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Contents

Ethiopia: *Bertussa,* the Indigenous Governance and Conflict Resolution Mechanism of the Sheko Community

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Abstract: Conflict is an inevitable phenomenon in human relationships. Cognizant of the inevitability of conflict in human interaction, the most important issue needed to be emphasized is the way how conflict can be resolved before it becomes violent and destructive. The objective of this study is to explore "***bertussa***" the indigenous governance and conflict resolution mechanism of the Sheko community of Ethiopia. According to the objective, the study followed a qualitative research approach and used a case study research design. Data were collected through key informant interviews and FGD. A deductive thematic analysis technique was used to analyze data. The study found that the *bertussa* institution is the well-respected institution of conflict resolution playing an irreplaceable role in maintaining peace and social cohesion. *Bertussa* is hierarchical in its structure and it includes the *Koynab* (the King) at the top, *Komtu.* (Clan leaders), and, at the bottom, socially respected individuals called *Yab babu* (local elders). In the tradition of the Sheko community, conflicts that are believed to be less violent are settled at the *yab babu* (local elders) level. Whereas, reconciliation of homicide issues and conflicts which are serious and complex are mostly addressed by the *komtu* (clan leaders)

with the help of a person known as *burjab* who is believed to have spiritual power. In the Sheko community, the reconciliation process ends with the performance of symbolic ceremonial practices which imply the healing of the discontent among the disputants. Though this institution has strong acceptance from the community, it lacks due focus from the local government and it is not formally recognized.

Keywords: *Koynab, burjab*, reconciliation, sheko, conflict resolution, indigenous.

Introduction

Conflict is an inevitable phenomenon in human relationships. Thakore (2013) and Gupta *et al.* (2020), expressed that conflict is a phenomenon that cannot be avoided and it is inevitable. Conflict exists as far as interaction exists between individuals and groups. According to Fisher (1990), Bukari (2013, cited in Masenya, 2021), and Nicholson (1992), conflict is a phenomenon that may occur as a result of competing interests and incompatible goals between two or more individuals and groups. It is as old as human history. Conflicts and disputes within society and individuals over different issues are part of human history (Burtone, 1996).

Cognizant of the inevitability of conflict in human interaction, the most important issue we need to focus on is the way how conflict can be resolved before it becomes violent and destructive. Concretizing this, Alula & Getachew (2008) boldly pointed to a resolution of conflict as a crucial element for the day-to-day coexistence of humanity. Thus, conflict resolution is a process that aims at identifying the main causes of conflict to put an end to the conflict thereby ensuring sustainable peace. In this context, we may come up with the modern and traditional institutions of conflict resolution. According to Gupta *et al.* (2020) and Alula & Getachew (2008), conflict resolution mechanisms can be generally classified as formal conflict resolution mechanisms (state court system) and indigenous conflict resolution mechanisms.

Formal conflict resolution mechanism is derived from the western nations and it works under the umbrella of state institutions. Gupta *et al.* (2020) pointed out that the formal conflict resolution mechanism relies on the decisions of judges and justice administrators. The system involves judges, juries, police officers, administrative dispute resolvers, and another state legal system. In modern governance, the legitimacy of the court system is derived from the constitution which leads to the creation of the system. The traditional conflict resolution mechanism, the prime subject of this study, is a long persistent social practice deep-rooted in the customs and cultural settings of the society (Endalcachew *et al.*, 2015; Gupta *et al.*, 2020; Sandu, 2018). It originates from the tradition of the respective community, practiced over a long period, accepted by the community as a

governing principle, and hence binds the society. Thus, a breach of the accepted social norms entails social reaction and even punishment (Dagne & Bapu, 2016).

Africa has a long history of using the indigenous institutions of governance for resolving conflicts that arise between individuals, groups, and clans. The institutions have helped the societies of Africa to maintain and ensure social cohesion and harmony. Dealing with traditional conflict resolution, most indigenous communities in Africa have their traditional conflict resolution processes that enable them to manage and resolve conflict (Masenya, 2021; Ghebretekle & Macdonald, 2018; Kpae, 2018). The *Sassywood* and *Slah* indigenous conflict resolution mechanisms are prominent among the indigenous communities of Liberia practiced for generations in peacemaking and maintaining sustainable stability (Chereji & King, 2013). *Ubuntu,* the traditional institution for the resolution of conflict, is applicable among the indigenous communities of Southern Africa (Olowu, 2018). Another traditional institution in Africa to add is *Gacaca. Gacaca* is a traditional Rwandan conflict resolution method that is applicable for conflicts such as a dispute over land, property damage, material issues, or inheritance rights is one among many traditional practices of conflict resolution in Africa (Tongeren *et al.*, 2005 cited in Mengesha *et al.*, 2015).

Ethiopia is the home for various ethnic groups and these ethnic groups have widely practiced and deep-rooted traditions of conflict resolution based on shared norms and held values. Different studies witnessed that, in Ethiopia, almost all ethnic groups have their distinct indigenous mechanisms of conflict resolution which are used and practiced for many centuries (Daniel, 2016; Endalcachew *et al.*, 2015; Gowok, 2008; Enyew, 2014). Among these, Gowok (2008) listed *Gada* system of the Oromo, Joburas of the Agnuak, and Shimagelle of the Amhara as notable traditional conflict resolution mechanisms practiced by respective communities. To add a few, *Yejoka of* Gurage (Zelalem & Endalcachew, 2015) and *Seera* of the Kambata (Mengesha *et al.*, 2015) are some among many indigenous conflict resolution mechanisms practiced in Ethiopia.

The indigenous conflict resolution mechanisms are deeply rooted in the culture and customs of respective communities and gain their legitimacy from the values of the community instead of the state (Alemie & Mandefro, 2018). In this regard, every society has its traditional way of conflict resolution and the ethnic groups that are located in Southwest Ethiopia people regional state are not exceptions. Among thirteen indigenous communities who live in the Southwest Ethiopia people regional state, the Sheko community is one. In the Sheko community, conflicts may arise due to different factors, and these conflicts are effectively resolved using *Bertussa,* the indigenous institution of governance and conflict resolution. This indigenous practice of the Sheko community is not studied and documented to ensure its continuity for the forthcoming generation. Yitayew *et al.* (2020) argued that in Ethiopia, indigenous knowledge including indigenous conflict resolution is largely oral, undocumented, and not organized. This

hampered the sustainable use and integration of the institutions into the formal court system. Thus, this study is a useful addition in filling this gap and encouraging the practical documentation of the *Bertussa* institution.

Objectives

1. To explore the structure and procedures in the institution of ***Bertussa***.
2. To identify major types of conflicts that mostly arise in the *Sheko* community.
3. To exhibit the reconciliation and ceremonial practices in resolving each type of conflict under the ***Bertussa*** institution.
4. To see the relationship between the traditional conflict resolution system and the formal court system.

Methods

Research approach and design

The study employed a qualitative research approach. Qualitative research explores attitudes, behavior, and experiences and attempts to get an in-depth opinion from participants through methods such as interviews, focus group discussions, and observation (Dawson, 2002). Based on the nature of the study, a case study research design was used. Creswell (2007) noted that a case study research is a qualitative approach in which the investigator explores a tradition or system through detailed and in-depth data collection involving multiple sources of information.

Sampling

The study area and research participants are selected purposively. The three districts such as Guraferda and Sheko districts from Bench-Sheko Zone and Yeki from Sheka Zone where the Sheko communities predominantly live were purposively selected. These are areas where abundant information regarding the *Bertussa* institution is found.

By using the none-probability sampling technique elders, clan leaders, traditional belief leaders, officials from the culture and truism office, and justice administration office of each district were selected. Snowball sampling technique was mostly employed for the selection of elders, clan leaders, and traditional belief leaders.

Data collection

Data was collected through interviews and focus group discussions (FGD). An interview was held with elders, clan leaders, and traditional belief leaders. In addition, officials from the culture and tourism office, and the justice administration officials were also interviewed. Regarding the FGD, it was held with elders, clan leaders, and traditional belief leaders who were selected based on their lived experience in the *Bertussa* and their recognition in the community.

Analysis technique

Creswell (2007) noted that data analysis in qualitative research consists of preparing and organizing the data for analysis (transcribing), reducing the data into themes through a process of coding and condensing the codes. Cognizant of this, the researchers employed a deductive thematic analysis technique.

Theoretical foundation

Our theoretical underpinning for this research is a social capital theory. There are various definitions given to social capital following its foundation in the 1980s. For this research, we defined social capital as a set of shared values, norms, and customs that bind the society together, thereby settling disputes, building social cohesion, and strengthening the relationship among the member of the community. In the same fashion, Phillips and Pittman (2009) described social capital as a set of resources intrinsic to social relations and include trust, norms, community responsibility, reciprocal obligations, civic sense, and networks that can improve the efficiency of society by facilitating collective action for achieving mutually beneficial ends. Fred-Mensah (2005) referred to social capital as the capability of social norms and customs to hold members of a group together by effectively setting and facilitating the terms of their relationships.

To Field (2016), social capital is a term that is used in describing the intangible resources of the community, shared values, customs, and trust to which we rely on our daily life. Social capital has won international credit and been widely taken up within politics and sociology as an explanation for the decline in social cohesion and community values in western societies. Thus, the theory helped us to understand and describe *Bertussa* the indigenous practice of resolving conflict and keeping social cohesion.

Results and Discussion

1. *Bertussa****: structure and procedures***

As discussed earlier in the introduction part, different studies witnessed that, in Ethiopia, almost all ethnic groups have their distinct indigenous mechanisms of conflict resolution which are used and practiced for many centuries (Daniel, 2016; Endalcachew *et al.*, 2015; Gowok, 2008; Enyew, 2014). Cognizant of this, the Sheko community has its own indigenous conflict resolution mechanism which is deeply rooted in the culture and customs of the community. This traditional conflict resolution system of the Sheko community is called ***Bertussa***. According to the interview and focus group discussion result, the term *Bertussa* refers to the process of conflict resolution (adjudication) system. This institution of conflict resolution has been practiced for a long period among the Sheko community. The traditional adjudication system is hierarchical in its structure and it includes the *Koynab* (the King) at the top who is the most responsible person and

crowned the kingship based on blood descent (see Figure 1). ***Koynab*** (the King) is the highest respected position in the socio-political structure of the Sheko community and he is responsible for administering the socio-cultural, economic, and political affairs of the Sheko community. Following the *Koynab* (the King), we find the clan leaders who are locally known as *Komtu.* Clan leaders play a greater role in conflict resolution systems and traditional governance. Each clan leader has its *burjab*. *Burjab* is an individual who is believed to have spiritual power in the community and plays a greater role in facilitating the reconciliation process *(bertusa)*. In the *bertusa* institution, the *Burjab* is the most responsible and highly mandated to facilitate and settle a dispute in the community of the Sheko. Hierarchically at the bottom, there are socially respected individuals called *Yab babu* meaning (local elders). In the tradition of the Sheko community conflicts which are believed to be less violent are settled at *yab babu* (local elders) level. Whereas, reconciliation of homicide issues and conflicts which are serious and complex are mostly addressed by the *komtu* (clan leaders).

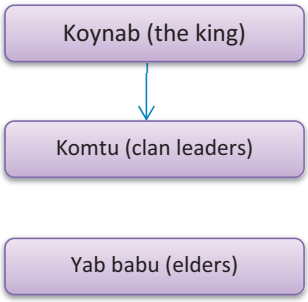

Figure 1: Structural Hierarchy of administrative and conflict resolution system of the Sheko community

Source: Researchers Compilation, 2022

2. ***Overview of major types of conflicts that mostly arise in the*** *Sheko* ***community***

As we understood from previous studies, conflict, by its nature, is an inevitable phenomenon of any society (Wolde, 2018; Gupta *et al.*, 2020; Thakore, 2013). Thus, conflict may arise due to different reasons and its magnitude can be labeled based on its consequences. In this regard, Sheko community is no exception, as in any other society, different types of conflicts are also observed in the Sheko community. Underneath, we figured out and briefly described the type and nature of conflicts that commonly occur among the Sheko community. In the subsequent part, the reconciliation and ceremonial practices in resolving each type of conflict under the *Burtusa* institution are described briefly.

2.1 *Marriage-related conflicts*

The marriage-related conflict is the most common and frequently occurring conflict type in the Sheko community. According to the key informant interview result, there are three major sources for marriage-related conflict among the Sheko community such as; (1) if a girl whom a marriage dowry was given (fiancé of a particular man), married for another person. If it is so, conflict occurs between the person who gave a dowry and the girl's parents who received the dowry. In addition, seeking his dowry to be given back, the person may also get in to quarrel with the man who married his fiancé; (2) due to marital conflict, if the woman went to her parent's home and lived without being divorced and married to another person, a conflict also occurs between the first husband and the parents of a woman and the newly engaged husband, and (3) adultery in marriage, this causes a serious conflict among others. In the Sheko community, marriage is highly respected and by no means cheating is tolerable. Thus, if a married woman had a sexual relationship with another man, a serious conflict may occur between the husband and the wife. Moreover, the husband will engage in violent conflict with the man with whom the woman had a sexual relationship. If this conflict is not managed early, it will lead to the crime of homicide.

2.2 *Clan conflict*

Clan conflict is another type of conflict that may occur as a result of different factors. The FGD discussion and key informant interviews revealed that boundary trespassing and cattle looting are major sources of inter-clan conflict. If the members of a particular clan trespass the landholding of the other clan for agricultural purposes, use of grazing land, and or territorial encroachment a serious conflict may occur between the two clan members. If the issue is not managed early by the clan leaders of the conflicting clans or the other third neutral clan leader, the conflict may become a bloody conflict. Another source of clan conflict among the Sheko community is cattle looting. If members of the particular clan loot the cattle that belong to the other clan, the clan members whose cattle were looted directly revenge by doing the same. Finally, such inter-clan cattle looting lead to a stiff clan conflict.

2.3 *Conflict Due to Abduction (**Gishwa**)*

Although there are different practices in marriage all over the country, marriage through abduction, which is known as *gishwa* in the Sheko community, is a common practice in Ethiopia (Getahun, 2001). An abduction is an act of taking a woman forcefully for marriage against her consent and the traditions of the community. According to Getahun (2001), abduction is the act of kidnapping a woman with an intention of marriage against her will. In the Sheko community, abduction is locally known as *Gishwa*, and this act can cause a violent conflict between the family of the abducted girl and the abductor. In the community, in addition to forceful abduction, there is also consent-based

abduction. Forceful abduction is a principal source of violent conflict if it is not managed timely. This is because the family of the abductee feels disgraced so the family attempts to bring the girl back home by any means. Cognizant of this, the process of reconciliation between the family of the abductor and abductee depends on the nature of abduction. If the abduction is voluntary, the reconciliation is less stringent and the family of the abductee doesn't exacerbate the issue, instead, they feel ashamed by the deed of their daughter. However, if the abduction is made forcefully with no consent from the girl, this will be a strong offense for the family of the abductee and the reconciliation process is stringent and tedious to conclude. In the Sheko community, the family of the abductee considers forceful abduction as the action that humiliates the prestige of the family and this is why the practices cause a bloody conflict and the process of reconciliation becomes tedious.

2.4 *Interpersonal conflict*

Interpersonal conflict is a conflict type that occurs between two individuals. This type of conflict among the Sheko community may occur as a result of betrayal, adultery, insulting, and being over drunk in times of cultural festivity or other occasions. Thus, a serious interpersonal conflict lasts with homicide further causing a widespread conflict if not managed well in time and intervenes by clan leaders.

3. ***Reconciliation and ceremonial practices in resolving each type of conflict under the*** *Bertussa* ***institution***

According to the FGD and key informant interviews, various conflicts, such as marriage-related conflicts, clan conflicts, and interpersonal conflicts among the Sheko community, are resolved by using the indigenous conflict resolution mechanism. In the indigenous conflict resolution mechanism of the Sheko community, the reconciliation procedures and processes are determined by the magnitude of the conflict that is occurred. If the conflict is serious and strong, it will be directly referred to the clan leaders and resolved with the involvement of the *burjab* and local elders. If the conflict is less violent, it will be managed at the local elder's level, thereby ensuring the healing of the discontent among the disputants. In the upcoming part, the reconciliation process and ceremonial practices in resolving each type of conflict are discussed.

3.1 *Reconciliation process and ceremonial practices in resolving marriage related conflict*

As discussed earlier, marriage-related conflict is the most occurring conflict in the Sheko community. According to the FGD and key informant interviews, marriage-related conflicts may fall under three categories depending on the nature and cause of the conflict.

3.1.1 Fiancé of a particular man married to the other man

This is a marriage-related conflict type that may occur if a girl, whom a marriage dowry was given, married another person. According to the key informant interview result, a fiancé of a particular man may marry another man on one of two occasions, either voluntarily or by abduction. For these two cases, the response of the girl's family and her fiancé is different. If the girl, whom a marriage dowry was given, voluntarily marries another person, to calm the emotion of her fiancé, her parents promise to give him her little sister as a replacement. If the man agrees, he can marry her sister and if he is not in agreement he can claim the dowry to be reimbursed. If it is so as per the culture of the community, the parents are obliged to pay back the sum of all cattle given to them as a dowry.

However, the issue will be very serious if the girl was abducted forcefully. Especially this is more aggravated if there is a clan difference between the girl's parent and the man who abducted her. In this case, the father of the abducted girl directly goes to the house of the clan leader and reports the case. One of the key informants narrated the appeal as follows; *"my daughter whom I received a marriage dowry is abducted by a person from another clan and I don't accept the marriage. Thus, I request you to bring my daughter back, unless I will not accept your leadership and I don't want you to seat in your father's position".* Then, as soon as the clan leader hears the appeal of the abducted girl's father, directly he goes to the house of the grandfather or father of the man who married the girl by abduction, and urges them to withdraw the girl and let her go back to her fiancé's or parent's house. Since the communities of Sheko people strongly adhere to the saying and order of the clan leaders, the parents of the man who abducted the girl immediately accept the order and let the girl go back to her parent's home. In the Sheko community, the newly married woman covers her whole body with ointment locally known as *(Siaru/ diku)* for a month, sometimes up to 40 days, of her stays in honeymoon. Thus, upon her return back to her parents, she goes with her ointment even without being washing it away. At this time, there is a ceremony to be conducted. The girl, before reunited with her parents, a ceremony of purification will be held by washing her with a yearling bull and yearling cow. If this is done in the Sheko community, it is believed that all deeds are washed away and from now on she is deemed as pure. In this way, the conflict can be successfully resolved and peace is maintained.

3.1.2 Marriage of un-divorced woman to another person

This type of marriage-related conflict occurs if a married woman went to her parent's home due to marital conflict and lived without being divorced and married to another person. The marriage of an un-divorced woman to another person may occur either voluntarily or by abduction. In this case, the first husband along with his clan members engages in stiff conflict with his wife's parents and the newly engaged husband. All clan members of the first husband collectively call the woman 'my wife' and claim

the return of the woman to the legitimate husband unless a bloody conflict will follow. In this time, as soon as he knows the case the clan leader intervenes in the issue and begins the reconciliation process. Then, if the first husband claims his wife to return the ceremony of purification will be held and she will come back to her home. On the contrary, if the husband refuses to re-take his wife, he can claim the dowry to be reimbursed by her parents.

3.1.3 Adultery in marriage

This is one of the major sources of marriage-related conflict. Cheating in the Sheko community is a more highly condemned action if it is committed by the woman. However, according to the interview result in the Sheko community, if a married woman had sex with her husband's brother and if it is not publicly known it can be ignored aside. This practice, though it is not officially allowed, is common and normal to the community. The issue may become conflictual if the husband knows that his brother is dating his wife. If this is the case the father punishes his son who dated his brother's wife.

Adultery becomes a serious offense if the woman had a sexual relationship with a man who belongs to another clan. In this case, if she is caught, the ceremony of purification will be held and she will be reunited with her husband.

3.2 *Clan Conflict*

As discussed earlier, clan conflict is another type of conflict that may occur as a result of different factors such as boundary trespassing for agricultural purposes, use of grazing land, and or territorial encroachment. In addition, an inter-clan cattle looting is also another source of inter-clan conflict. Thus, whatever the sources of the conflict, unless the conflict is intervened by clan leaders and local elders, the conflict may escalate to its destructive stage. However, the Sheko community has developed an age-old practice of conflict resolution mechanism to deter the destructive nature of conflicts. The actors involved in the reconciliation process are well acquainted with the indigenous knowledge of conflict resolution so that they successfully manage conflicts and maintain peace and order in the community.

In the Sheko community, if a clan conflict occurs, it will be directly intervened by clan leaders of both sides as soon as the news of the conflict is heard. If the case is failed to be held by the clan leaders of the conflicting clans a third neutral clan leader intervenes and reconciles the conflicting parties. The clan leaders, though they reside far from one another, they are interconnected with marital relationships and thus they know each other. This helps them to reconcile conflicts that occur between the members of their clan successfully.

In the institution of *Bertussa,* if the conflict, be it clan or interpersonal, led to murder, the reconciliation process is tedious, the actors who involve in reconciliation are different

from the actors who are involved in the reconciliation process of conflicts which are believed to be less violent, and the ceremonial practice is unique.

Reconciliation process of homicide

According to the cultural value of the Sheko community, murder is a highly denounced crime and if it is committed immediately, the local elders report the case to the clan leader of the area. On some occasions, the family of the killer may also report the case to the clan leader and appeal for reconciliation. The reason why the families of the murderer themselves report the incident for the clan leader is to avoid potential escalation of the conflict as a result of revenge. As soon as the report is addressed the clan leader orders the killer to come to his house and put him under his control. This is to make the murderer hide from the victim's family thereby, deterring further revenge and escalation of the conflict. Then, the clan leader directly goes to the house of the victim and expresses his deep condolence, and shares the victim's family grief. The *Bertussa* (reconciliation) process is somehow different for the cases where the killer and the victim are under the same clan leader, and they are from different clan leaders. If the killer and the victim are from the same clan, the clan leader under his administrative jurisdiction has full responsibility for leading the reconciliation. In the first place as the clan leader hears the report of the committed homicide most often from *yab babu* (local elders), or on some occasions from the killer family the clan leader goes to the house of the victim and express his condolence to the family in so doing culturally advise them not to go to revenge.

Then, the clan leader calls the *burjab* and selects respected elders in the community for the process of *bertussa* (reconciliation). In the meantime, the clan leader discusses and plans the reconciliation process with the *burjab* and the elders then he sends them to the family of the victim. He sends them by praying and blessing for the success of the reconciliation process. In the culture of the Sheko community, the clan leader, the *burjab,* and the elders are the most respected bodies so the reconciliation process becomes successful though the process is exhaustive. The next day, early in the morning, the *burjab* and the selected elders go to the house of the victim to discuss with the family to bring them to the reconciliation process. In their discussion with the family of the victim, the *burjab* and the elders approach them persuasively as much as they can. However, the family of the victim may not accept the request for the process of reconciliation so the attempt may continue for several rounds until the victim's family accepts the request for reconciliation.

Later on, following the confirmation of acceptance of reconciliation by the victim's family, the *burjab* and the elders (the elders are from both sides) arrange a time and place to bring the two families into the reconciliation process. In the tradition of the Sheko community, the reconciliation process for such serious conflicts is held around the river bank. Traditionally, such reconciliations are not held around farming lands used

to grow crops, plants, and fruits for food, and around the residence of both sides. In the cultural value of the Sheko community, it is strongly believed that conducting homicide reconciliation around the aforementioned areas is not a good practice. This is because, if the reconciliation is made in farming lands where crops, plants, and fruits are growing for food, it may make the land to be unproductive. In addition, if the reconciliation process is held around the residing area, the community believes that the bad spirit is not washed-up so that there may be repetitions of the homicide. Thus conducting the reconciliation around the river bank according to the culture of the Sheko community implied that the bad spirit, conflict, ruthlessness, and spirit of revenge are washed-up by the river in so doing peace prevails and social harmony is maintained.

In the previously arranged time and place, the two families arrive at the river bank and stand on the opposite sides of the river. The reason why the *burjab* and the elders let the families stand on the opposite sides of the river is (1) to avoid contact before reconciliation ceremonies are held and (2) to avoid potential revenge incidents as they meet face to face for the first time since the incident has occurred. Before the reconciliation begins, the *burjab* and the elders make sure of the readiness of the compensations (cattle and girl). If the murderer families don't have a girl for the compensation, they must notify the *burjab* and the elders in the earlier stages of the reconciliation process. Then the *burjab* and the elders cross-check the truthfulness of the appeal and then, if they confirm, they let the victim's family know the truth. Accordingly, the family of the murderer needs to prepare 10–12 cattle on the behalf of the girl. Then, the reconciliation begins with the ritual slaughter of a black sheep prepared for this purpose. The *burjab* and the elders let the blood of the sheep washed by the river which implies that the bad spirit and the conflict are washed-up. Then, the *burjab* orders the families of both sides to cross over the blood of the slaughtered sheep. As per the culture of the Sheko community, the *yenu* (intestine) of the slaughtered sheep is cautiously separated from the other part of the slaughtered sheep body. The cautiously separated *yenu* (intestine) is placed on the two up-right standing sticks having a space in between. Then, with the leadership of the *burjab,* four individuals from each family hold hands together and cross between the *yenu* (intestine) through the space. According to the culture of the community, this practice implies that the two families are swearing not to see each other as a foe and not to think of revenge after all. Finally, the *yenu* (intestine) is thrown by the *burjab* into the river to be washed up. In the end, the ceremony of serving food and drinks is held which is the last stage of the reconciliation process.

On the other hand, regarding reconciliation for a homicide that occurred between two different clans (inter-clan homicide); the process of reconciliation is somehow different. In this case, as soon as the news of the murder is reported to the clan leader of the murderer, he sends *burjab* and elders to the clan leader of the victim. After that, the clan leader of the victim hears the message from the sent *burjab* and elders and he, in his turn, calls a *burjab* and selects respected elders, and discusses the issues together.

Upon the discussion made with the blessing and praying, he sends the *burjab* and the elders to the victim's family. Then, the reconciliation begins and the reconciliation process remains the same with the intra-clan homicide reconciliation.

3.3 *Conflict due to abduction*

A voluntary abduction in the Sheko community is easily identifiable based on the prior behavior demonstrated by the girl and the abductor. Before the abduction, both of them may frequently be observed publicly doing different activities, having contact on different occasions, and playing together. This activity of the two individuals exposes their secret love to the community. Thus, with this knowledge, the abduction may not surprise the families of both parties as the rumor about their love was already heard by both the girl's family and the abductor's family. However, the action causes conflict between the families of the abductor and the abductee as abduction in the Sheko community is seen as a transgression of the dignity of the abductee's family in the community.

Therefore, as soon as the abduction is occurred, the family of the abductor prepares respected elders to send to the families of the abductee for the process of reconciliation. In the Sheko community, sending elders to the family of the abductee as soon as the abduction is made is one way of showing due respect to the abductee's family to loosen the tension.

Then, the chosen elders having the responsibility of reconciling the conflict directly head to the house of the abductee. Most of the time, in the Sheko community, the reconciliation process takes two rounds of the visit to the house of the abductee, especially for forced abduction. Concerning voluntary abduction, most often the reconciliation process will be concluded with a single trip presenting compensation for the abductee's families. Then, following the conclusion of reconciliation, the elders come back to the house of the abductors with the arranged day for celebration of the marriage.

As introduced earlier, the reconciliation process in the case of forced abduction is tedious and the task is somehow worrisome for the elders. This is because the forced abduction in the culture of the Sheko community is labeled as a serious offense to the families of the abductee. The family of the abductee, by no means, easily accepts the reality that happened, so that they become highly disappointed and feel disgraced. Thus, they cautiously inspect to spot the place where their girl was located to bring her back home. Owing to this, the abductor always hides the abductee in an unidentifiable place to avoid the potential revenge.

Consequently, the family of the abductor begins the arrangement of compensation to be presented to the abductee's family. In the culture of the Sheko community, it is cattle that are principally given as compensation. Next, they choose elders whom they give the responsibility of reconciliation. As discussed in the first part of this section, sending elders to the family of the abductee as soon as the abduction is made is one way of

showing due respect to the abductee's family to loosen the tension. This action helps to ease the reconciliation process thereby ensuring the successful accomplishment of the conflict resolution process. Adhering to this culture, the abductor's family sends elders as immediately as possible to the house of the abductee.

Having discussed the issue and plan of the reconciliation process as detail as possible with the family of the abductor, elders directly make their first journey to the house of the abductee's family. Upon their arrival, they gently approach them and began to address the reason for their coming and they persuasively express that the abductor's family is in search of reconciliation. According to the tradition of the Sheko community, it is hardly possible to elders to persuade the families of the abductee to accept the reconciliation in the first round. The families of the abductee in their first meeting with the elders demonstrate their anger and disappointment at the action of the abductor. Then, with wise reconciliation of the elders, the families of the abductee appoint the elders to come back after a week or longer.

On the day of the second meeting with the elders, the abductee's family prepares food and drinks to be served for the elders. In their second journey, the elders also convey with them the compensation to be presented for the abductee's family. As introduced prior, the compensation for such kind of conflict in the Sheko community is cattle. Thus, they present a yearling bull, a steer/ox, a yearling cow, and a milk cow for the offense made on the abductee's family. Upon their arrival, the elders enter the house leaving back the cattle in the surrounding. In the house, the elders remain standing until they are told to seat. Standing in front of the family of the abductee, they address the reason for their coming and list the compensation brought to be presented as a remedy for the offense. As the elders finished their speech, the families of the abductee invite them to take a seat and the ceremony of eating and drinking started. The completion of the compensation process loosens the tension between the two families and face-to-face contact can be started hereafter.

Then, after arranging a time for the third meeting, the elders get back to the house of the abductor. In the third round, the elders come along with the abductor's close relatives with a dowry to be presented to the family of the abductee. In the meantime, reconciliation is held between the families of both sides followed by a blessing from elders. Finally, a marriage ceremony is held.

4. ***The relationship between*** *Burtusa****, the traditional conflict resolution system, and the formal court system***

It is believed that conflicts are resolved by using either the modern or the traditional adjudication system. The nature, complexity, and level of conflict may determine the type of conflict resolution system we use. This is because, as argued by Bekele & Akako (2022), there is no single conflict resolution mechanism that is believed to be a perfect

fit for all types of conflict. The type of conflict resolution used differs largely depending on the type, nature, and level of conflict. This argument concludes that in modern governance conflicts can be better resolved either by using the formal court or using an informal (alternative) dispute resolution mechanism. Thus, we should not completely attach to modern conflict resolution mechanisms by denying the contribution of the alternative dispute resolution mechanism.

Whereas, practically in the study area, we didn't see any institutionally supported formal relationship between the modern and traditional institutions to alternatively manage conflicts in the community. Despite widespread conflicts, dishonesty, and betrayal within the community, the indigenous conflict resolution institutions are put aside which have a tremendous contribution and solutions to successfully manage such vice behaviors happening in the community. In this study, FGD discussants and key informant interviewees do believe that most conflicts in the Sheko community can be better addressed by the *bertussa* institution than the modern institution. They also believe that genuine and heartfelt reconciliation can be achieved through the traditional reconciliation process. This is because, in the case of the traditional adjudication system disputants as well as witnesses by no means lie for the *komtu* (clan leaders), the *burjab* (reconciler), and the *yab babu* (local elders); if they do so, it is believed in the community that they may be cursed for a generation. In the case of formal adjudication, the disputants and the witnesses are more likely to lie. Though the indigenous governance system has such kind of strong acceptance from the community, it lacks due focus from the local government and it is not formally recognized. This highly overloaded the formal court with different cases.

Conclusion

Based upon the study, the following conclusions are given on four themes of the study. In Ethiopia, different ethnic groups, Sheko inclusive, have their age-old indigenous institutions of conflict resolution. In the Sheko community, there is an institution known as *bertussa* which served as a governance and reconciliation institution in the community for a long period. In the traditional governance, *Koynab* (the King) is the highest respected position in the socio-political structure of the Sheko community and he is responsible for administering the socio-cultural, economic, and political affairs of the Sheko community. Under the *Koynab,* there are the *Komtu* (clan leaders)**.** Clan leaders play a greater role in conflict resolution systems and traditional governance. Each clan leader has its *burjab*. *Burjab* is an individual who is believed to have spiritual power in the community and plays a greater role in facilitating the reconciliation process in the *bertusa* institution. Moreover, the *burjab* in the Sheko community is believed to have spiritual power. Hierarchically, at the bottom, there are socially respected individuals called *Yab babu* meaning (local elders). In the tradition of the Sheko community, conflicts that are believed to be less violent are settled at the *yab babu* (local elders) level.

Whereas, reconciliation of homicide issues and conflicts which are complex are mostly addressed by the *komtu* (clan leaders).

As in other societies in Ethiopia, conflicts in the Sheko community occur due to various sources. Thus, adultery, betrayal, abduction, boundary trespassing, and overdrunk are observed as the most common sources of conflict in the community. Conflict types that are most common among the Sheko community are marriage-related conflicts, clan conflicts, conflict due to abduction *(Gishwa)*, and interpersonal conflicts. However, these conflicts are successfully resolved by the aforementioned governance and adjudication structures through the *bertussa* institution. In the indigenous conflict resolution mechanism of the Sheko community, the reconciliation procedures and processes are determined by the magnitude of the conflict that is occurred. If the conflict is serious and strong it will be directly referred to the clan leaders and resolved with the involvement of *burjab* and local elders. On the other hand, if the conflict is less violent, it will be managed at the *yab babu* (local elder's) level thereby ensuring the healing of the discontent among the disputants. In this indigenous practice of conflict resolution, there are symbolic ceremonial practices implying the healing of discontent and washing away the evil that causes the conflict.

It is believed that, in modern governance, conflicts can be better resolved either by using the formal court or using an informal (alternative) dispute resolution mechanism. Thus, it is not recommended to completely attach to modern conflict resolution mechanisms by denying the contribution of the alternative dispute resolution mechanism. With this understanding currently, there is a tendency to recognize and resort to indigenous conflict resolution systems in modern governance.

However, in the study area, there is no tendency to recognize the traditional institution of governance and conflict resolution. There is no institutionally supported formal relationship between the modern and traditional institutions to alternatively manage conflicts in the community. Despite widespread conflicts, dishonesty, and betrayal within the community the indigenous conflict resolution institutions are put aside which have a tremendous contribution and solutions to successfully manage such vice behaviors happening in the community. The Sheko community believes that most conflicts can be better addressed by the *bertussa* institution than the modern institution. It is also strongly believed that genuine and heartfelt reconciliation can be achieved through the traditional reconciliation process. Though the indigenous governance system has such kind of strong acceptance from the community, it lacks due focus from the local government and it is not formally recognized. This highly overloaded the formal court with different cases.

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South China Sea: Asymmetric Conflicts. The Role of Chinese Paramilitary Forces

Tudor CHERHAT

Abstract: A new way in which China has tried to expand its control over the South China Sea for the past decade has been to engage paramilitary forces in its territorial disputes. These forces acted as auxiliary devices for the People`s Liberation Army, applying tactics specific to asymmetric conflicts, such as rapid and low-intensity attacks on foreign ships. The leading role was assumed by the People`s Armed Forces Maritime Militia, a structure made up of civilian personnel with military training and fishing vessels equipped with surveillance technology. These actions are part of China's strategy to attribute its maritime aggression to civilian entities to hinder possible military responses from other countries and in particular from the United States. Using collective case studies, this article illustrated the dynamics of the coercive activities of the Chinese naval forces and the inability of affected states to deal with these unconventional threats.

Keywords: South China Sea, asymmetric conflicts, paramilitary forces, maritime aggression, People's Republic of China.

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Introduction

Although the South China Sea has been an important geopolitical nexus for more than half a century, it has seen unprecedented conflict potential in the last decade. Maritime disputes have gained global reach as a result of the internationalization of territorial claims by the Philippines, Malaysia and Vietnam (United Nations, 2009a, 2009b). In turn, the United States has shown an interest in maintaining a regional security environment by increasing its maritime presence in the area (U.S.

Department of State, 2011). The most spectacular moves, however, have been made by the People's Republic of China (PRC), which has embarked on an extensive process of effective naval occupation of the sea (Martinson, 2018; Yahuda, 2013).

The South China Sea is of strategic importance to both China and the other littoral states for many reasons. Firstly, it is a heavily trafficked sea route with an annual transit of around $5.3 trillion. The Strait of Malacca, linking the sea to the Indian Ocean, accounts for no less than 40% of global maritime trade (Wong, 2016). This makes it a strategic dilemma for Chinese leaders, given the dependence of the Chinese economy on oil imports from Africa and the Middle East. Currently, 80% of the PRC`s crude oil imports arrive via the South China Sea (Mohanty *et al.*, 2016). Secondly, the region is known for its vast underground resources. Experts have estimated between 25 and 130 billion barrels of oil and between 4 and 25 billion cubic meters of natural gas. These quantities would meet China's consumption needs for sixty years and thus change the current status-quo in the region (Haddick, 2014). Area fisheries are also an important economic sector, accounting for 10% of global business (Fisher, 2018).

There are five large archipelagos in the South China Sea (Spratly, Paracel, Pratas, Scarborough, Macclesfield), of which Spratly and Paracel are the most disputed due to their size and geographical position. Six of the eight littoral states (China, Vietnam, Philippines, Malaysia, Brunei and Taiwan) have issued territorial claims in the South China Sea (Yong, 2016, Parameswaran, 2016) (see Figure 1). These claims fall into two categories: sovereignty over islands (atolls, sandbanks or reefs) and delimitation of maritime rights under UNCLOS Treaty (territorial waters, contiguous zones, exclusive economic zones, continental shelves). At the same time, there are two types of arguments that states invoke in support of territorial claims: historical rights based on early evidence of occupation and control of the islands, and legal rights based on UNCLOS provisions.

China controls the Paracel and Scarborough islands, along with seven other islands in the Spratly. All of these were obtained as a result of military clashes: Paracel, along with six Spratly islands, were conquered after military conflicts with Vietnam in 1974 and 1988. The seventh Spratly Island and the Scarborough archipelago were taken from the Philippines in 1995 and 2012 respectively.

China is the country that predominantly uses the historical argument, citing the existence of numerous ancient written sources that illustrate how the Chinese people discovered, occupied and administered the territories of the South China Sea. This evidence confirms, according to Chinese leaders, the right of the state to exercise sovereignty over those archipelagos. To support its claim, the PRC has used a map since the post-war period to demarcate its territorial and maritime claims (see Figure 2). This was updated in 2009 in response to the other littoral states' request to regulate their legal

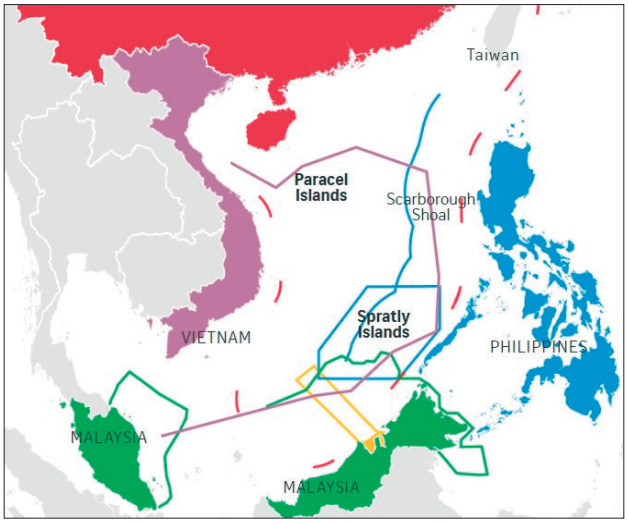

Figure 1: Overlapping territorial claims in the South China Sea

Source: Strait Times (2016)

rights under UNCLOS (The Permanent Mission of the People's Republic of China to the United Nations, 2009). A 2016 ruling by the International Court of Justice rejected the historical-legal basis invoked by the Chinese state (Permanent Court of Arbitration, 2016), but Beijing ignored it (Zhenmin, 2016) and increased its naval presence in the South China Sea (Phan & Nguyen, 2017).

The interconnection between military concerns and states' political-economic interests in the South China Sea is, therefore, clear. As such, it can be argued that this part of South-East Asia is one of the most important geopolitical areas in the world.

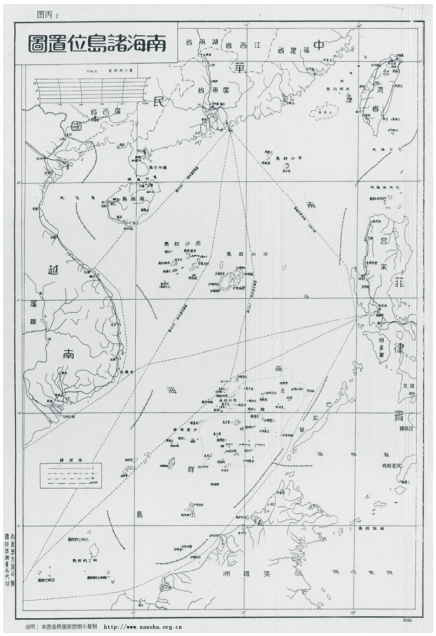

Figure 2: Original version of The Nine-Dash Line map, produced by the Republic of China in 1947

Source: United States Department of State, (2014)

Conceptual and Evolutionary Delimitations in The Existing Literature

Although asymmetric conflicts are not a recent topic in international relations, their dynamics are constantly being updated and are, therefore, a constant research subject for the scientific community. Conceptually, asymmetric conflicts depict confrontations in which combatants use unconventional tactics to increase their strategic advantages and exploit the weaknesses of their opponents (Berglund & Souleimanov, 2020). The terminology came into widespread use with the end of the Cold War, when centralized clashes between armies gradually gave way to guerrilla warfare, espionage, terrorism, cyber-attacks or economic sanctions (Berglund & Souleimanov, 2020). The main features associated with this type of dispute are its ability to be used in diverse geographical conditions, the flexibility of decision-making from the central to the local level, and the strong psychological impact on the adversary (Grant, 1991).

The wide range of phenomena associated with asymmetric conflict generated extensive debate in the Anglo-Saxon academia during the 1990s. Coming from the military sphere, Lind *et al.* (1989) have classified the new typology of disputes in the quaternary generation of warfare, characterized by state-of-the-art technology and artificial intelligence. The previous three generations were associated with battles involving infantry, artillery and tactical warfare. In turn, Colonel Howard Dixon (1989) has outlined in an unpublished report the US interest in asymmetric conflict typology. Since 1985, they have been classified as low-intensity disputes, in which unconventional means of combat are used to reduce the disproportionality of forces. Professors Beaumont (1995) and Olson (1990) have also taken similar theoretical approaches to asymmetric conflicts, classifying them as small wars. They saw the emergence of this new type of dispute as a natural consequence of the new political and economic constraints that emerged after the Second World War.

Professor Hammond (1990) took the opposite view, criticizing the tendency of American scholars to underestimate the destructive potential of such disputes. He argued that the circumstances, costs and consequences of a small-scale conflict can be similar to those of a conventional war. For this, he offered the examples of the Vietnam War and the Korean War, which caused significant repercussions for the American diplomacy.

During the 2000s asymmetric conflicts became more deeply embedded in academic language as a result of their association with the fight against terrorism and the development of cybercrime (Berglund & Souleimanov, 2020; Buffaloe, 2005). Gross (2009) has centered his approach around the hypothesis that unconventional means of warfare make up modern warfare, which is gradually replacing traditional warfare. The diffuse delineation between combatants and non-combatants or the state and non-state actors creates strategic benefits, so that entities involved in conflicts often resort to torture, assassinations, blackmail or even attacks against civilians. The question of the morality

and legality of these actions is therefore raised and, according to the author, they are violated even by Western nations. The ethical and normative dilemma of asymmetric conflicts has also been analyzed in various scientific studies, where it has been found that there is a causal relationship between this dilemma and the technical-tactical capabilities of the warring parties (Berglund & Souleimanov, 2020).

Another aspect of asymmetric conflicts noted by academics is that, although these wars are predominantly used by the militarily inferior entity, they can be also used by the superior actor. The United States, Russia and China have all resorted to unconventional means of warfare at some point and there are signs that the latter two continue to do so today (Ahrari, 2010; Crane, 2013; Jonsson & Seely, 2015; Wayne, 2009). To complement these findings, Melander, Moleler and Oberg (2009) have created a database of asymmetric conflicts over ten years to identify the sources of disputes and at the same time prevent or mitigate their geopolitical impact.

Regarding China's position on asymmetric conflicts, colonels Liang and Xiansui (1999) published a compendium of tactical means by which developing countries like China can compensate for military inferiority in a war against the US. The book was printed under the aegis of the People`s Liberation Army (PLA) Publishing House, giving it a relatively formal character. At the same time, the book became a reference point for Chinese academia, as the number of scholarly publications on asymmetric conflict multiplied after its publication (Lee, 2002).

The prospect of an asymmetric conflict in the South China Sea was the subject of an extensive analysis by American Professor Andrew Erickson (Kennedy & Erickson, 2017, Heath & Erickson, 2015). His research focused on Chinese paramilitary forces engaged in territorial disputes in the South China Sea, which consists of the People`s Armed Police (PAP) and the People`s Armed Forces Maritime Militia (PAFMM). These forces are auxiliary fighting devices used by the Chinese state to support the PLA and, therefore, perform multiple tasks such as maritime surveillance or law enforcement. Erickson sees them as counter-intervention forces, as they seek to restrict the presence of other states in the South China Sea region. Of the two paramilitary groups, the authors deal extensively with the dynamics of the latter due to its extensive operational capabilities and decentralized administrative structure. Howarth (2006) also studied the asymmetric combat capabilities of China, analyzing the PRC`s geopolitical ambitions through the naval strategic theory lens. The text focuses on China`s naval capabilities and the multi-strategic prospects of unconventional maritime warfare.

The literature review has revealed that asymmetric warfare covers a wide range of definitions, concepts and experiences. Thus, this type of conflict includes all armed disputes in which tactics different from those of conventional warfare are used. Asymmetric conflicts can also be generated by states with superior military power against other

nations or non-state actors. However, the history of recent decades has shown that this type of warfare is preferred by small groups such as rebels, insurgents or terrorists, who do not have sufficient resources to withstand a major conflict. As a result, most disputes are short-lived and have a specific objective. Finally, China's interest in asymmetric conflicts has intensified over the past two decades, amidst the strategic considerations identified in the South China Sea.

Administrative Structure of The Chinese Naval Forces

In order to understand how Chinese naval forces conduct their naval activities, it is necessary to have an overview of their administrative organization and their ability to dominate the sea. From a quantitative perspective, China's military capabilities rank second regionally if the United States is included, followed by Taiwan, Vietnam, Malaysia, the Philippines and Brunei (Global Fire Power, 2022a) (see Table 1). China's military outnumbers the combined military strength of the other littoral states. The most significant difference can be seen in submarines and destroyers, which are the most powerful attack devices in a country's fleet. The discrepancy is due to the massive investment made by the Chinese state in the defense sector over the last two decades (Congressional Research Service, 2022) (see Table 2).

In terms of quality however, Chinese manpower still has many shortcomings, especially when compared to its American counterparts. They range from a bureaucratic command structure to an oversaturated logistics sector and low professional quality (Congressional Research Service, 2022).

The PLA is the state structure in charge of maritime security, preservation of national sovereignty and territorial integrity. It is charged with a dual role: the operational role of protecting the country's interests and the political role of maintaining peace and contributing to the internal decision-making process. Under the last two presidents, the PLA received a more holistic role in the South China Sea, and it was prepared only for large-scale interventions where civilian naval intervention would be at a disadvantage. The PLA`s political power has been gradually diminished, with its representatives removed from senior positions in the Central Political Bureau. There has also been a tendency to subordinate it to the party in decision-making, by extending the President's powers of control or by reducing defense funding (Nan, 2016).

The secondary maritime actors consist of regional administrations and law enforcement agencies, which provide advisory support in regional policy. Provincial leaders have at least the same hierarchical level as state ministers, as they represent the direct political extension of the party. Moreover, some of them are members of the Central Political Bureau, thus going beyond the status of ministerial office. The political power enjoyed by the provinces also implies a certain degree of decision-making autonomy. They can adopt their own laws and regulations that complement national legislation, as

Tabel 1: Military power of the South China Sea states (2022)

State	Global Ranking	South China Sea Ranking
United States	1	1
China	3	2
Taiwan	22	3
Vietnam	23	4
Malaysia	41	5
Philippines	64	6
Brunei	<137	7

Source: Global Fire Power. (2022a). 2022 Military Strength Ranking. *GFP Ranking*. Retrieved from https://www.globalfirepower.com/countries-listing.asp

Tabel 2: Main naval capabilities of the South China Sea states

State	Submarines	Destroyers	Frigates	Corvettes	Patrol Vessels	Aircraft Carriers
United States	68	92	0	22	10	11
China	79	33	49	70	152	2
Vietnam	6	0	9	14	54	0
Philippines	0	0	2	1	50	0
Taiwan	4	4	22	2	43	0
Malaysia	2	0	3	6	29	0
Brunei	0	0	0	3	42	0

Source: Global Fire Power. (2022b). Total Navy by Strength. *GFP Ranking.* Retrieved from https://www.globalfirepower.com/navy-ships.asp

long as they do not contradict the latter's precepts. In the case of the South China Sea, Guangdong and Hainan provinces are responsible for the administration of maritime sovereignty (Jakobson, 2014).

Dubbed the "dragons stirring up the sea" (Goldstein, 2010, p. 2), the agencies in charge of maritime law enforcement underwent a major institutional reorganization in 2013 due to excessive bureaucratization, unbalanced professional training and modest technical facilities at agency level. Also, overlapping areas of authority did not ensure sufficient coherence in patrolling and protecting maritime areas of interest (Yamaguchi, 2016). The five agencies were:

- Chinese Maritime Police (Ministry of Public Security);
- China Maritime Surveillance (Ministry of Natural Resources);
- Fisheries Law Enforcement Command (Ministry of Agriculture);
- Anti-Smuggling Bureau (General Administration of Customs);
- Maritime Safety Administration (Ministry of Transport).

After the reorganization, the decision-making was centralized and military roles were assigned to the agencies. The Chinese Coast Guard (CGC) was established, merging all agencies except the Maritime Safety Administration. CGC thus became the main entity with a role in enforcing and respecting maritime laws in the South China Sea. In 2018 the CGC was transferred to the PAP, an organization under the Central Military Commission (Morris, 2017). As a result, it has undergone a process of militarization and can be placed operationally under the military in the event of war (see Figure 3).

Alongside the PLA and the PAP, China's naval power also includes the PAFMM (Erickson, 2019). Emerging before the creation of the PRC, it has received little exposure compared to the other two entities. But it has re-emerged in the public eye under the last two presidents as an organization capable of mobilizing impressive human and material resources (Erickson & Kennedy, 2016). Over the past decade, Erickson and Kennedy (2016) could not identify any definition of the PAFMM or its role in China's security architecture in official sources. But they have found that the organization is part of the naval defense system, tasked in particular with enforcing China's maritime rights. In 2010 the number of primary (paramilitary-trained) members totaled eight million, drawn from local communities along the coast.

Enjoying the attention of the president, the organization has become a political and operational tool used to consolidate claims in the South China Sea. As evidence of this, it has been involved in all the maritime conflicts during the last two presidents. Like the

Figure 3: Hierarchical structure of the Chinese armed forces

Source: Office of the Secretary Defense of the United States of America, 2019

other two bodies, PAFMM is also under the Central Military Commission. At the same time, however, its human resources are predominantly civilian, made up of locals from the coastal region, so the organization has less political control (Erickson & Kennedy, 2016).

PLA, PAP and PAFMM: The Coercive Forces in The South China Sea

The degree of involvement in the South China Sea of the three naval forces was analyzed through collective case studies focused on maritime incidents caused by the Chinese state between 1978 and 2020. The approach allowed us to identify both the Chinese maritime structures involved in the disputes and the nature of these incidents. For data restriction and control, we selected only case studies that involved the PRC`s official maritime forces and received sufficient international media coverage to generate diplomatic echoes.

The results collected and systematized in the table below illustrate that over the past three decades the Chinese state has improved the cooperation between its civilian and military forces. This has been achieved by transferring some tasks from the military to paramilitary devices (PAP and PAFMM). They have increasingly appeared on the frontline of conflicts while the PLA has been directed towards a more proactive maritime policy (Yamaguchi, 2016). Armed conflicts were replaced by intimidation and physical aggression such as ramming foreign vessels and using water cannons or artificial smoke so as not to cause human casualties. Such incidents have intensified since 2009 and have been applied to all states in the South China Sea, including the United States.

Overall, China's strategy can be considered successful, because the PRC managed to secure 20 islands in Paracel and 7 in Spratly, plus the Scarborough Shoal. Also, it created around 3200 acres of artifical land, especially in the Paracels, that is currently being used for establishing new outposts for their troops. (Asia Maritime Transparency Initiative, 2022).

Geopolitical Considerations and Legal Implications

The asymmetric warfare provoked by the PRC in the South China Sea is known in Western academia as belonging to "gray-zone" operations (Morris *et al.*, 2019, p. 8; Bunker, 2019, p. 20). They are defined as sets of psychological tactics, political subversion and paramilitary interventions designed to create legal and diplomatic obfuscation. The resulting ambiguity is then used as a deterrent against possible international repercussions, as it is difficult for other states to appreciate the source of the aggression and therefore the proper military response (Morris *et al.*, 2019; Bunker, 2019) (see Table 3).

In Chinese academia the "gray-zone" tactic has been called the "Huangyan model" (Zhang, 2017, p. 446; Wan, 2016, p. 181), which recommends the use of political pressure in conjunction with the gradual occupation of the South China Sea. Gradual control

Tabel 3: Summary of the main international maritime incidents caused by China

Year	Incident Name	Target	Chinese Forces Engaged	Incident Type	Official Cause	Casualties
Deng Xiaoping 1979–1993						
1988	Johnson Reef	Vietnam	Army	Armed conflict	Resource explotation	64
Jiang Zemin (1993–2003)						
1995	Mischief Reef	Philippines	Army + Paramilitary forces	Harassment	Fishing	0
2001	Hainan Island EP-3	USA	Army	Harassment	Military presence	1
Hu Jintao (2003–2013)						
2009	USNS Impeccable	USA	Army + Paramilitary forces	Harassment	Military presence	0
2011	Reed Bank	Philippines	Paramilitary forces	Harassment	Resource exploitation	0
2011–2012	Binh Minh 02, Viking II	Vietnam	Paramilitary forces	Ramming	Resource exploitation	0
2012	Scarborough Shoal	Philippines	Paramilitary forces	Harassment	Fishing	0
Xi Jinping (2013–prezent)						
2014	Second Thomas Shoal	Philippines	Army + Paramilitary forces	Harassment	Fishing	0
2014	HYSY-981	Vietnam	Army + Paramilitary forces	Ramming	Resource exploitation	0
2014	Top Gun	USA	Army	Harassment	Military presence	0
2016	Natuna Islands	Indonesia	Paramilitary forces	Ramming	Fishing	0
2018	USS Decatur FONOP	USA	Army	Harassment	Military presence	0
2019	Reed Bank 2	Philippines	Paramilitary forces	Ramming	Fishing	0
2019	Vanguard Reef	Vietnam	Army + Paramilitary forces	Ramming	Resource exploitation	0
2020	Woody Island	Vietnam	Paramilitary forces	Ramming	Fishing	0

Source: Compiled by the author from various press reports

begins with non-state or quasi-state actors (maritime surveillance organizations, fishing associations), who are closely monitored by military forces until the islands are de facto occupied (Au, 2018; Zhang, 2017; Wan, 2016). Once this step has been taken, it is virtually impossible for other states to recover the territories concerned, a phenomenon known as "fait accompli" (Waguri, 2015, p. 1).

China has stepped up its maritime aggression against other states by engaging paramilitary forces. A significant proportion of these (mainly the PAFMM) use vessels that do not comply with international rules on identifying their origin (United Nations, 1982; Gates, 2017*)*. In this way, Chinese leaders manage to disassociate the state's image from maritime incidents, which they attribute to civilian entities. At the same time, limiting maritime aggression to the level of intimidation or ramming mitigates the media impact of incidents and forces the adversary to seriously consider the consequences of an armed response (Morris *et al.*, 2019). In this way, diplomatic tensions are kept at a level that ensures Beijing an acceptable international image.

Another element through which China has been able to extend its control of the South China Sea has been the interpretability of international maritime law. According to Article 51 of the UN Charter, "Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations..." (Charter of the United Nations, 1945, pp. 10–11). Article 2(4) also states that "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations" (Charter of the United Nations, 1945, p. 3).

The two articles are crucial because they formed the basis of the 1986 trial between the United States and Nicaragua. At that time, the International Court of Justice held that the US had engaged in military operations directed against the Nicaraguan state without the conditions of Article 51 having been met. It was held that the self-defense argument invoked by the US State was not preceded by military aggression of severe intensity and consequences on the part of Nicaragua. Accordingly, the Court held that the US had violated Article 2(4) of international law (Case Concerning the Military and Paramilitary Activities in and Against Nicaragua, 1986).

If we extrapolate the Court's decision to the asymmetric conflicts in the South China Sea, we see how Chinese paramilitary forces resort to moderate maritime offensives, aware that such incidents have been practically legalized by the ruling. In general, the Court's decisions are widely regarded by experts as having the greatest authority and influence on the evolution of customary principles in international law (Rowles, 1986). As such, it can be argued that China is using this legal ambiguity to expand its maritime assertiveness and gain control of the South China Sea, while avoiding large-scale conflict.

International Reactions

The most expected official reaction on the issue of asymmetric conflicts came from the US Department of Defense (2017), which noted the organizational reform started in 2015 by Chinese military leaders to improve short-duration maritime operations. It was only in 2018, however, when their annual report comprehensively addressed the issue of asymmetric conflict, looking at the diplomatic responses the US should offer to these forms of assertiveness. At the same time, the document exposed the fact that the PAFMM is directly under the Chinese president (United States of America Department of Defense, 2018). A year later, several US leaders warned that coercive actions would no longer be tolerated and paramilitary forces would be treated as entities belonging to the Chinese military (United States of America Department of Defense, 2019; Panda, 2019).

So far, no official details have emerged on how the US will counter China's actions. Moreover, organizational shortcomings have been identified as a result of individual strategies applied by Government agencies, lack of inter-agency coordination and an over-militarized national security structure (United States Special Operations Command, 2018). However, the RAND Corporation think-tank in collaboration with the US Government have identified multiple military, diplomatic, intelligence and economic levers through which the US can mitigate the expansion of China's paramilitary activities (Morris *et al.*, 2019).

As for the other countries bordering China, the Philippines has limited itself to diplomatic protests amid the current president's political rapprochement with Beijing (Senate of the Philippines, 2011; Department of Foreign Affairs, 2012, 2014). Vietnam, for its part, had a series of critical official positions which were correlated with low-intensity military responses (Embassy of the Socialist Republic of Vietnam in the United States of America, 2011a, Embassy of the Socialist Republic of Vietnam in the United States of America, 2011b, Embassy of the Socialist Republic of Vietnam in the United States of America, 2011c).

Conclusions

This paper has illustrated how China has used asymmetric conflict to expand its control over the South China Sea. By enlisting paramilitary forces in maritime disputes, China has deliberately created legal and diplomatic ambiguity in its coercive actions. The aim has been to hinder possible military retaliation, particularly from the US side. The strategy has been successfully applied, as the low escalation of maritime incidents over the past decade and the lack of articulate responses from other states have allowed Beijing to expand its regional sphere of influence, without getting involved into a major conflict.

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Tajikistan: An Evaluation of Terrorism and Counter-Terrorism Policies Since Independence

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Abstract: Tajikistan, a country overloaded with the horrific memory of bloody civil war, an increasingly devastated economy, and the ineradicable misfortune of having long borders with Afghanistan and Uzbekistan, has been reigning consistently by the Emomali Rahmon's regime for three decades with wide-scale surveillance and draconian acts. Taking advantage of the weak governance, poor military infrastructure and porous border, Islamic extremists and cross border terrorist groups have also been seen persistently deepening their influence in the region either by perpetrating a series of terrorist activities in the terrain or joining Tajik national into their organizations. This paper presents a detailed analysis of how and to what extent terrorism has posed security threats to Tajikistan through examining the Global Terrorism Database and RAND database that includes the numbers and intensity of the terrorist incidents in the territory since independence. It systematically analyses the prominent terrorist groups and, more particularly, the Islamic State of Iraq and Levant (ISIL), which has widened its network in the region. The paper also makes a sincere effort to evaluate the counter-terrorism acts adopted and implemented by Tajikistan. Moreover, the article also examines how the Tajik's authority constructs state discourse on terrorism by delegitimising social acceptance of the terrorist on the one hand and projecting the state as the severe victim of terrorism on the other.

Keywords: Terrorism, Tajikistan, Terrorist Attacks, Counter-terrorism Act, Taliban.

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Introduction

Tajikistan is the smallest country in Central Asia, sketching an area of 143,100 square kilometers, of which 400 square kilometers is water. It was the southernmost republic of the former Soviet Union. Tajikistan shares

a rugged, mountainous 1,206 kilometers border with Afghanistan in the South and 1161 kilometers border with Uzbekistan in the West. In the East, it shares a border with China's Xinjiang province, which is 414 kilometers. The thin wedge of the wakhan corridor is mapped in the eastern part of Tajikistan, which has separated Tajikistan from Pakistan. In the North, it shares 870 kilometers border with Kyrgyzstan. Significantly, it is the only country in Central Asia sharing the longest border with Afghanistan, known for its fragile political situations and Islamic insurgencies. This peculiar geographical location has brought constant fear of insecurity and political turmoil to the terrain. Tajik Foreign Minister Lakim Kaqumov admitted this as early as in December 1991- "Afghanistan is the most difficult and complex problem we face, that we have ever faced because we share a long border with it. The Mujahidin control most of the border region, and there have been incursions into Tajikistan. If Islamic fundamentalism is very high in Afghanistan, it is natural and will influence Tajikistan" (Ahmed, 1994, p. 172). Tajikistan's location makes it a gateway to Central Asia from Afghanistan to drugs, weapons, people and radical ideas. It is also crucial for transit in the opposite direction (Jonson, 2006). The Tajik government has persistently addressed the rise of Islamic extremism and the cross-border terrorism coming from Afghanistan as severe security concerns in preserving the *raison d'etat* of the state. The recent recapturing of power in Afghanistan by the Taliban has heightened the risk of terrorism in the region. However, Afghanistan's new political developments have opened the way for the Rahmon regime to garner attention from the western block by reaffirming its hardline against the influx of terrorism in general and the resurgence of the Taliban in particular.

Tajikistan is also seen continuously projecting Uzbekistan as the direct threat to the region's national security. Being an influential power within Central Asia, having enormous natural resources, a large population and the largest Central Asia's Army, Uzbekistan, on many occasions, constitutes a threat by taking unilateral decisions against Tajikistan and by using Tajikistan's energy dependence for political pressure, closing the Uzbek-Tajik border, and restricting Tajikistan's contacts with the outside world. The resentment between the two CA states is also evident on the issue of large-scale refugees entering Uzbekistan during the Tajik Civil War and the proposed construction of Rogun Dam by Tajikistan on the Vakhsh River as well as the project of the building of Kamchik Railway pass by Uzbekistan that would shorten the distance between Tashkent and Ferghana valley but cut the link of Tajikistan's northern Sughd Province from the outer world (Sadykov, 2013).

However, the Tajikistan leaders have always been bearing terrorism and radical Islam in mind as the grave security threat to the region. The establishment and official registration of the first Islamic political party, namely the Islamic Renaissance Party(IRP) in Tajikistan and the due course of the eruption and infliction of civil war have made the Tajik authorities desperately suspicious about the activities of the radical Islamic

and militant groups. They advocate harsh prosecution for Islamic militants to eradicate such real or perceived security threats (Naumkin, 2005). This paper has been divided into three parts. The first part makes a systematic effort to present a brief historical overview of Tajikistan to understand how several powerful empires in different historical epochs continuously fought amongst themselves to establish political control and linguistic and cultural hegemony over the region. It is also essential to understand when Islam was brought into the area and with the changing time how it has been a dominant religion in the region. The second part deals with the detailed accounts of the terrorist incidents in the region from 1992 to 2018. For this purpose, this paper has collected data from the Global Terrorism Database and RAND database. The third part of this paper explores the state's response to Terrorism in Tajikistan. This part presents an analysis of the region's counter-terrorism policies. It investigates how the Tajik's authority constructs state discourse on terrorism by delegitimising social acceptance of the terrorist on the one hand and projecting the state as the severe victim of terrorism.

A Brief Historical Overview

Tajikistan is the only Persian-speaking country of the former Soviet Union with a long history of ups and downs of the various empires, dating back to the first or second millennium BC. In the first volume of the official account of Tajiks Nation, namely, *The Tajiks in the Mirror of History* (1997), written by a collective of scholars but published under Tajik President Emomali Rahmon, has provided a chain of such empires and dynasties. This chain included the ancient Bactria and Sogdiana (6th and 7th centuries BC), the Achaemenid Empire (from mid-6thcenturies to 321 BC), the Graeco-Bactrian state (300 to 140 BC), the Kushan (from the 1st to 4th Centuries AD) and Ashkonid dynasties and the Khuttal Kingdom respectively. In the 8th century, the Arabs conquered modern-day Tajikistan and brought Islam, which turned to be the predominant religion within one century. They ruled Central Asia for almost 150 years, which was full of war and revolts. The Arabs destroyed most of the pre-Islamic culture. Their clergy burned pre-Islamic literature and destroyed objects of culture and religion (sculptures and paintings) from previous periods. Pre-Islamic religious halls were demolished and rebuilt as mosques (Jonson, 2006). The contemporary Tajik official historiographers have termed the Arab invasion "The most disastrous setback of all [invasions] caused by the Arab conquest" (Rahmon 1997). On the other hand, the Soviet Tajik scholar Gafurov argues that Arab rule and the introduction of Islam contributed to the socio-economic and cultural development of Mawarannahr (Nourzhanov & Bleuer, 2003).

However, the Samanids Empire was established in mid of the 9th centuries AD and continued until the end of the 10th centuries AD is regarded as the first stage of Tajik Statehood. This period was considered the Golden Age of Iranian culture in Central Asia. During that time, the whole country became a unified national state and remained united during the entire century (Rahmon, 1997). The end of the Samanid dynasty

was caused by another spate of Turkic invasions: The Karahanid Turks, the Kara-Kitai nomads from Mongolia. The conquest of that dynasty by the Qarakhanid Turks intensified Turkic peoples and culture's introduction into the region. "Between the eleventh and the sixteenth centuries, modern-day Tajikistan was ruled successively by Turks, Mongols, and Uzbeks" (Ahmed 1994). The defeat of Tajikistan in Uzbeks' hands paved the way for Persian and Tajik's influence in Central Asia.

In the first part of the nineteenth century, as the Tsar expanded the Russian Empire into Central Asia, Moscow annexed Tajikistan in 1868. During that period, Russia was afraid of possible British incursion from India that caused mutual distrust and rivalry. To settle this boundary dispute, both the authorities agreed to set up an Anglo-Russian Boundary Commission in March 1884, which "eventually demarcated Afghanistan's highly porous northern border with present-day Tajikistan". To prevent "the new Russian frontier from being contiguous with India", the Wakhan corridor, which divides Tajikistan from present-day Pakistan, was created in the Pamirs (Ahmed 1994).

When the Bolshevik revolution of 1917 overthrew the Tsarist regime, the Tajik's clan leaders also initiated a movement (later known as Basmachi Movement) in the Ferghana Valley. It set up Provisional Kokand Autonomous Republic and demanded the promulgation of Islamic sharia law and the private ownership of land. However, the Bolsheviks refused to accept their demands and cracked down their movement by the Red Army's massive attacks. After that, the Tajik Autonomous Soviet Socialist Republic was created as part of the Uzbek SSR in October 1924. Finally, the Soviet leaders established Tajikistan as a full-fledged union republic on October 15, 1929.

In the late 1980s, Mikhail S. Gorbachev's *perestroika* stimulated a nationalist movement in Tajikistan again. In 1990, the state emergency was declared in Dushanbe after riots stormed the city, costing dozens of lives and countless injuries. Finally, when the dissolution of the Soviet Union became inevitable, Tajikistan had to declare its independence along with its long history of Islamic revolts and the fresh political turmoil that soon drifted Tajikistan towards partisan and bloody civil war.

In its first year of independence, Tajikistan witnessed an unbridled storm of political unrest between the pro-communist Rakhmon Nabiev's government and the political opposition, including anti-government forces led by the Islamic Renaissance Party (IRP). The longstanding clan rivalries between the pro-communist Kuliab district in the South-East and the Kurgan Tube in the South-West further intensified the region's instability. In September 1992, as soon as the Nabiev government was forced to resign by massive violent demonstrations of the IRP militants, the civil war got new momentum in Tajikistan. It was against this background of chaos that a special session of the parliament was held in Khujand in November 1992. In this session, the pro-nomenklatura groups (later known as People's Front) elected Emomali Rakhmonov as the state's acting head, who consolidated his position after that. In spring 1993, different

opposition groups came under the same roof and created the United Tajiks Opposition (UTO). In short, the civil war in Tajikistan was nothing but a lengthy violent struggle to acquire political power between the People's Front and the Tajik's Opposition Party that lasted for five years. The causalities of this war have been estimated between 40,000 to 80000. Besides, this long-lasting political strife forced more than 800,000 people to seek refuge abroad, mainly in Afghanistan and Iran and Russia (Jonson 2006). Aside from the casualties, the bloody war generated a massive number of refugees and internally displaced persons, led to large-scale destruction and looting of property, resulted in the rape and torture of many, and further destroyed the already fragile economy of Tajikistan (Nourzhanov & Bleuer, 2003).

Finally, in 1997, the General Agreement on the Establishment of Peace and National Accord in Tajikistan" and the "Moscow Protocol" were signed between the Rahmon's government and the UTO on June 27, 1997, in Moscow that formally ended civil war. However, the situation of Tajikistan remains fragile in the post-civil war period. Omelicheva (2010) writes that examining the post-civil war scenario, "intermittent skirmishes with remnants of fighters from the civil war era have been a destabilising factor in the republic". The consequence of the Tajik Civil war paved the way for the authoritarian regime of Emomali Rahmon, who became the President of Tajikistan by winning the 1994 election for the first time and has never been confronted with defeat in four consecutive presidential polls held in 1999, 2006, 2013 and 2020, respectively. However, the Election Observation Mission (EOM) of the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), while submitting the final report on the 2013 Presidential election of Tajikistan, categorically pointed out the "restrictive candidate registration requirements" that resulted in a "lack of genuine choice and meaningful pluralism" (OSCE, 2013). The report also mentioned the formalistic nature of the election campaign that limited the voter's opportunity for taking an informed decision. Nonetheless, despite the constant criticisms against Rahmon about his alleged undemocratic occupancy of the presidential post, a law in December 2015 was passed by the Parliament of Tajikistan that honoured him the title-"the founder of peace and national unity of Tajikistan". The law further granted lifelong immunity from prosecution, stating that he cannot be prosecuted for anything he has done while in office (RFE/RL, 2015).

A Brief Account of Terrorist Attacks

Being the only country in Central Asia devastated by political strife, ethnic-regional clashes, and Islamic militancy, Tajikistan witnessed the highest number of terror attacks than any other Central Asian state during the first decade of independence. The global terrorism database, a popular open-source database containing details about the domestic and international terror attacks globally and which began in 2001 and has been managed by The National Consortium for the Study of Terrorism and Responses to

Terrorism (START) since 2006, has identified a long list of incidents within the purview of terror attacks based on certain norms. All these incidents, which are included in the list, are somehow related to various types of terrorist attacks such as "assassination, armed assault, bombing/explosion, hijacking, hostage-taking (Barricade Incident); hostage-taking (Kidnapping), facility/infrastructure attack an unarmed assault" (START, 2006). In a period, from 1991 to 1997 when Kazakhstan, Kyrgyzstan and Uzbekistan witnessed only a total of 16 terrorist incidents with the least intensity that cost only 11 fatalities and two injuries, and the Turkmenistan which did not have even experience any single terror attacks, Tajikistan turned to be the worst terrorist affected countries in Central Asia that confronted with 144 terrorist incidents during that period (START, 2006). The dream of creating an independent, united Tajik nation got stuck at the very early transition steps due to clan rivalry, violent political enmity amongst the political groups and the increasing terrorist activities were evident in the region that claimed 241 human lives; most were civilians and injured hundreds.

However, the Global Terrorism Database was quite skeptical about the perpetrators of the terror attacks that occurred in the region. It categorically mentioned the perpetrators of most of the terror attacks as 'unidentified'. After the end of the ghastly civil war, the number of terror attacks and their frequency fell rapidly and significantly. The database has included 49 terrorist attacks from 1998–2019; most of them can be considered minor in terms of their intensity and effects.

Another open-source database on global terrorism, namely the RAND Database of World Wide Terrorism Incidents, has maintained that Tajikistan has faced 44 incidents of terrorist nature from 1998 to 2010. However, this database includes ambiguous incidents within the sphere of the terrorist attack. The RAND database has also clarified that most of the terror attacks in Tajikistan from 1998 to 2010 are minor regarding causality as in 38 incidents, numbers of casualties and injuries are less than five(RAND, 1994).

Terror groups that destabilise the region

The supreme court of Tajikistan has branded many organisations as terrorist organisations in different courses of time. Tajik Prosecutor-General Bobojon Bobokhonov, on behalf of the Tajik Supreme Court, included ten organisations and political groups to the country's official terror list on January 15, 2006. The list included organisations such as the Islamic Party of Turkestan and Tochikistoni Ozod (Free Tajikistan), an Uzbekistan-based political party that authorities described as a threat to Tajikistan's national security (RFE/RL, 2007). The list also included the Islamic Movement of Uzbekistan(IMU), which was suspected to be responsible for the Dushanbe blast in January and June 2005 (RFE/RL, 2006). The IMU is identified as a foreign terrorist organisation by the US Department of States, which maintained strong ties with the Taliban regime in Afghanistan, later seen publicly declaring its allegiance to the Islamic State of Iraq and

Levant (ISIL) in 2015 (Lemon, 2015). However, the IMU has posed considerable security threats to Uzbekistan rather than Tajikistan.

Another significant terror group that is increasingly widening its terror network in the Tajik region is the Islamic State of Iraq and Levant (ISIL), an Islamic terrorist organisation infamous as the third deadliest terrorist organisation in the world that committed 943 deaths in 2019 (IEP, 2021). The Tajik Supreme court has recognised ISIL as a terrorist organisation and banned its activities in the region in May 2015 (Tajikistan Times, 2015). Taking advantage of rampant poverty, widescale unemployment, draconian censorship on religious activities and porous and unforced borders, the ISIL successfully joins many Tajiks into the organisation (Counter Extremism Project, 2019). Tajikistan is now the leading exporter of suicide bombers to ISIL, as more than 1300 Tajik nationals are currently fighting in Iraq and Syria (Global Risk Insights, 2017). Using the Tajik fighters to perpetrate small scale bombing and shooting in other countries or sometimes within the terrain of Tajikistan, the ISIL has constantly posed fear and insecurity to the region. The hit-and-run attack of seven cyclists in July 2018 in Danghara was the first ISIS-sponsored attack in Tajikistan. In this attack, two Americans, one Dutch and one Swiss cyclist lost their lives, two cyclists of Swiss and Dutch nationality succumbed to injury, and one Frenchman managed to escape without injury. This unfortunate terror attack shocked the international community and validated the severity of terror threats into Tajikistan.

The ISIL has also claimed responsibility for a deadly terror attack on May 19, 2019, in Vakdht, Tajikistan, which errupted in the form of a prison riot that killed 29 inmates and three prison guards. Among the deceased, Sattor Karimov, Saeed Qiyomiddin Ghazi, and Jomahmad Boev were the prominent members of the opposition party of Tajikistan, namely the Islamic Renaissance Party of Tajikistan(IRPT) (Aljazeera, 2019 May 29). In this context, it is noteworthy to mention that the High court of Tajikistan, at the request of the Tajik Prosecutor-General, by making democracy mockery, also has branded the IRPT as a terrorist organisation on September 29, 2015. The IRPT, known as the lone mainstream Muslim party in Central Asia, also has been playing the only opposition party in Tajikistan since 1990 was permanently dissolved by the Tajik Justice ministry due to 'failing to meet membership quotas' as it failed to retain its two seats in the parliament in 2015 election (Columbia Global Freedom of Expression, 2022). Moreover, the Supreme court of Tajikistan has also designated "Al-Qaeda, East Turkestan Islamic Movement, Turkestan Islamic Movement (TIM), Taliban, Muslim Brotherhood, Lashkar-e-Taiba, Dzhamoati Tablig, Sozmoni Tabligot, Tochikistoni Ozod, Islamic society of Pakistan, Hizb ut-Tahrir" as terrorist organisations and banned their activities in the region (Abdukhamitov & Abdullayeva, 2018).

Counter-Terrorism Laws and the Official Definition of Terrorism

The ghost of terror threat has always been haunting Emomali Rahmon and his regime. Undoubtedly, the potential terrorist threats arising from Afghanistan and Uzbekistan's porous and fragile borders exert insecurity and instability in the region. However, the Rahmon government often uses cross-border terror threats to garner attention from the international community and has left no stone unturned to project itself as the severe victim of terrorism. Like Uzbekistan, known for the extensive and harsh counter-terrorism laws, the parliament of Tajikistan is also not an exception in enacting anti-terror laws "riddled with unclear terminology" and "ambiguous enforcement procedures" (Counter Extremism Project, 2022). After experiencing the deadly civil war, Tajikistan passed a state counter-terrorism program from 1998 to 2000. This program was elaborated and approved by Decree No. 707 of the President of the Republic on April 21 1997. It directed the law enforcement agencies to ensure actions in identifying and suppressing the channels of international communication of terrorist groups operating in the Republic of Tajikistan from abroad (United Nations, 2005). The Majlisi Oli of the Republic of Tajikistan (Parliament) adopted a law on "Combating Terrorism" on November 16, 1999 and further enacted another act on "Combating Extremism" on December 8, 2003. However, the parliament has passed a new law called "Countering extremism" on December 25, 2019, and declared the Combating Extremism Act 2003 invalid. Besides, on November 12, 2016, Tajikistan has approved the National Strategy of the Republic of Tajikistan on counter-extremism and counter-terrorism for 2016–2020, specifying the main priority guidelines on counter-extremism and counter-terrorism. Moreover, the Criminal Code of Tajikistan has also provided a broad outline of terrorism and terrorist acts. These counter-terrorism laws and programs have represented Tajikistan's official stand on terrorism.

The Law on Combating Terrorism 1999

It is a fundamental law in the field of countering Terrorism in Tajikistan. Since its adaptation, it has been amended five times precisely in 2005, 2007, 2008, 2012 and 2015 to deal with the region's changing security complexity. The primary objectives of this law, as mentioned in Article 1, are the implementation of the state policy and showing international commitment towards combating terrorism. Besides, it seeks to "uncover, prevent and stop terrorist activity", to "eliminate causes and conditions", which give rise to Terrorism (Majlisi Oli of the Republic of Tajikistan,1999). Significantly, creating a strong negative attitude towards terrorism in the minds of Tajikistan people is also included as an objective of this law.

Article 3 of this law has incorporated a definition of terrorism which is as follows-

> "Terrorism — is violence or the threat of violence against individuals, compulsion or threat of compulsion against legal entities, and also the destruction

> (damaging) of or threat to destroy (damage) property and other material objects of individuals and legal entities, which threaten to cause loss of life, significant damage to property, or other socially dangerous consequences and are implemented with a view to violating public security, intimidating the population, or influencing the adoption by state organs of decisions advantageous to terrorists, or satisfying their unlawful material and (or) other interests; attempts on the lives of statesmen or public figures perpetrated with a view to weakening the foundation of the constitutional order and security of the state or with a view to ending their state or other political activity or out of revenge for such activity; attempts on the life or infliction of a bodily harm to statesmen, public figures or representatives of authorities perpetrated because of their political or public activity, with a view to destabilising the public order or influencing the adoption of decisions by organs of power or obstructing the political or public activity; attacks on representatives of foreign states or staffers of international organisations enjoying international protection, or members of family living together, and also on the offices, dwelling places or vehicles of persons enjoying international protection if these actions are committed with a view to provoking war or complicating international relations" (Majlisi Oli of the Republic of Tajikistan, 1999, p. 1).

In Article 4, this law has identified a long list of activities of terrorist nature and has listed them under the category of the terrorist act. This list comprises actions like "the explosion, arson, or the use of or threat to use nuclear explosive devices or radioactive, chemical, biological, explosive, toxic, noxious, aggressive or poisonous substances; the destruction, damaging, or seizure of vehicles or facilities" (Majlisi Oli of the Republic of Tajikistan, 1999).

This list further includes activities such as "an attempt on the life of a statesman or public figure or representative of national, ethnic, religious, or other population groups" as the terrorist act subject to legal action.

Similarly, the act of "taking hostages, kidnapping"; "carrying danger to life, health, or property of a nonspecific range of people by creating the conditions for accidents and man-made disasters or the real threat of the creation of such a danger" are also identified as the terrorist crime. Lastly, "the dissemination of threats in any form and by any means" and other actions that pose a danger of loss of life; "significant property damage", or "other socially dangerous consequences "have been listed as a terrorist act by this law.

This law has assigned authority and responsibility to certain competent entities for directly implementing the fight against terrorism. The Ministry of Security of the Republic of Tajikistan is the central body. The other agencies now engaged in combating terrorism are — Ministry of Internal Affairs of the Republic of Tajikistan, the Ministry of Defense

of the Republic of Tajikistan and the Ministry for Emergency Situations of the Republic of Tajikistan. Similarly, the Committee for the Protection of the State Borders under the Government of the Republic of Tajikistan and the Presidential Guard of the Republic of Tajikistan also have the legal authority to counteract terrorism in the state. (Majlisi Oli of the Republic of Tajikistan,1999).

Criminal Code of Tajikistan 1998

The official stand of Tajikistan on Terrorism is also reflected in the criminal code that provides a definition of terrorism and determines legal action against such acts. Being the defender of rights and freedom of the persons and citizens and as a principal crime prevention mechanism, the code has first defined terrorism and later categorically determined different punishments for different terror-centric offences. The code has incorporated the phenomenon of terrorism in section VIII, chapter 21 of the code, placing it under crime against public security.

Article 179 (Chapter 21) of the Code has defined terrorism in the following words:

> "*Terrorism, that is committing an explosion, arson, firing with firearms or other actions, which create the danger of destroying people, causing a substantial financial damage or coming other socially dangerous consequences if these actions committed with the goal of violating public security, frightening the population or influencing the decision making of the power organs, as well as the threat of having committed the mentioned actions with the same goals"* (Majlisi Oli of the Republic of Tajikistan, 1998, p. 46).

After defining terrorism, the criminal code has granted different penalties for the actions specified in the definition. Firstly, the code has determined punishment with imprisonment for 5 to 10 years who commits such crime. Secondly, the law has maintained that if a group of people in a conspiracy commits the same actions in a repeated manner, then the tenure of the imprisonment will be extended from 8 to 15 years with an additional punishment of confiscation of property. Thirdly, the code has granted long-term confinement from 10 to 18 years regarding acts such as an attempt to murder, significant bodily injury caused to a politician, public man, or representative of the power committed to their state public activity. However, the goal of such intentional acts must be destabilising the situation, influencing the decision-making of the state bodies, or hindering political or public movement. In addition to imprisonment, the law has also established punishment with confiscation of property.

Finally, the law has declared the longest possible tenure in prison, a period starting from 15 to 20 years with the confiscation of property or the highest award, i.e. the death penalty for committing terrorist acts. Such harsh punishment may be awarded for having committed the offences as specified in those mentioned above first, second and third of the paragraphs with certain conditions which are as follows: (a) if such

actions are committed by an organised group; (b) if such acts are committed along with the threat of using a weapon of mass destruction, radioactive materials and committing other actions which can lead to mass loss of people; (c) if an especially dangerous recidivist perpetrates such actions; (d) if such actions cause the death of a person or other serious consequences carelessly (Majlisi Oli of the Republic of Tajikistan, 1998).

Law on Countering Extremism 2019

The parliament of Tajikistan adopted a new law in December 2019 to deal with the potential threats coming from the religious extremist groups in the region by declaring the previous law on Combating Extremism, 2003, as null and void. This act has extensively elaborated terminologies such as extremism, extremist activity, extremist organisations, extremist financing, extremist materials and provided directions on countering extremism from the region. The act defines extremism as "an expression of ideology and extremist activity to resolve political, public, social, national, racial, regional and religious issues by force and other illegal actions" (Majlisi Oli of the Republic of Tajikistan, 2019). The act further defines extremist activity as the activity of various entities aimed at "committing extremist activity, instability of national security and defence capability of the state, as well as public calls for a violent seizure of state power or a violent change in the constitutional order and actions aimed at inciting national, racial, regional or religious enmity or hatred" (Majlisi Oli of the Republic of Tajikistan, 2019, page 2). Although the Tajik Government has justified the indispensability of this act for ensuring sovereignty, integrity and safety of the Republic of Tajikistan, the law has been facing severe criticism across the world due to its rampant misuse of the acts for suppressing the voices of dissent. This act has authorised wide-ranging powers to restrict freedom of expression and has directed thirteen government agencies to request the communication service to block any website without judicial review (Amnesty International, 2020).

Criminalisation and Social Construction of Terrorism

With the experience of six years of political turmoil and consistent violence, Tajikistan's authority is seen envisaging terrorism as one of the most dangerous threats to the state's sovereignty and stability. Their concern about terrorism is evident in the legal statutes of the republic. For example, the Criminal Code of the Republic of Tajikistan 1998 has identified terrorism as a 'criminal act' by incorporating terrorism under the heading of "crime against public security and health of the population". The official documents of Tajikistan also construct terrorism as one of the gravest crimes against public security, rather than just stating it as a criminal act. The code has provided four folded divisions of the offence by the nature and degree of the crime and has constructed terrorism as the gravest crime by categorizing it as "especially grievous crime" (Majlisi Oli of the Republic of Tajikistan, 1998).

Further, the social construction of terrorism is reflected in the language of Article 17 of the same code, which constructs terrorism as a socially dangerous act by defining crime as a "socially dangerous act". Another statute of the republic, namely the Republic of Tajikistan Law on Combating Terrorism 1999, has further strengthened this social construction. This law has defined terrorism as "violence or the threat of violence against individuals, compulsion or threat of compulsion against legal entities… that threaten to cause loss of life, significant damage to property, or 'other socially dangerous consequences'…" (Majlisi Oli of the Republic of Tajikistan, 1999).

The Tajikistan government is also seen as proactive to dehumanize terror outfits for nullifying their social acceptance systematically. The Tajik authority in various national and international platforms often take the opportunity to delegitimize the demands of the extremist groups by using emotive words. For example, in the Report of the Government of the Republic of Tajikistan on the implementation of Security Council resolution 1373 of September 28, 2001, concerning counter-terrorism (2002), Tajikistan uses derogative words by stating terrorist act as "being in blatant defiance of progressive humanity", "scourge'', "barbaric". Moreover, this document also condemned the September 11 terrorist attack with the following words- "unprecedented, cruel and inhumane". Similarly, addressing the United Nations General Assembly Debate, the President of Tajikistan Emomali Rakhmonov dismissed the ideological base of terrorism by noting "international terrorism has no ideology, nation or homeland". In the same speech, he also described terrorism as "crimes", committed by "cruel", "merciless people" "who are driven by the lust for power and personal gain, people who have nothing to do with the holy religion of the world's Muslims" (United Nations General Assembly fifty-eight sessions, 2003).

Conclusion

Tajikistan, the only country in Central Asia that experienced five long years of horrific civil war due to intense political conflict and ethnic-religious clashes, has been seen struggling for peace, political stability, and the Tajik nation's integrity since the day of getting independence from the former Soviet Union. Terrorism has undoubtedly posed a significant security threat to Tajikistan for bearing the misfortune of sharing the longest border with Afghanistan, a haven and the safest shelter for terrorist groups across the globe. The recent retaining of the Taliban regime in Afghanistan has heightened the terror threats to the national security and stability of the region. However, the government's failure to deal with the issue of rampant poverty and wide-scale unemployment also have made Tajikistan a fertile ground for recruiting Tajiks into ISIL and other terror groups. Similarly, the Rahmon regime's draconian policies to suppress the political opponents, freedom of expression, and religion have further deepened the resentment among the masses. Tajikistan has to adopt two-way approaches to countering terrorism

at this critical juncture. On the one hand, sufficient attention must be given to strengthening the law enforcement agencies to deal with terrorism, and on the other, a holistic approach should be initiated to resolve the people's resentment against the regime.

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Zimbabwe: Critiquing the Challenges of Cultural and Religious Concepts Such as *Ubuntu* and the "Forgive and Forget" Approach to the *Gukurahundi* "Genocide".

Alfred NDHLOVU

Abstract: This article explores the challenges which emanate from the discourse of reconciliation in Zimbabwe as it relates to the *Gukurahundi* atrocities of the post-independence Zimbabwean era. Since most of the efforts to address this nation's ugly past have been influenced mainly by cultural (African) and religious (Christian) concepts such as the Bantu concept of *Ubuntu* and the Christian religion approach to conflict resolution which is based on the "forgive and forget" concept, this article will critique these concepts, demonstrating their unviability in bringing reconciliation in Zimbabwe. The article argues that without legal frameworks which can facilitate justice as a primary vehicle to reconciliation, the cultural and religious approaches may not make much impact in reconciliation efforts in Zimbabwe. For instance, it is not clear how the cultural concept of *Ubuntu/ Unhu* should be implemented to establish a *formal* and *structured* way of dealing with the issue of *Gukurahundi*. Among other issues of concern, the "forgive and forget" approach also poses its own problems, one of them being a too *simple* and *casual* approach to a much disturbing issue which has affected thousands of lives up to this day. With the aid of an example of how the post-World War II West Germany under the leadership of Willy Brandt addressed the issue of reconciliation and the history of holocaust, this article argues that justice should be the primary vehicle of the *transition* to reconciliation.

Keywords: *Gukurahundi*, Zimbabwe, Ubuntu, conflict resolution.

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Introduction: Historical Background

After a protracted struggle which lasted from 1964 to 1979, Zimbabwe gained liberation from the colonial rule of Rhodesia in 1980. The *Gukurahundi* (a *shona* word for "the rain that washes away the dirt") atrocities are generally taken as an occurrence of

the post-independence Zimbabwe period. However, if carefully examined, their roots go back to the period of the struggle for independence, where two main revolutionary movements namely ZANU (PF) and (PF) ZAPU were used as vehicles of combating the colonial regime. The contestations of power and influence between these two main revolutionary movements have been highlighted by several historical narratives on the struggle for independence in Zimbabwe, for instance, by Chung (2005) in her memoir. As Chung notes, confrontations between ZANU (PF) and (PF) ZAPU began in 1963 when the formation of ZAPU broke apart to produce ZANU (PF) and (PF) ZAPU. These movements began to occasionally target each other rather than targeting the colonizer. Despite efforts to reconcile these two movements between 1963 and 1979 which were ultimately demonstrated by choosing a combined team to represent the Patriotic Front (PF) at the Lancaster House conference, the decision by ZANU (PF) to contest in the first "democratic" elections of 1980 as an independent political party dashed these efforts. Furthermore, when ZANU (PF) eventually won the 1980 elections, it decided to deal with dissent voices and cower all efforts of creating opposition politics. Kriger (2005) observes that:

> *In the aftermath of the election, despite the official policy of reconciliation, the ruling party's one-party mentality was evident in its political discourse and use of coercion. ZANU (PF) used the state media to promote only its war contributions and war songs, and used its party slogans and symbols at the first celebration of Heroes' Days and at the viewing of the first two national heroes' bodies. At rallies, ZANU (PF) slogans denigrated ZIPRA, ZAPU, and Joshua Nkomo and their role in the armed struggle, including denouncing them as 'oppressors'* (p. 5).

It is this background which culminated to the violent assault of civilians and former members of (PF) ZAPU which lasted from 1982 until the signing of the Unity Accord in 1987. The Unity Accord therefore, ended the *Gukurahundi* atrocities but did not bring peace and reconciliation. It became an "amalgam of silence and denial" (Mashingaidze, 2020: 4). The assault aimed at rooting out dissent voices in Matabeleland and Midlands provinces of Zimbabwe left over 20,000 people dead (The Catholic Commission for Justice and Peace and the Legal Resources Foundation, 2007).

In terms of terminology of this study, the reader needs to be aware of the conundrums (within debates on the issues of peace, justice, resolution, and reconciliation) associated with terms such as "restoration", and "reconciliation" among others. For instance, there is usually an uneasy nexus between *restoration*, *justice* and *forgiving*. Questions usually arise as to whether perpetrators of injustice can be forgiven without the processes of justice and restoration (see for instance, Chamburuka & Chamburuka, 2016). The example of the history of holocaust in Germany which is provided in this study demonstrates that justice can indeed clear the path to "restoration" and "reconciliation". Furthermore, it remains hazy as to how "restoration" can be fully attained in cases of

death and grief. Can material compensation bring restoration of a parental *love* which is no longer there, or can a jail term of the "living" perpetrator be enough to cover this gap? These questions, therefore, demonstrate problems associated with these terms and how they are applied in discussions in the field of justice, peace, reconciliation, and restoration. For instance, Ganiel and Tarusarira (2014) explore the application of the term "reconciliation" to Zimbabwe. They note for instance, that there has been debates on whether besides rebuilding relationships, reconciliation should also involve public truth telling and acknowledgement of guilt. Furthermore, in the context of Zimbabwe, they observe that Mugabe's inauguration speech is usually referred to as the "hand of reconciliation". Mugabe's speech is analyzed in detail in the fourth section of this article, where its "contribution" to reconciliation in Zimbabwe is analytically explored.

The Discourse on the *Gukurahundi* Atrocities

Since the Unity Accord did not silence concerns over the *Gukurahundi* atrocities, questions on justice, reconciliation, and restoration have always crept up in the Zimbabwean society. Various personalities ranging from scholars (those in the academia), to traditional leaders, journalists, religious leaders, and politicians have raised concerns over the burden of the *Gukurahundi* history as "a stain on the wall" of Zimbabwean independence.

Contribution by the Academics

Since the signing of the Unity Accord in 1987, various scholars, both within Zimbabwe and in the diaspora, have written extensively on the issue of the *Gukurahundi* "genocide", addressing various aspects of this grim past such as its suitability to be called a "genocide" or just a civil war and its socio-economic effects on the victims and their relatives. Troubling, however, is that most of these scholars are either in the diaspora (such as Sabelo Ndlovu- Gatsheni) or are from the region affected by the *Gukurahundi* such as the Midlands and Matabeleland provinces of Zimbabwe (Terrence Mashingaidze and Professor Ngwabi Bhebe are good examples of academics from the Midlands province who have demonstrated some interest in this subject). Failure to recognize this subject as a national problem may be a concern which may hinder its progress within the academia.

Concerns of the Traditional Leaders

Among traditional leaders in Zimbabwe, the most vocal on the issue of the *Gukurahundi* are traditional chiefs from the Matabeleland region especially those from Matabeleland South who are chaired by Chief Senator Masendu Dube Sindalizwe and chiefs from Matabeleland North who are usually led by Chief Nhlanhlayamangwe Ndiweni. In an interview and conversation with Trevor, Ndiweni (2021) has stressed the need to bring to book those responsible for the *Gukurahundi* atrocities as the first step to reconciliation. He stresses that without doing this, reconciliation cannot be achieved.

Voices of religious leaders

The role of the church in bringing peace and reconciliation in post-independence Zimbabwe is already a debatable issue, as such most political atrocities in the country have not received a convincing attention and unveiled reprimand from the religious circles. Since most Pentecostal church leaders have concerned themselves more with the "prosperity gospel" than political injustice in the country, the ruling party has always tried to woo leaders of the apostolic sects to support its policies and agendas. However, some churches organizations especially those from *protestant* churches have raised concerns over national healing and reconciliation. The International Religious Freedom Report for 2019 states that:

> *Multiple church organizations, including the Churches Convergence on Peace, ZCC, and Catholic Bishops' Conference, released letters appealing for tolerance, national unity, peace, reconciliation, healing, and stability while calling on the government to uphold the constitution and protect citizens' political rights* (US Department of State, 2019, p. 5).

However, as compared to the engagement of religious leaders in matters of justice and reconciliation in South Africa, as exemplified by the work of the late Desmond Tutu (Crompton, 2007), religious leaders in Zimbabwe have not demonstrated much enthusiasm and interest of actively engaging the problem of political injustices and human rights abuses such as the *Gukurahundi* atrocities. Commendable and isolated cases of religious intervention against human rights abuses in Zimbabwe, come from the Catholic Church in Zimbabwe. The contribution of the Catholics includes the report released on the *Gukurahundi* disturbances which was released in 2007 (Catholic Commission for Justice and Peace in Zimbabwe, 2007) which has provided primary data on the nature of the Matabeleland atrocities. It also includes the intervention made by the Catholic bishops who in 2020 wrote a letter of protest highlighting their displeasure in the military's "reign of terror" in post Mugabe Zimbabwe.

Perhaps the church's passive stance towards human rights abuses in Zimbabwe (especially the *Gukurahundi* atrocities) is not only complicated (as also observed in the case of academic contribution) by ethnical interests but also by the observation that in Zimbabwe, religious groups "that have an alternative ideology to that of the ruling party are treated with antagonism, and various strategies are used by the regime to silence dissenting voices" (Dube, 2021: 2). Furthermore, it needs to be noted that instead of waiting for the church to engage with Zimbabwe's grim past and the issues of human rights abuses, some church leaders have addressed these issues as *academics*. A good example is that of Reverend Dr Isheanesu Gusha of the Anglican diocese, who authored an article titled: "Memories of *Gukurahundi* Massacre and the Challenge of Reconciliation" (2019). In this article, Gusha (2019) explores the possible factors which may explain the failure of the project of reconciliation in Zimbabwe. Gusha cites amnesia

(which he defines as an officially imposed form of forgetting) and lack of truth as the main culprits of this failure.

Ubuntu/ *Unhu*: Ncube (2021), Chemhuru and Shizha (2012)

The concept of *Ubuntu*/*Unhu* (humanity or being human) is an African ideology which is entrenched in communal understanding and the production of a harmonious living environment. It is therefore, a philosophy that is based in the importance of a community (Ncube, 2021), and which recognizes that to be human is to affirm one's humanity by recognizing the humanity of others, and on that basis, establish respectful human relations with them (Samkange, 1980). It therefore, fosters cultural values such as love for one another, brotherhood, and respect of life (Chemhuru & Shizha, 2012).

Chemhuru and Shizha (2012) focus on how the *Unhu*/*Ubuntu* concept can be promoted through education and thereby ensuring that it becomes part and parcel of our African cultural heritage, and a resource that can be used to promote reconciliation and peaceful communication among members of the society. They state for instance, that "education for reconciliation through *unhu* reflects on the relationship between the concepts of reconciliation and *unhu*. It must be an education that fosters respect for the community and other individuals" (p. 23)

In the same line of argument, Ncube (2021) has underscored the value of *Ubuntu* as an "Afrocentric" model of bringing restorative justice in Zimbabwe. However, unlike Chemhuru and Shizha (2012), Ncube does not demonstrate an interest in the long path of cultivating the spirit of *Ubuntu*/*Unhu* through the educating system. His argument is that it is the mandate of the government to consider and be guided by *Ubuntu* in resolving conflicts and effects of atrocities such as the *Gukurahundi* "genocide" in the Zimbabwean society. He concludes for instance, by stating that:

> *The failure, by consecutive ZANU-PF governments, to identify the salience of ubuntu has led to the persistent marginalization of ethnic minorities and also the violent impunity of governance characterized by human rights abuses, rampant corruption and absence of rule of law* (p. 138).

This "great expectation" of the government to be "humane" and the emphasis on this important mandate is also evident in Chemhuru and Shizha's (2012) analysis of the role of *Ubuntu* in reconciliation. Like Ncube, they conclude by highlighting this mandate of the government of Zimbabwe:

> *The Government of Zimbabwe should use education must foster sustainable development and active and effective global and local citizenship, as well as contribute to strengthening democracy, dialogue, mutual understanding and the peaceful resolution of conflict, while preventing the promotion of all forms of extremism and violence (sic)* (p. 25) (personal emphasis).

However, putting all this burden and mandate in a political institution which is guided, to quote Ncube (himself) by the "foreign Dutch-Law" is to expect a miracle is resolving the misdeeds of the past in Zimbabwe. This is important to understand especially considering that most of the alleged perpetrators and interested occupy senior positions in the government. To expect the alleged perpetrators to be driven by the spirit of *Ubuntu* and hand themselves to the mercy of the justice system in Zimbabwe would be trivializing the complex matrixes of the political arena, especially the African political arena where holding on power for as long as it takes, and whatever it takes is an enticing vision for most politicians.

"Forgive and forget": A religious approach

In general terms, the Christian biblical text discourages vengeance which it allots to God alone (English Standard Version Bible, Deuteronomy 32:35). However, it is contentious to equate justice to vengeance. If, for instance, calling for justice can be taken (from this biblical perspective) as an act of being vengeful, then all the systems of justice and the judiciary will be rendered unnecessary. Without these systems of law and order, societies will degenerate into chaos where criminality will flourish, and accountability vanish. Hence, to a certain extent, the justice system promotes accountability. Without it, the issue of the *Gukurahundi* "genocide" may amount to a troubling simplicity: a case of forgiving and forgetting, and leaving vengeance to God. However, this does not mean that the very same system of justice is not susceptible to manipulation, especially by those who possess material and political power. Evidently, despite the right to life being enshrined in the Zimbabwean constitution, in the case of the *Gukurahundi* atrocities, the Zimbabwean justice system has so far failed the victims of these atrocities.

Although the terms "forgive and forget" are common in biblical discussions associated with reconciliation, they are not found in one sentence or verse. Some texts emphasis on forgiveness, while some on forgetting (not becoming vengeful). Interestingly, however, used together in a single sentence, these two words are evident in Robert Mugabe's inaugural speech (as Prime Minister) which he made on the 4th of March 1980:

> *I urge you, whether you are black or white, to join me in a new pledge to forget our grim past, forgive others and forget, join hands in a new amity, and together, as Zimbabweans, trample upon racism, tribalism and regionalism, and work hard to reconstruct and rehabilitate our society as we reinvigorate our economic machinery* (p. 3).

Cleary, at this time, Mugabe's vision of the new Zimbabwean society *seemed* to be inspired by the biblical approach to conflict resolution: the "forgive and forget" approach. However, how the ZANU (PF) government handled issues of conflict soon after they gained power betrayed this speech and approach. Considering that they have been described as "ethnically" inspired (see for instance, Katri, 1996), the *Gukurahundi* atrocities

are the first evidence of betraying the "brotherly" love he pledged in his speech, through encouraging Zimbabweans to "join hands in a new amity, and together, as Zimbabweans, trample upon racism, tribalism and regionalism" (p. 3). The second major betrayal of the "forgive and forget" belief is evident in his campaign of "correcting" the injustices of colonialism by taking land from the former colonizer and giving it back to the majority black Zimbabweans. The land Reform of 2000, can therefore, be deemed as "corrective" and an evidence of the fact that the injustices of the past have not been *forgotten*. One will, therefore, wonder why the "forgetting" needs to be selectively applied depending on who commits the injustice.

Within the scholarship of religion (Christianity in particular), the "forgive and forget" approach is sometimes entrenched in what has been referred to as the *Jesus' ethics* of non-resentment (Chamburuka & Chamburuka, 2016). For instance, Chamburuka and Chamburuka (2016) explore *Jesus' ethics* of non-resentment in the context of two schools of thought: the first one which suggests that non-violence ethics should be applicable *unconditionally* and the second school which argues that these ethics should be accompanied by *confession*, *truth* and *justice*. In relation to Zimbabwe's socio-political violence of 2008 and 2013, Chamburuka and Chamburuka (2016) conclude that Jesus's ethics can only be applicable productively when guided by truth, confession, and justice, suggesting that they do not subscribe to the first school of thought which supports an "unconditional" application of Jesus's ethics of non-resentment. These views, therefore, augment the argument expressed in this article that reconciliation can only be considered when preceded by a process of justice. This process should be mainly provided for in "internal" legal frameworks (in consultation with the Zimbabwean constitution) and in consultation with international legal frameworks such as those provided for by the International Court of Justice).

Willy Brandt's *Kniefall*: Lessons Learnt

It is usually difficult to discuss issues related to human rights violation, conflict, justice and reconciliation without making reference to the national socialist terror of the *Third Reich* which took place between the years 1933 and 1945. Beside the ultimate crime of plunging the "world" into the Second World War where many lives were lost, it is the holocaust, the "slaughtering" of Jews in concentration camps (sometimes referred to as the "death camps") such as the Warsaw ghetto in Poland which paints a vividly grimmer picture of the atrocities of the nationalists.

Although the Nazi regime fell in September 1945, its burden of crimes against humanity remained on the shoulder of every German, on both sides of the divided Germany (1949–1989/1990) and even after the 1990 reunification of Germany. The need to address this burden is adequately addressed by the German literary historian Wolfgang Emmerich (2015) who notes that in their formation, the post-World War Two German nations (the German Democratic Republic and the Federal Republic of Germany) were forced to ad-

dress the burden and memory of "fascism" as a basis of their new identities. According to Emmerich, while East Germany distanced itself from the Nazi atrocities and claimed that the remaining Nazis were in West Germany, West Germans embraced the fact that Nazis were indeed Germans and that as Germans they had to share the admission of guilty. While this admission was not clearly vivid when the Christian Democrats (CDU) being chaired by Conrad Adenauer were in charge of the chancellery of West Germany, it become more vivid when the socialists led by Willy Brandt took over the chancellery in October 1969. The socialists rebranded the foreign policy of West Germany basing it on *Ostpolik*, a focus on re-mending relations with the Eastern part of Europe.

With the effects of the Nazi terror and the holocaust more pronounced in the eastern party of Europe especially in Poland where the fascists had created one of the largest concentration camps the Warsaw Ghetto, the holocaust memory was always going to be a stumbling block to the *Ostpolitik* campaign. Hence, the need to come to terms with it and the humble gesture of visiting a memorial site of the Warsaw Ghetto was a significant work towards reconciliation. However, it was not just this visit which moved the survivors of the "camps of death" and the world at large, but rather his humble gesture of kneeling down (famously known as the *Kniefall*). It became a symbol of atonement which projected the German society as a repentant sinner. It therefore, had some religious connotations and influence. To demonstrate the significance of this act, a plaque showing Brandt kneeling in front of a wreath of flowers was erected at the site.

What is significant to note from Brandt's *Kniefall* and his *Ostpolitik* in general is that this process was necessitated by the clearance of political impediments which might have complicated if not hindered it from happening. The path to the reconciliation with the east (and indeed with the world at large) was firstly cleared in 1945, when the Nazi Germany collapsed allowing for the process of *denazification* to begin. This process of cleansing Germany of all known Nazi elements was twofold, firstly it involved bringing the former Nazi perpetrators to justice. This happened mainly through the Nuremberg trials which took place from 1945 to 1948. The second part involved partitioning Germany into administrative zones of the four allied powers (France, United States of America, Great Britain and Union of Soviet Socialist Republics). Consequently, the German territory was divided into two states which were founded in 1949. East Germany which was an administrative area of the communist USSR, and West Germany which was an administrative area of the other three "capitalist" powers. Hence, by putting Germany under administration, the allied powers ensured that the Nazi elements are stifled and discouraged in the German society. The German society was therefore, rid of the perpetrators of Nazi atrocities and thus reconciliation processes could begin. When the *Kniefall* took place in 1970, the German society was at a better position to come to terms with its past. At this stage, any cultural or religious approach to reconciliation was now feasible, hence Brandt's biblical posture of a repentant sinner, who kneels and looks down in shame and self-reproach.

There are a number of lessons drawn from the German experience which may aid in explaining impediments of reconciliation efforts in Zimbabwe. First, the Zimbabwean community needs to identify the machinery which engineered the *Gukurahundi* atrocities, and evaluate whether it has been properly dismantled to create a platform of restoration and reconciliation. Clearly, the ZANU (PF) government which masterminded the "genocide" is still the ruling party in Zimbabwe, and one of the active participants of this politics of turmoil, Emmerson Mnangagwa, who was the leader of intelligence at the time occupies Zimbabwe's upper chair. The Zimbabwe National Army, from whose loins the "murderous gang" of the Fifth Brigade came has undergone not much reformation to bring to book those involved in the *Gukurahundi* atrocities. Hence, under the current political administration, to expect a replica of the Nuremberg trials in Zimbabwe will be taking a very long walk to justice and restoration in Zimbabwe. This has been further complicated by the increase in the power to meddle in internal politics that the "civilian" Zimbabwean ZANU (PF) government has given to the army. By engineering the removal of the "feared" former president Robert Mugabe, the Zimbabwean army has demonstrated no tolerance to those who threaten not only its leadership but also its political interests.

Secondly, it took Germans two and half decades to address their grim past, and to show atonement. It took a different generation, a generation with no direct link to the atrocities of fascism to address the issue of restoration in a progressive manner. It took the effort of the socialist party (SPD) to consider reconciliation, not only with the wronged neighbors but among the Germans themselves (East and West Germany). As a result of the efforts and policies of the SPD, reconciliations treaties were signed which included the Treaty of Moscow (USSR), Treaty of Warsaw (Poland), and the Basic Treaty of 1972 with East Germany (formally known as the German Democratic Republic). Hence, if "restoration" and reconciliation can be achieved in Zimbabwe, it would likely take a different generation to do this. A generation which has no direct link to the *Gukurahundi* atrocities and is not a beneficiary of them. Considering the fact that the youth seem to be the backbone of the opposition politics (the revisionist politics of change) in Zimbabwe, and also considering the first point raised above, it is this young generation of Zimbabwean politicians which is better positioned to revise the sins of their forefathers and bring about reconciliation.

Lastly, as demonstrated by Brandt's "biblical" gesture of kneeling down, cultural and religious intervention can only be important at the final stages of the reconciliation process, after the process of justice. Political impediments cannot allow religious and cultural intervention to act as a vehicle of reconciliation. Such intervention can only be feasible after the removal of these impediments through constitutional means. With political reform being a concern of most Zimbabweans, especially those interested in addressing the issue of the *Gukurahundi* atrocities, cultural and religious intervention will not bring much progress towards reconciliation in Zimbabwe.

Conclusion

This article explored the challenges which emanate from the discourse of reconciliation in Zimbabwe, demonstrating the need to foster justice and accountability before considering the role that cultural and religious concepts such as *Ubuntu* and the "forgive and forget" approach could play in the process of reconciliation. In order to shed light on the need for justice as a path to reconciliation, the article made reference to the case of West Germany, where it highlights how (following years of *denazification*) Willy Brandt's SPD led administration engaged in a campaign of reconciliation with the former victims of fascist terror (especially in the eastern part of Europe). Thus demonstrating the need for justice to open the path to reconciliation. Considering their challenges, cultural and religious concepts can only play a supportive (and secondary) role in the process of reconciliation in Zimbabwe. While it is not clear how *Ubuntu/ Unhu* should be operationalized to established a *formal* or *structured* way of dealing with the a grim past such as that of the *Gukurahundi*, the "forgive and forget" approach poses its own problems, one of them being a "too simple" way of dealing with this grim past of post-independence Zimbabwe. Without much thought on the long-term effects of these atrocities, the latter presents two words as a solution to this visible deeper problem: just *forgive* and *forget*. Such "simplistic" analysis is also evident in Robert Mugabe's evaluation of the atrocities as merely a "moment of madness". Through these lines of argument, the article demonstrated the challenges that cultural and religious concepts may face when proposed as primary vehicles of reconciliation in Zimbabwe. The paper therefore, argued that these may only be proposed as supporting concepts especially in addressing psychological effects of the trauma caused by the *Gukurahundi* atrocities. *Political reforms* which will remove the remnants of the *Gukurahundi* machinery and Justice provided through the constitutional law should be the primary vehicle through which the case of the *Gukurahundi* atrocities is addressed. A progressive engagement with this case can be an important yardstick with which the *independence* and *non-prejudiced* position of the justice system in Zimbabwe can be evaluated.

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Dispute Resolution on Blockchain: An Opportunity to Increase Efficiency of Business Dispute Resolution?

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Abstract: With the advent of blockchain technology and smart contracts, the finance, business, and legal industries have witnessed a drastic shift in their modus operandi. A *smart contract* does not necessarily mean and include a legally binding contract as it is under the legal regime but is instead a computer software built on blockchain technology, which is competent to self-execute its functions, as well as self-enforce its results. *Smart contracts* with the help of complex algorithms have raised the efficiency of conducting business online. Consequently, disputes pertaining to smart contracts have also increased. The utilization of *smart contracts* in the legal industry has assisted businesses in maintaining the efficiency gained in the initial phase of the process and resolving their *smart contract* and/or other disputes expeditiously. The pivotal question that knocks on our door is whether a decision rendered by an autonomous computer program is binding on the parties, specifically an award rendered in a *smart contract* arbitration? This article explores rudimentary knowledge pertaining to blockchain and *smart contracts*, and analyses the validity of *smart contract* dispute resolution mechanisms and their role in enhancing business dispute resolution efficiency. Lastly, it sheds light on the legitimacy of *smart contract* arbitration under the international conventions which regulate international commercial arbitration.

Keywords: Dispute resolution, Blockchain, Smart contract arbitration, Efficiency, Legitimacy.

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Booting-up the *Smart Contract* Software — An Introduction

Technological advancement brings about diverse alterations in our surroundings and the environment we work in. The blockchain platform is one of the technologies which possesses the capability to transform our lives and how we experience the Internet — from simple cloud storage to encrypted decentralized ledgers for data storage; from fiat currency to cryptocurrency; from in-person service bookings to autonomous online service bookings; and from traditional face-to-face arbitration to smart contract arbitration, all powered by blockchain technology. Blockchain is one of the most discussed and debated technologies of recent years. *Smart contracts* are software built on the blockchain platform which can execute multifarious service functions and obligations, including execution and enforcement of legal obligations in isolation of any external or third-party assistance. Consequently, the life cycle of *smart contracts* is entirely digital and autonomous, due to which users experience expedited and efficient resolution of their disputes.

With the integration of blockchain into the finance and services sectors, businesses have started providing online dispute resolution platforms relating to certain types of disputes, expediting dispute resolution and enhancing the efficiency of their businesses. Various companies have adopted different procedures and underlying codes to make this a reality. Therefore, the legal question that surfaces for inquiry is whether the decision or award of smart computer software is binding and enforceable through a national court?

This article sheds light on the elementary knowledge relating to blockchain technology and how smart contracts software embedded on the blockchain platform assists in enhanced efficiency in resolving business disputes. Secondly, the article analyses the legitimacy of smart contract arbitration in light of the New York Convention, United Nations Commission on International Trade Law Model Law on International Commercial Arbitration, and other international instruments relating to international commercial arbitration. Thirdly, it discusses the advantages and disadvantages of smart contract arbitration from a practical perspective, followed by a conclusion and outlook.

An Outline of Novel Technologies — Blockchain and *Smart Contracts*

The totality of implications brought about by any novel technological development is not estimable, and blockchain is no different. We can, however, interpret blockchain functioning and its uses in a piecemeal fashion. Keeping in mind the objectives of this article, we will briefly outline blockchain technology and *smart contracts*.

Blockchain
— A Block Ledger Technology

A blockchain stores data in parts at different places and then links it together. It is a distributed ledger that keeps information in blocks. Christidis and Devetsikiotis (2016) defined blockchain technology as "a decentralized digital database that consists of secure transactions that are copied and shared amongst the members of the network". It is important to note that there is no single blockchain technology but multiple different implementations working on the same fundamentals, storing data onto various links, and making a chain of these decentralized links to confirm the validity of data.

In general, blockchain technology is identified by the following characteristics (Kreis & Kaulartz, 2019; Michaelson & Jeskie, 2019; Hourani, 2020):

1. It is a method to collect information, i.e., a database.
2. The information is not stored centrally as it would have been in any traditional database but is decentralized on different computers at different places. Whenever any new information is fed into the database, a copy of the new data is stored in each of the existing blocks/computers, which means all information is saved several times.
3. The decentralized information is stored in interconnected blocks, thus blockchain. Each block contains some information of the preceding block, which is done using hashing. Each block contains a unique code from the previous block to validate transactions. Any change in a block would invalidate the unique code and break the link.
4. The method of validating data or transactions ensures the safety of the data fed into such blocks.

Blockchain technology enables anonymous users to establish an impregnable trust in each other in an efficacious, cost-effective, and distributed fashion. Blockchain technology has created a faith that cannot be breached and is absolute, extinguishing the need for intermediaries. However, blockchain technology by itself is just half a part of these machine-implemented self-executing contracts. The other half is the software code that manifests the codes on the blockchain, called *smart contracts*.

Smart Contracts
— Self-executing-enforcing computer software

Smart contracts are a more advanced application of blockchain technology, and they are the product of proliferation of cryptocurrencies and distributed ledger technologies (Koulu, 2016). A *smart contract* is a computer software that runs on a blockchain and can benefit from its unique characteristics. Often, when people hear the term *smart contract*, they think of an autonomous legal contract binding parties to a legal relationship. The term *smart contract* is a misnomer, as it does not always constitute a legal agreement. Instead, it is a computer program that validates the information and automatically

transfers digital assets from one party to another if certain preconditions, which were fed into its code, are met. A *smart contract* may be used to make bookings online for varied services such as flights, parcels, buses, trains, and others. If the *smart contract* receives any information validating a successful journey or delivery it will automatically transfer the money to the service provider. Suppose there is any impediment in successfully completing the service such as cancellation or delay. In that case, the *smart contract* will automatically take it into account and run the code to either refund the money to the customer's account or give the customer some other advantage, as per the contract and code. Looking from a legal perspective, *smart contracts* can perform certain legal obligations on part of the party, resulting from a legal agreement. That is to say; the software can automatically transfer the funds to the seller upon successful delivery of a shipment to the customer.

What is expected in all smart contract software is that the preconditions that result in the execution of the transaction are not verified by any third party but by the software itself (Kreis & Kaulartz, 2019). Such *smart contracts* eliminate the need for both virtual trustees and external verification and are thus cost-and-time-effective. Moreover, once the software has begun to run, neither party can interfere with its operation.

Smart contracts are coded by IT industry experts, and once coded, they execute all functions without requiring intervention. The nexus between the real-non-digital world and the blockchain is known as an 'oracle' — it is through the oracle interface that relevant information enters into the digital world (Kreis & Kaulartz, 2019). In reference to the above illustration, an oracle provides relevant information, such as real-time flight schedules, delivery receipts, and others, to the *smart contract* enabling it to show the customers real-time flight status and digital parcel tracking. Thus, a *smart contract* does not entail a legal contract, but in reference to this article, *smart contract* will include a smart legal contract, setting out and governing the parties' rights, duties, and obligations.

Smart Legal Contract Dispute Resolution — Why to Choose?

Like any other traditional contractual relationship, a relationship arising out of a *smart contract* may be subject to disputes between the parties. The use of a *smart contract* will increase the efficiency of the transactions during the performance stage of the contract, but if, there arises any dispute concerning the performance of the *smart contract*, it may add complexity and delay in the completion of the contractual relationship. Irrespective of the case or the nature of the dispute, the parties would not want to lose the efficiency gained in the initial stage of the contract and would like to carry at least a part of it through effective dispute resolution means.

A myriad of disputes might arise in executing obligations under a *smart contract*. These disputes may or may not relate to or arise out of the concerned *smart contract*.

Fundamentally, the dispute resulting from the *smart contract* does not significantly differ from the traditional dispute. In general, a *smart contract* dispute may revolve around any complex issues relating to software or the blockchain, involving the questions pertaining to its functioning, alleged bugs in the software, or the underlying blockchain. For example, there may be impediments in the *smart contract*'s function, such as the oracle feeding incorrect information into the system. Moreover, the dispute may also relate to purely legal questions, such as the meaning and interpretation of specific legal terms which are not encoded into the *smart contract* code by the coder ('(un)foreseeable,' 'vis major,' '(un)reasonable').

Considering the dispute in isolation of its technical complexity, judges and arbitrators will adjudicate the dispute by traditional means of dispute resolution and render a binding decision. But if any perplexing technical questions need to be answered to render a decision, the assistance of an IT expert is unavoidable and imperative.

Nevertheless, as reflected above, one of the pivotal benefits of deploying *smart contracts* is that they raise the efficiency and reliability of the business transaction. If the parties resort to conventional means to resolve their dispute, the efficiency achieved during the transitional contractual performance will possibly be neutralized. The claim is initiated by filing a formal statement of claim or a notice of request for arbitration before the court or the arbitral institution. The adjudicating process takes several months to conclude, depending on the nature or size of the dispute involved. This substantial disruption of the initial efficient process may even result in a claimant's reluctance to pursue their claim in the first place. The loss of efficiency will manifest during the commencement of the dispute resolution process.

The Silicon Valley Arbitration & Mediation Center's (Silicon Valley Arbitration & Mediation Center [SVAMC], 2017) survey regarding dispute resolution in the technology sector shows that the participants perceived costs (64 percent), time taken in the resolution of disputes (57 percent), the inexperience of judges with the subject matter in question (46 percent) as the main problem with litigations. On the other hand, the expertise of the arbitrators (80 percent) and the time taken to resolve disputes (54 percent) were the main advantages of arbitration, with cost being number seven on the list. The parties who make use of a *smart contract* for their business transactions have an inherent interest in preserving at least a part of the transactional efficiency through a dispute resolution mechanism that employs a specialist neutral person. Arbitration is currently the most popular private method of dispute resolution for B2B disputes (The Queen Mary University of London, 2018). Moreover, as pointed out by Koulu (2018), blockchain technology, as with other types of digital technologies, is bound to have an impact over traditional methods of dispute resolution.

These general interests coalesce into and contribute towards the need for a smart contract dispute resolution mechanism. An automated mechanism is utilized to re-

solve any dispute arising out of *a smart contract*, which is also encoded into the smart contract's code.

Understanding the Technical Implementation of Smart Contract Dispute Resolution — The Autonomous Dispute Resolution Protocol

As mentioned above, a *smart contract* cannot be stopped, interfered with, or amended in its code once initiated to execute. Stopping, interfering, or amendment can only be done if such a move is contemplated beforehand. Interfering with the code goes against the concept of self-execution and non-interference of parties. And hence, the power to interfere with the *smart contract* must be (a) foreseen in principle, (b) embedded in its code, and (c) it should be granted to a reliable third party (Kreis & Kaulartz, 2019). Such a reliable and trusted third party will act as an oracle, permitting it to make determinations outside the *smart contract*'s ken. The oracle will insert relevant information into the *smart contract* and, if necessary, influence its execution to illuminate the third parties' determinations. There are as such no restrictions as to who or what the trusted third party could be from a technical viewpoint. But in light of the ethos and principles of using a *smart contract*, the oracle shall only be enabled to interfere with the *smart contract* in cases of necessity, such as if the party expresses dissatisfaction with the working of the software or the result produced.

The above-stated considerations reflect the cornerstone of the technical implementation of a smart contract dispute resolution system, which functions as follows (CodeLegit White Paper on Blockchain Arbitration, n.d.).

The parties trigger the *smart contract* that has embedded foreseen interference code. The *smart contract* self-executes. The software provides a grace period to the parties to raise an objection to the *smart contracts*' functioning and result. If the party raises an issue before the expiry of the grace period, it will pause the execution of the *smart contract*. The asset flow may or may not be reversed (single or multiple transactions), or it may have absolutely no effect on the *smart contract*. Raising the issue will trigger an autonomous dispute resolution protocol through the 'Dispute Resolution Library'. The *smart contract* can directly enforce the outcome or the specific relief granted of such dispute resolution process by implementing it by itself. This is one illustrative process that forms the smart contract dispute resolution process outline. Still, the forum and specific procedure for smart contract dispute resolution are practically unlimited and depend on the parties' interests and needs in each case (see Figure 1).

Smart Contract Dispute Resolution Mechanisms — Enhanced Efficiency in Business Disputes

Alternative dispute resolution (ADR) mechanisms based on contractual obligations allow the parties to tailor the applicable procedural rules as per their need; specifically,

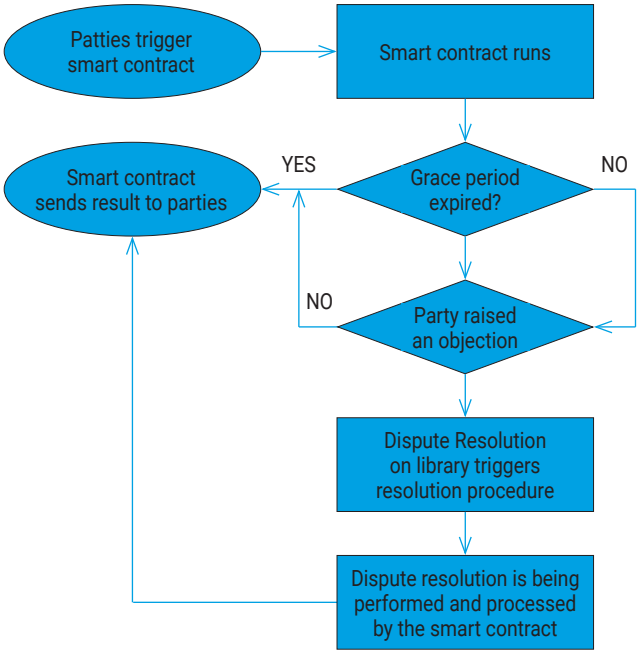

Figure 1: Function of a *smart contract*
Source: CodeLegit, n.d.

ADR methods including arbitration, mediation, conciliation, expert determination, and private adjudication allow for considerable flexibility and party autonomy (Born, 2014). Unlike an arbitral award, the decision in the rest of ADR methods, be it mediation, expert determination, or adjudication, is not enforceable as a decree on the parties. Still, there is no doubt that they allow the parties to settle their differences cost-effectively, specifically in cases where the difference relates to any question of fact, such as payment disputes, simple logistics disputes, and others. Differences involving simple questions and insignificant amounts of money require a more straightforward procedure. Kreis et al. (2019) found that, especially in the Information Technology (IT) sector, parties are more inclined towards fast resolution of their disputes in somewhat isolation of the actual legal implication.

Let's look at the different dispute resolution mechanisms adopted by leading online payment or trading corporations, such as PayPal, WazirX, or similar platforms. It is axiomatic that these corporations prefer expeditiousness to binding decisions for low-value claims. One example of such dispute resolution mechanism (WazirX, n.d.) is the robust dispute resolution of peer-to-peer (P2P) disputes arising between a seller and a buyer on WazirX. If the seller or buyer is of the opinion that there exists any discrepancy in the P2P cryptocurrency transaction, he can move such P2P transaction to dispute mode.

The disputed transactions are multi-checked through a fool-proof process providing absolute accuracy while reviewing the dispute. Then the dispute team can make a fair decision to finally settle the dispute in favor of either seller or buyer. The dispute resolution team relies on blockchain to validate the payments.

Another mechanism (PayPal, n.d.) is adopted by the PayPal Dispute Resolution Process. The process facilitates the settlement of disputes regarding any purchase or transaction done via PayPal. The buyer may initiate a dispute by opening a dispute in the PayPal Resolution Center by explaining the issue. The issue of such a dispute raised by the buyer may be regarding an item not received or an item significantly not as described. There are no processing fees for such issues, and the owner of the process or policy is PayPal. Once the dispute has been brought to the seller's attention, they are enabled to respond to the buyer's issue within a few days via e-mail. This opens a direct communication between the seller and the buyer and attempts to facilitate mutual settlement between them. If they fail to settle mutually, the issue can be escalated to the next stage where there is the direct involvement of PayPal and is called a 'claim". Therein, PayPal relooks into the claim and requests the seller to render proof of a document, delivery, or other documents. On this basis, PayPal renders a decision. It is non-binding expeditious dispute resolution of international low-value claims.

Moreover, another protocol identified as 'double-blind bidding' ("ICDR Manufacturer/Supplier Online Dispute Resolution Protocol" [MSODRP]) is also employed by various online service providers and dispute resolution organizations, including International Centre for Dispute Resolution (ICDR). Double-blind bidding is a confidential process of dispute resolution which allows the parties to offer and demand against each other without letting each other know what has been offered or demanded and evaluated by an unbiased third-party autonomous system. The system (MSODRP) evaluates the amount offered and demanded, and if the offer is greater or equal to the other party's demand, the system declares a settlement and considers the dispute resolved. ICDR Double Blind Bidding Manufacturer/Supplier Online Dispute Resolution Protocol (MSODRP) assists the manufacturer and the supplier parties to maintain the cordial relationship by resolving minor payments disputes within a short time frame of sixty days.

Keeping in mind the nature and magnitude of the dispute, various protocols could be employed to resolve business-to-business disputes expeditiously. As pointed out by Mcllwrath (2010), these uncomplicated protocols based on simple systems are indeed used in commercial disputes. Smart contract non-binding dispute resolution protocols are best suited for small-value and high-volume disputes. Besides an agreement to resolve disputes via these novel and expeditious smart protocols, parties should also explicitly provide a binding and final resolution, like arbitration.

Smart Contract Dispute Resolution Mechanism Legitimacy — Smart Contract Award Upheld or Quashed?

The above illuminated technical implementation of dispute resolution via the Dispute Resolution Library initiates an independent dispute resolution process. Nevertheless, the question arises whether such implementation of smart contract dispute resolution is sufficient to bind the parties legally or are there any further requirements to uphold such a decision in a court of law. Where disputes arising out of a *smart contract* are directly referred to a court of law, such a question becomes irrelevant as the court follows its own procedure to adjudicate any matter made before it. But the question becomes significant regarding cases referred to any alternative dispute resolution mechanism, such as arbitration, conciliation, mediation, or adjudication.

Despite the numerous potential dispute resolution mechanisms which could be utilized by parties to resolve their dispute outside the court, the focus is drawn to the requirements of arbitration proceedings, specifically because arbitration is the only method that requires specific formal prerequisites under the national laws (inter alia, Romania Code of Civil Procedure, 1965; Indian Arbitration and Conciliation Act, 1996; U.K. Arbitration Act, 1996), and international conventions (New York Convention [NYC], 1958; United Nations Commissions on International Trade Law [UNCITRAL] Model Law,1985) and arbitration is the only alternative dispute resolution method with a protocol similar to that of judicial adjudication rendering a binding decision; nationally, internationally and off-blockchain. Currently, there are no uniform standard arbitration procedures for arbitrating disputes involving smart agreements (Hourani, 2019). They are just very new. The purpose of this section is to provide an outline of how various aspects of smart contract arbitration are implemented under the applicable law and assess whether arbitration can be considered having business sustainability to enable sufficient access to justice from a legal perspective.

Smart Contract Arbitration Agreement — Indispensable Requirement

To conduct valid arbitration proceedings, specific prerequisites must exist to make the award passed binding, recognizable, and enforceable through the national courts. Article II(1) of the NYC provides for an indispensable requirement of an 'agreement in writing' concerning the subject matter of the dispute capable of settlement by arbitration (NYC). The peculiar feature of a smart contract arbitration is that the arbitration agreement regarding its form is entirely authenticated in computer language and not in spoken languages. This raises the question of whether an arbitration agreement digitally signed by the parties containing the agreement in a code language can be validated and recognized by the legal framework.

Article II(2) of the NYC elucidates the term 'in writing' as an arbitration clause in a contract or a whole agreement signed by the parties or that which form part of letters or telegrams exchanged between the parties (NYC). The scope of Article II(2) is limited to conventional modes of communication and agreement but The United Nations Commissions on International Trade Law (UNCITRAL) in its thirty-ninth session passed a recommendation extending its application to electronic communications in international contracts ("Recommendation regarding the interpretation of Article II, paragraph 2, and Article VII, paragraph 1, of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards", 2006). It can be said safely that a broad interpretation can be given to the term 'in writing' under the NYC (Wolff, 2018). By applying these provisions to an arbitration agreement that is in the form of code, it can be said that NYC recognizes such agreements to be in writing. Article VII(3) of UNCITRAL Model Law on International Commercial Arbitration provides that an agreement is in writing if it is recorded in any form and concluded orally, by conduct, or by other means. (UNCITRAL). Article VII(4) states that an arbitration agreement is in writing if it is an electronic communication and accessible for subsequent reference. (UNCITRAL). Thus, the words 'other means' and 'electronic communication' under Article VII of UNCITRAL confirm the term agreement's broad scope in writing, enabling it to include a smart contract arbitration agreement encrypted in code.

There are, however, restrictions under the NYC concerning the recognition of an arbitration agreement in code as satisfying the 'in writing' prerequisite. Articles XI(c), V(1)(a), and IV(1)(b) of NYC direct the national courts back to the pertinent national law. These provisions culminate into a situation where if the national law in issue does not recognize a comprehensive understanding of the term 'in writing' prerequisite of the NYC, then the smart contract arbitration agreement in form of a code might not be acknowledged under the convention in that jurisdiction. The remedy for such an impediment is to include the arbitration agreement in a *smart contract*'s code — the arbitration agreement can be fed in the code in the English language comprehensible to the parties along with the agreement in computer language. This can be done by inserting comments in the *smart contract* code, generally indicated by a hash before each comment line. In such a scenario, the agreement is present in a comprehensible and permanent form for evidentiary purpose before the court. Moreover, it reflects the meeting of the mind of the parties to resort to smart contract arbitration.

For countries that are signatories to the NYC but have not adopted the UNCITRAL Model Law and have instead adopted other international conventions which provide for a more favourable approach towards recognition and enforcement of the award, such an international convention would supersede the applicability of the NYC, as per Article 7(1) of NYC. For illustrative purposes, the United Nations Convention on the Use of Electronic Communication in International Contracts, New York, 2005 favors

a broader interpretation of the term 'in writing'. It can facilitate the national court of such countries to recognize an award based on an agreement in code passed in a smart contract arbitration.

Reference by National Court to Arbitration — Autonomous Initiation Validity

A *smart contract* can automatically trigger arbitration proceedings by executing the arbitration agreement encoded within its code upon fulfilment of certain pre-inserted stipulations (CodeLegit, n.d.). This autonomous initiation of arbitration proceedings eliminates the need for an arbitration administer to initiate the arbitration proceedings. Article II(3) of NYC stipulates that a national court shall refer the parties to arbitration if there exists an arbitration agreement between the parties on the point of the issue raised before the national court, except if the court finds the agreement to be null and void, inoperative, and unperformable. There is no inconsistency between Article II(3) and the autonomous initiation of the arbitration proceeding as Article II(3) speaks of a situation prior to initiation of arbitration proceedings. However, if the agreement contained in the form of code is null and void ab initio and the *smart contract* executes the coded agreement, it would breach Article II(3) unless a programmer intervenes and terminates the autonomous arbitration process. From a legal perspective, there is not much difference between the automated enforcement of the arbitration agreement and the traditional commencement of arbitration proceeding as there is a meeting of minds in both, so this would not necessarily be a problem from a legal perspective.

Prerequisite of Due Process in Arbitration — Validity of The Digital Arbitral Proceeding

Depending on the coding style, the design of the smart contract arbitration may vary; the coder may encrypt an utterly autonomous process of conducting the arbitral proceedings. In such situations, keeping in mind the *curial law*, an issue may arise regarding the opportunity of being heard in arbitral proceedings. As the proceeding was conducted entirely autonomously, the parties were not given the opportunity to present their arguments in the arbitral proceedings. The UNCITRAL Model Law under Article 18 stipulates that the parties shall be treated equally and shall be given a full chance to present their case before the tribunal. Conducting completely autonomous and digital proceedings without allowing any parties to present their arguments can substantially breach the principles of natural justice.

Attention is drawn to a recent case wherein the Amsterdam Court of Appeal refused to enforce three arbitral awards pertaining to the trading of bitcoins passed in the United States. The Court pronounced that the arbitral proceedings (conducted on email) did not provide the opportunity of being heard to the parties and defend their claim. Hence,

they were in breach of Article 1075Rv of the Code of Civil Procedure of the Netherlands and were thus against the public policy of the Netherlands.

The organization facilitating smart contract arbitration shall encode such a design that ensures and entails a procedure that provides both the parties equal opportunity to present their case and advance arguments to defend their case. One way is to conduct a documents-based arbitration. A smart contract arbitration initiated autonomously and supplemented with all relevant documents and pleadings through the oracle could be vital. It doesn't seem easy, but a right cocktail of computer and human interface would taste just right, facilitating due process, the right to a fair trial, and access to justice.

Smart Contract Arbitration Award
— Form, Recognition, and Enforcement of Smart Award

One peculiar characteristic of a smart contract arbitration decision is that it is authenticated or verified in code and communicated to the parties through the smart contract software (CodeLegit). Authentication of the decision through a code raises the issue of whether the arbitrator(s) can include their reasoning and signature in code and whether such reason and signature would stand the test of the applicable national law. Companies offering smart contract arbitration services often employ real humans to act as jurors or arbitrators to give straightforward 'yes' or 'no' or 'not applicable' answers (Keleros, n. d.). Moreover, specific organizations adopt a system that provides an arbitral award in writing and communicates the written award to the parties through a post, if such is the necessary legal requirement for enforcement of the award under the applicable law (CodeLegit).

The analysis of whether a smart contract award would be recognized and enforced by the national courts under the NYC is imperative. The NYC mandates neither any specific form of arbitral award nor any manner in which the arbitral award shall be communicated to the parties. Under Article I of NYC, there is no mention of what the form, or content, or mode of communication of the award shall be. Article III of the NYC states that each contracting country shall recognize an arbitral award as final and binding subject to the country's national law where such award is relied upon. And a conjoint reading of Article I along with Article VII(1) of NYC (preferential rule on the recognition and enforcement as stated above), it can be safely deduced that an award in the form of a code and communicated over the *smart contract* to the parties can be recognized and enforced under NYC. This safety can be breached by an argument that the coded award could be refused recognition and enforcement under Article V(1)(e) of the NYC, which stipulates that if the national law of the enforcing state does not recognize an award in coded form or communication over the smart contract software, then such coded awards would not be recognized and enforced under the Convention.

Moving onto the enforcement or execution stage of smart contact arbitration. The enforcement of a smart contract arbitration award is digitally executed without the interference of a court. It eliminates the requirement of the national court to enforce or execute the coded award. This again raises an issue pertaining to the legitimacy of such autonomously executed coded awards. Moreover, the automated enforcement of the arbitral award may be in conflict with national laws regarding the recognition of the award under NYC (Ortolani, 2019). Article III of the NYC states that each contracting country shall recognize an arbitral award as final and binding subject to the country's national law where such award is relied upon. Article III refers to the laws of the national jurisdiction for recognition and enforcement of an award. So, whether an autonomously executed coded award would stand before the national court depends on the national law in question.

Advantages and Disadvantages of Blockchain Arbitration — Not Exactly a Losing Battle but an Uphill Battle

This part accentuates the arguments for and against the use of blockchain arbitration in business-to-business (B2B) disputes and its efficiency in resolving business disputes. It illuminates a pragmatic assessment of the need for smart contract arbitrations and its practical limitations as a forum for resolving B2B disputes. The tenets of international commercial arbitration are expeditiousness, cost-efficiency, and fair resolution of commercial disputes, but in recent times, there has been a disruption in the international arbitration community regarding these tenets, specifically cost-and-time-efficiency. International arbitration is taking the role of litigation (Trakman & Montgomery, 2017). One of the many benefits of smart contract arbitration is that it offers efficiency in terms of time and cost (Soares, 2018).

Technology is impacting arbitration as the main contribution is increased efficiency and the reduction of costs (Vanniewenhuyse, 2018). The enhanced efficiency of smart contract arbitration needs to be understood from three outlooks. First, the procedure is entirely digital and is entirely conducted online on a blockchain platform. This eliminates the cost of travel and securing a venue for the proceedings. Second, there is greater accessibility to information and documents. The smart contract arbitration, which is embedded on a blockchain, can easily make accessible all information and documents to the parties remotely. The smart contract software stores all the documents and verifies their authenticity through the blockchain network verification and encryption procedure (Barnett & Treleaven, 2018). Third, smart contract arbitration eliminates human intervention and autonomously functions on the decentralized structure of the blockchain. It implies that there is no need for outside assistance to enforce the arbitration agreement and the award in smart contract arbitrations. The decentralized structure of the blockchain ensures that the platform is transparent and there is real-time visibility and streamlining of the process, reducing the in-person administrative

processing time. It results in enhanced efficiency in the procedure while eliminating the human error involved.

Traditional arbitration at times becomes the victim of a breach of confidentiality and security when the systems used to store case documentation are compromised due to hacking attacks. In Libnanco v. Republic of Turkey (ICSID ARB/06/8), the defendant admitted to obtaining information illegally by hacking the claimant's correspondence. The decentralized and encrypted blockchain technology architecture makes the system more resilient to hacking in comparison to the cloud storage used in traditional arbitration proceedings (Mohsin et al., 2019). Better security is the result of better work done on the blockchain network (Mik, 2017). It is almost impossible to breach blockchain from a single point of entry as the data is stored on the ledgers of all the members of the network with interlocking encryption verified at each step. Thus, the security of the smart contract system is provided by encryption and timestamping each transaction block on the system. Consequently, the smart arbitration procedure benefits from higher security levels than cloud storage, especially in private permissioned networks.

Garth and Capellati's definition of access to justice places paramount importance on the element of cost and time in rendering justice (Garth & Capelleti, 1978). In this regard, smart contract arbitration provides for efficient and secure resolution of disputes enhancing the parties' access to justice, specifically suited for low-value B2B disputes.

Shedding light on the practical limitations of smart contract arbitration, there arise several questions such as whether such coded software is considered to be legally binding and equivalent to a standard contract. This question remains unclear due to the lack of uniform international regulations. Moreover, there is another issue regarding the interpretation of such smart contracts, for example, which of the two should prevail if there exists any inconsistency between the written code and the wordings of the contract (Maxwell & Vannieuwenhuyse, 2018). In addition to this, the chances of detecting any vitiating circumstances are rare, leading to mistakes in the execution of the proceedings due to the automated execution with no way to stop the execution. It is pointed out that shifting towards electronic-based communication without human intervention can cause a multitude of misinterpretations in the execution of the smart contract (Wahab & Katsh, 2018). Moreover, an autonomous arbitration proceeding with an artificial intelligence arbitrator may lack the human touch of empathy, emotions, and morals, even though they are not considered as fundamentals of the process but holds importance from a humanity perspective (Vanniewenhuyse, 2018). These arguments are against smart contract arbitration and reflect the limited flexibility of smart contract arbitration protocols.

Apart from lack of flexibility, smart contract arbitration is also prone to security breaches as it is not entirely failsafe from a security perspective; for example, the private key which is used to access the data and sign the transaction can be stolen to access data

illegally. Moreover, there also exists other data privacy issues (such as, what happens to the data stored on the blockchain?), which further negates the argument of increased efficiency of the smart contract arbitration.

Despite the efficiency of smart contract arbitration in private permissioned blockchain networks, it has been asserted that it would not be pragmatic to implement smart contract systems on a large scale or public domains because of the problems with system responsiveness, meaning thereby that it would perform functions very slowly (Giancaspro, 2017).

Smart contract arbitration provides several pragmatic solutions to some of the issues that hinder the efficiency of traditional in-person arbitration. These solutions facilitate enhanced access to justice in B2B disputes, specifically in blockchain-based disputes relating to supply chain, documentation, logistics, and online bookings. While on the other hand, detractors raise several questions regarding the immutable security and impeccable execution of the procedure that creates technical and legal barriers. In other words, from a practical perspective, the adoption of smart contract arbitration enhances access to justice but can also hinder it at times, making it an uphill battle.

Conclusion

No promise can be an end in itself; a promise must be executed for a successful performance of the contract. Blockchain ledgers are presumed to have immutable trustworthiness and security, incorporated in smart contracts. These smart contract ledgers are destined to be utilized across varied fields — dispute resolution/arbitration is just one of them.

First contracts were digitalized, and now, in the next stage, the contracts are automated — capable of self-execution and enforcement — all possible because of blockchain technology. Smart contract software possesses the capability to increase the efficiency of business transactions significantly, but disputes nonetheless still arise, which must also be settled through a smart dispute resolution system to preserve the efficiency gained in the initial stage of the transactions. The efficiency of business lies in a speedy dispute resolution mechanism which can be substantially obtained by resorting to smart contract dispute redressal mechanism or smart contract arbitration. The year 2020, due to the pandemic COVID-19, largely contributed to the acceleration of blockchain dispute resolution.

Looking from the international legal framework perspective, smart contract arbitration is a legitimate mechanism of binding dispute resolution subject to the fulfillment of the mandatory pre-requisites of arbitration. NYC is relatively favorable towards significant aspects of smart contract arbitration despite being faced with several limitations. The major drawback is at the national level, where NYC is side-lined, and the national legislation occupies the field.

Smart contract dispute redressal mechanism is without any iota of doubt a legitimate but a non-binding alternative dispute redressal mechanism. Notwithstanding the limitations, a smart contract presents the highest efficiency level, especially when used to resolve high volume-less value disputes such as peer-to-peer transactions disputes on financial servers, logistics disputes, flight booking, hotel bookings, etc. Such a simple but intelligent dispute resolution mechanism based on blockchain technology can highly enhance the efficiency of a business. Smart contracts provide the customer with a seamless redressal of his dispute making him a happy and returning customer.

What needs to be developed and designed is a better smart contract arbitration protocol that fulfills all essentials of arbitration and guarantees better access to justice for the parties. Moreover, the legislatures of arbitration-favoring states shall keep turning their wheels to include smart contract arbitration within the ambit of the national arbitration legislation. Such a trusted protocol can only be developed when the leading minds of the legal and information technology sectors work together in such an endeavor.

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Myanmar: Ethnic Cleansing of Rohingya. From Ethnic Nationalism to Ethno-Religious Nationalism

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Abstract: Rohingya, an ethnic minority group in the Rakhine state of Myanmar, has been levelled as one of the most persecuted ethnic groups in contemporary time. For the last five decades, they have been undergoing systematic torture ranging from deprivation of citizenship to mass killing and forceful eviction from their inhabitants. The army of Myanmar spearheads this persecution, which is deemed as genocidal. However, the engagement of radical Buddhist groups and support from the local Burmese population worsened the situation. Along with army intervention and ethnic differences, some economic and geostrategic question is highlighted behind this inhuman situation. But Myanmar consists of more than 100 ethnic groups, and there are other similar areas with similar economic and geostrategic importance. Though there are several instances of conflict in some of those areas, they are almost unparalleled comparing that of the Rakhine state. Having acknowledged the multiple genealogies of this conflict, this paper focuses more on the state/nation building process of Myanmar to understand the exceptionalism of Rohingya persecution. We want to argue that rather than ethnic tension or geostrategic interest, the nation/state-building of Myanmar in different phases of its history can put more light on the unique suffering of the Rohingya population in Myanmar. Analyzing the key historical transition of Myanmar, we attempt to trace the gradual exclusivity of the Rohingya

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people in the evolution of State manufactured discourse on the question of nation and their deliberate enactment of specific identity while alienating the other.

Keywords: Rohingya, Myanmar, Nationalism, Identity, State/Nation-Building.

Introduction

Rohingya, a small Muslim minority group in Myanmar, is often termed one of the most persecuted ethnic minorities on the earth. According to the most prominent human rights organizations, what's going on with Rohingya for at least the last two decades can be termed as a textbook example of ethnic cleansing. Even some academics and researchers have gone to the far, claiming it as slow burning genocide. But the question is why this small minority group, already very impoverished and marginalized, has been targeted for this extreme level of brutality. If we consider Myanmar, which constitutes more than 135 recognized ethnic identity groups and several unrecognized ones like Rohingya, this question becomes puzzling. Though Myanmar is fraught with ethnic conflict where state military dominated by majority Burmans persecuted other groups, very few ethnic entities experienced the devastating fate of Rohingya. Especially in the last 30 years, starting from 1988, ethnic cleansing or genocidal attempt is becoming an exclusive phenomenon for Rohingya in Myanmar. Though the civil war between the Myanmar army and some other ethnic groups like Karen and Kachin are still going on, these are the two longest-running civil wars in modern history (Steinberg, 2013). They are not faced with the same level of devastation in terms of external displacing and mass killing. In earlier decades in the 60s and 70s, persecution level to Rohingya by the state in other groups might be termed as comparable and thus not unique, but what has been happening in the last two decades is incomparable with the fate of any other group. Even in terms of demand and struggle, Karen ethnic groups are fighting for autonomy. At the same time, Rohingya people demanded citizenship as they were stripped of it in 1982. So, it is a very curious case to analyze why Rohingya people face continuous ethnic cleansing while other ethnic groups, notwithstanding their fight with the state, are not suffering at the same level.

Moreover, persecution of Rohingya is not perpetrated only by the Military or Burmans; the leading majority ethnic group, another minority group named Rakhine, is found complicit in the brutality. Though Rakhine Buddhist groups, as a minority in Myanmar but a majority in Rakhine state, have a different history of the fight and struggle with Burmans, they are actively collaborating with the Myanmar state and participating in the ethnic cleansing effort Rohingya. The critical point is that it is unprecedented in Myanmar that minority ethnic groups are actively engaged with the Military to cleanse another minority group despite conflict with the state.

So, this article will attempt to answer the following two questions. First, from 1962, why Rohingya people face continuous ethnic cleansing efforts from the state while other groups are not. The second is why Rakhine, as a minority group within Myanmar, evicted another oppressed minority group. In our endeavor, we will try to deal with these two questions from the enactment of certain features of identity and alienation of others. We will see how this enactment and separation occurred in Myanmar in different phases and how it led to conflict casting Rohingya in a unique situation in Myanmar.

Literature Review

Relevant literature concerning the ethnic cleansing of Rohingya need to be discussed dividing them into two broad categories. The first type of literature which is important to discuss here sees ethnic cleansing in a general theoretical framework where some general rules or preconditions that may cause ethnic cleansing are focused on. Second type of literature deals more specificly with the case of Rohingya.

Among the literature attempting to produce some meta-theory regarding genocide, Barbara Harff (2003) discusses the precondition of ethnic cleansing. In this article, she shows the seven preconditions that may cause genocide or ethnic cleansing. She mentioned some essential preconditions: political upheaval, exclusionary ideology, low economic development, autocratic rule, etc. (Harff & Gurr, 2003). Most of the preconditions are indeed available for the Rohingya population. But the point is that these causes are prevalent for many other ethnic groups of Myanmar. These preconditions cannot sufficiently explain this exclusivity of Rohingya's plight. Another article that deals with ethnic cleansing was written by Hägerdal (2016). Although he deals with the Lebanese civil war, the insight he gathered is very relevant for Rohingya. He shows that ethnic cleansing is rifer in areas where inhabitant is predominantly homogenous. The larger the co-ethnic groups in an area live, the lower the likelihood of ethnic cleansing is. The causality behind this is that if antagonistic co-ethnic groups live in the same place, it becomes easy to collect information by intelligence about militant activities. Thus, the state can engage in selective killing rather than mass killing. This conclusion is also very appropriate for the Rohingya population as villages inhabited by Rohingya are very homogenous. The villages where Rohingya lives are inhabited only by them. These meta-theories though help us to grasp the Rohingya crisis to a certain extent, it can not explain the exceptional suffering of Rohingya within the context of Myanmar. Several other ethnic groups in Myanmar live in their areas without any other co-ethnic groups. Still, their plight is not the same as Rohingya's.

The second type of literature, which deals with Rohingya questions and their suffering, can again broadly be divided into two. Some of the literature deals with Rohingya and their identity questions while the other deals with their present conditions and multifaceted repercussions. Several pieces of literature talk about Rohingya identity because it

is assumed that the current plight of Rohingya relates to the citizenship law from 1982. So, in this literature, they tried to deal with the citizenship issue and origin of Rohingya, the validity of the 1982 citizenship law and its application in Rohingya. One such article is written by Kipgen (2013), articulating their historical roots of identity. Several other similar pieces of literature are available, such as Leider (2018), Parnini (2013), Rahman (2008). The other type of literature focusing upon present Rohingya plight and its solutions explains why Rohingyas are victims of ethnic cleansing. Ibrahim (2018) searches the causes of ethnic cleansing to the political instrumentalization of Rohingya. According to him, when military or local politicians need some distraction, they use the Rohingya issue as political tool. He indicted the political othering of Rohingya in far-right politics as an essential element for Rohingya ethnic cleansing. The human rights school of Yale (2015) points to anti-Rohingya propaganda from Government, and Theravada ultra-Buddhism in Rakhine are the prime causes of Rohingya ethnic cleansing. In the above literature, though they show the role of the Government and some elite groups as lynchpins behind this ethnic cleansing, it is not clear why Rohingya are exclusively being targeted by both Government and ultra-Buddhist groups in Rakhine.

In the following sections, it will be attempted to answer this gap in the literature identified above. We will try to answer this question using identity politics and enacting specific identity by military rulers and other social elites' groups. We will see the historical transition of identity in Myanmar. The historical evolution of nationalized ethnic identity and its failure to accommodate specific identity left Rohingya in a unique alienated situation that made them exclusively victim to current ethnic cleansing.

Theory and Methodology

In this article, the basic theoretical frameworks that we will use are underlined by Harold Isaacs (1989) and Kanchan Chandra (2006). Both writers acknowledge the significance of descending related attributes in determining ethnic identity (Chandra, 2006). But the relevant part of their theory is their unanimity that specific details become central for determining individual identity. Chandra has termed this as activated identity. Similarly, Isaac (1989) shows how specific badges or features of identity become relevant in a group's historical and political process to represent themselves or alienate another (Isaacs, 1989). In this article, we will see how the enactment of certain identity features within the context of the Myanmar region in different phases of its history and through other processes pushed Rohingya into a unique place where their identity becomes the cause of its unfortunate fate. Activation and enactment of certain identity features for both oppressed and oppressors and accommodation or alienation based on it will be analyzed, including three broad factors.

One is a historical epoch related to ethnic division and antagonism before independent Myanmar. The second aspect is state engineering of identity and transition of identity

construction in Independent Myanmar and developing an apartheid structure based on it. And the final one is concurrent regional and international factors that help in the crystallization of identity division. So, our theoretical assumption is that Myanmar is a country where ethnic identity is always primal due to nature and method of British colonial rule, which rode on ethnic division. In post-colonial independent Myanmar, the military power established in 1962 utilized this ethnic division and altered it in different phases. In this transition process, the Myanmar state is inclined to ethnoreligious Buddhist identity from ethnic Burman identity. But in every stage of this identity transition, Rohingya remains outside the state incorporated identity repertoire domain. On the other hand, the long history of enmity with Rakhine and the state's incorporation of Rakhine within Buddhist nationalism made Rohingya in the eye of state and Rakhine minority groups (Yunus, 1994). In our article, historical tracing of division through identity enactment will be explored. That's why historical literature will show the incidents and their causality that will prove my points. Besides, concurrent facts supported by relevant sources will be used to establish our claim.

Activation of Identity and Alienation of It:
Colonial and Postcolonial State Engineering

To understand the ethnic cleansing of Rohingya, it is essential to locate it within the national history of ethnic conflict in Myanmar running for more than seven decades. But before that, it is necessary to understand the salience of ethnic identity in Myanmar and its roots. People in Myanmar prioritize their ethnic identity before national identity, and all the conflict runs in the line of ethnic cleavages (Gravers 2015). In Most ethnic conflicts, most Burmese ethnic groups (69.8%) led by the army of Myanmar and some other minority ethnic groups appear as protagonists. Suppose we search the roots of this ethnic division and primacy of ethnic identity. In that case, it can be traced back to the British colonial era and in their ruling system. After colonizing present Myanmar, the British started ruling it by enacting ethnic identity where majority Burmese were marginalized and became a minority in military and other bureaucratic administrations (McAuliffe, 2017). For instance, in his Ph.D. thesis, McAuliffe mentioned the military enrollment ratio of different ethnic groups. He shows that enrollment of the Burmese population was 12 %, while they are almost 70% of the aggregate population. On the other, Karen, Chin, Kachin has more representation, although they were a minority, the Karen (27.8 percent), Chin (22.6 percent), and Kachin (22.9 percent), Burman (12.4 percent). Due to such distribution of power and privilege based on ethnicity and its enactment with political consciousness that lasted for more than 100 years, all the political and cultural complexities regarding the state-building process of independent ruling run around ethnic identities. The importance of activating identity by British colonizers and its effect till today will be more conspicuous if we consider India and how it is ruled by the British. British used religious and caste division to rule India.

Most current conflicts or riots occur between religious identity like Muslim and Hindu or between different caste systems (Pandey, 1992).

Though the ascendency of ethnic identity is related to the nature of colonial rule enforced by British colonizers, the conflict between different ethnic groups had not occurred immediately after the British withdrawal from the region in 1948. Instead, it began after the military takeover of power in 1962 and its Burmanization policy (Steinberg, 2013). British indeed gave power to Burmans, whom other ethnic groups marginalized in the British period even though they were a majority.But at the same time, other ethnic groups would get autonomy in their state was the condition approved in the Panglong agreement in 1947 (Gravers, 2004). So, from 1947 to 1962, democratic regimes tried to accommodate ethnic groups through consociationalism and territorial federalism. But the whole process broke down when the military Government led by Ne win. Steinberg, in his book, describes the mode of military rule:

> *"The immediate effects of the 1962 coup were to dismantle all elements of institutional and personal power that could invalidate or threaten military control. The Revolutionary Council ran military rule — a junta of seventeen officers. General Ne Win rejected all accommodative strategy at the apex of which and rather took hardcore Burmanization policy and gradually built an apartheid structure."* (Steinberg, 2013).

Military rule led by Ne Win lasted uninterrupted from 1962 to 1988. We can divide this period into two based on different identity activation. From 1962 to 1982 is the first period which went along the line of Burmanization. The second period is from 1982 to 1988. In this period, we see some selective integration strategies based on the notion of native ethnic identity.

In the first period, due to the segregation policy based on Burmanization, ethnic conflict ensued in every minority state which was supposed to get autonomy as per the condition stated in the Panglong agreement. Rohingya people were also persecuted. They were stripped of all government posts given to them on the constitutional quota system (Wade, 2019). From 1962 to 1982, two significant exoduses of the Rohingya population occurred. In 1962 more than 300.000 and 1970, more than 500.000 Rohingya fled and took refuge in Bangladesh. But their plight in this period was not unique as they experienced in post-1988 Myanmar. Instead, some other major ethnic groups like Kachin, Karen, and Chin succumbed to the same fate due to their non-Burmese ethnic identity and historic enmity in divisive British policy. Most of the ethnic groups with whom conflict occurred are non-Burmans and somehow identified as oppressive against Burmans in the British period. It is essential to understand that the identity cleavages policy taken by the British and the Burmanization policy brought in the post-1962 period is crucial to understanding the ethnic conflict. Because ethnic groups affected adversely are Burmese and were privileged or collaborators of the British in the pre-in-

dependent period. That's why we see that though Rakhine was not Burmese, they were not targeted for persecution as they had little historical enmity with Burmans in the British period (Kipgen, 2013).

In the second period dating from 1982 to 1988, the Military gave some space to other groups. So far, the state structure was providing Burmans better privileges and discriminating non-Burman groups. But in 1982, the state decided to make a citizenship law based on equal rights. It proposed to incorporate other groups who are indigenous in Myanmar. The condition of being indigenous was to live in current Myanmar before the British came in 1824. Why the military decided to turn back from extreme Burmanization and provide equal citizenship law has many explanations. Some argued that due to external pressure and investment conditions imposed by IMF and World Bank, they started to take such policy (Htoo, 2021). Another explanation is that the Military had opened myriad front of conflict, which proved unaffordable for it. They felt the need to compromise with some groups.

Some other argues that internal and external pressure for democratization compelled the military regime to do this (Steinberg, 2013). Whatever the reason, this is a new period of transition where a different set of identity features were activated to rule, incorporate some groups, and alienate others. In the new citizenship law, Karen, Kachin, and some other ethnic groups were included. In 1985, even the government was seen to make a ceasefire effort with these groups but Rohingya, with some other groups on the pretext of non-indigenous identity, were excluded from citizenship law. In this period, political othering or state-engineering worked on the line of non-native ethnic identity. Due to this new identity policy, all Indian-like ethnic groups faced persecution. Along with Rohingya, Burmese Indians, Gurkha, and some other groups termed Indian origins had also faced persecution from the military. So, in this phase, extreme persecution has good causal relation with enacting a new identity and policy based on it.

Post-1988 And Uniqueness of Rohingya Plight

But in the 1990s, Rohingya people were seen to suffer uniquely. From 1991 to 2017, several mass exoduses have taken place. Several allegations of genocide from the Burmese military were echoed. Indeed, there were still conflicts with other groups, but the state showed a sign to compromise or mitigate. That's why external displacement and mass killing of other ethnic groups did not occur to a large extent. Even some groups who were stripped of citizenship did not suffer to the level of Rohingya. So, to understand the uniqueness of Rohingya plight in post-1988, we must make the change that occurred in the ruling elites and subsequent alteration of identity politics and policy and how it includes some groups and excludes others.

In 1988, due to protests, the previous military government stepped down, and a new junta took power. Initially, it promised to work for returning democracy. The most

important aspect of this regime is its new policy to diminish ethnic conflict. Several efforts were seen but the most important aspect was its emphasis on Buddhist nationalism (Wade, 2017). 89 % population in Myanmar were Buddhists. One of the policies taken by Myanmar to enact Buddhist nationalism was the empowerment of Buddhist monks, eulogizing Buddhism as the historical identity of Myanmar by state media. Why the state halted excessive Burmanization and emphasized Buddhism can be traced back to two reasons. Gravers (1999) mentioned these two reasons: to create division among large ethnic groups like Karen and Kachin. These two ethnic groups constitute Buddhism and Christianity.

Two is as Buddhism is understood as peaceful religion dividing the society using these tools is expedient. The military feels the need for foreign investment and limited liberalization due to an underdeveloped economy. But to attract foreign investment, it is essential to minimize the conflict on the one hand and keep power in the hand of the military; keeping competition alive is necessary for them. So, in this phase, the military took this resort, which, as they thought, would unite a large population under the umbrella of Buddhism. However, the conflict will still exist due to some other religious groups. Though this plan failed in dividing Karen and Kachin ethnic groups into Buddhist and Christian lines, in Rakhine state, it got success in Rakhine state in Rohingya ethnic cleansing. Rohingya was outside in every previous state engineering of identity and enactment of Buddhism also kept them out. This transition from ethnic nationalism to ethnoreligious nationalism made Rohingya the state's sole target of ethnic cleansing. Some other ethnic groups stripped of citizenship did not face similar faces as they were primarily Buddhist. All seven major ethnic groups, except Rohingya, that were deprived of citizenship were Buddhist. Other groups that got oppressed in the previous period have been incorporated within state-engineered identity, at least nominally. But Rohingya ethnic community from 1962 remained outside in every state-sponsored identity activation. Post-1988, they became the only major group that was previously oppressed. In the post 9\11 period, this Buddhist nationalism and the global war on terror worsened the situation for Rohingya. Due to their Muslim Identity, in the name of the counter-terrorism act, it became easier to target Rohingya and purge them (Parnini, 2013). In fact, after 9\11, religious nationalism against Muslims has also been seen in neighboring countries like India and Srilanka, where Hindu and Buddhist nationalists targeted Muslims as their enemy (Hasan, 2017). Those instances in neighboring countries aggravated the situation for Rohingya in the Rakhine state. So, in post 9\11, Rohingya identity alienation did not occur only from the state; instead, global, and regional circumstances helped in this process of othering.

Why Rakhine As A Minority Group Became an Actor in This Ethnic Cleansing

This is the second query of two that has been identified at the beginning of this article. This question is seen from several aspects, from an economic or rational point of view. Some tried to answer it from the perspective of political othering by Rakhine political elites. But those answer is not enough to the question, why no other minority group in any other state did not collaborate with the Burmese army in the ethnic cleansing of another minority group while Rakhine is actively doing that as to Rohingya? It is to be noted that rational or political othering is not anything exclusive in the case of Rohingya. So, the above two explanation seems inadequate in this case. The answer to this question is partially given because Rakhine is Buddhists while Rohingya are Muslim. Enactment of division by state based on religious identity or Buddhist nationalism and subsequent instrumentalization created this clash. But the conflict between Rakhine and Rohingya did not start in the post-1988 Buddhist nationalist period. Instead, it has been ever-present since the independence of Myanmar. Division of ethnic identity and mutual enmity and othering had history beyond that of independent Myanmar. To understand the conflict between them, it is essential to trace back the historical hatred and crystallization of division by essential factors is essential.

Rakhine and Rohingya Muslims have a history of enmity where one group is alleged to oppress the other groups. It is seen that from 1430 to 1638, Rakhine was ruled by Buddhist Rakhine Ruler. After 1638, Arakan or the present Rakhine was captured by Mughal rulers of Bengal. Rakhine alleged that Rohingya or Muslims in Rakhine state helped Mughal win it (Yunus, 1994). On the other hand, in 1734, the current Rakhine state was captured by the Burmese kingdom, where Muslims alleged that Rakhine helped Burmese win it (Yunus, 1994). Again, when the British captured Rakhine in 1824, Muslims in Rakhine were assumed to help the British. Later in the British colonial period, Rakhine Buddhists were discriminated against Muslim by the British.

Due to complex historical enmity, antagonism was seen in the folk narrative where Rakhine mostly portrayed Rohingya as diabolical and foreigner (Prasse-Freeman, 2012). Rakhine worries that giving ethnic rights might have resulted in the separation of the Rohingya state from Rakhine as it was done previously in the Mughal period (Prasse-Freeman, 2012). However baseless this might be, this type of narrative can be spread by elites due to a historical clash that generated identity division. This historical identity clash aggravated in current Myanmar due to state policy where political elites and ultra-nationalist can easily abuse this historical identity division to appropriate their agenda (Ibrahim, 2016). Even general mass also finds it economically beneficial to purge Rohingya and loot their properties. All these factors worked here but without this extreme identity, clash evolved through history, which might not lead to this situation as it did not in the other state of Myanmar.

Conclusion

It is very clear that what is happening to the Rohingya ethnic group is nothing more than an old process of gradually annihilating a nation in a systematic way. The Rohingya have long been the victims of modern state-sanctioned genocide. The policy adopted by the Myanmar government and military to deal with the Rohingya, the world's most oppressed people, declared by most international organizations, including the United Nations, is a complete violation of the UDHR and the CRC signed by Myanmar. it is to be noted that mass killing or ethnic cleansing in different places like Cambodia (1975–1979) or Rwanda (1994) resulted from long-standing violence in every case. Ethnic cleansing of Rohingya was also achieved in several decades of central planning of the state and the Rohingyas as a nation have already experienced all kinds of barbarism which is one of the unprecedented incidents in modern times. It is a fact that Rohingya is in no way a better off situation compared to Palestine and Kashmir, because the news of these two crisis areas does not reach Arakan exactly the way it reaches the outside world. However, their position is more vulnerable as they are outside of world focus. The military's policy of Rohingya is far more stringent than that of Myanmar's democratic government, which has already been branded a crime against humanity. This has become a complex unresolved issue due to the strict Burmanization policy of the Myanmar Army in the style of British colonial rule. To solve the crisis, the return of democratic rule in Myanmar and the more critical factor is the change in the autocratic military rule, which finds it expedient to keep the conflict alive.

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