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## AMNESTY VERSUS ACCOUNTABILITY

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### JCSP 40

#### *Exercise Solo Flight*

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EXERCISE *SOLO FLIGHT* – EXERCICE *SOLO FLIGHT*

**AMNESTY VERSUS ACCOUNTABILITY**

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## AMNESTY VERSUS ACCOUNTABILITY

### I. Introduction

- a. Since the dawning of the twenty first century, the world has become increasingly more deeply embroiled in a series of counter insurgency campaigns, each of which has become progressively more dangerous and each progressively affecting a broader range of the world's population. From Al Qaeda to ISIL, campaigns being undertaken by western and allied forces against these insurgent forces have the appearance of generating unintended second and third order effects that prolong the continuum of violence and war. In contrast to this, we have had a series of regional, national and transnational conflicts which have occurred on the African continent during the late 20<sup>th</sup> and early 21<sup>st</sup> centuries; which while not perfectly resolved have shown the effective use of programs which are capable of reintegrating combatants, and in some cases ending the cycle of violence.

The thought expressed by some is that these irregular conflicts are a new manner of threat, yet even in the Canadian context threats posed by non-state actors are not a new phenomenon. A question attributed to Darcy McGee, with respect to the active Fenian minority in Canada, has a great deal of relevance today. “‘Canada and British America’, he wrote, ‘have never known an enemy so subtle, so irrational, so hard to trace, and, therefore, so difficult to combat.’ McGee and his fellow cabinet ministers

were faced with a very real problem: how could they defeat a revolutionary minority inside an ethno-religious group without alienating the moderate majority within that group?”<sup>1</sup> One might argue that the nefarious efforts of ISIL to seek recruits across the Islamic world has created a conundrum for today’s government in the same way the Fenians did McGee and his Cabinet colleagues a 150 years ago. How does one engage an enemy without subverting one’s influence on the uncommitted majority, and therefore exacerbating the threat, rather than resolving it?

## **II. Thesis Statement**

- a. Using recent coalition and African conflicts to compare broad foundational approaches to campaign planning, this paper will evaluate the role that amnesty and reintegration plays in achieving a balanced and stable end state in modern irregular warfare.
  
- b. Explanation of methodology – Utilizing several recent coalition and African conflicts to evaluate how, if at all, general Disarmament, Demobilization and Reintegration (DDR) and Transitional Justice principles were employed during operational planning and execution of those actions. The first focus though will be on what effects DDR and Transitional Justice create. The impact of the decision to use, or not use, these general principals will then be weighed against the outcome of those

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<sup>1</sup> (Wilson 2009), 2.

actions.

- c. In comparing the coalition actions against the African actions, attention will be given to the fact that they are not direct comparators, as the manner in which the conflicts have their origins and their resolutions are different. The intent is to show that there may be value in planning on providing an “out” for combatants, who may not be ideologues, but simply participants in the conflict, willing or otherwise. “We used to hear [from LRA commanders] that if you return, you will be killed, but when I heard that amnesty is being given to people and that people who return home are not killed, then I got courage to escape.” – Former LRA rebel<sup>2</sup>

### **III. What are the principles of DDR and Transitional Justice?**

- a. Traditionally, Canada has been at the forefront of efforts to conduct military operations in accordance with international law, promoting the broad use of the Law of Armed Conflict (LOAC) to be applied to all operations.<sup>3</sup> One of the elements of the LOAC is that of amnesty for former combatants. Amnesty is a concept whereby, “At the end of hostilities, and in order to facilitate a return to peaceful conditions, the authorities in power are to endeavour to grant the broadest possible amnesty to those who have participated in the conflict, or been deprived of their liberty for reasons related thereto, whether they are interned or

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<sup>2</sup> (Agger 2012).

<sup>3</sup> (Canada 2001), 17-1.

detained.”<sup>4</sup>

- b. Justice versus Amnesty. A program of amnesty is one methodology of dealing with reconciliation in a society, but the broader concept of transitional justice also lends itself to this and other modalities.
  
- c. Transitional justice is an approach that was developed out of actions taken in the 1980s to deal with the receding conflicts taking place in Central America. For the United Nations, transitional justice is the full range of processes and mechanisms associated with a society’s attempt to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation.<sup>5</sup> The Truth and Reconciliation Commission which was established in South Africa following the end of Apartheid is an example of a transitional justice program.
  
- d. A program of DDR is often central to the development of human security and the successful implementation of peace in a country following a conflict. “Through a process of comprehensively disarming combatants, preparing them for civilian life and providing them with opportunities for sustainable social and economic reintegration, DDR aims to support this

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<sup>4</sup> (Canada 2001), 17-5.

<sup>5</sup> (United Nations, Guidance Note of the Secretary-General: UN Approach to Transitional Justice 2010), 3.

high-risk group so that they become *stakeholders in the peace process*.<sup>6</sup>

The effects that I is capable of generating may be grouped to include; alleviating internal pressure, promotion of peace and reconciliation, response to international pressure, cultural or religious traditions, providing reparations, encouraging exiles to return and protecting state agents from prosecution.<sup>7</sup> It is not principally focused on justice; it has a focus on disengaging combatants from the field and reintegrating them into society. The pursuit of justice does not always have peace as an outcome and in order for a program of amnesty to be viable; it needs to be politically supported.

- e. In comparison, conflicts in the African Union appear to be moving towards resolution at a greater frequency.

#### **IV. No Stone Left Unturned.**

- a. Coalition – Iraq and Afghanistan – The theoretical approach being followed by campaign designers has the appearance of being very doctrinal and dogmatic with a strong emphasis on kinetic engagement. The origin of this lack of consideration for the use of the LOAC, with its concept of amnesty for combatants appears to be a function of the framework that was given non-state actors following 9-11. The argument follows the line that since Al Qaeda is not a state sponsored or sanctioned

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<sup>6</sup> (United Nations 2014), 24.

<sup>7</sup> (Mallinder 2009), 133.

terrorist organization; it cannot be a party to nor rely upon international conventions and laws.<sup>8</sup>

In setting the conditions for the war in Afghanistan, the United States (US) government adopted a policy which was predicated on the idea that where an organization can't demonstrate any elements consistent with a central government, its actors may not be afforded those rights typical of combatants. The discourse following 9/11 has been focused on an approach that sees terrorists being defeated through military action, and military action alone for the most part. In President Bush's public address before the United States Congress on the evening of 20 September, 2001, he made a clearly stated ultimatum for nations to join with America in its pursuit and destruction of terrorists.<sup>9</sup>

- b.** The moral, ethical and legal questions that arise when governments stray from the path of what has been deemed to be the principles of legal warfare, by failing to observe accepted practices such as the Geneva Conventions are certainly problematic. The real issue though is that these governments may be ignoring a proven methodology that is capable of creating effects which lead to resolving a conflict. Britain's example of Northern Ireland showed that through negative experiences, "Many governments have learnt the importance of avoiding counterproductive

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<sup>8</sup> (Unlawful Combatants: A Genealogy of the Irregular Fighter 2015), 209.

<sup>9</sup> (United States 2004), 336-337.



overreaction that might generate emotive secondary causes. These can be gratefully seized upon as a substituted and more plausible basis for violence.”<sup>10</sup> While a former Chief Constable of Northern Ireland observed that there are few if any examples of terror threats being solved by force alone.<sup>11</sup>

- c. It is in this last observation in which we find the crux of our examination between recent coalition and African operations. The coalition in both Iraq and Afghanistan appear to have made very conscious decisions to use kinetic force and only very rudimentary efforts at reform and reintegration. Following the Bonn Accord in 2001, it was almost five years until the London conference in 2006 where a post-conflict framework for Afghanistan’s security sector reform was mapped out. Even then, it was not until 2009 that the NATO Training Mission – Afghanistan was stood up, where until then, SSR projects were largely piecemeal.
- d. In the case of Iraq, the consequence, falling out of decisions made in 2003, are being felt today in the form of ISIL. Prior to the 2003 invasion of Iraq, a plan had be drawn up that would have seen the Iraqi Army reconstituted and used as a supporting force to the rebuilding of Iraq. The plan, of which the first elements were initiated in June of 2002, envisioned keeping the army largely intact, as the effects of a large body of Iraqis being disbanded

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<sup>10</sup> (Mansbergh 2011), 14.

<sup>11</sup> (Powell 2011), 21.

was identified as likely having a destabilizing effect on the country. It appears that Coalition Provisional Authority Order 2 was neither clearly briefed nor adequately considered. That decision set a cascade of events which has led to the Middle East once again being disrupted, this time by ISIL forces, the impact of which continues to be felt worldwide.<sup>12</sup>

- e. Bremer's decision to wholly disband the Iraqi Army appears to have been based on a political agenda to be rid of Baathist elements in government organizations, as they were seen as a potential avenue for a resurgent Saadam. There also appears to be a misunderstanding on the part of Bremer that the Iraqi Army had ceased to function, although there was certainly clear advice being provided to the contrary by almost all of the senior US leadership.<sup>13</sup>

## **V. Amnesty Versus Accountability.**

- a. Africa - Uganda and Rwanda – In the African context, the principles of amnesty are employed as part of a transitional justice process, in which some nations choose to employ amnesty as a tool to aid in the disarming and reintegration of combatants. The challenges of the process are immense and involve the balancing of the need to obtain relative security in the region, against the demands for prosecution and retribution against combatants who have committed atrocities. The process by which the

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<sup>12</sup> (Mastracci 2015).

<sup>13</sup> (Gordon 2008)

amnesty is granted is usually part of formal process of negotiated agreements, in which amnesty laws or agreements are passed.<sup>14</sup>

- b. In the case of Rwanda, this example is one that is post conflict, but still illustrates the principles behind the decision making process of whether to adopt a policy of amnesty for combatants. The era post-genocide was fraught with demands for retaliation and retribution for those who perpetrated the crimes. Almost 150,000 genocide suspects were jailed, but with the destruction of most of the government infrastructure and the deaths of many of the judiciary and lawyers, the ability to pursue justice was difficult. In fact, it took almost seven years for the government to agree and adopt an approach to deal with the genocide crimes. The initial decision was to seek the full breadth of justice with the perpetrators, including the pursuit of the death penalty for some.<sup>15</sup>
- c. With the courts decimated, the Rwandan approach was to use a traditional courts called Gacaca (justice in the grass), to deal with the backlog of persons accused of genocide. The emergence of these courts was in some ways a grassroots response to the need to find a resolution that wasn't going to take decades. The establishment of the courts allowed hundreds of thousands of cases to be tried, without exhausting the country's scarce

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<sup>14</sup> (Mallinder 2009), 139-144.

<sup>15</sup> (Lessa and Payne 2012), 214-217.

resources.<sup>16</sup> The courts also allowed a transition to occur overtime, where reconciliation became a dominant feature of the actions of the courts.

Accountability was maintained, but the initial reaction of seeking harsh punishments evolved over time to more moderate responses.<sup>17</sup>

- d. The Rwanda example provides us with a solid example of how an emotional response to a conflict can lead to a want to seek justice over peace. In Rwanda, we find that the sense of what constitutes justice becomes tempered over time with issues of greater priority. In this case, the punishments did not revert to full amnesty, but they did provide a strict set of sentencing guidelines based on the alleged offences.<sup>18</sup> While this was being conducted to local judicial standards, it did not bankrupt the country and allowed some normalcy to begin to take shape.<sup>19</sup>
  
- e. Uganda benefitted from the Rwandan experience. In essence, it learned from Rwanda's mistakes, as it has adopted a wide range of accountability measures and also did not hesitate from revising them over time. The result has been that Uganda has employed amnesty in a much more sustained manner than Rwanda.<sup>20</sup> Uganda is a cleaner case for comparison as well, as it is a country where amnesty was employed as a direct tool used to foster combatants to put down their weapons and to follow a path

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<sup>16</sup> Ibid, 218-224.

<sup>17</sup> Ibid, 212.

<sup>18</sup> (Ingelaere 2008), 40.

<sup>19</sup> (Lessa and Payne 2012), 212.

<sup>20</sup> Ibid, 225.

of reintegrating into society.<sup>21</sup> One of the core features of the Ugandan experience is the idea used from the outset, that amnesty was preferable to punishment, as it is a means to effect reintegration and reconciliation.<sup>22</sup>

- f. Uganda recognized that many of the lower level members of the Lord's Resistance Army (LRA) did not want to be in the role they played, and that given a reasonable opportunity, they would escape.<sup>23</sup> There was an understanding on the part of the Ugandan government, that defections from the LRA were another way of combatting them, by removing their fighters and undermining the fighting effectiveness of the forces. There is a clear understanding, even by the average villager in Northern Uganda, that there are some who deserve prosecution, but for the most part the fighters were unwilling participants. The Ugandan Act which enabled the amnesty had the amnesty clause removed in 2012, and despite no public statements as to why, it is believed to be a result of international pressure to conform with the norms of international justice. Revoking the ability for combatants to defect without penalty has raised the fear of a resurgent LRA.<sup>24</sup>

## **VI. Comparison of the planning approaches.**

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<sup>21</sup> Ibid, 226.

<sup>22</sup> Ibid, 226.

<sup>23</sup> (Agger 2012), 2-3.

<sup>24</sup> (Agger 2012), 2.

- a.** Amnesty and reintegration are obviously not a panacea for all conflicts and even where they are appropriate, they need to be well thought out to address the needs of the particular circumstances and planned with adequate resources committed to support the envisioned activities. It should also be considered that amnesty and reintegration are both foundational elements to the LOAC, as a means to effecting stability post conflict.
  
- b.** In the circumstance of coalition conflicts examined, the broad concept of amnesty and reintegration does not appear to have been widely considered as a tool to support the envisioned end state of the conflicts. The theme of justice for the victims through the employment of kinetic effects appears to have remained predominant, especially in the Afghanistan example. There was consideration given to the idea of amnesty during the preparatory planning of the Iraq invasion; however that was undone by the ill-considered actions of the Coalition Provisional Authority's first civilian administrator. There does appear to be acceptance on the part of many of the principle actors on the US side, that a move to amnesty for a large part of the Iraqi Army would have led to a more successful campaign in Iraq.
  
- c.** In the African context, amnesty and reintegration factor significantly in the experiences of our two examples, Rwanda and Uganda. Rwanda arrives at an acceptance of amnesty and reintegration, largely due to the

sheer numbers of persons accused of genocidal crimes, and engage with the concepts because doing otherwise would have destroyed the country again, but this time as a result of the pressures that seeking justice would have put on the country. Uganda, on the other hand, engages the use of amnesty as an effective tool against the insurgent forces of the LRA, by using it to attrite the available fighting forces by reintegrating them without repercussions into society, giving them an out. Largely because of the nature of these two conflicts being primarily internal; amnesty and reintegration play a larger role as planning considerations.

## **VII. Conclusion**

- a. Both the coalition and the African examples are seen to have foundational issues at the core of the respective conflicts that would have seen benefit from adopting amnesty and reconciliation as a method of dealing with combatants. The effects of amnesty and reconciliation additionally appear to present examples of where this approach would have created positive effects both during and post-conflict.
  
- b. Using recent coalition and African conflicts to compare foundational approaches to campaign planning, this paper has shown through evaluation of the role that amnesty and reintegration plays in a conflict, which amnesty and reintegration contribute to achieving a balanced and stable end state in modern irregular warfare.

## BIBLIOGRAPHY

- Agger, Kaspar. "Enough: The project to end genocide and crimes against humanity." *Enough*. August 2012. [www.enoughproject.org/files/GuluDispatch.pdf](http://www.enoughproject.org/files/GuluDispatch.pdf) (accessed May 20, 2015).
- Ambos, Kai (ed.), Judith (ed.) Large, and Marieke (ed.) Wierda. *Building a Future on Peace and Justice*. Berlin: Springer, 2009.
- Brankovic, Jasmina. *Advocating Justice: Civil Society and Transitional Justice in Africa*. Workshop Report, Johannesburg: The Centre for the Study of Violence and Reconciliation, 2010.
- Canada. *B-GJ-005-104/FP-021 Law Of Armed Conflict At The Operational And Tactical Levels*. Ottawa: The Department of National Defence, 2001.
- Gordon, Michael R. "Fateful Choice on Iraq Army Bypassed Debate." *The New York Times*, March 17, 2008:  
[http://www.nytimes.com/2008/03/17/world/middleeast/17bremer.html?fta=y&\\_r=0](http://www.nytimes.com/2008/03/17/world/middleeast/17bremer.html?fta=y&_r=0).
- Ingelaere, Bert. "The Gacaca courts in Rwanda." In *Traditional Justice and Reconciliation after Violent Conflict*, by Luc (ed.) Huyse and Mark (ed.) Salter, 25-58. Stockholm: International Idea, 2008.
- Lessa, Francesca, and Leigh A. Payne. *Amnesty in the Age of Human Rights Accountability*. Cambridge: Cambridge University Press, 2012.
- Mallinder, Louise. "Exploring the Practise of States in Introducing Amnesties." In *Building a Future on Peace and Justice: Studies on Transitional Justice, Peace and Development*, by Kai (ed.) Ambos, Judith (ed.) Large and Marieke (ed.) Vierda, 127-174. Berlin: Springer, 2009.
- Mansbergh, Martin. *Counterterrorism and Conflict Resolution in Northern Ireland*. Special Report - The Lessons of Northern Ireland, London: London School of Economics, 2011.
- Mastracci, Davide. "How the 'catastrophic American decision to disband Saddam's military helped fuel the rise of ISIL." *The National Post*, May 23, 2015:  
<http://news.nationalpost.com/news/world/how-the-catastrophic-american-decision-to-disband-saddams-military-helped-fuel-the-rise-of-isil>.
- Powell, Jonathan. *Security is Not Enough: Ten Lessons for Conflict Resolution from Northern Ireland*. Special Report - The Lessons of Northern Ireland, London: London School of Economics, 2011.



- United Nations. "Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice." *United Nations Rule of Law*. 2010. <http://www.unrol.org/doc.aspx?d=2957> (accessed May 20, 2015).
- United Nations. *Operational Guide To The Integrated Disarmament, Demobilization And Reintegration Standards*. New York: UNDDDR, 2014.
- United States. *The 9/11 Commission Report, National Commission On Terrorist Attacks Upon The United States*. Congressional Report, Washington D.C.: The Government Printing Office, 2004.
- Unlawful Combatants: A Genealogy of the Irregular Fighter*. Oxford: Oxford University Press, 2015.
- Wilson, David A. "Swapping Canada for Ireland." *The Irish Canadian Society*. May 18, 2009. [www.irishcanadiansociety.net/Swapping\\_Canada\\_for\\_Ireland\\_Fenians.pdf](http://www.irishcanadiansociety.net/Swapping_Canada_for_Ireland_Fenians.pdf) (accessed May 14, 2015).