of that suspicion and mistrust between the peoples of the world through which their differences have all too often broken into war;

That the great and terrible war which has now ended was a war made possible by the denial of the democratic principles of the dignity, equality and mutual respect of men, and by the propagation, in their place, through ignorance and prejudice, of the doctrine of the inequality of men and races;

That the wide diffusion of culture, and the education of humanity for justice and liberty and peace are indispensable to the dignity of man and constitute a sacred duty which all the nations must fulfil in a spirit of mutual assistance and concern;

That a peace based exclusively upon the political and economic arrangements of governments would not be a peace which could secure the unanimous, lasting and sincere support of the peoples of the world, and that the peace must therefore be founded, if it is not to fail, upon the intellectual and moral solidarity of mankind…

International Hydrological Programme

World Water Assessment Programme