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Armed Conflicts in Africa and Western Complicity: A Disincentive for African Union's Cooperation with the ICC

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Abstract

Intrinsic in the concept of international justice for violations of international humanitarian law is the requirement of cooperation by states and, to a large extent, regional bodies with the International Criminal Court (ICC). Unlike domestic courts, the ICC is not endowed with law enforcement power nor could such power be imputed to it as part of its functions. It is against this background that the on-going crisis of corporation between the ICC and the African Union (AU) following the indictment of Sudanese President Omar al-Bashir for international crime portends a far reaching implication for the administration of international criminal accountability. As part of a broader diagnosis of the reasons for the AU's opposition, this paper, while discussing armed conflicts in Africa, which provides the fillip for gross human rights violations in the region, exposes the contributions of the West. It concludes that an effective enforcement of international justice in the region must include an inquiry into the role of international actors and Western powers in promoting and exacerbating the situation.

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Introduction

The last two decades have been particularly disturbing, as well as challenging, from the perspectives of both Africa and the international community. It was a period marked by a series of conflicts[1] on the continent, some of which were not only the most destructive in the world, but had clogged the development of the region.[2] According to the *Stockholm International Peace Research Institute's (SIPRI) 2000 Yearbook*, "...Africa is the most conflict ridden region of the world and the region in which the number of armed conflicts is on the increase."[3] From the Democratic Republic of Congo (DRC) to Sudan, Somalia, Uganda, Rwanda and Sierra Leone, armed conflicts have become a common denominator of statehood, as peace and security remain elusive. With conflicts

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[1] The term 'conflict' has been defined as "a violent and armed confrontation and struggle between groups, between the State and one or more groups and between two or more states. In such a confrontation and struggle some of those involved are injured and others killed". See A. Bujra, "African Conflicts: A discussion of their causes and their Political and Social Environment," in Alfred G. Nhema, *The Quest for Peace in Africa: Transformation, Democracy and Public Policy* (Netherlands: International Books, 2004) 12. In this Paper, "conflict" is used interchangeably with the term 'civil war' since the distinction between the two is not important for the purpose of dealing with international criminal justice, which mostly treats them the same. It is however difficult to define civil war. This is because a domestic unrest and demonstrations or riots against a particular regime may be regarded as civil war rather than merely civil disturbances. See Guy Arnold, *Historical Dictionary of Civil Wars in Africa*, (2nd Ed.) (The Scarecrow Press, Inc., Toronto 2008). However, the Correlates of War (COW) project provides an operational definition of civil war as "sustained military combat, primarily internal, resulting in at least 1,000 battle deaths per year, pitting central government forces against an insurgent force capable of effective resistance, determined by the latter's ability to inflict upon the government forces at least 5 per cent of the fatalities that the insurgents sustain." See Small Melvin and Singer J. David, ed., *Resort to Arms: International and Civil Wars, 1816-1980* (Beverly Hills, CA: SAGE 1982) in Alfred Nhema and Paul T. Zeleza (ed.) *The Roots of African Conflicts: Causes & Costs* (Athens: Ohio University Press, 2008) 59. Elbadawi and Sambanis defines a civil war as an armed conflict that has (1) caused more than 1000 deaths; (2) challenged the sovereignty of an internationally recognised state; (3) occurred with the recognised boundaries of that state; (4) involved the state as one of the principal combatants; (5) included rebels with the ability to mount an organised opposition; and (6) involved parties concerned with the prospect of living together in the same political unit after the end of the war. See Ibrahim Elbadawi and Nicholas Sambani, "Why are there so many Civil Wars in Africa? Understanding and Preventing Violent Conflict" (2000) 9 *Journal of African Economies* 244, 247.

[2] A. Bujra, "African Conflicts: A Discussion of their causes and their Political and Social Environment," in Nhema, *supra* note 1 at 189; John C. Anyanwu, "Economic and Political Courses of Civil Wars in Africa: Some Economic Results" Online: http://www.peacestudiesjournal.org.uk/docs/CivilWarAfrica.PDF last viewed 05-11-2008.

[3] SIPRI, *Yearbook of World Armaments and Disarmaments* (Oxford: Oxford University Press 2000), cited by Anyanwu, ibid., at 1. According to the United Nations, since 1970, well over 30 wars have been fought in Africa, most of which have been internal, as opposed to between states. See *Report of the Secretary-General to the UN Security Council: The causes of conflict and the promotion of durable peace and sustainable development in Africa*, UN doc. A/52/871-S/1998/318, April 1998, at para. 4. Between 1980 and 1994, 10 out of the 24 most war-devastated countries were in Africa. See Charles C. Jalloh, "Regionalizing International Criminal Law?" (2009) 9:3 Int'l Crim. L. Rev., 445, 454. However, Paul Zeleza disagrees with the above assertion which he regards as a distortion of facts calculated by the West to portray African conflicts as peculiar and pathological without rational explanation. He argues that from historical standpoint, 'Africa has been no more prone to violent conflicts than other regions. Indeed, Africa's share of the more than 180 million people who died from conflicts and atrocities during the twentieth century is relatively modest: in the sheer scale of casualties there is no equivalent in African history to Europe's First and Second World Wars, or even the civil wars and atrocities in revolutionary Russia and China.' See Nhema & Zeleza, *supra* note 1 at 1.

incubating in some other African states, any suggestion that civil wars in the region have bottomed out appears to be an exaggeration.[4]

As gross violations of human rights usually occur on a large scale during armed conflicts, susceptibility of the African region to civil wars has earned it the unedifying title of "the ICC's favourite customer."[5] Arguably, the majority of those against whom the Court and, indeed, other international tribunals have exercised jurisdiction are from the Continent. In keeping with the principle of individual criminal accountability established at Nuremberg, and especially after the 1994 Rwandan genocide, the international community has begun to insist on the prosecution of those alleged to have committed heinous crimes during armed conflicts in the region.

For the African region, the causes of these conflicts stimulate a re-appraisal of at least the exclusive focus on the idea of individual criminal accountability under international criminal law, including the huge resources devoted by the international community towards the establishment of international courts to try perpetrators of crimes during conflicts. This paper argues that conflicts in Africa, which are responsible for creating the wider setting for the occurrence of human rights violations, are influenced by the West[6]. This paper deals with armed conflicts in Africa, discusses their causes, and highlights some external factors that contribute to fuelling the crises, such as, colonialism, the policies of international financial institutions such as, the World Bank and the International Monetary Fund (IMF), the Cold War era, the illegal arms trade, and the United States' fight against terrorism. It contends that the on-going resistance by the African Union (AU) to the prosecution of Sudanese president, Umar al-Bashir, by the International Criminal Court (ICC) for international crimes is, in part, borne out of a legitimate feeling among the states of the African region that the international criminal justice system is an institution driven by those who are responsible for the conflicts in the continent. This paper concludes that an effective enforcement of international justice in the Region must include an inquiry into the role of international actors and Western powers in promoting and exacerbating the situation.[7]

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[4] Stedman notes that "in 1995, there were five on-going wars (in Angola, Liberia, Sierra Leone, Somalia, and Sudan), several countries that were candidates for state collapse or civil war (Burundi, Cameroon, Kenya, Nigeria, Rwanda, Togo, and Zaire), and a host of other countries where low-level ethnic and political conflict remained contained but unresolved (Chad, Congo, Djibouti, Ethiopia, Malawi, Mali, Mozambigue, Senegal, South Africa, and Uganda)." See Errol A. Henderson, "When States Implode: Africa's Civil Wars 1950-92" in Nhema and Zeleza, *supra* note 1 at 51. Rwanda and Uganda have since joined the first category, while in Nigeria, what began as peaceful agitation for greater resource control has recently turned into a second-degree armed struggle between the militants and the government forces. See Uche Nworah, "How to Resolve the Niger Delta crises" Online: Global Politician http://www.globalpolitician.com/22460-niger-nigeria last viewed 28-11-08. There have been reported cases of gross violations of human rights such as rape, murder, conscription of child soldiers, kidnapping, etc. See Andrew Walker, "Elusive Peace in Niger Delta" Online: BBC News http://news.bbc.co.uk/2/hi/africa/7500472.stm last viewed 28-11-08.

[5] Chikeziri Sam Igwe, "The ICC's Favourite Customer: Africa and international criminal law" (2008) XLI:2 *The Comparative and Int'l. L.J. Southern Africa*, 294.

[6] Anthony Anghie and B.S. Chimni, "Third World Approaches to International Law and Individual Responsibility in Internal Conflicts" (2003) 2 *Chinese Journal of International Law*, 77, 90.

[7] Ibid.

I. Armed conflicts in Africa: Black Violence, White Roots

Analysts of civil wars in Africa are divided on their root cause(s) of the conflicts.[8] For scholars like Elbadawi and Sambanis, wars in Africa are essentially due to "high level of poverty, failed political institutions and economic dependence on natural resources."[9] Henderson identifies domestic political factors related to state-building and nation-building as being responsible,[10] while others explain wars in the continent by reference to ethnicity.[11] The absence of unanimity only underscores the complexity of the crises in the African region as well as the difficulty of resolving them.[12] However, there is a broad consensus among scholars that, in many ways, the susceptibility of the continent to conflicts is not only rooted in its past,[13] but also in the present activities of some external forces. There is little doubt that transnational actors, such as Western states and international financial institutions have continued to instigate, facilitate, compound and sustain conflicts in Africa for both national and strategic interests. While a few examples are provided, it must be emphasised that the intention in this paper is neither to justify the apparently catastrophic proliferation of conflicts in the region, nor to provide an alibi for the governments of the affected states some of whose inept, corrupt and autocratic regimes provide fillips for the outbreak or escalation of the crises. Rather, it is to highlight the fact that, perhaps, in the AU's point of view, an "international community" which is complicit in the African armed conflicts lacks the moral authority to enforce international criminal justice in the continent

A. Colonialism

It is almost impossible to come across an armed conflict in Africa which is without a colonial component, as most wars have highlighted the ethnic[14] composition of the

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[8] Cutler J. Cleveland, "Armed Conflict in Africa: A Threat to Regional Cooperation" Online: The Encyclopaedia of Earth http://www.eoearth.org/article/Armed_conflict_in_Africa~_a_threat_to_regional_cooperation last viewed 11-05-2009.

[9] Elbadawi and Sambanis, supra note 1 at 244. This view is also shared by Clayton who argues that struggle over inadequate economic resources is the underlying cause of conflicts in the Region, and further submitted that economic development and equitable distribution of wealth are Africa's best hope for a more peaceful future. See Anthony Clayton, "Violence in Africa Since 1950: Frontiersmen" in Pumphrey & Schwartz-Barcott, eds., *infra* note 17 at 43.

[10] Henderson, *supra* note 4 at 51

[11] Taisier M. Ali and Robert O. Mathews, *Durable Peace: Challenges for Peace Building in Africa* (University of Toronto Press, 2004) 321.

[12]Ibid., at 320.

[13] "Armed Conflict A Threat to Regional Cooperation: Evolution of Armed Conflicts in Africa" Online: United Nations Environment Programme http://www.unep.org/dewa/Africa/publications/AEO-2/content/201.htm last viewed 11-05-2009.

[14] The Western media prefer to use the word "tribe," which is both derogatory and racial. According to one writer, "Racist attitudes of the media have often been encapsulated in the loaded word *tribe* or *tribal*. There are no tribes in the West; there are nations and ethnic groups. Only primitive, savage societies have tribes..." See Gerald Caplan, *The Betrayal of Africa* (Toronto: Groundwood Books, 2008) 14. According to Berkeley, "the term was associated with stereotypes of Africans as primitive brutes. For evolutionist anthropologists in their nineteenth-century heyday, 'tribe' society conjured up an early stage of human development with minimal state organisation, class structure, literacy or other features of 'civilized' societies." See Bill Berkeley, *The Graves are not yet Full* (Basic Books, 2001) 12. It has been argued that the failure of the international community to intervene promptly in Rwanda before the Genocide of 1994

African societies[15] - a socio-political mess that 'white' colonialism created.[16] Prior to the advent of colonial rule in the region, most countries consisted of largely homogenous and autonomous ethnic groups, each with a distinct religion, customary values, mores and ethos shared by its members.[17] Communality of existence, facilitated by a common history, ensured that few intra-ethnic conflicts occurred, and that they were resolved through a mechanism based not upon legal rules, but by adoption of traditional approaches.[18]

The "scramble for Africa" by the Europeans and the attendant acrimonious competition for resources in the Region led to the convocation of a conference in 1884-1885 in Berlin for the purpose of partitioning the continent.[19] Needless to say that none of the African people or ethnic groups who were the subject of the conference were ever invited to air their views or make contributions on the issue. As one writer put it, "the Europeans felt they knew what was best for the natives."[20] The tragedy of the Berlin conference lies not only in the forcible assemblage of mutually incompatible ethnic groups into one country,[21] but also in the shared arrogance with which the exercise was conducted. With an air of accomplishment, the British Prime Minister Salisbury announced to his country, "we have been giving away mountains and rivers and lakes to each other, unhindered by the small impediments that we never knew exactly where they were."[22]

The transformation of relatively homogenous ethnic societies to ethnically plural states has remained problematic,[23] especially from the perspective of peace and security in the African region. As people who otherwise were socio-politically and culturally incompatible were compelled to live together as a political unit, what emerged were not only artificial entities,[24] but also "precarious systems of States."[25] Throughout the era of colonialism, peace and unity in these states was secured not by any form of integration, but by the military superiority of the colonialists. Following years of struggle by the colonised African states, independence was won and the fallacies of the unions were exposed; many ethnic agitations founded on mutual distrust quickly assumed the proportion of armed conflicts.[26] Mutua puts it more succinctly: "The ethnic plurality,

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was because Western reporters had described the conflict as a "tribal warfare" to which "any notion of international intervention would be a waste of time." See Caplan, ibid., at 16.
[15] Ali & Mathews, *supra* note 11 at 321; Nhema & Zeleza, *supra* note 1 at 38; Arnold, *supra* note 1 at xxxi.
[16] Ali A. Mazrui, "Conflict in Africa: An Overview" in Carolyn Pumphrey & Rye Schwartz-Barcott, eds., *Armed Conflict in Africa* (Oxford: The Scarecrow Press Inc., 2003) 22.
[17]Okechukwu Oko, "Confronting the Transgressions of Prior Military Regimes Towards a More Pragmatic Approach" (2003) 11 *Cardozo J. Int'l. & Comp. L.* 89, 102.
[18] Ibid.
[19] Caplan, *supra* note 14 at 20.
[20] Makau Mutua, "Why Redraw the Map of Africa: A Moral and Legal Inquiry" (1995) 16 *Mich. J. Int'l L.* 1113, 1127.
[21] Oko, *supra* note 17 at 104.
[22] Caplan, *supra* note 15 at 21, citing Martin Meredith, *The Fate of Africa* (New York: Public Affairs, 2005) 2.
[23] Oko, *supra* note 17 at 104.
[24] Emmanuel Hansen, *African Perspectives on Peace and Development* (London: The UN University, 1987) 64.
[25] Marina Ottaway, "Personal Views: Keep out of Africa," *The Fin. Times*, Feb. 25, 1999.
[26] The negative impact of colonialism on Africa was brilliantly stated by a retired justice of the Supreme Court of Nigeria, Chukwudifu Oputa thus:

and in some cases, the duality of the state, have finally caught up with post-colonial Africa. Absent cold war or neo-colonial international guarantees to client states, the colonial state is nothing if not a house of cards. Its ethnic configuration, an integral legacy of colonization, is a major factor in its failures."[27]

During the colonial era, ethnic conflicts were generally regarded as an integrated component of imperialist's exploitative economic policies, rather than as a pathology. By encouraging ethnic tensions, the colonial administration succeeded in breaking the bond of unity among the groups, thereby emasculating their spirit of resistance that would have undermined its authority.[28] Aniagolu, a retired justice of the Nigerian Supreme Court stated:

> The colonial rule, while not being, all negative, poignantly left in its wake disaster and desolation. In order to rule Nigeria, the British had to adopt certain strategies and principle. They not only adopted the wise political principle of "indirect rule" but also the vicious, divisive policy of "divide and rule." Instead of emphasizing and harnessing the richness of our cultural diversities, the British exacerbated and pitched our difference. While the ethnic groups were at each other's throats, the British reaped their economic and political harvests.[29]

As the following examples show, since independence, most states in the African region have continued to grapple with enormous challenges arising from statehoods poorly designed by their colonial architects, and have, in some instances, "caved in" under severe strain and suffered armed conflicts. Ethnic suspicions and a sense of insecurity in the unions, sometimes exacerbated by the actions of their respective governments, account for the escalation of civil wars in the continent. Marina Ottaway, an authority on Africa, states:

> The precarious system of states bequeathed to Africa by the colonial powers is disintegrating fast, with domestic instability increasingly leading to inter-state conflicts. . . . Wars are raging in Africa because many states have become hollow entities. Government cannot exercise basic control over its territories, let alone carry out other functions of modern state. There are some 15 active conflicts in

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"The lumping together of different ethnic groups into one artificial unit is not the worst feature of colonialism. Its most obnoxious feature is the subsequent alienation of the colonized from their roots, from their culture, from their religion, from their language, from their laws and from their concept of justice. You cannot colonize a group without first dehumanizing them, enslaving them, and brainwashing them into believing that they are inferior. The colonial masters, through myths designed to show the inferiority of the oppressed and colonized people, through the imposition of language of the colonial masters, but mostly through the inclusive and frightening character of their authority managed to impose on the colonised a new religion, new ways of behaviour, new ways of seeing and. In particular, a pejorative judgment with respect to their original culture, religion, language, sense of right and wrong."

Oko, *supra* note 17 at 105 n 77, citing Chukwudifu Oputa, "The Sovereignty of the Courts and the Nigerian Military Regimes", Dr. Chukwudifu Ubezonu Memorial Lecture 36-7 (May 30, 1996)

[27] Mutual, *supra* note 20 at 1147.

[28] Oko, *supra* note 17 at105.

[29] Anthony N Aniogolu, "Keeping Nigeria One Through Visionary Constitutional Engineering: Philosophy Behind Some Provisions of the 1989 Constitution" (1992) *Cap. U. L. Rev.* 1033, 1034.

Africa today, but only that between Ethiopia and Eritrea can be properly described as a border conflict. The problem is not boundaries but state failure.[30]

i.   *Nigeria: From Civil War to the Niger Delta Crisis*

The state of Nigeria, a creation of British imperialism in 1914 through a dubious amalgamation, almost disintegrated less than a decade after its independence in 1960, as a result of a bloody civil war that lasted for nearly three years between the North and the South/East. Consistent with most armed conflicts in the African region, the Nigerian civil war, otherwise popularly referred to as the "Nigeria/Biafra war" arose from ethnic tension between two of the three major ethnic groups in the country – the Housas and the Ibos. The 1914 amalgamation had enclosed three major nations and several smaller ones in one entity – the Muslim Housa in the North, the Yoruba in the West, and the Ibo in the East – all of whom are different in every sense.[31] According to Arnold, "there was no historical basis for Nigerian unity except British imperial convenience."[32]

Nigeria gained independence in 1960 but both preceding and succeeding events exposed the fallacy of the union. The artificial mixture created ethnic rivalries which were carried over into the post-independence era.[33] Once independence was achieved, a power struggle developed as to who or which region should control the central government.[34] In January 1966, an ethnically motivated coup d'état led by a young Ibo army officer, Major Chukwuma Kaduna Nzeogwu, toppled a Hausa-led democratic government. However, this was temporary as within six months, a counter-coup was staged by the Hausas who rejected the earlier coup. This was followed by mass killings of the Ibos residing in the Hausa- dominated northern part of Nigeria, forcing the Ibos to declare a State of Biafra in an attempt to secede from the country. Eventually, things fell apart as the centre could no longer hold and the country plunged into civil war which lasted from 1967 to 1970,[35] claiming the lives of an estimated 100,000 military personnel and between 500,000 and two million civilians, while 4.5 million Biafrans became refugees.[36]

In the recent times, the Niger Delta crisis in Nigeria has further exposed the evil of the amalgamation of 1914. The area, which is located in the Southern part of Nigeria, is populated by fairly large minority ethnic groups such as the Ijaws, the Ogonis, and the Ekwerre. Rich in crude oil, the Niger Delta accounts for about 90% of the state's export earnings.[37] The ongoing armed conflict between militant groups from the area and the federal government, among other things, stems from the perceived marginalisation of the minority ethnic groups in the area by the central government which, until recently,

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[30] Ottaway, *supra* note 25 at 14.

[31] Nhema and Zeleza, *supra* note 1 at 37. The Hausas are bound together by common language, history and strong fidelity to Islam. The yorubas, too, are distinct with unique history, language and culture, while the Ibos consist of autonomous villages united by common religion, culture, language and political structure. See Oko, *supra* note 18 at 103 ns 65-7.

[32] Guy Arnold, *Africa: A modern History* (London: Atlantic Books, 2005) 189.

[33] Arnold, *supra* note 1 at xxxiii

[34] Ibid.

[35] Nhema & Zeleza, *supra* note 1 at 37.

[36] Arnold, *supra* note 1 at 269.

[37] Emaka Nkoro, "Conflict in the Niger Delta: The Way forward" Online: http://searchwarp.com/swa20447.htm last visited 11-05-2009.

was dominated by the majority Hausa ethnic group.[38] In the last five years, the conflict moved from a simple agitation over greater resource control to a full blown armed struggle with an attendant upsurge in gross human rights violations ranging from kidnappings[39] to injuries and deaths.[40] Although the conflict centres on agitation for resource control, it speaks to the frustration, fear of exclusion and suspicion, which have often defined the relationship between the different ethnic groups who were indiscriminately fused together by the Western imperialists based on their own economic interests.[41] The 1994 Rwanda genocide and the current armed conflicts both in Sudan and Uganda are further examples of the centrality of colonially-inspired ethnic tension in many conflicts in the African region.

ii.   The Rwandan Genocide

The 1994 genocide in Rwanda, involving two of its major ethnic groups, the Hutus and the Tutsis, marked the full maturity of the seed of ethnic hate planted in the country by its Western imperialists: Germany and Belgium. In what has been described as the "worst outbreaks of violence in black Africa,"[42] the conflict led to the massacre of an estimated 800,000 Tutsis and moderate Hutus within 100 days.[43]

As earlier pointed out, the cause of the conflict leading to the genocide is one in which the West, as usual, was seriously implicated.[44] Most scholarship on the Rwandan genocide has described it simply as a war between two groups of people: the Hutus and the Tutsis. Such over-simplification belies the historical complexities – of the Rwandan society in general and the Hutu/Tutsi relationship in particular – without which the genocide might not have occurred.

Pre-colonial Rwanda was largely a homogenous society. Although it consisted of thirteen clans and groups of people who were distinct from one another, it had one common culture, religion and language, *Kinyarwanda,* which was spoken by everyone. While the people were generally classified as the Hutus, the Tutsis, and the Twa, such categorisation was merely vocational rather than racial.[45] Regardless of the clan of origin, a farmer was called Hutu, and a cattle owner, Tutsi. The Twas were jungle people and were more physically distinguishable from the rest.[46]

The distinction between these groups was never clear-cut, as it was merely descriptive rather than divisive or racial.[47] Not only were there marriages between members of one group and those of the other, inter-group transition was very informal

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[38] Pat Utomi, "The Niger Delta Crisis: Beyond the Price of Crude Oil" Online: Centre for Strategic and International Studies http://forums.csis.org/africa/?p=166 last viewed 11-05-2009.

[39] "Kidnapped Man Shot in both Feet" BBC News, Friday, 1 May 2009 Online" BBC News http://news.bbc.co.uk/2/hi/uk_news/scotland/edinburgh_and_east/8028091.stm last viewed 11-05-2009.

[40] Andrew Walker, "Inside Port Harcourt's ER Clinic" BBC News, Tuesday, 5 August 2008, Online: BBC News http://news.bbc.co.uk/2/hi/africa/7541325.stm last viewed 11-05-2009.

[41] Oko, *supra* note 17 at 108.

[42] Mazrui, *supra* note 16 at 24.

[43] Kingsley Chiedu Moghalu, *Rwandan Genocide* (Palgrave MacMillan, 2005) 17

[44] Arnold, *supra* note 1 at 302. See Caplan, *supra* note 14 at 78.

[45] Emmanuel M. Kolini, and Peter R. Holmes (eds.) *Christ Walks Where Evil Reigned: Responding to the Rwandan Genocide* (London: Authentic Publishing, 2008) 26.

[46] Ibid. at 27.

[47] Ibid., at 28.

and flexible. As one writer put it, "a change in marriage or economic status could also change 'ethnic' status, making the division something of a caste system similar to that in India. A wealthy Hutu who bought cattle could become Tutsi. A Tutsi who failed as a herder could be reclassified as a Hutu."[48]

However, the cordial relationship between the Tutsis and the Hutus changed with the advent of colonialism. By virtue of the Anglo-German treaty of 1880, Rwanda became a German protectorate but it was transferred to Belgian control after World War 1.[49] Hardly had the imperial German government taken control of the administration of Rwanda when it took interest in distinguishing the appearances of the ethnic groups based on the formula of its "Aryan" culture.[50] Adopting John Hanning Speke's infamous theory, which attributed the primordial civilizations of the central Africa to the Tutsis, whose superior intelligence, he had argued, was due to their genetic connection with the Europeans, the Germans elevated the Tutsis above other ethnic groups.[51] Belgium, which took over from Germany in 1924 not only continued with the divisive policy of Germany, but took it to the next level. It elevated the minority Tutsis to the status of overseers and encouraged social division between them and the majority Hutus for more than sixty years.[52] What was intriguing was the salient factor that influenced the elevation of the minority Tutsi: race. According to Moghalu, "The Tutsis were taller, lankier, and thin-lipped and had aquiline noses; so Belgian colonialists judged them closer to Europeans in their physical traits than the generally shorter and thick-lipped Hutus."[53] Still speaking about the supposed racial superiority of the Tutsis based on the conclusions of some dubious 'Belgian science,' Gourevitch observed:

> In addition to military and administrative chiefs, and a veritable army of churchmen, the Belgians dispatched scientists to Rwanda. The scientists brought scales and measuring tapes and callipers and they went about weighing Rwandans cranial capacities, and conducting comparative analysis of the relative protuberances of Rwandan noses. Sure enough, the scientists found what they believed all along. Tutsis had "nobler," more "naturally" aristocratic dimensions than the "coarse" and "bestial" Hutus. On the "nasal index," for instance, the median Tutsi nose was found to be about two and a half millimetres narrower than the median Hutu nose.[54]

The Belgians did not stop there. To minimise the possibility of a mistake of identity, they issued Identity Cards, which bore the ethnic group of the holder, to every Rwandan, and those who illegally changed this classification were subject to imprisonment or a fine or

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[48] Thomas P. Odom, *Journey into Darkness: Genocide in Rwanda* (United States of America: Texas A&M University Press, 2005) 161.

[49] Moghalu, *supra* note 43 at 10.

[50] Kolini & Holmes, *supra* note 45 at 28.

[51] Aimable Twagilimana, *Historical Dictionary of Rwanda* (United Kingdom: Scarecrow Press, Inc, 2007) xliii.

[52] Odom, *supra* note 48 at 161

[53] Moghalu, *supra* note 43 at 11.

[54] Philip Gourevitch, *We Wish to Inform You That Tomorrow We Will Be Killed With Our Families* (Farra, Straus and Giroux, 1999) 55-56.

both. Movement from one state or region to another without appropriate authority was prohibited.[55]

Having successfully separated the "white" Tutsis from the black Hutus, Belgium began the implementation of socio-economic and political policies that discriminated against the Hutus. From employment, to political appointments, and even education, the minority Tutsis were overwhelmingly preferred over the majority Hutus.[56] As this policy of segregation intensified, what emerged was a groundswell of resentment and bitter hatred on the part of the Hutu population against the Tutsis, and every indication pointed to a potential bloody ethnic explosion.

A test-run for the eventual genocide occurred in 1959, about two years before Rwanda got independence. The Hutus who had, in 1957, published the *Hutu Manifesto* in which they demanded "democracy," triggered a "social revolution" killing thousands of Tutsis and forcing others into exile in neighbouring countries of Burundi, Tanzania, Uganda and the then Belgian Congo (now the DRC).[57] Attempts by the exiled Tutsis to return to their country in 1963 met with violent resistance from the then Hutu led government, and this culminated in another massacre of an estimated 20,000 Tutsis.[58] The government had declared that Rwanda was too over-populated to accept the repatriation of the approximately 600,000 Tutsis in exile.[59] While still in exile, the Tutsis began to plan another attempt at regaining power. They founded the Rwanda Patriotic Front (RPF) under the leadership of Paul Kagame and their incursion into Rwanda from 1990 would ultimately result in a government-sponsored attack on the Tutsis living in the country. On 6 April 1994, the plane carrying the country's President, Juvenal Habyarimana, together with the President of Burundi, Cyprien Ntaryamira, was shot down killing the two. This sparked a wave of mass killings targeting the Tutsis who were accused of masterminding the death of the Presidents. In less than four months, over 800,000 Tutsis were massacred.

The Rwandan genocide led to the establishment of the International Criminal Tribunal for Rwanda (ICTR) to prosecute its perpetrators. While the propriety of international judicial interventions as post-conflict reconciliatory mechanisms in Africa is not part of this paper, suffice it to say that the Rwandan genocide reinforces the argument that most conflicts in Africa are essentially by-products of external influences.

iii.   *The Ugandan Crisis*

For over two decades, armed conflict has raged in Uganda between the central government force of President Yoweri Musaveni, and the Lord's Resistance Army (LRA), a rebel group under the command of Joseph Kony. In a number of ways, the war has some similarities with the Nigeria/Biafra civil war discussed earlier, both in terms of inter-geographical tension, and as part of the legacy of the British imperialism. Although the cause of the conflict is as complex as finding its solution, it reflects an entrenched

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[55] Linda Melvern, *A People Betrayed: The Role of the West in Rwanda's Genocide* (London: Zed Books, 2000) 25.

[56] Moghalu, *supra* note 43 at 11.

[57] Ibd., at 12.

[58] Arnold, *supra* note 1 at 303.

[59] Victor Peskin, *International Justice in Rwanda and the Balkans* (Cambridge University Press, 2008) 156, quoting Alison Des Forges, *Leave None to Tell the Story: Genocide in Rwanda* (New York: Human Rights Watch, 1999) 48.

hatred between the Northern district of Uganda and the Southwestern parts – a deep-seated division between the two that engendered fear of domination between them which can be traced to the British Colonial administration.[60]

The adoption of policy-driven regional split began during the British colonial period.[61] Upon taking effective control of the territory of Uganda, the British imperial administration was primarily interested in warding off other prospective imperial contenders, and establishing Uganda as a profitable enterprise for Britain.[62] To achieve this, it devised a policy of "divide and rule" and divided the country into economic zones for administrative convenience and maximum economic profit.[63] For instance, while a large part of the southern territory was designated as crop growing and industrial, the north was marked out as a labour reserve,[64] and was seen as "a disturbed, hostile territory, in which there were some tribes powerful enough to offer stiff and prolonged resistance."[65]

The fragmentation of Uganda, which was not motivated by any genuine desire for socio-economic development of the state, created enormous economic disparity between the largely Acholi-dominated Northern Uganda, and the South, which is predominantly Baganda. To further complicate matters, the British imperialists formulated an economic policy that ensured that recruitment into the civil service was disproportionately skewed in favour of the South, while the North dominated the military.[66] Consequently, the British created two levels of class in Uganda – a southern class of "developed" and educated, and the northern people, the Acholis.[67] Lomo and Hovil capture the discriminatory policies of Britain against the northern Uganda thus:

> The Baganda in the south were rewarded generously for their cooperation with the British, with the capital, parliament, university, principal hospital, and best infrastructure all built in Baganda territory. British authorities also characterised and reinforced images relative to the "usefulness," productivity, "suitability" and competence of the people in each region, leading to ethnic-based labels and stereotypes that have persisted to this day. People from the north were described as having certain inherent traits and flaws that made them brutal and martial "tribes" unsuited to rational political administration and economic governance, in contrast with the peaceful communities in the south.[68]

At independence in October 1962, Uganda was already a fractured State and ethnic violence between the north and the south exacerbated the divide between the two

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[60] Mohamed M. El Zeidy, "The Ugandan Government Triggers the First Test of the Complementarity Principle: An Assessment of the First State's Party Referral to the ICC" (2005) 5 *Int'l Crim. L. Rev.* 83 at 84.
[61] Zachary Lomo, and Lucy Hovil, *Behind the Violence: The War in Northern Uganda* (Pretoria, South Africa: Institute for Security Studies, c2004) 18.
[62] Ibid.
[63] Ibid.
[64] Ogenga Otunnu, "Causes and Consequences of the War in Acholi land" Online: Conciliation Resources http://www.c-r.org/our-work/accord/northern-uganda/causes-dynamics.php last viewed 12-05-2009.
[65] Lomo, and Hovil, *supra* note 61 at 18.
[66] Otunnu, *supra* note 64.
[67] El Zeidy, *supra* note 60 at 85.
[68] Lomo, and Hovil, *supra* note 61 at 18.

regions. Both democratic and military governments led by people from the two regions have been installed and dethroned based on ethnic differences. In most cases, the tribe whose government has been dethroned would regroup to reclaim its "stolen" mandate. Today, the conflict between the government and the LRA is a reflection of this trend, as the current President, Musaveni, is from Southwestern part of Uganda while the LRA is essentially a rebel group from the North.

Uganda has been ravaged by years of violence and internal armed conflict between the north and the south. Allegations of gross violations of human rights have led to the issuance of arrest warrants by the International Criminal Court (ICC) against five top leaders of the LRA following an earlier referral of the case to the Court by the government.[69] However, this has been resisted by the LRA and, subsequently, by the government which requested to withdraw the original request and to be allowed to deal with the issues domestically. For the African region, the conflict in Uganda is another sad reminder of the continuous devastating effect of colonialism, a frustration, which occasionally manifests itself in the form of suspicion and acute sensitivity to the actions of international powers and institutions.[70] Arguably, the current resistance of the African Union to the enforcement of international criminal law in the Region is a perfect example.

iv.   *The Crisis in Sudan*

Other than the Rwandan genocide in 1994, the violent crisis that erupted in Darfur, Western Sudan, in 2003[71] has generated the most international attention of any conflicts in the African region. Many of the causes of the war between the North and the Southern Sudan, as with many conflicts in the continent, can be traced back to the state's colonial past.[72] Sudan's problems are rooted in its formation as a state.[73] The country is sharply divided into two – the North and the South – and each region is inhabited by a distinctive group of people: Muslim and Arabinised Sudanese predominantly live in the North, while the Southern part is occupied by the black African non-Muslims.[74] At the advent of colonialism, the two regions had separate and

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[69] Kathleem E. MacMillan, "The Practicability of Amnesty as a Non-Prosecutory Alternative in Post-Conflict Uganda" (2007) 6 *Cardozo Public Law, Policy and Ethics Journal* 199, 205.

[70] Anghie & Chimi, *supra* note 6 at 78.

[71] Since independence from Britain in 1956, Sudan has suffered from, at least, two civil wars. The first was between 1955-1972, while the second began in 1983/1984 and has continued till date. See Arnold, *supra* note 1 at 353.

[72] Ferdinand Katendeko, "Sudan's 50 Year War" Online: Peace and Conflict Monitor http://www.monitor.upeace.org/archive.cfm?id_article=87 last viewed 12-05-2009. According to a BBC correspondent, the roots of the crisis "are complex, filled with all the angry ambiguities of our age. It is partly a conflict between the Arabised Muslims from the North and the Christian and African traditionalists in the South. *It is a heritage of the colonial divisions* (italics supplied), and it is also about the oil and other minerals that lie underneath the stark mountains." See Hamilton Wende, "Surviving the Sudanese Conflict" (a BBC broadcast, accessed at http://news.bbc.co.uk/2/hi/programmes/from_our_own_correspondent/1353279.stm> on 18-10-08)

[73] Atta el-Battahani, "A Complex Web: Politics and Conflict in Sudan" Online: Conciliation and Resources http://www.c-r.org/our-work/accord/sudan/politics-conflict.php last viewed 12-05-2009.

[74] Arnold, *supra* note 1 at 352.

autonomous leadership – the Arabs were the main political leaders of the Northern Sudan while non-Arabs were the leadership of the black Africans.[75]

Under the British administration from 1898 to 1956, the gulf of difference between the two groups widened. The dominant policy of the imperialist in Sudan was to keep the two regions separate and to concentrate on the North. While the black Africans and, indeed, the entire Southern region were completely neglected and abandoned, the Arabs, as well as the North, were fully integrated into the colonial administration. Apart from appointments into positions of authority, "the vast majority of infrastructure developments, which stem from colonial times, such as the 'Gezira' irrigation scheme, the cotton industry and most of the modern railways were built in the North."[76] Furthermore, a city in the North, Khartoum, was made the capital of Sudan while good roads, hospitals and schools were sited in the North. In fact, other than providing raw materials, labourers, and slaves for the development of the North, the South remained in total poverty, utterly abandoned by the British and isolated from both the North and the rest of the world.[77]

Sudan was a fragile state even at independence in 1956. Years of colonial-driven segregation had ensured that only the North had been sufficiently equipped with the requisite managerial competence for the vacancies that the exit of the British created.[78] For almost forty years, the British administered the Northern and the Southern Sudan as two separate states under one colonial government.[79] In fact, the decision to merge the two together as one country was made just nine years before independence.[80] However, the marriage was doomed from the start as the southern fear of northern dominance led to the first civil war, which broke out after independence in 1956 and ended in 1972, and another in 1983/1984 that has continued to date.[81] A sense of resentment and fear of Northern dominance, which was accentuated by the 1958 coup of General Ibrahim Abboud, a radical northerner, compounded the situation.[82] Abboud had sought to spread Islam and the Arab language to the South and increased fears by replacing the southerners in the civil service and other positions in the South with northerners.[83]

The crisis in Sudan has escalated particularly in the Darfur area since 2003, and by 2005, it was estimated that between 300,000 and 340,000 people had died as a result of the conflict, another 1.65 million persons internally displaced, and more than 200,000 living as refugees in neighbouring Chad.[84] The conflict started after an armed attack by militants who accused the Omar al-Bashir-led central government of

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[75] Katendeko, *supra* note 72.

[76] Ibid.

[77] Ibid.

[78] According to Ruay, "out of every eight hundred posts, only four junior posts of Assistant District Commissioner and two Mamur were given to the Southern People." See Ibid., citing Deng Ruay, T*he Politics of Two Sudans: The South and the North 1821-1969* (Nordic African Institute 1994)

[79] Bona Malwal, "The Sudan: Negotiating a Settlement" in Pumphrey and Schwartz-Barcott, *supra* note 16 at 164.

[80] Ibid.

[81] Arnold, *supra* note 1 at 353-354.

[82] Ibid., at 354.

[83] Ibid.

[84] Nsongura J. Udombana, "When Neutrality is a Sin: The Darfur Crisis and the Crisis of Humanitarian Intervention in Sudan" (2005) 27 *Human Rights Quarterly* 1149, 1159.

neglecting the Darfur region, which is in southern Sudan, and of oppressing black Africans in favour of Arabs.[85] Following a referral by the UN Security Council, the ICC issued an arrest Warrant against the Sudanese President Omar Hassan al-Bashir for crimes against humanity committed in Darfur.[86] The president has, with the full backing of the AU[87], refused to submit to the Court's jurisdiction.[88] While there are a number of reasons for the AU's resistance including the fear of further escalation of the crisis, the complicity of the West in the Sudan conflict is one of the strongest.

II. From Colonialism to Cold War: The Complicity of the West in the Somalia Conflict

Until the beginning of the 1990s, the world watched as the two Superpowers – the defunct United Soviet Socialist Republic (USSR) and its allies, and the United States of America (US) and its NATO allies – engaged in a bloodless ideological war popularly referred to as the "Cold War." With capitalism pitted against communism in a battle for supremacy, the geographical size of the combat expanded as more and more states, particularly from the Third World, were conscripted by either side in exchange for some forms of economic assistance. In the African region (especially the two major theatres of war: the southern African and the Horns of Africa), the depth, intensity and duration of internal armed conflicts was amplified and extended by the external support received by various governments from the Superpowers during the Cold War. In short, the susceptibility of these states to crisis has been greatly enhanced through their role as Cold War proxies.[89] The current conflict in Somalia, one of the countries located in the Horns of Africa, is a clear example.

Contrary to popular impression, the national tragedy of Somalia did not begin with an increase in the seizure of foreign vessels off its coast[90], nor did it commence in 1991 with the ousting of its long time president Siad Barre and the concomitant fighting between militia groups.[91] It started in the 1970s – in the heat of the cold war – when the role of Somalia became that of a pawn on the Superpowers' socio-economic and political

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[85] "In Depth Sudan: The Crisis in Darfur, a Timeline" Online: CBC News http://www.cbc.ca/news/background/sudan/darfur.html last viewed 17-08-2009.

[86] Martin Plaut, "Judicial Noose Tightens Around Bashir" Online: BBC News http://newsvote.bbc.co.uk/go/pr/fr/-/2/hi/africa/7498459.stm last viewed 14-07-2008.

[87] The Guardian, Monday, Sept. 29, 2008 Online: NigerianNews http://nigeriannews.com/ last visited 29-09-2008

[88] "Ban Urges Al-Bashir's Co-operation with UN Crimes Court," Guardian Newspaper, Thursday, February 12, 2009.

[89] Tom Lodge, "Towards an Understanding of Contemporary Armed Conflicts in Africa" Online: http://www.iss.co.za/pubs/Monographs/No36/ArmedConflict.html last viewed 18-05-2009.

[90] Only recently, the Captain of an American vessel Maersk Alabama was captured off the coast of Somalia by pirates. See Xan Rice, "Somalia Pirates Surrounded by FBI and US Warships in Indian Ocean Stand-off" Online: http://www.guardian.co.uk/world/2009/apr/10/somalia-pirates-us-military-hostages last viewed 19-07-2009.

[91] Rick Rozoff, "Cold War Origins of the Somalia Crisis" Online: OEN http://www.opednews.com/articles/Clean-copy-with-correction-by-Rick-Rozoff-090503-918.html Last viewed 18-05-2009.

chessboard,[92] a "geographical football"[93] beginning with "the British, Italian, and French who courted rival ethnic leaders as a way of protecting their respective hegemonies; then the United States and the Soviet Union moved in."[94]

In 1969, a military government headed by General Siad Barre came to power in Somalia, announcing its pursuit of a socialist economic ideology and providing naval facilities to the Soviets[95] – a move which was viewed as a major victory for Soviet Union and a blow to the US. Despite the dictatorial nature of Barre's regime, the Soviets supplied it with weapons and military training[96] and supported its oppressive policies until 1978 when they parted ways for different reasons.[97] Following the US defeat in Vietnam, America found a new frontline battle in Somalia and, having identified the vulnerability of Soviet influence in the area, seized the opportunity. The Barre regime, which had failed the country both internally and externally, was beginning to face mounting resistance from democratic opposition movements and Barre was desperate for a solution to prolong his reign. The solution came from Washington. According to Abdullahi, "he was able to align the country with the West, and Washington moved in as the patron of his regime because of the strategic value of Somalia's northern coastline."[98]

Once his reign was secured, Barre transformed Somalia into an American military camp under Presidents Carter and Reagan, and later George H. W. Bush.[99] Apart from signing a defence pact with the US, Somalia made its port a base to protect America's interest in the Persian Gulf and the horn of Africa, and Barre received a reward for his obedience. As O'Neill puts it:

> Barre was handsomely rewarded for his compliance. His increasing corrupt dictatorship was funded and armed by Carter, Reagan and Bush senior. This period of Western intervention was especially disastrous for Somalia: through Barre, America manipulated and intensified ethnic divisions in Somalia, in order to shore up the ever-more isolated Barre's rule over the country. Barre used American money to buy allies and American weapons to punish enemies. The old dream of a united Republic of Somalia – which motivated Somalia in 1960s and 70s – was consigned to the dustbin of history.[100]

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[92] Mohamed D. Abdullahi, "In the Name of the Cold War: How the West Aided and Abetted the Barre Dictatorship of Somalia" in Adam Jones, ed., *Genocide, War Crimes & the West: History and Complicity* (London: Zed Books 2004) 241.

[93] Gerry O'Sullivan, "Another Cold War Casualty – Somalia – Against the Grain" Online: BNET http://findarticles.com/p/articles/mi_m1374/is_n1_v53/ai_13307996/ Last viewed 18-05-2009.

[94] Ibid.

[95] Brendan O'Neill, "Somalia: Killed by 'Kindness'" Online: Spiked http://www.spiked-online.com/index.php?/site/article/439/ Last viewed 18-05-2009.

[96] Abdullahi, *supra* note 92 at 241.

[97] The Soviet dumped Somalia for Ethiopia convinced that the policies of the latter were more communist oriented than those of the former, and as a result of Somalia's invasion of Ethiopia in the battle of Ogaden region. Ibid. at 242.

[98] Ibid.

[99] O'Neill, *supra* note 95.

[100] Ibid.

The analysis of the relationship between Barre and the US and the USSR during the Cold War is important for the understanding of the current conflict in Somalia. The dictatorship of Barre, with the full connivance of the US, created opposition groups that would later transform into guerrilla movements with the formation of the Somali National Movement (SNM),[101] and the Democratic Front for the Salvation of Somalia (DFSS).[102] The insurgents, assisted by an open rebellion by a northern Somali population angered by years of torture, economic plunder, massacres and neglect, took control of the main cities and unleashed violence on the country.[103] Armed to the teeth with weapons supplied by his US-client, Barre turned his attention to the SNM, and from May to July 1988, between 50,000 and 100,000 people were killed.[104]

At the end of the Cold War in the 1990s, the US abandoned Barre having declared him excess baggage, but not before Somalia was enmeshed in both economic crisis and civil war.[105] With a highly polarised population as a by-product of the Cold War, Somalia remains one of the states most susceptible to armed conflict in the African region. Today, discussions about the current conflict in Somalia by the international community have proceeded on a rather wrong notion that the situation was entirely created by Somalia.[106] With calls for the enforcement of international criminal justice against some of the leaders of the rebel groups garnering momentum, it would be interesting to see how the AU responds in the event of an indictment by the ICC. Surely, the complicity of the West in the current instability in Somalia will affect the cooperation of the AU, which has increasingly become suspicious of international criminal justice as an institution run by those who are responsible for the crises in Africa.

III. Illegal Arms Trade, Natural Resources, and the Conflicts in Africa: The Experiences of Angola, Liberia, and Sierra Leone

Armed conflicts in the Africa region are, at least, sustained by arms illegally supplied by some of the industrialised Western nations. During the Cold War, the craze for ideological spread led both the communists and the capitalist powers into a competition to align with rebel groups in the continent.[107] These groups were provided with arms and ammunition by their respective ideological clients to destabilise incumbent governments which were perceived to be hostile to the client's interest. For instance, during the Angolan crisis of 1975, the Soviet Union and Cuba supported a faction known as the Movimento Popular para a Libertação de Angola (MPLA), while the United States backed another faction known as União Nacional para a Indepêndencia Total de Angola

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[101] For instance, in December 1984, forty-three men were summarily executed in Burao for no other reason than to neutralise the resistance of the northern population to the regime. See Abdullahi, *supra* note 92 at 245.

[102] Arnold, *supra* note 1 at 328.

[103] Abdullahi, *supra* note 92 at 245.

[104] Ibid. at 246.

[105] Emira Woods, "Somalia" Online: http://www.fpif.org/briefs/vol2/v2n19som_body.html last viewed 18-05-2009.

[106] Abdullahi, *supra* note 92 at 252.

[107] Nhema, *supra* note 1 at 12, quoting A. Bujra, "African Conflicts: A Discusion of their Causes and their Political and Social Environment," a Paper presented at the Ad hoc Expert Groups Meeting on the Economics of Civil Conflicts in Africa. 7-8 April 2000, Ethiopia: Addis Ababa.

(UNITA).[108] Though the Cold War is over, ammunition supplied to rebel groups in Africa during that period has never been retrieved, and a great deal more has found its way into the region.[109] In addition, the fall of governments in Uganda, Ethiopia, and Somalia between the late 1970s and early 1990s, and the continued conflicts in southern Sudan and the DRC have contributed to the availability of illegal arms in the East African Region.[110]

The post-Cold-War era has even witnessed an upsurge in illegal arms trade within Africa. With the global attention now shifted from international to local, regulation of the movement of arms has been largely relaxed, leaving developing countries at the mercy of networks of international arm traffickers and contractors.[111] Even more disturbing is the recent phenomenon of dumping of unwanted, unused stocks of small arms by Eastern European countries into the region, which compounds the problem of armed conflict in Africa.[112]

Distinct but by no means exclusive is the paradox of Africa's natural resources as a destabilizing factor in the Region. A great deal has been written on how inter-ethnic squabbles for available natural resources account for most armed conflicts in the continent,[113] with little attention paid to the effect of the increasing dependency of the West on Africa for raw materials. Propelled by ravenous interest in the abundant natural resources with which most states in the Region are blessed, industrialised Western nations often engage in covert arms deals with disgruntled insurgents in the Region in exchange for cheap raw materials. In Angola, both the leaders of MPLA and UNITA continued to fund their war efforts through the sale of the country's oil and diamonds to international clients in return for arms and ammunitions, having lost their superpower sponsorship due to the end of the cold war era.[114] From 1999-2002, UNITA is reported to have earned an estimated US$300 million yearly from illicit diamond sales.[115]

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[108] Arnold, supra note 1 at 93.

[109] "China Voices Firm Opposition to Illegal Trade in Small Arms" Online: People's Daily http://english.peopledaily.com.cn/200107/10/eng20010710_74551.html last viewed 18-05-2009.

[110] Francis K. Wairagu, "The Proliferation of Small Arms and their Role in the Escalating Conflicts in East Africa" in Nhema, *supra* note 1 at 109.

[111] It is reported that the perpetrators of the Rwandan genocide in 1994 got their arms from dealers in several countries including Belgiun, Britain, Italy, Albania and Israel: "There were seven cargo loads that were flown through just before the genocide started right up until the genocide had ended. And so, you could say, if you cost it up to $12.5 million of small arms and light weapons were used in that terrible humanitarian catastrophe." See Lisa Schlein, "Study: Illegal Small Arms Trading Fuelling African Conflicts" Online: NewsVOAcom http://www.voanews.com/english/archive/2007-01/2007-01-03-voa27.cfm?CFID=199997430&CFTOKEN=39930439&jsessionid=00302cc6dda87ad444802d7a2227634bb2b5 last viewed 18-05-2009.

[112] Wairagu, *supra* note 109 at 109.

[113] Paul Collier, "Natural Resources and Conflicts in Africa" Online: Crimes of War Project http://www.crimesofwar.org/africa-mag/afr_04_collier.html last viewed 18-05-2009.

[114] Tom Porteous, "Resolving African Conflicts" Online: Crimes of War Project file:///C:/Users/Ebere/Downloads/African%20conflict.html last viewed 18-05-2009.

[115] "Armed Conflict a Threat to Regional Cooperation: Evolution of Armed Conflicts in Africa" Online: UNEP http://www.unep.org/dewa/Africa/publications/AEO-2/content/201.htm Last viewed 18-05-2009.

The Liberia armed conflict offers a perfect example of the devastating breadth of the scourge of the illegal arms trade.[116] In the prolonged civil war that ravaged the country, the various rebel groups relied on illegal arms to prosecute and sustain the war. Much of the arms used by the rebel groups including the Charles Taylor-led National Patriotic Front of Liberia (NPFL) were reported to have illegally come from Russia.[117] On February 7, 2003, a Russian aircraft from Burkina Faso landed in Liberia loaded with a consignment of weapons.[118]

As soon as Taylor captured most of the Liberian territories, especially the parts where its natural resources are domiciled, resolution of the conflict by the AU (then known as the Organisation of African Unity), became more difficult. In a thriving export business relationship with a network of foreign firms, the NPFL traded the country's diamonds, timber, gold, and agricultural products, using proceeds to finance its politico-military enterprise.[119] Some of the international companies involved were the Agricultural Development Corporation (United States); Firestone Tire and Rubber (United States), whose parent corporation is Bridgestone of Japan; the Nimba Mining Company (NIMCO), a consortium consisting of Bureau des recherchés geologiques et minieres (France); Cyprus Minerals (United States), Liberian Iron Ore (Canada); Liberian Swedish Minerals Company (United States and Sweden); Sumimoto (Japan); West African Mining Company of Liberia (Britain); and Sollac (France).[120]

The Sierra Leone conflict which began in 1991 was a spill-over from the crisis in the neighbouring states of Guinea and Liberia.[121] Specifically, the conflict, initially waged on its border with Liberia, involved Sierra Leone government forces and the forces of Charles Taylor, the Liberian warlord and his NPFL.[122] The cause of this war was not clear but there was speculation that Taylor was trying to gain control of the diamond-producing region of south Sierra Leone.[123] Deterioration of peace and security in the country led not only to an overthrow of the government of Joseph Momoh by Captain Benjamin Strasser, in 1992, but also to the emergence of a dissident Sierra Leone group – the Revolutionary United Front (RUF) – based across the border in Liberia.[124] This group, led by Foday Sankoh, claimed its mission was to rid the country of corrupt leaders, but as it turned out, its real interest was in the country's diamonds.[125]

On January 16, 1996, the government of Strasser was toppled by Brigadier General Julius Maada Bio who conducted an election that led to the emergence of a democratic government headed by Tejan Kabbah. The election of Kabbah and his attempts to broker peace deals with the RUF did not end the conflict. In fact, the reverse

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[116] "Illicit Small Arms Trade in Africa Fuels Conflict, Contributes to Poverty, Stalls Development," Papers Presented at the UN Review Conference on Illicit Arms Trade, Online: GA Doc/3032 http://www.un.org/News/Press/docs/2006/dc3032.doc.htm last viewed 18-05-2009.

[117] Douglas Farah, and Stephen Braun, *Merchant of Death: Money, Guns, Planes, and the Man Who Makes War Possible* (Hoboken, New Jersey: John Wiley & Sons, Inc., 2007) 4.

[118] "Fighting the Illicit Trafficking of Small Arms" Online: CDI http://www.cdi.org/program/document.cfm?DocumentID=2996 Last viewed 18-05-2009.

[119] Elwood D. Dunn "The Civil War in Liberia" in Taisier M. Ali and Robert O. Matthews, *Civil Wars in Africa: Roots and Resolution* (Montreal & Kingston: McGill-Queen's University Press, 1999) 107.

[120] Ibid.

[121] Igwe, *supra* note 5 at 302.

[122] Arnold, *supra* note 1 at 317.

[123] Ibid.,

[124] Ibid., at 318.

[125] Igwe, *supra* note 5 at 302.

was the case. Another coup on May 2, 1997, dismantled all democratic structures in the country and created a new government headed by Paul Koroma, forcing Kabbah to flee to Guinea.[126] However, the intervention of the Economic Community of West African States (ECOWAS) through its military wing, the Economic Community of West African States Monitoring Group (ECOMOG) restored Kabbah to office.[127] Despite a series of peace accords signed between the government and RUF, the conflict continued until January 14, 2002, when the war officially ended.[128] To sustain the conflict, the RUF relied on the country's diamonds and the availability of foreign buyers who provided cash in exchange.[129]

The international community has expressed its worry over the escalation of violence in the African region, and insists on the prosecution of the masterminds. While this is absolutely commendable, it is a double standard for the West to be involved in acts that are inimical to peace and stability of the region such as illegal arms deals. For instance, the involvement of China in Sudan has made the resolution of the Darfur crises difficult,[130] and the same can be said of other countries in Africa where conflicts are currently on going. In fact, according to one researcher, most of the illicit arms used to sustain conflicts in Africa originate from China, Israel, and more than 20 Organisation for Security and Co-operation in Europe (OSCE) members,[131] and this, too, explains the AU's emerging resistance.

IV. The United States War on Terror and its Effects on Peace in Africa

Since the 9/11 terrorist attack, the US has turned its attention to the expansion of its strategic security interests around the globe, a policy move nicknamed "war on terror." States, organisations, as well as non-state actors with views regarded as anti-American or as threats to its national security interest, are generally branded as terrorists, "axis of evil," or "rogue."[132] The US invasions of Afghanistan in 2001 and Iraq in 2003, as well as its veiled threats against other "rogue states" (principally Iran and North Korea), are a few instances of the emergence of this "new world order."

However, like the Cold War, the war on terror has given rise to another form of externally sponsored armed conflict in the African region. In January 2007, Ethiopia, at the behest of the US, invaded Somalia and attacked the Union of Islamic Courts (UIC) led government, accusing it of harbouring anti-American terrorists.[133] Interestingly, at the time of the invasion, the UIC, which had reasonably stabilized the country for the

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[126] Arnold, *supra* note 1 at 320.

[127] Ibid., at 322.

[128] Igwe, *supra* note 5 at 302.

[129] "Armed Conflict a Threat to Regional Cooperation: Evolution of Armed Conflicts In Africa," *supra* note 116.

[130] Hilary Anderson, "China 'is Fuelling War In Darfur" Online: BBC News http://newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.co.uk/2/hi last viewed 10-19-2008.

[131] Math Schroeder, "The Illicit Arms Trade in Africa: A Global Enterprise" Online: http://www.fas.org/asmp/library/articles/SchroederLamb.pdf last viewed 18-05-2009.

[132] Paul T. Zeleza, "The Causes & Costs of War in Africa: From Liberation Struggle to the "War on Terror" in Nhema and Zeleza, *supra* note 1 at 13.

[133] Caplan, *supra* note 14 at 61.

first time in 15 years – having seized the control of much of Somalia from rebels – had openly resisted the US's political control.[134]

Internally, the war on terror has become a platform for many African governments to legitimize their vendettas against political enemies, and as a cover for discredited authoritarian regimes. Some have rushed to pass poorly worded anti-terrorism laws targeted at opposition groups, laws which could undermine the fragile peace in these states and serve as a stimulus for age-old rivalries and conflicts.[135] In addition, the 'war on terror' has been identified as inflicting other collateral damage on Africa. According to a report by Human Rights Watch:

> Pre-existing political tensions between Muslim and Christian populations in a number of African countries threatened to become inflamed, and increasingly violent. Cote d'Ivoire, Ethiopia, Kenya, Nigeria, South Africa, and Tanzania all faced the possibility of worsening communal tensions. Bloody riots between Muslims and Christians in Kano, northern Nigeria, following demonstrations against the US bombing of Afghanistan, had already left a high death toll. A pro-Taliban demonstration was also reported in Kenya's predominantly Muslim coastal city, Mombasa.[136]

As the war on terror rages, its implications for peace in Africa become even more devastating than the Cold War. In January 2006, an International Crisis Group expert reported that the US was providing between $100,000 and $150,000 to warlord proxies in Kenya every month meant to purchase arms to destabilise Somalia, in breach of the UN arms embargo.[137] The consequence is an escalation of armed conflicts in the region, and thus attempts by the West to enforce international criminal justice in the circumstances may be resisted by the AU as coming from a source that lacks moral and practical credibility on the issue.

V. In pursuit of "development:" International Financial Institutions and Armed Conflicts in Africa

Africa is mired in under-development and abject poverty, a condition believed to be fundamentally connected to its susceptibility to conflicts. Often identified as the major causes of this are internal factors such as corruption, mismanagement, and political instability.[138] The Nobel Prize-winning Nigerian writer, Wole Sonyinka, once lamented that African states have been ruled by those he described as "power-crazed and rapacious."[139] Many armed conflicts in the Region centre on the struggle for resource control by groups angered by perceived neglect by the government which is accused of misappropriation of the state treasury and lack of transparency. Since the struggle bears

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[134] Ken Olende, "Africom: The 'War on Terror' Spreads to Africa" Online: http://www.stwr.org/global-conflicts-militarization/africom-the-war-on-terror-spreads-to-africa.html last viewed 19-05-2009.

[135] Nhema & Zeleza, *supra* note 1 at 15.

[136] Ibid., at 14., citing *Human Rights Watch Report 2003*, New York: Human Right Watch.

[137] Nick Warren, "The War on Terror Hits Africa" Online: CounterPunch http://www.counterpunch.org/dearden12302006.html last viewed 19-05-2009.

[138] Paul T. Zeleza, "The Causes & Costs of War in Africa: From Liberation Struggle to the "War on Terror" in Nhema and Zeleza, *supra* note 1 at 6.

[139] Caplan, *supra* note 14 at 61, citing Calderisi, *Trouble with Africa*, 77.

some semblance of legitimacy and altruism, recruits are never in short supply as they see themselves as patriots who are fighting to liberate the marginalised of the society.

However, this is only a fraction of the truth. The attraction which corruption holds for African leaders would not have been as profound as it is without some form of external patronage. In connivance with some Western governments and institutions, corrupt African leaders not only cling to power for too long, but also conceal their loot by stashing it in foreign banks,[140] in what has been described as, "a system run by an international network of criminals."[141] For instance, Mobutu Sese Seko, past President of the DRC and one of the most corrupt African leaders, was a staunch ally of the United States.[142]

It is also worth flagging international organisations as agents of under-development. States in Africa have always turned to International Financial Institutions (IFIs) such as the International Monetary Fund (IMF) and the World Bank for financial assistance for development purposes. To be sure, Africa remains one of the greatest beneficiaries of assistance from the IFIs and relies on such aid for its development projects. For instance, through its International Development Association (IDA), the World Bank has approved a total value of US$677 million in credit and grant for economic and managerial building in Angola from 1991.[143] In Nigeria, World Bank assistance designed to help the country work towards achieving economic growth and a reduction in poverty is valued at US$3.6 billion.[144]

Paradoxically, a critical analysis of the policies of these institutions and the conditions to which loans granted by them are attached reveals a systematic augmentation of inequality and impoverishment among the African states.[145] Intrinsic in the "assistance" are mechanisms that ensure that as much as "seventy per cent of monies sent to African nations by the World Bank and other organisations always go back to their countries."[146] Referred to as "Shock Therapy,"[147] the loans are granted under crippling interest terms that are devastating to states. Within a short period, the interest will surpass the principal sum, and the struggle to, at least, "service" the debts takes precedence over more important issues of governance and development, the objective being to subjugate the countries concerned and dilute their will to resist external manipulations. This process was famously described by Kwame Nkrumah, a respected Pan-Africanist and former President of Ghana, as neo-colonialism.[148] As one writer, quoting the Bible to affirm this intent behind the loan once put it: "And thou shalt lend unto many nations, but thou shalt not borrow; and thou shalt rule over many

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[140] Ibid., at 77

[141] Ibid., at 81

[142] Ibid.

[143] World Bank Report, Online: http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/AFRICAEXT/ANGOLAEXTN/0 last viewed 15-06-2009.

[144] World Bank Report, Online: http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/AFRICAEXT/NIGERIAEXTN/0 last viewed 15-06-2009.

[145] Antony Anghie, "The Present and Time Past: Globalisation, International Financial Institutions, and the Third World" (2000) 32 *N.Y.U.J. Int'l L. & Politics* 243, 252.

[146] "World Bank's Assistance questionable, Says Bankole" The Guardian, Tuesday April 28, 2009.

[147] Michael Mendel, *How America Gets Away with Murder* (London: Pluto Press 2004) 65.

[148] Arnold, *supra* note 32 at vii.

nations, but they shall not rule over thee."[149] And as would be expected, the economic crisis which becomes the inevitable consequence of this relationship for any borrowing African state is bound to try its civil peace:[150] "Bankrupt governments...are prone to fail. Rarely does that failure mean a simple reversion to old practices; often it means a more dangerous state of affairs, including criminality, political extremism, civil unrest, hyperinflation, capital flight, and, in the worst cases, civil wars."[151]

A similar strategy is the imposition of certain economic policies on developing states based on the Western model, even when such transplantation is counterproductive. Loans are granted subject to the ability of the borrowing states to comply with a set of policy guidelines often crafted to favour the Western economy. One such policy, the Structural Adjustment Program, arguably, has led to the collapse of the economies of most developing nations, particularly in Africa, [152] and has, consequentially, created crises. In 1990, the Organisation of African Unity (OAU), in its Addis Ababa Declaration, raised an alarm concerning the economic policies of the IMF in Africa: "most of our (African) countries have entered into structural adjustment programs with the international financial and monetary institutions . . . mostly at heavy political and social cost . . . we are very much concerned that . . . there is increasing tendency to impose conditionalities of a political nature for assistance to Africa."[153] The Rwandan genocide is a good example of how such economic intervention laid the groundwork for conflict. The report of the International Panel of Eminent Personalities asked to Investigate the 1994 Genocide in Rwanda and the Surrounding Events by the OAU notes that:

> By the late 1980s, all economic progress ended. Rwanda's economic integration with the international economy had been briefly advantageous; now the inherent risks of excessive dependence were felt. The Government revenues declined as coffee and tea prices dropped. International financial institutions imposed programs that exacerbated inflation, unemployment, and land scarcity. Young men were hit hard. The mood of the country was raw.[154]

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[149]Ibid., citing J. H. Hertz, ed., *The Pentateuch and Haftorahs*, 2nd ed., (London: Soncino Prss, 1988), 812.

[150] Ibid.

[151] Jeffrey Sachs, "Beyond Bretton Woods: A new Blueprint," Economist, 1 October 1994, 23 at 24. According to Nabudere, ' the economic and political conditionalities that have been imposed on African countries in the last two or so decades by the West have either directly or indirectly caused social instability, making African states vulnerable to conflicts. See Nhema, *supra* note 1 at 13, quoting Nabudere, D. W., *Globalisation and the Post-Colonial African State: Post-Traditionalism and the New World Order* (Harare: AAPS 2000).

[152] Anghie, *supra* note 144 at 253.

[153] Report of Eminent Personalities to Investigate the Genocide in Rwanda and the Surrounding Events, CM 12048 (LXVII), 29 May 2000, Online: http://www.africa-union.org/Official_documents/reports/Report_rowanda_genocide.pdf last viewed 07-06-2009.

[154] Anghie and Chimni, *supra* note 6 at 90 n. 27.

Conclusion

The story of Africa, particularly in the last two decades, is one that has been defined by armed conflicts resulting from political instability, ethnic tension, poverty,[155] and "endemic competition for resources."[156] While the Rwanda genocide in 1994 has been described as the most horrific, the current crises in Sudan, Somalia and other parts of the region are no less devastating in their impacts. The negative effects of armed conflicts on the states involved, the victims of the concomitant human rights violations, and the entire African region cannot be over-stated. For the states, the loss of generations of human capital, economic devastation, breeding of future rebels through the use of child soldiers, proliferation of arms and resulting implications for national security, societal disintegration and erosion of community bonds, are but a few implications.

The victims of armed conflict are, arguably, the most traumatized because "most of Africa's wars have been accompanied by some of the most gruesome violations of human rights and humanitarian laws."[157] During war, even marital and blood ties are broken. A father, in his quest for survival, abandons his child or wife whom he considers as "excess luggage," and vice versa. The use of child soldiers[158] and sexual violence, such as forced marriage,[159] has also been added to the ever-increasing catalogue of human rights violations during armed conflict. Finally, Africa as a whole is not safe from the impact of armed conflict in any part of the region. According to Nhema and Zeleza, "these were defensive, unavoidable wars, waged at enormous cost in African lives and livelihood."[160] Caplan also states that "no one should underestimate the monumental problems created by the chaos, devastation and trauma of conflict or the lack of human and financial resources to meet them."[161]

Armed conflicts in Africa are fundamentally unique and complex, especially in relation to their causes. They represent an expression of frustration by a people against their colonial history, corrupt and despotic leaders, as well as the struggle for resource control, boundary adjustments and good governance. Beyond these internal factors, the current influence of the West on escalation of conflicts in Africa is noteworthy. Chris Cramer sums it up thus: "international arms market, the use of external debt or foreign exchange, especially mineral based, to purchase arms, the integration of cross-border weapons and criminal networks, foreign military 'aid,' are all characteristics of many modern 'civil' wars."[162] From colonialism to the Cold War and illegal arms deals, the West has emerged as complicit in most armed conflicts in the African region. Pope Benedict puts it more succinctly:

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[155] Seth Obeng, "The Obstacles to Stability and Security in Africa" Online: http://pdfserve.informaworld.com/831474_770885140_902913279.pdf last viewed 21-05-2009.

[156] Udombana, *supra* note 84 at 1197.

[157] Ibid., at 325.

[158] *P v. Norman (Fofana Intervening) SCSL-2003-14-AR27 (E.).*

[159] *P v. Brima, Kamara and Kanu,* SCSL-04-16-T, Judgment, 20 June 2007.

[160] Nhema & Zeleza, *supra* note 1 at 5.

[161] Caplan, *supra* note 14 at 68.

[162] Ndombana, *supra* note 84 at 1197, citing Chris Cramer, "The Economics and Political Economy of Conflicts in Sub-Saharan Africa," CDPR Discussion Paper 1099 (Centre for Dev. Pol. & Research, School of Oriental and African Studies, University of London) (1999) 5.

> Outside forces, in complicity with men and women on the African continent, exploit the wounded state of human heart... They fuel wars so as to sell arms. They back those in power, irrespective of human rights and democratic principles, so as to guarantee economic benefit such as the exploitation of natural resources... They threaten to destabilise entire nations and to eliminate persons who wish to free themselves from their oppression.[163]

In the view of the African region, therefore, the international community's insistence on the enforcement of international criminal justice in the continent is a manifestation of the schizophrenic attitude with which it has always approached issues concerning Africa, including peace and security. The failure of the international criminal justice system to hold accountable persons and institutions whose actions or inactions provided fillip to armed conflicts merely ensure a narrow culpability which, in these instances, attaches only to Africans. For the Region, any genuine attempt to identify responsibility for the heinous crimes committed in the Continent and to create a system of accountability should be broad enough to include the roles that international actors played in causing, promoting and exacerbating armed conflicts in Africa.[164]

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[163] "Pope in Cameroun, Accuses Outside Forces of Ravaging Africa" Guardian Newspaper, Friday, March 20, 2009.
[164] Anghie & Chimni, *supra* note 6 at 90.