

KAS INTERNATIONAL REPORTS

TOWARDS A NEW DEVELOPMENT AGENDA



■ **Germany – a “Developing Country”:** Towards a Sustainable Future with the “2030 Agenda”

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Valentin Katzer



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Konrad
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EDITORIAL

Dear Readers,

How many refugees can and should Germany accept? How can an equitable sharing of the burden in Europe be organised? And what will be the consequences of the influx of hundreds of thousands of people for the cohesion of the societies affected? These are just some of the many questions that are currently occupying the minds of politicians, businesspeople and members of the society in Germany and Europe in equal measure. However, there is another aspect that is not receiving much attention and that Chancellor Merkel subsequently made a point of emphasising during a speech on the occasion of the UN Development Summit in New York: "Anyone who witnesses the suffering of those who have left their homes to seek protection and a future elsewhere, and who is aware of the challenge facing the countries which take in the refugees, knows that in the end there can be but one solution: we must tackle the causes of flight and expulsion."

Anybody who wishes to tackle the causes of flight and expulsion for the long term will need to demonstrate substantial staying power – that is the key message of the so-called Agenda 2030, which was adopted at the summit and has appropriately been entitled the "Agenda for Sustainable Development". In their articles for this issue, Winfried Weck and Sabina Wölkner examine what sustainable development is all about, which goals the community of states intends to pursue in future, how to evaluate the new development agenda, and in what sense Germany has now itself become a "developing country".

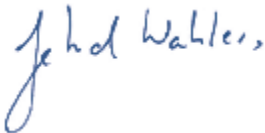
The article on what are known as illicit financial flows by Andrea Ostheimer illustrates the concrete challenges facing Development Cooperation beyond summits and agendas. For years now, the volume of illicit financial flows in Sub-Saharan Africa has exceeded the volume of development aid provided there. By implication, this means that if it were possible to curb illicit financial flows in the region, many African states could, at least theoretically, fund their development efforts themselves overnight.

The states in Sub-Saharan Africa that are affected substantially by illicit financial transactions include Ivory Coast, where a presidential election is scheduled to take place at the end of October. As the previous election had led to bloody clashes costing the lives of over 3,000 people, Valentin Katzer examines not only the election chances of individual candidates in his article but also the conflict potential of the impending election.

The article by Julia Bimler and Hans Maria Heÿn on the long-term involvement of the European Union in the building of a Palestinian state illustrates the challenges facing external actors involved in Development Cooperation, particularly in conflict zones. Bimler and Heÿn argue the case for the European Union to accept greater responsibility in the Israeli-Palestinian conflict – not least to ensure that the money provided by European taxpayers does not serve to prop up the status quo, but contributes to finding an enduring solution to the conflict.

Europe is not the only region that has to deal with the repercussions of flight and expulsion. Australia has also been faced with strongly rising refugee numbers for some time and has most recently responded with a policy aimed at sealing the country off. In their article, Denis Schrey and Tobias Schneider express their doubts as to whether the so-called Pacific Solution can represent a true solution to the refugee problem and instead argue for a return to a “humanitarian refugee policy”.

Aside from all the discussions on Germany’s willingness to welcome refugees and the Australian stance aimed at keeping them out, the following applies: The most efficient refugee policy is still that which ensures that streams of refugees are not triggered in the first place. That is what Angela Merkel called attention to in her speech in New York, and political foundations are also called upon to make a contribution to allow such a policy to be realised.



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GERMANY – A “DEVELOPING COUNTRY”

TOWARDS A SUSTAINABLE FUTURE
WITH THE “2030 AGENDA”

Winfried Weck



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2015, the year of summits, is a key year for the international community. It is possibly even the most significant year since 1992, when the seminal UN Conference on Environment and Development (UNCED) in Rio took place, at which Agenda 21 and four further key documents on sustainable development were adopted.¹

The Gavi Replenishment Conference, the Vaccine Alliance, held on 27 January in Berlin and the G7 Elmau Summit held on 7 and 8 June were the first two important and successful events of 2015. These set the scene for the remaining summit agenda of the year.² But the main highlights of the year are considered to be the UN General Assembly in New York from 25 to 27 September and the COP21 Climate Change Summit on 7 and 8 December, as heads of state and government assembled in New York agreed on the agenda for sustainable development, known as the 2030 Agenda, and a legally binding agreement on the global reduction of greenhouse

- 1 | These are (1) the Rio Declaration (officially: Rio Declaration on Environment and Development), which enshrines the right to sustainable development for the first time; (2) the United Nations Framework Convention on Climate Change, which envisaged a 60 per cent reduction in greenhouse gas emissions by 2050; (3) the Convention on Biological Diversity and (4) Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests.
- 2 | The Gavi Vaccine Alliance is a public-private partnership initiative founded in 2000 by the Bill and Melinda Gates Foundation, aimed at providing global vaccination for all children. The original funding of some 750 million U.S. dollars was sufficient to vaccinate 440 million children against life-threatening diseases such as diphtheria, tetanus, yellow fever and whooping cough. At the pledging conference in Berlin, hosted under the patronage of Chancellor Angela Merkel, funding was secured for the immunisation of a further 330 million children.

gases is to be approved in Paris. The two conventions jointly serve as the starting point for a new era of global cooperation, assuming all nations take future threats seriously and are prepared to address the related challenges. The Third International Conference on Financing for Development, which took place in Addis Ababa in July, defined fundamental key features of the required funding framework for the implementation of sustainable development goals under the 2030 Agenda for Sustainable Development.³

This article begins by taking a look back at the various historic milestones set by the international community from Rio to the present day in order to place the 2030 Agenda in a meaningful historic context. This is followed by an examination of the contents of this agenda, illustrating that it cannot be reduced to a list of 17 sustainable development goals, but represents a holistic global project that is unprecedented in its scope and will therefore pose a great number of new challenges to the international community.

THE LONG ROAD FROM AGENDA 21 TO THE 2030 AGENDA

In 1992, after the fall of the Iron Curtain and the collapse of the Soviet Union, a new and significantly more peaceful era seemed to be on the horizon. The spirit of optimism generated by the anticipation of the *New World Order* postulated in the early nineties manifested above all in the hope that it would be possible to address the global environmental, climate and development challenges with similarly global answers and actions. Many politicians, academics and experts had already become aware of the fact that “environmental protection” would develop into the central task of the future once the famous report entitled *The Limits to Growth* had been published by the Club of Rome in 1972, but at the latest upon publication of the so-called Brundtland Report in 1987.⁴ In Germany in particular, wide swathes of the general public were definitely aware of these new environmental challenges: forest dieback and acid rain, the ozone hole, the destruction of primeval forests and, not least, the anti-nuclear movement had made their mark. And with the end of the East-West conflict, which had

3 | The first International Conference on Financing for Development, which was concerned with funding for the Millennium Development Goals (MDG), took place in 2002 in Monterrey in Mexico. A second conference followed in Doha in 2008.

4 | This refers to the report entitled “Our Common Future” by the UN Commission on Environment and Development chaired by the former Norwegian Prime Minister Gro Harlem Brundtland.

previously acted as the backdrop which affected everything, the course was now clear to also engage in efforts at a global level and address the problems of the environment with heightened euphoria and enthusiasm. This was the spirit in which the 108 heads of state and government, who had convened in Rio in 1992, adopted Agenda 21, which declared sustainable development the central global challenge of the 21st century.



Dead spruces: The death of the forest and acid rain were wildly debated topics in the Federal Republic of Germany in the 1980s. The society's sensitisation to sustainability stemming from this period continues to this day. | Source: © R. Kaufung, picture alliance/blickwinkel.

This historic, seminal conference in Rio paved the way for a number of follow-up conferences focusing on different key aspects, all connected to the fundamental concept of sustainable development: in 1993 the World Conference on Human Rights in Vienna and the Global Forest Conference in Jakarta, in 1994 the International Conference on Population and Development in Cairo and the UN Conference of the Parties to the Convention on Biological Diversity in Nassau, in 1995 the Fourth World Conference on Women in Beijing, the World Summit for Social Development in Copenhagen and the United Nations Climate Change Conference in Berlin, the first Conference of the Parties to the United Nations Framework Convention on Climate Change (COP1), in 1996 the World Food Summit in Rome and HABITAT II in Istanbul (UN Conference on Human Settlements), in 1997 the UN Climate Change Conference in Kyoto (COP3) with the adoption of the protocol of

the same name and the Conference of Parties to the Convention to Combat Desertification in Rome.

This first series of international conferences culminated in the largest meeting of heads of state and government at the time, the UN Millennium Summit in New York in 2000, where 189 UN member states adopted the Millennium Declaration. This described four spheres of action for securing the global future:

1. Peace, security and disarmament
2. Development and poverty eradication
3. Protecting our common environment
4. Human rights, democracy and good governance

On this basis, a panel of experts including representatives from the UN, the World Bank, the OECD and various non-governmental organisations drew up a list of eight goals, which UN Secretary-General Kofi Annan presented to the international public in 2001 under the title "Road Map towards the Implementation of the United Nations Millennium Declaration". These Millennium Development Goals (MDG) represented a consistent progression from the development goals that had been agreed at an international level during the UN conferences of the 1990s. The following goals were to be achieved by 2015:

The Millennium Development Goals represented a consistent progression from the development goals that had been agreed at an international level during the UN conferences of the 1990s.

1. Eradicate extreme poverty and hunger
2. Achieve universal primary education
3. Promote gender equality and empower women
4. Reduce child mortality
5. Improve maternal health
6. Combat HIV/AIDS, malaria and other diseases
7. Ensure environmental sustainability
8. Develop a global partnership for development

In addition, targets and indicators were set down to define the objectives in detail. With respect to the first goal for instance, two targets specified that both the proportion of people whose income is less than a dollar a day and the proportion of people who suffer from hunger were to be halved between 1990 and 2015. A third target was added in 2008, demanding the realisation of full

employment and decent work for all, including women and young people.⁵

The MDG were not embedded in a framework of international law. Realisation of the goals can therefore not be legally enforced, nor can any legal sanctions be applied in the event of failure.

Generally, the MDG were aimed at developing countries (even in the case of goals 7 and 8, which appeared to have global relevance at first glance), but they were not embedded

in a framework of international law. Realisation of the goals can therefore not be legally enforced, nor can any legal sanctions be applied in the event of failure. It also remained unclear what responsibility the industrialised countries had in connection with the realisation of the goals. Ultimately, it was left to each donor country to make decisions on the developing country or countries it would support and the amount of funding and the type of assistance it would provide.

Two summits in New York in 2005 and 2010 to review progress on the MDG represented important events, where the achievements made so far were examined and decisions were taken on what strategies needed to be pursued to get back on track with specific goals. In 2010, the representatives of the 150 participating states, which were under pressure from the global financial crisis, further adopted an "Action Agenda" to boost the efficiency of the global MDG engagement, focusing specifically on the financial aspects of the MDG process. The Agenda contained statements to the effect that international financial institutions would have to undergo comprehensive reforms and modernisation measures and that donor countries had to deliver on the promises from the two conferences on development funding in Monterrey in 2002 and in Doha in 2008 in a timely manner. The developing countries' own responsibility was also stressed, particularly regarding the raising of their own funds, for instance through the implementation of fair and effective national taxation systems. In this context, the German government pushed for better international coordination of the global development engagement and efforts to increase funding efficiency.⁶ The summit participants also agreed

5 | An excellent overview of the MDG, their targets and indicators, the achievements to date (based on the UN Millennium Development Goals Report 2014) and the contributions made by Germany can be found on the website of the Federal Ministry for Economic Cooperation and Development (BMZ), http://bmz.de/en/what_we_do/principles/german-contribution-to-international-development-policy-goals/index.html (accessed 25 Aug 2015).

6 | Ibid.

that the MDG process would have to be extended beyond 2015 until all goals had been reached in full.⁷

The greatest impulse for the substance of the 2030 Agenda in fact came from outside the MDG process itself. It manifested as one of the key outcomes of the so-called Rio+20 Conference of 2012, which had been organised once again in Rio de Janeiro on the occasion of the 20-year anniversary of the Rio UNCED Conference of 1992. At what was officially called the United Nations Conference on Sustainable Development (UNCSD), the 190 participating countries adopted an outcome document entitled “The World We Want” and agreed to initiate a process to draw up sustainable development goals, building on the MDG, which was to converge with the MDG process after 2015. The signatory states agreed that these new sustainable development goals (SDG) for short, should fulfil ten fundamental conditions. They should

1. be based on Agenda 21 adopted in Rio in 1992 and on the Johannesburg Plan of Implementation adopted at the World Summit on Sustainable Development (WSSD) in Johannesburg in 2002,
2. fully respect all the Rio Principles,
3. be consistent with international law,
4. build upon commitments already made,
5. contribute to the full implementation of the outcomes of all major summits in the economic, social and environmental fields,
6. focus on priority areas for the achievement of sustainable development, guided by the outcome document,
7. address and incorporate in a balanced way all three dimensions of sustainable development and their interlinkages,
8. be coherent with and integrated into the United Nations development agenda beyond 2015,
9. not divert focus or effort from the achievement of the Millennium Development Goals, and
10. include active involvement of all relevant stakeholders, as appropriate, in the process.⁸

7 | For an evaluation of the MDG process see also the article by Sabina Wölkner in this issue.

8 | Cf. UN, Division for Sustainable Development, Sustainable Development Knowledge Platform, <https://sustainabledevelopment.un.org/topics> (accessed 27 Jul 2015).

In addition, the SDG should be action-oriented, concise, easy to communicate, limited in number, aspirational, global in nature and universally applicable to all countries.



Brazil in 2012: The creation in terms of content of the 2030 Agenda can be traced back to the Rio+20 United Nations Conference on Sustainable Development. | Source: © Antonio Lacerda, picture alliance/dpa.

In the outcome document, the UN Secretary-General was mandated to form an inter-governmental Open Working Group (OWG) to draw up a proposal for the sustainable development goals. The 30-strong Open Working Group met 13 times between 14 March 2013 and 18 July 2014, with rotating attendance to ensure participation by members from all regions of the world and all interest groups, until it was ready to submit its official proposal for the SDG at the 68th session of the UN General Assembly on 8 September 2014. Germany shared a seat in the OWG with France and Switzerland. The ideas on linking development and sustainability, the principles of global partnership and the global validity of the goals incorporated into the OWG proposal show a clear German influence.

THE 2030 AGENDA FOR SUSTAINABLE DEVELOPMENT

From 25 to 27 September 2015, the United Nations Sustainable Development Summit 2015,⁹ which representatives from almost all 193 member states attended, officially adopted the 2030

9 | Cf. UN, Division for Sustainable Development, Sustainable Development Knowledge Platform, "United Nations Sustainable Development Summit 2015", <https://sustainabledevelopment.un.org/post2015/summit> (accessed 25 Aug 2015).

Agenda for Sustainable Development. They discussed the contents of the agenda for sustainable development and adopting it, preferably without significant changes. It should be without significant changes because the proposal by the Open Working Group represents a compromise, and calling it into question would considerably delay the entire 2030 Agenda process.

The first point to make is that the 2030 Agenda comprises not just the SDG, but is made up of four parts in total:

1. The political declaration by the signatory states,
2. the sustainable development goals (SDG) and targets,
3. the means of implementation (MoI) and
4. the follow-up and review process.

While the SDG catalogue with the targets, which had been at the center of the experts' discussions, forms the core, it is only part of the overall package, which has been assembled while bearing the experiences gained from the MDG process in mind.

1. The Political Declaration

This is the political commitment by the signatory states to the implementation of the goals of the agenda for sustainable development. The content of this declaration of intent, which was published under the working title "Transforming Our World – A Call for Global Action" and has been accepted by both state and non-state actors, was already discussed at an inter-governmental level back in February 2015 in New York. It was to comprise a total of 15 paragraphs and no more than three pages.¹⁰

"Leave no one behind" is one of the most important principles set forth in the declaration. The SDG will not be considered fulfilled until all countries and groups have realised them. No social group, no country is to be excluded from the post-2015 process or prevented from pursuing it. Further principles include human rights as the foundation of all action, striving for structural transformation, the integration of the different sustainability dimensions of

10 | UN, Division for Sustainable Development, Sustainable Development Knowledge Platform, "Discussion Document for Declaration", https://sustainabledevelopment.un.org/content/documents/6155_Discussion%20Document%20for%20for%20Declaration%2019%20Feb.pdf (accessed 25 Aug 2015). The adopted version was not available at time of printing.

the environment, the economy and the social sphere as well as strengthened global partnership.

The central statement is, in fact, hidden away in a later paragraph of the declaration, which makes reference to the “universality” of the 2030 Agenda. While the MDG had been designed as tasks to be addressed directly by the developing countries, for which the global North could make contributions as it saw fit, the SDG are conceived as global challenges, which all countries of the world need to address. Our planet is perceived as “One World”;¹¹ the traditional divisions into developing and industrialised countries,

Once the SDG agenda takes effect, the term “developing country” will become totally redundant and replaced by new realities. While there will still be rich and poor, the disparity will not be as much at state level as within individual societies.

North and South, beneficiaries and donors are becoming obsolete since all are expected to perform their specific tasks in shaping a sustainable future for our planet, so that coming generations will have a world worth living in. To take a phrase: As of September 2015, Germany will be a “developing country” just like Peru, the Gambia or Bangladesh. Once the SDG agenda takes effect, the term “developing country” will become totally redundant and replaced by new realities. While there will still be rich and poor, the disparity will not be as much at state level as within individual societies. This development is not a futuristic vision but a global reality in the making, which can be observed already in numerous countries in diverse regions of the world. The universality of the 2030 Agenda is therefore neither an abstract idea nor utopian lip service. Instead, it is the consequence of a fair and equitable global allocation of tasks that address not only states and their respective governments but also the regions and communities, society as well as individuals and their families, civil society actors as well as regionally or internationally active businesses. This concept of the acceptance of responsibility by all parties embodies the second fundamental aspect of universality in the 2030 Agenda.

2. The Sustainable Development Goals

While the product of the Open Working Group’s work is consistent with the requirement from the above-mentioned Rio+20 Declaration for the SDG to be “global in nature and universally applicable to all countries”, the 17 goals and 169 targets (!) are clearly in contrast to two requirements mentioned earlier, namely

11 | In Germany, the BMZ uses the joint spelling “EineWelt” in most of its official publications today to convey the idea.

for the SDG to be “easy to communicate” and “limited in number”. It appears that the members of the OWG found these requirements impossible to reconcile, and they actually justified the high number of goals with the need for universality. As the SDG and their targets address all actors worldwide, the actors’ diverse interests, wishes and demands needed to be reflected in the SDG catalogue. One of the consequences of this is that not all actors can or should address all the goals, let alone all the targets, at the same time. Only a small number of countries, Germany included, will therefore take on the challenge of making strides in implementing all 17 goals, both in the country itself and via its multilateral or bilateral work with partner countries to support them in their efforts to realise the SDG. While Germany will not need to put in place national plans to eradicate hunger, for instance (Goal 2: End hunger, achieve food security and improved nutrition and promote sustainable agriculture),¹² land-locked countries such as Bolivia, Slovakia and Uzbekistan cannot be expected to make any substantial contributions to Goal 14 (Conserve and sustainably use the oceans, seas and marine resources for sustainable development). Goal 2 further illustrates that certain aspects of a goal can be of little relevance with respect to implementation in individual countries (in Germany’s case: end hunger), while other aspects may indeed pose challenges for them (promote sustainable agriculture).

Not all actors can or should address all goals, let alone all targets, at the same time. Only a small number of countries, Germany included, will take on the challenge.

Despite explanations along these lines, the criticism by many national and international NGOs in particular has focused on the large number of goals and targets, usually making reference to the concisely worded eight Millennium Development Goals.¹³ The question many ask is this: How can 17 goals and 169 targets be conveyed to the general public? UN Secretary-General Ban

12 | Instead, we would need plans for reducing the enormous mountain of food waste in Germany. According to a study by Stuttgart University published in March 2012, which was conducted on behalf of the Federal Ministry of Food and Agriculture, some eleven million tons of food waste are generated in Germany alone each year. That corresponds to 135 kilograms of food waste per head of the population per year! Cf. Federal Ministry of Food and Agriculture, “Ermittlung der Mengen weggeworfener Lebensmittel und Hauptursachen für die Entstehung von Lebensmittelabfällen in Deutschland. Zusammenfassung einer Studie der Universität Stuttgart (März 2012)”, http://bmel.de/SharedDocs/Downloads/Ernaehrung/WvL/Studie_Lebensmittelabfaelle_Faktenblatt.pdf (accessed 25 Aug 2015).

13 | The partly controversial discussion about the 17 SDG and the 169 targets is also put under the spotlight in Wölkner, n. 7.

Ki-moon responded to this criticism in a synthesis report on the Agenda 2030, which was published on 4 December 2014. In this report, he presented six principles covering the 17 goals. He did not, however, clearly assign the individual SDG to specific principles as some of them can be associated with more than one (see table). The principles classify the SDG under the categories:

- Dignity: to end poverty and fight inequality;
- prosperity: to grow a strong, inclusive and transformative economy;
- justice: to promote safe and peaceful societies and strong institutions;
- partnership: to catalyse global solidarity for sustainable development;
- planet: to protect our ecosystems for all societies and our children;
- people: to ensure healthy lives, knowledge and the inclusion of women and children.¹⁴



Animal husbandry and solar energy: While Germany is not in need of national projects toward combating hunger, the promotion of sustainable agriculture is an important aspect of the SDG. | Source: © Ringo Chiu, picture alliance/ZUMA Press.

14 | UN, "The Road to Dignity by 2030: Ending Poverty, Transforming all Lives and Protecting the Planet. Synthesis Report of the Secretary General On the Post-2015 Agenda", p.14, http://un.org/disabilities/documents/reports/SG_Synthesis_Report_Road_to_Dignity_by_2030.pdf (accessed 25 Aug 2015).

But in terms of conveying the agenda contents to people all around the world, the 17 development goals themselves or the principles will not play that significant a role; instead, it will be indirect routes that can bring certain aspects of the 2030 Agenda home to people. One example is the Partnership for Sustainable Textiles, which was established by the Federal Ministry for Development and Cooperation, and the associated logo with a downloadable app for accessing information about the value and content of ecolabels and/or the Fairtrade brand in the textile sector. While this encourages consumers directly to purchase textiles that have been produced in an ecologically and socially “clean” manner and without endangering workers’ health, they are only indirectly aware that they have just made a small, but collectively important contribution to the global implementation of sustainable production and supply chains and thereby to the implementation of the 2030 Agenda.

Fig. 1

The Six Principles of Sustainable Development



Source: Own Illustration based on UN, n. 14, p. 20.

Fig. 2
The 17 Goals of Sustainable Development



Source: Own Illustration. For the 17 goals of sustainable development:
 ©©© The Global Goals for Sustainable Development,
<http://globalgoals.org> (accessed 21 Sep 2015). © racken.

3. The Financial Means to Implement the SDG

One important lesson learned from the MDG process is that in addition to coming to an agreement on new development goals, the international community must attend to the question of how

to fund their implementation promptly as well. During the first phase of the MDG process, the question of how to fund their implementation was not discussed until the specially convened Conference on Financing for Development in Monterrey in March 2002, the outcome of which was documented in the Monterrey Consensus on Financing for Development or Monterrey I for short. The question of funding was therefore not put on the international agenda until two years after the MDG had been adopted! However, with the Monterrey Conference, the issue of development funding was definitively brought to the attention of all actors as a fundamental part of the global debate on development policy; the follow-up conference consequently already took place in 2008 in Doha (Monterrey II).

On the basis of these lessons learned, the 67th UN General Assembly, which took place in September 2013, set up the 30-strong Intergovernmental Committee of Experts on Sustainable Development Financing. Its remit was to check which development funding sources were available and how they could be used most efficiently. Its findings were to inform the drafting of the strategies for funding the sustainable development goals and serve as a basis for the third UN Conference on Financing for Development, which took place in Addis Ababa from 13 to 16 July 2015.

The conference objective was to create a robust framework for global development funding for the following ten to 15 years, which would interconnect all sources of funding and realise the best possible synergies with respect to the objectives of the three sustainable development dimensions that needed funding. In addition, a catalogue of 100 reproducible measures was to be drawn up that could be used by individual countries to contribute to the implementation of the sustainable development agenda through concrete political actions to mobilise all resources – in the areas of funding as well as technology, innovation and commerce. While the conference did ultimately not succeed in coming to an agreement on the hotly debated establishment of a UN tax body, Secretary-General Ban Ki-moon stressed the positive outcomes of the conference: “The results here in Addis Ababa give us the foundation of a revitalised global partnership for sustainable development that will leave no one behind.”¹⁵ For other actors, particularly from the NGO sector, the resolutions of Addis Ababa lagged far

15 | Cf. Eliza Anyangwe, “Glee, relief and regret: Addis Ababa outcome receives mixed reception”, *The Guardian*, 16 Jul 2015, <http://gu.com/p/4ayhb/stw> (accessed 25 Aug 2015).

behind expectations. They had hoped for further concessions by OECD states with respect to trade facilitation and the establishment of an international tax regime.¹⁶

The outcome document of the Conference of Addis Ababa was presented to the UN Special Summit for approval as part of the 2030 Agenda.

4. Procedures for Monitoring the Implementation

All actors should be audited regularly by UN institutions with respect to their progress in the implementation of their own sustainability plans.

Complementing the declaration, the catalogue of goals and the funding framework, the comprehensive follow-up and review mechanism forms the fourth integral part of the sustainable development agenda. All actors (states and regions or multinational institutions such as the European Union, commercial enterprises, large civil society organisations, etc.) should be audited regularly by UN institutions with respect to their progress in the implementation of their own sustainability plans. The appropriate body will be the High Level Political Forum on Sustainable Development (HLPF), which functions under the auspices of ECOSOC and began operating in September 2013. Besides its remit to monitor the entire agenda process, the HLPF is to take on a political leadership role, provide recommendations and orientation, and act as a link between politics and science.

The follow-up and review procedures will serve fine-tuning and controlling programs and measures during the implementation phase, toward ensuring comparability between individual states, identifying best-practice measures, and determining conclusive outcomes after programs have come to an end. They are also intended to ensure that the sustainability and action plans of the individual actors are neither overblown nor trivial, but both ambitious and in line with realistic objectives. As there is not a wealth of past experience to draw on in this area, many questions remain unresolved. Practicable solutions will likely not emerge until the implementation phase scheduled to begin in 2016 (for instance the question as to whether actors will submit voluntarily to an evaluation or the scope and timing of the evaluation). Germany intends to set a good example here and has therefore declared its willingness to have its national sustainability plan and the achieved results subjected to a comprehensive evaluation as soon as 2016.

16 | Cf. Wölkner, n. 7, p. 36.

OUTLOOK

In conclusion, there is the question as to whether the 2030 Agenda will truly set humanity on the path to a sustainable future. The realistic answer is probably that we are definitely going in the right direction, despite the obstacles and setbacks that are to be expected. Does a conceivable alternative even exist? Clearly, the commitments and declarations of intent by the individual state and non-state actors will need to be followed up with a multitude of actions, measures, initiatives and programs, which must range from the global scope to the international, national and regional scope to the local and even family scope. Establishing a general awareness of the issue of sustainability is taking on central significance here, and may become the actual challenge. No doubt there will be some surprises with respect to the countries and institutions that will become the promoters of sustainable development over the next 15 to 20 years. Only actors capable of making relevant contributions over the long term will be able to act as opinion-makers and provide leadership for action in an increasingly problematic environment.

Clearly, the commitments and declarations of intent by actors will need to be followed up with a multitude of measures which must range from the global and local to the family scope.

Now that the sustainable development agenda is about to be adopted, the task for all governments worldwide will be to create national sustainability plans based on the 17 SDG and 169 targets, which will bear subsequent evaluation. To allow such sustainability plans to be created in the first place, studies will need to be conducted to take stock of the current societal, social and environmental circumstances. This in itself will pose a challenge to many countries, because they do not have the appropriate research institutes or instruments to collect solid data. For a country such as Germany, which created its first national sustainability plan back in 2002 and has been updating it every year on the basis of a virtually unlimited wealth of data, this is an area where it can offer essential and timely support and assistance with the creation of national sustainability strategies to countries that have inadequate resources for conducting research and devising their own national sustainability goals and targets.

Looking back at the process history from Rio 1992 to New York 2015, it is obvious that environment and development have been linked from the beginning. Numerous international conferences have accompanied and illustrated the progressive merging of the

two policy areas. When speaking about sustainable development, we now consider it a matter of course that the development goals, which relate predominantly to people, and the environmental goals, which relate more to the planet, represent two sides of the same coin. This should also be borne in mind more strongly when making decisions on departmental remits when governments are formed in the future so that greater synergy effects can be realised in the implementation of Germany's national sustainability agenda and its bilateral and international contributions to the 2030 Agenda.

Incidentally, sustainability as an instruction for action is a German invention! It was over 300 years ago that Hans Carl von Carlowitz, tax accountant and mining administrator, used the term in connection with sustainable forestry: "Only cut down as much timber as the forest can cope with. As much timber as can grow back." An admonition that was as pioneering as it was simple!

THE “2030 AGENDA” – MORE PRIVATISATION, LESS DEMOCRACY?

A NEW DIRECTION FOR GLOBAL AND EUROPEAN DEVELOPMENT POLICIES

Sabina Wölkner

The 2030 Agenda sets out the Sustainable Development Goals (SDGs) that were agreed at the 70th sitting of the UN General Assembly in New York on 25 September. These SDGs replace the Millennium Development Goals (MDGs) that were agreed in connection with the World Summit in Rio de Janeiro in 2000. These MDGs were made up of eight goals,¹ which focused on combating extreme poverty. They were based on the assumption that people who have to live on less than 1.25 U.S. dollars per day have no chance of survival.²

The MDGs were hailed by the international community as a global convention on combating poverty. They were considered to be benchmarks that were easy to communicate to the wider public and whose success or failure would be easy to quantify.³ However, it soon became clear that the results of the MDGs would be mixed,



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- 1 | The goals are as follows: To eradicate extreme poverty and hunger, to achieve universal primary education, to promote gender equality, to reduce child mortality, to improve maternal health, to combat HIV/AIDS, malaria, and other diseases, to ensure environmental sustainability and to develop a global partnership for development. Cf. United Nations (UN), *Millennium Development Goals and Beyond 2015*, <http://un.org/millenniumgoals> (accessed 10 Jul 2015).
- 2 | Jeffrey D. Sachs, *Investing in Development. A Practical Plan to Achieve the Millennium Development Goals*, UN Millennium Project, 2005, New York, <http://unmillenniumproject.org/documents/overviewEngLowRes.pdf> (accessed 9 Jul 2015).
- 3 | Cf. Sebastian Barnet Fuchs, "Anforderungen an die Post-2015 Agenda: Für mehr politische Mitbestimmung, Gleichheit und Nachhaltigkeit", *Analysen und Argumente*, Konrad-Adenauer-Stiftung, Apr 2014, <http://kas.de/mned-bruessel/de/publications/37426> (accessed 10 Jul 2015).

and they particularly failed to meet expectations in sub-Saharan Africa. This was particularly the case in fragile African countries that were affected by war and conflict, and in the Least Developed Countries (LDCs).⁴ The gulf between these groups and other development regions actually increased. However, it is worth taking a closer look at the problems in Africa. The working poor are a case in point. The number of people who earn less than 1.25 U.S. dollars per day has actually gone down, especially in North Africa. There is also evidence of progress in other parts of Africa. Between 2000 and 2013 the number of people in this group as a percentage of the working population fell from 55.8 per cent to 39.2 per cent. But at the same time there was an increase in the number of people working in the informal sector. In North Africa, “only” 35 per cent of people earned less than 1.25 U.S. dollars a day, whereas the total in the rest of Africa was still closer to 78 per cent.⁵

Sebastian Barnet Fuchs believes that one of the reasons for this uneven rate of progress is the fact that some developing nations view the MDGs as a “top-down agenda” and an “OECD product”, as developing nations representatives were not sufficiently involved in their creation.⁶ “For some governments, this has occasionally served as a welcome excuse for refusing to submit to a “Western” agenda and for failing to make development efforts in certain areas as called for in the MDGs”, suggests Fuchs.

Another potential problem, according to Fuchs, was the technical nature of the MDGs. They made no mention of democracy, the rule of law or good governance. They were only mentioned in the

- 4 | The Organisation for Economic Co-operation and Development (OECD) works on the assumption that there are 50 fragile states. Cf. OECD, *2015 OECD report on States of Fragility*, “List of fragile states and economies”, <http://oecd.org/dac/governance-peace/conflictandfragility/docs/List%20of%20fragile%20states.pdf> (accessed 10 Jul 2015). “Least Developed Countries” account for less than two per cent of global trade, yet more than 880 million people live in these countries. This is approximately twelve per cent of the world’s population. The list includes 48 countries, of which 34 are in Africa, 13 in Asia and the Pacific Rim and one in Latin America. Cf. UN, “Least Developed Countries: Country resolutions and reports”, http://un.org/en/development/desa/policy/cdp/ldc2/ldc_countries.shtml (accessed 12 Jul 2015).
- 5 | United Nations Economic Commission for Africa, African Union, African Development Bank and United Nations Development Programme, *MDG Report 2014, Assessing progress in Africa toward the Millennium Development Goals Analysis of the Common African Position on the post-2015 Development Agenda*, Oct 2014, http://afdb.org/fileadmin/uploads/afdb/Documents/Publications/MDG_Report_2014_11_2014.pdf (accessed 11 Jul 2015).
- 6 | Cf. Fuchs, n. 3.

United Nations Millennium Declaration of 18 September 2000. The goals' lack of a clear commitment to these principles came back to bite them. In many developing countries it led to a lack of transparency, democratic participation and accountability in implementing the MDGs.

However, in spite of these obstacles, the measures inspired by the goals still managed to lift more than 700 million people out of extreme poverty. Part of the reason for this success was the favourable global economic climate during that period. China in particular, together with some developing and emerging economies in Latin America, were enjoying high rates of domestic growth. This allowed them to rapidly meet and in some areas even exceed their targets.⁷

In terms of the post-2015 phase, it was clearly time to tackle the shortcomings in the MDGs in order to promote development in countries that have still made little progress. Global changes have also forced the international community to shift the orientation of the goals for the next 15 years.

DEMOGRAPHIC SHIFTS AND MIGRATION

The world's population has grown by two billion in the last 25 years. By 2050, there will be more than nine billion people living on the planet. 85 per cent of them will be living in today's developing countries. Half of the population growth will be in Africa. By 2050, a quarter of all people will come from this continent.⁸ The fact that population numbers in Europe and China are likely to decline over this period means that we can expect to see an increase in the global movement of migrants. There are currently more than 232 million international migrants. Since 1990, the number in the Global North has risen by 53 million (65 per cent), while in the Global South the number has increased by 24 million (34 per cent).⁹

As population numbers in Europe and China are likely to decline until 2050, we can expect to see an increase in the global movement of migrants.

7 | UN, *The Millennium Development Goals Report 2014*, <http://un.org/millenniumgoals/2014%20MDG%20report/MDG%202014%20English%20web.pdf> (accessed 11 Jul 2015).

8 | UN, *Realizing the Future We Want for All. Report to the Secretary-General*, 2012, p. 16 f., http://un.org/millenniumgoals/pdf/Post_2015_UNTTreport.pdf (accessed 11 Aug 2015).

9 | UN, Department of Economic and Social Affairs, *World Migration in Figures. A joint contribution by UN-DESA and the OECD to the United Nations High-Level Dialogue on Migration and Development*, 3-4 Oct 2013, <http://oecd.org/els/mig/World-Migration-in-Figures.pdf> (accessed 14 Jul 2015).

CLIMATE CHANGE AND COP21

The fact of the world's growing population increases the pressure to find ways of using the planet's natural resources sustainably and preventing catastrophic climate change. Expectations are high regarding the 21st annual session of the Conference of the Parties (COP21) to the United Nations Framework Convention on Climate Change (UNFCCC), which is due to take place in December 2015 in Paris. Success would be the adoption of a binding agreement to enter into effect in 2020 aimed at preventing global warming exceeding two degrees Celsius. A key element of the agreement is the reduction of CO₂ emissions (mitigation).

Developing countries are suffering from the negative effects of climate change. Adaptation is essential in order to secure the long-term livelihoods of people in regions that are particularly affected.

At present, the largest producers of emissions are: China (29 per cent), the USA (15 per cent), the European Union (eleven per cent), India (six per cent) and the Russian Federation (five per cent).¹⁰ In terms of carbon dioxide emissions per capita, the USA comes top with 16.5 tons ahead of China and the EU.¹¹ However, mitigation alone is not enough to secure an effective agreement. Many developing countries are already suffering from the negative effects of climate change. Adaptation is essential in order to secure the long-term livelihoods of people in regions that are particularly affected by climate change. The global cost would be in the order of 150 billion U.S. dollars per year by 2030, potentially growing to 500 billion U.S. dollars per year by 2050 if emissions continue to grow at their current rate.

NEW DONOR COUNTRIES / RISE OF THE EMERGING ECONOMIES

In 2010, China became the first country to halve its poverty rate. Today, the country now runs its own projects in developing countries, especially in Africa. Chinese investment there grew from 210 million U.S. dollars in 2000 to 3.17 billion U.S. dollars in

10 | PBL Netherlands Environmental Assessment Agency, *Trends in global CO2 emissions. 2014 Report*, http://edgar.jrc.ec.europa.eu/news_docs/jrc-2014-trends-in-global-co2-emissions-2014-report-93171.pdf (accessed 11 Jul 2015).

11 | Matt McGrath, "China's per capita carbon emissions overtake EU's", *BBC News*, 21 Sep 2014, <http://bbc.com/news/science-environment-29239194> (accessed 11 Jul 2015).

2011.¹² Beijing's money is welcomed by the rulers of developing countries as, unlike European aid money, it is not linked to conditions and uncomfortable reforms aimed at improving democracy, the rule of law and human rights. In 2015 China set up the Asian Infrastructure Investment Bank (AIIB), of which it is the principle shareholder. As the country is not a member of the OECD, it tends to follow its own rules when it comes to implementing development projects.



Cement factory in Zimbabwe: Especially the autocratically governed countries in Africa welcome Chinese investment, to which no structural conditions are attached. | Source: © Xu Lingui, picture alliance/Photoshot.

Brazil is also taking on a growing role as a donor country for development projects. Unlike China, however, it has been actively involved in development aid projects for decades. But it is only in recent years that it has significantly increased its commitment in this area. This growing interest is almost certainly tied up with Brazil's own successful development. Brazil has been able to meet seven of the eight MDGs, which has given it more room to manoeuvre in terms of its commitment to international development.¹³ However, Brazil's overall success at meeting the

12 | Cf. Yun Sun, "China's Aid to Africa: Monster or Messiah?", Brookings East Asia Commentary, No. 75, Feb 2014, <http://brookings.edu/research/opinions/2014/02/07-china-aid-to-africa-sun> (accessed 10 Jul 2015).

13 | Cf. Overseas Development Institute, "Brazil: an emerging aid player. Lessons on emerging donors, and South-South and trilateral cooperation", *ODI Briefing Paper*, Oct 2010, <http://odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/6295.pdf> (accessed 10 Jul 2015).

MDGs is partly cosmetic. It has indeed reduced extreme poverty within its borders, but it still needs to improve its performance in terms of providing sanitary facilities for people in the slums, and make efforts to continue reducing the number of people who live in them. But despite these caveats, most observers agree that the country has made progress in terms of development.¹⁴

In light of this progress, it is perhaps hardly surprising that Brazil, China and other developing and emerging countries have demanded greater involvement in formulating the 2030 Agenda. But they take a very different view when it comes to who should fund this development, each believing this remains the responsibility of the “developed North”.

CRISES AND CONFLICTS

While most developing countries have improved their results in the Human Development Index since 2000, progress amongst the fragile states has been modest at best.

According to the OECD, the fragile states have had the worst results when it comes to achieving the targets set out in the MDGs. While most developing countries

have improved their results in the Human Development Index since 2000, progress amongst the fragile states has been modest at best. U.S. Aid is of the opinion that extreme poverty will be concentrated in these particular countries for the next two decades. Development in these countries is very dependent on international development aid, and the chronic instability of these countries makes it unlikely that things will change in the near future. Other sources of finance such as direct investment do not play a significant role, unless the fragile states happen to have mineral or other natural resources. This last point goes some way to explaining why Angola, Chad and Rwanda were among the top ten countries with the fastest growing economies between 2001 and 2010. All three countries belong to the group known as the Least Developed Countries (LDCs). In spite of their high growth rates, they are a long way from overcoming poverty and hunger within their borders.

What is clear from the above is that the consequences of migration, climate change, war and conflict around the world require a global partnership between developing, emerging and developed

14 | Cf. “The world’s next great leap forward, towards the end of poverty”, *The Economist*, 1 Jul 2013, <http://economist.com/news/leaders/21578665-nearly-1-billion-people-have-been-taken-out-extreme-poverty-20-years-world-should-aim> (accessed 4 Sep 2015).

nations that takes into account the rise of China, Brazil and other countries of the Global South, but also recognises the growing interdependence of policy areas such as climate, development, energy and security. We will now look at the extent to which the foundations for such a cooperation have been laid during the negotiations on the SDGs and which precepts are likely to play a leading role in the future 2030 Agenda.

DEMOCRACY – A LEITMOTIF FOR THE SDGs?

Drawing up the SDGs presented an opportunity to make democracy their leitmotif. Civil society called for a “holistic and inclusive approach” to the 2030 Agenda, and highlighted the need for good governance and respect for human rights to play a key role. Non-governmental organisations also demanded more involvement in the negotiating process of the UN General Assembly’s Open Working Group (OWG), which was tasked with drawing up a first draft of the SDGs. The basic direction was set as part of the Rio+20 UN Conference on Sustainable Development in the summer of 2012 and in light of the adoption of the document “The Future We Want”. The UN’s member states agreed to involve relevant development policy actors in the process, so non-governmental organisations and civil society representatives were invited to take part in consultations. The UN General Secretary also appointed representatives from civil society, the private sector and governments to the High Level Panel (HLP) to advise on the 2030 Agenda. Finally, NGO representatives and other development policy actors were allowed to give feedback on the Synthesis Report of the Secretary-General on the 2030 Agenda in advance of its publication in December 2014.

Non-governmental organisations frequently demand more involvement in work of the UN.

This openness and transparency paid off. The group produced a report that was even welcomed by non-governmental actors. On 2 June 2014, the UN published the group’s “Zero Draft” and on 10 September 2014 the members of the UN General Assembly adopted the Report of the Open Working Group on SDGs as the “main basis for incorporating the SDGs into the post-2015 Development Agenda”. The group recommended 17 goals and 169 targets, in this way going far beyond the original MDGs. But the number of goals was not the only change. All the Sustainable Development Goals, as the name suggests, are based on a principle of sustainability that cuts across all political, social, economic

and environmental policy spheres. The importance of this principle is displayed in the fact that the word “sustainability” is mentioned 100 times in the draft document. In comparison, the term “human rights” only appears three times, while¹⁵ “democratic” does even worse, with just a single mention in the preamble.¹⁶ And yet, while sustainability is clearly the focus of the document, the actual meaning of the concept remains somewhat vague and its connection to democracy is very much on the sidelines. This lack of a clear definition adds to the confusion about what sustainability really means.



Ecological growing of vegetables in Vietnam: Especially in agriculture, sustainability plays an increasingly important role. | Source: © Christoph Mohr, picture alliance/Christoph Mohr.

This is in part due to the fact that not everybody sees things the same way. Democratically governed member states believe that democratic reforms are essential if sustainable development is to be achieved, while autocratic governments naturally see things somewhat differently. It is therefore hardly surprising that serious disagreements arose at various times during the negotiations, such as during the formulation of Goal 16. This calls for the promotion of peaceful and inclusive societies for sustainable development and the establishment of effective, accountable and inclusive

15 | Cf. UN, *Open Working Group Proposal for Sustainable Development Goals*, <https://sustainabledevelopment.un.org/content/documents/1579SDGs%20Proposal.pdf> (accessed 9 Jul 2015).

16 | Ibid.

institutions at all levels.¹⁷ China expressed specific reservations about this particular goal. According to Beijing, the goal touches on security policy issues that are the sole responsibility of the UN Security Council. However, this argument sounds somewhat forced and designed to hide Beijing's fears that Western democracies, and the USA in particular, could use this goal as a pretext to interfere in China's internal affairs.¹⁸ The fact that China eventually dropped its opposition to the wording of the goal is thought to be down to its growing presence in Africa and it now appears to be showing a growing interest in security policy cooperation outside of the UN Security Council.¹⁹ The UN admitted that "although the majority of States have backed an agenda for sustainable peace, the inclusion and framing of SDG 16 on peaceful and inclusive societies remains sensitive for some Member States".²⁰

The EU was also unhappy with the formulation of this particular goal. It felt that it was necessary to find a clear and unambiguous formulation, as fundamental values were at stake. They called for two separate goals: one aimed at the creation of stable and peaceful societies and another focused on good governance, the rule of law and the creation of transparent and accountable institutions.

The EU has stuck to this particular line throughout the 2030 Agenda process, as can be seen in numerous EU strategy papers on the 2030 Agenda. The Commission, for its part, stressed in its communication of February 2015 that the global partnership "needs to be based on human rights, good governance, rule of law, support for democratic institutions, inclusiveness, non-discrimination, and gender equality".²¹

17 | Ibid.

18 | Cf. Jennifer Constantine, "Understanding the Rising Powers' contribution to the Sustainable Development Goals", Institute of Development Studies, Brighton, Mar 2015, <http://opendocs.ids.ac.uk/opendocs/bitstream/handle/123456789/5970/RRB9%20Final%20revised%20online.pdf?sequence=8> (accessed 16 Jul 2015).

19 | Ibid.

20 | Larry Attree, "Goal 16 – Ensuring Peace in the Post-2015 Framework: Adoption, Implementation and Monitoring", *UN Chronicle*, Ausgabe LI No. 4 2014, <http://unchronicle.un.org/article/goal-16-ensuring-peace-post-2015-framework-adoption-implementation-and-monitoring> (accessed 30 Aug 2015).

21 | Europäische Kommission, *Communication from the Commission to the European Parliament, the Council, The European Economic and Social Committee and the Committee of the Regions. A Global Partnership for Poverty Eradication and Sustainable Development after 2015*, 5 Feb 2015, COM(2015) 44 final, p. 3 f., https://ec.europa.eu/europeaid/sites/devco/files/com-2015-44-final-5-2-2015_en.pdf (accessed 13 Jul 2015).

However, the UN Group did not go so far as to accept the EU call for two separate goals. This failure served to highlight the main problem with the SDGs. Transparent and accountable institutions are inextricably bound up with the principles of democracy and yet the word “democratic” does not appear in any of the goals. The goals therefore lack a clear political commitment to democracy, which, in the opinion of democratically governed member states, is a prerequisite for “genuine” sustainability.

UNIVERSALITY AND SHARED RESPONSIBILITY

The principle of universality was reintroduced into the 2030 Agenda. In his December 2014 report “The road to dignity by 2030: ending poverty, transforming all lives and protecting the planet”, UN Secretary-General Ban-Ki Moon defined the concept as follows:

“Universality implies that all countries will need to change, each with its own approach, but each with a sense of the global common good. Universality is the core attribute of human rights and intergenerational justice. It compels us to think in terms of shared responsibilities for a shared future. It demands policy coherence. Universality embodies a new global partnership for sustainable development in the spirit of the Charter of the United Nations.”²²

China, India and Brazil suspect an attempt by the richer nations to reduce their financial contributions to development cooperation. And, indeed, there appears to be some evidence for this.

While this sounds good in principle, China, India and Brazil were not especially enthusiastic about this particular definition. They took the reference to the idea of shared responsibility in the definition to be a veiled

attempt by the richer nations to reduce their financial contributions to development cooperation projects. And indeed there did appear to be some evidence for this. Many donor countries had failed to achieve the target set out in the MDGs of increasing ODA (official development assistance) to 0.7 per cent of gross national product (GNP). This included some EU member states. And while the European Commission called on the “black sheep” states to fulfil their obligations, many countries’ contributions fell short of the agreed target. Those countries badly affected by the Eurozone crisis, such as Ireland, Spain and Portugal, actually reduced their contributions. Great Britain, for its part, only managed to achieve

22 | UN, “The road to dignity by 2030: ending poverty, transforming all lives and protecting the planet Synthesis report of the Secretary-General”, Synthesis report of the Secretary-General, Dec 2014, p. 11, <http://un.org/en/development/desa/publications/files/2015/01/SynthesisReportENG.pdf> (accessed 15 Jul 2015).

the 0.7 per cent mark relatively recently, while Germany's ODA currently stands at 0.41 per cent. And yet total EU ODA as a percentage of gross national product (GNP) remains, as before, at a constant of 0.42 per cent. This is due to the fact that Denmark, Luxembourg and Sweden have exceeded the 0.7 per cent mark and so have helped to plug the gap to some extent.²³

For the EU, there are two main issues surrounding the principle of universality. Firstly, it believes that the development agenda must be tied into its "Europe 2020" growth and development strategy.²⁴ This ten-year strategy plan incorporates key targets agreed between the EU and its member states in the areas of innovation, the digital economy, employment, youth, industrial policy and poverty reduction. Secondly, the EU feels it needs to get to grips with its own commitment to the concept of Policy Coherence for Development (PCD). The aim of this concept is to try to align goals covering areas such as trade, finance, agriculture and climate protection with EU development goals in order to establish principles for cooperation with developing countries that go beyond aid.²⁵ According to Heiner Janus, Stephan Klingebiel and Sebastian Paulo, the aim of policy coherence "when formulated negatively, is simply to design policies in such a way that they do not damage existing development goals ('do no harm'). When formulated positively, the PCD concept aims to achieve cooperation between all political policy areas for the benefit of these development goals".²⁶

Policy coherence in development work is now the main thrust of European development policy. The principle formed a part of the European Consensus on Development in 2006 and has been consistently built upon since then – most recently within the framework of the Treaty of Lisbon. For this reason, the EU campaigned strongly for the integration of the principle of policy coherence for development during the OWG draft negotiations.

23 | Cf. European Commission, "European Commission calls for renewed commitments to reach targets on official development assistance", press release, 8 Apr 2015, http://europa.eu/rapid/press-release_IP-15-4747_en.htm (accessed 18 Jul 2015).

24 | Cf. European Commission, "Europa 2020 im Überblick. Prioritäten", http://ec.europa.eu/europe2020/europe-2020-in-a-nutshell/priorities/index_de.htm (accessed 18 Jul 2015).

25 | Cf. Heiner Janus/Stephan Klingebiel/Sebastian Paulo, *Beyond Aid. Konzeptionelle Überlegungen zum Wandel der Entwicklungszusammenarbeit*, German Development Institute, discussion paper, 18/2013, http://www.die-gdi.de/uploads/media/DP_18.2013.pdf (accessed 20 Aug 2015).

26 | Ibid.

The main motivating factor for the EU was its trading relations. Brussels and the EU member states are important, or even the most important, trading partners for some developing countries. Neven Mimica, European Commissioner for International Cooperation and Development, praised the fact that the EU has given many developing countries free access to the European market, resulting in exports from Least Developed Countries (LDCs) of more than 35 billion euros per year, for example.²⁷ However, organisations such as CONCORD are less impressed by figures like these. They accuse the EU of sabotaging their own noble goals during trade negotiations with developing countries by signing treaties and agreements that only serve to further reinforce existing economic monostructures in these countries.²⁸

ODA FUNDING VERSUS PRIVATE CAPITAL

At 58 billion euros, the EU and its member states continue to be the world's largest donors of development aid. According to Development Commissioner Neven Mimica, the facts speak for themselves. It is clear that the EU has to continue with its pledge to commit 0.7 per cent of gross national product (GNP) to ODA, and he has called on other countries to follow the EU's example.²⁹ But the focus on official development aid detracts from the debate on how to reform financing for development. Over recent years there has been much debate about new instruments and sources of finance. These include private sector investment, loans and funding via public-private partnerships. The UN estimates that financing needs for sustainable development projects will stretch not just to billions, but to trillions. The World Bank and other financial

There is much debate about new sources of finance. The UN estimates that future financing will stretch not just to billions, but to trillions.

27 | Cf. European Commission, "Third International Conference on Financing for Development – Plenary session (Addis Ababa, 14/07/2015)", speech by Commissioner for Development Neven Mimica at the third international conference on financing for development in Adis Abeba, 14 Jul 2014, http://ec.europa.eu/commission/2014-2019/mimica/announcements/third-international-conference-financing-development-plenary-session-addis-ababa-14072015_en (accessed 24 Aug 2015).

28 | Concord illustrates this thesis with the example of West Africa. Cf. Concord, *The EPA between the EU and West Africa: Who benefits? Coherence of EU Policies for development*, Spotlight Paper 2015, http://concordeurope.org/images/Spotlight_2015-TRADE-EPA-April_2015-EN.pdf (accessed 25 Aug 2015).

29 | Cf. n. 27.

institutions are of the same opinion.³⁰ They believe this is what it will take to finance sustainable infrastructures for water supply, agriculture, telecommunications, transport and other industrial sectors in all developing countries. So it is clear that official development aid alone will not meet these needs. It seems inevitable that development resources will have to be mobilised through blended finance. The EU believes this new blending method could raise 100 billion euros by 2020. And, in the spirit of the oft-cited desire for more local ownership by developing countries, these nations should also be required to play their part in this respect. They should generate more funding for their own budgets by stepping up their efforts to fight corruption, money laundering and tax evasion and set up more effective administrative structures.



Welfare after the earthquake in Haiti in 2010: Not only the implementation but also the financing of development aid projects shall be increasingly shifted towards the private sector in the future. | Source: © Florian Kopp, picture alliance/Westend61.

These ideas were addressed at the UN conference held in Addis Ababa in July 2015. Under the banner of "Financing for Development", a number of initiatives were adopted on how to build

30 | Cf. Development Committee of the Joint Ministerial Committee of the Boards of Governors of the Bank and the Fund on the Transfer of Real Resources to Developing Countries), *From Billions to Trillions: Transforming Development Finance Post-2015 Financing for Development: Multilateral Development Finance*, The World Bank, 18 Apr 2015, [http://siteresources.worldbank.org/DEVCOMMINT/Documentation/23659446/DC2015-0002\(E\)FinancingforDevelopment.pdf](http://siteresources.worldbank.org/DEVCOMMINT/Documentation/23659446/DC2015-0002(E)FinancingforDevelopment.pdf) (accessed 26 Aug 2015).

effective tax systems. It was agreed that regional networks in Latin America, Africa and Asia should help to implement tax reforms effectively, and that in future national, regional and multilateral development banks should give loans running into the billions for expanding infrastructures and supporting small businesses. Finally, the UN member states agreed to support new financing models and partnerships in order to close funding gaps in the areas of food security and health care provision.

But not everyone was happy with the outcome of the summit. The UN and EU claimed the conference was successful in creating new financing frameworks for the SDGs, but NGO representatives and observers who had been hoping for an expansion of official development aid were disappointed. Civil society organisations were particularly sceptical about involving the private sector in development policy. Winnie Byanyima of Oxfam summed it up, saying: "Today, one in seven people live in poverty and Addis was a once-in-a-decade chance to find the resources needed to end this scandal. [...] the Addis action agenda has allowed aid commitments to dry up, and has merely handed over development to the private sector without adequate safeguards."³¹

Civil society organisations are particularly sceptical about involving the private sector in development policy.

The EU has made its position clear on the need to increase the role of the private sector in providing finance for development. It sees itself as a pioneer in the way it is mobilising additional funding for sustainable development. It believes the scale of the challenges ahead makes it essential to find new sources of funding. As the main focus of the SDGs is on sustainability, it is important to encourage more active involvement on the part of private actors such as businesses, financial institutions, associations, employers' and employees' organisations in the area of development. This particularly applies in light of the potential for businesses to create inclusive, sustainable growth in developing countries. These actors should not only be sources of finance but also act as partners to governments, non-governmental organisations (NGOs) and donor organisations.³² What is more, in its Communication of

31 | Cf. Clár Ní Chonghaile, "Addis Ababa outcome: Milestone or millstone for the world's poorest", *The Guardian*, 16 Jul 2015, <http://gu.com/p/4ayat/stw> (accessed 16 Jul 2015).

32 | Cf. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, "A Stronger Role of the Private Sector in Achieving Inclusive and Sustainable Growth in Developing Countries", -

May 2014, the EU Commission calls for the role of the private sector to be strengthened through the creation of regional facilities for mixed funding (blending) of new instruments in order to meet sustainability goals for the private sector.

However, Brussels also realises that the hope of obtaining large-scale private investment has so far proved to be somewhat unrealistic in many developing countries. Improvements

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to the political and legal framework are a prerequisite for making investments attractive to small and medium-sized businesses in these countries. In concrete terms, this means a functioning state governed by the rule of law, transparent management of public spending, tax reform and competent public administration.³³ From the EU's point of view, this also means the introduction of internationally-agreed rules and guidelines on responsible corporate practices in the areas of human rights, employer law and environmental standards. It remains to be seen how improvements in all these areas can be dovetailed in the countries concerned. Of course civil society organisations, human rights activists and political foundations are working particularly hard on these issues.

OUTLOOK

At the beginning of August the UN's 193 member states agreed on a 30-page action plan. The delegates are generally pursuing the final proposal produced by the OWG, which sets out 17 goals and 169 targets. As expected, the final proposal does not focus on the principle of democracy.³⁴ Although Human Rights are more often mentioned in the document, the definition of the sustainability remains vague and to a certain extent is left to the interpretation of individual member states. It remains to be seen how this will play out in countries like China, Venezuela, Saudi Arabia and Iran in terms of how they achieve the goals. But when it comes to implementing the SDGs, their exact wording is not the key issue. Success here depends much more on formulating interim goals, indicators and instruments to measure their progress, or lack of it. Discussions are ongoing in this respect. On 6 March 2015

13 May 2014, COM(2014) 263 final, p. 18, [http://europarl.europa.eu/meetdocs/2014_2019/documents/com/com_com\(2014\)0263_/com_com\(2014\)0263_de.pdf](http://europarl.europa.eu/meetdocs/2014_2019/documents/com/com_com(2014)0263_/com_com(2014)0263_de.pdf) (accessed 24 Aug 2015).

33 | Ibid.

34 | The word appears only once in both the UN's 11-page declaration and the OWG proposal. Cf. Point 9 in UN, *Transforming our World: The 2030 Agenda for sustainable Development*, <https://sustainabledevelopment.un.org/post2015/transformingourworld> (accessed 5 Oct 2015).

the UN created another expert group with the task of producing, a proposal for global indicators by next year. The latest report by the expert group called for a “data revolution for sustainable development” and technology transfer from developed countries to developing countries, which would include building capacity to capture statistical data and the introduction of a common standard.³⁵ But there is a long way to go. We cannot expect a simple solution, as the UN group includes member states as well as independent experts, resulting in the all-too-familiar polarity between democratic countries and autocracies.



Chip factory in Erfurt: According to experts, sustainable development aid also requires an encompassing transfer of technology from the developed countries to the developing countries. | Source: © Michael Reichel, picture alliance / dpa.

This polarity is not the only obstacle to the UN's ability to take effective action. The contrasting reactions to the Addis conference show that the EU's member states also need to debate the 2030 agenda. Civil society organisations are particularly concerned about involving private investors in developing and emerging countries. They support the EU's call for international standards, but fear these calls will remain nothing but statements of intent, since there is no chance such goals will be implemented in countries that have been in the grip of corruption for decades. It remains to be seen whether this scenario materialises. Much depends on observing the work of governments and other actors in the countries concerned and informing the public about

maladministration in good time. The Konrad-Adenauer-Stiftung can play an important role in this respect, alongside the EU, UN and other international organisations, because it is present in many developing countries and has contacts with many target groups.

But simply analysing the situation on the ground is not enough to ensure the success of the 2030 Agenda. It is also important to get people in the EU's member states more involved in the debate. According to a Eurobarometer survey carried out in 2013, 80 per cent of citizens believe that development aid is important, and 60 per cent would even be prepared to donate more. However, at the same time 50 per cent of respondents admitted they had no idea where the aid goes.³⁶ Again, the Konrad-Adenauer-Stiftung is relevant in this field. Thanks to its offices in EU member states, it has the appropriate instruments at its disposal to stimulate public dialogue. Clearly there will be many more issues to address. The key questions will not be about practical cooperation, building the administrative capacity to collect statistical data and so on. They will revolve around the extent to which we can use a sustainable development agenda specifically to promote the causes of democracy, human rights and the rule of law.

36 | Cf. European Commission, "EU Development Aid and the Millennium Development Goals", *Special Eurobarometer 405*, Nov 2013, http://ec.europa.eu/public_opinion/archives/ebs/ebs_405_en.pdf (accessed 24 Aug 2015).

ILLICIT FINANCIAL FLOWS AS AN OBSTACLE TO DEVELOPMENT



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Although the phenomenon of Illicit Financial Flows (IFF) is not entirely new on the agenda of the international donor community, in the past five years the subject has gained additional momentum in the context of development finance discussions. Donors and recipients have both come to realise that the hazards and side effects are not limited to financial losses for the state concerned, but rather pose a threat to its statehood.

The aim of this article is to address a topic that has rather been neglected in the recent German development policy debate. It assesses dimensions and characteristics of IFFs, and reviews the current policy initiatives against the backdrop of recent discussions in Addis Ababa in the scope of the International Conference on Financing for Development Cooperation (13 to 16 July 2015).

Even though IFFs are a global phenomenon that has grown to a volume of around 991.2 billion U.S. dollars (2012)¹ per year, the following analysis is primarily concerned with the current situation in sub-Saharan Africa, as well as global and African initiatives to combat the issue.

ILLICIT FINANCIAL FLOWS

The phenomenon of illicit financial flows is not limited to the often associated symptom of actual capital flight. The term, first coined by Raymond Baker,² emphasises the multi-dimensional character

1 | Cf. Dev Kar / Joseph Spanjers, *Illicit financial flows from developing countries 2003-2012*, Global Financial Integrity, 12/2014, p. vii, <http://gfintegrity.org/wp-content/uploads/2014/12/Illicit-Financial-Flows-from-Developing-Countries-2003-2012.pdf> (accessed 18 Aug 2015).

2 | Cf. Raymond Baker, *Capitalism's Achilles Heel. Dirt Money and How to renew the Free Market System*, Hoboken, New Jersey, 2005, p. 205ff.

of the issue, since responsibilities do not solely lie at the source of financial flows, but also on the receiving side. The term illicit deliberately encompasses more than just illegal transactions, but also refers to tax avoidance models of transnationally operating companies (intra-firm profit shifting).

When studying the effects of IFFs on the development and financing of states, it makes little sense to limit the concept to illegal aspects, as is for example the case with the OECD IFF definition, but instead to cast a wider net.³

However, since any broader conceptualisation would further impede the quantification of an issue that is difficult to measure due to the non-public nature of the phenomenon in the first place, IFFs are generally understood as follows:

Illicit financial flows are defined as all transfers of illegally acquired and employed capital.⁴ This capital is derived from criminal activities (a) and corruption (b). In sub-Saharan Africa, however, IFFs linked to commercial activities (c) are the primary cause of economic damage, undermining development efforts. The High Level Panel on Illicit Financial Flows from Africa under the auspices of former president Thabo Mbeki has therefore not limited its investigations to illegal transactions, and has included the legal grey areas within official economic cycle.

In sub-Saharan Africa, however, commercial activities are the primary cause of economic damage, undermining development efforts.

a) Criminal Activities

Money laundering is probably the criminal activity that has been the subject of most international attention. In particular, anti-terrorism legislation in many countries has made an effective contribution to combating the issue. However, some countries, particularly in sub-Saharan Africa, have signed the relevant international

3 | As Blankenburg and Khan demonstrated in the World Bank study (2012), illegal capital flows may also generate positive development momentum. Cf. Stephanie Blankenburg/Mushtaq Khan, "Governance and illicit flows", in: Peter Reuter (ed.), *Draining development? Controlling flows of illicit funds from developing countries*, Washington D.C., 2012. The observable construction boom and the underlying volume of foreign investment in African metropolitan areas becomes often associated with money laundering by foreign or local elites.

4 | For a discussion of the term IFFs cf. Marc Herkenrath, "Illicit Financial Flows and their Developmental Impacts: An Overview", *Revue internationale de politique de développement*, Articles and Debates 5.3, 2014, <https://poldev.revues.org/1863> (accessed 19 Aug 2015).

framework agreements but do not dispose of any institutional capacities and are also delaying their establishment.⁵ Since money laundering, insofar as the funds are of domestic origin, is directly related to corruption, the political will of the elites, but also their own ethical standards, are crucial for fighting it.

Apart from money laundering, drug trafficking, arms deals and human trafficking are other, partly transcontinental criminal activities that contribute to illegal capital flows. The High Level Panel on Africa is particularly concerned about the current level of organised crime in sub-Saharan Africa. It includes the trade in counterfeit goods as well as international smuggler networks, which serve the sole purpose of avoiding custom duties and other taxes destined for the treasury of the relevant country.⁶ The symbiotic relationships entered by transnational networks of organised crime with governmental structures in the context of fragile states are particularly likely to perpetuate the associated risks for further undermining the state. The susceptibility of the system to corruption, in turn, is the entry point for structures of organised crime.⁷

b) Corruption

In addition to money laundering, corruption is widely regarded as one of the primary sources of IFFs. This is due to the fact that major corruption scandals are particularly likely to make the headlines and enter public consciousness. Scientific studies have however established that an estimated mere three per cent of global IFFs are generated by corruption.⁸ Despite all efforts to combat corruption in sub-Saharan Africa,⁹ the gravity of the problem remains. On the one hand, access to information, as a first step of any form of public control, remains limited. Only South

5 | Cf. Economic Commission for Africa, *High Level Panel on Illicit Financial Flows from Africa: Track it! Stop it! Get it!*, 2015, p.32.

6 | Cf. *ibid.*, p. 32.

7 | Cf. Tjark M Egenhoff, *Transnational Organized Crime in fragile states as a threat to regional peace and security: Overload of the UN agenda or upgrade necessary? The case of Guatemala*, Boston, MA Thesis, 2014, p. 42.

8 | Cf. Dev Kar /Devon Cartwright-Smith, *Illicit Financial Flows from Africa. Hidden Resource for Development*, Global Financial Integrity, Washington D.C., 2010, p. 1, http://gfintegrity.org/storage/gfip/documents/reports/gfi_africareport_web.pdf (accessed 18 Aug 2015).

9 | Examples in this context are the UN Convention against corruption, regional initiatives such as the African Convention on Preventing and Combating Corruption, or even national disclosure requirements for ownership relations and investments (asset disclosure).

Africa provides sufficient information on the state budget. The Open Budget Survey of 2012 counts the governments of Angola, Cameroon, Equatorial Guinea, Zimbabwe, and Zambia as countries that have failed to provide either a viable legal framework or sufficient transparency. All countries mentioned have economies based on extractive industries and natural resources.¹⁰

The complexity of combating corruption in the context of IFFs relates also to the fact that the capital is commonly invested in phantom companies with obscured ownership structures outside of the developing continents. As a World Bank study established 70 per cent of the 213 largest corruption scandals (1980 to 2010) involved phantom firms either based in tax havens or in industrialised countries¹¹

Capital drain due to corruption deprives the state budget of necessary means for the development of vital sectors such as infrastructure, education, and health care. The

The level of corruption exacerbates the alienation of citizens from the state and its representatives.

existing and perceived level of corruption within a state and by its governing elites, exacerbates the alienation of citizens from the state and its representatives. This, in turn, forms a breeding ground for extremist groups that commonly present themselves as a supposedly “clean” alternative. Although there is no empirical evidence for any correlation between the level of corruption and the emergence of extremist groups to date, a glance at the Transparency International Index indicates that Al-Shabab (Somalia: ranking 174/174), Boko Haram (Nigeria: ranking 136/174), IS (Iraq: ranking 170/174), or the Taliban (Afghanistan: ranking 172/174), are all currently active in states at the end of the spectrum.¹²

10 | Cf. International Budget Partnership, “Survey 2012 Key Findings”, International Budget Partnership, o.D., o.O., <http://internationalbudget.org/opening-budgets/open-budget-initiative/open-budget-survey/publications-2/rankings-key-findings/key-findings> (accessed 18 Aug 2015).

11 | Cf. Emile van der Does de Willebois et al., *The Puppet Masters: How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It*, The World Bank, Washington D.C., 2011, p. 34 ff., <https://openknowledge.worldbank.org/bitstream/handle/10986/2363/9780821388945.pdf> (accessed 18 Aug 2015); see also: David McNair et al., *ONE*, Sep 2014, p. 8, https://s3.amazonaws.com/one.org/pdfs/G20-Bericht-2014_DE.pdf (accessed 9 Aug 2015).

12 | Cf. Transparency International, “CPI 2014: Tabellarisches Ranking”, *Corruption Perception Index 2014*, 3 Dec 2014, <http://www.transparency.de/Tabellarisches-Ranking.2574.0.html> (accessed 9 Aug 2015).



Anti-corruption poster in Uganda: The population in the affected developing countries itself considers corruption a big obstacle to stability and growth in their respective countries. | Source: futureatlas.com, flickr ©.

c) Commercial Transactions

The IFFs also include commercial transactions. However, this is a grey area, since the dividing line between the legitimate political exploitation of incentives and tax avoidance or even tax evasion cannot always be clearly identified. By now, abusive trade misinvoicing constitutes 77.08 per cent of all IFFs.

In sub-Saharan Africa, abusive trade mispricing is particularly widespread. Exports are under-invoiced with the aim of avoiding taxes and duties. For 2012, Mozambique, for example, stated a global export of 260,385 cubic meters of wood in its official statistics. China, in turn, reported the import of 450,000 cubic meters of wood from Mozambique in its own annual report.¹³ There are similar examples for other commodity economies.¹⁴

Countries such as Mozambique or Ghana have respectively lost 10.4 per cent and eleven per cent of their potential tax revenue for the period from 2002 to 2011 due to misinvoicing.¹⁵

13 | Cf. n. 5, p. 28.

14 | For illegal transactions in Nigeria's oil industry to the volume of some 100,000 barrels per day, see: Christina Katsouris/Aaron Sayne, *Nigeria's Criminal Crude – International Options to combat the Export of stolen Oil*, Chatham House, London, 2013.

15 | Cf. Christine Clough et al., *Hiding in Plain Sight: Trade Misinvoicing and the Impact of Revenue Loss in Ghana, Kenya, Mozambique, Tanzania and Uganda 2002-2011*, Global Financial Integrity, 12 May 2014, p. vii.

Profit-shifting is another popular tool among multinational enterprises, which entails the declaration of sales profits in tax privileged enterprise locations. The South African Revenue Service examined 30 cases of profit shifting and transfer pricing with a total volume of 30 billion rand on the basis of the 2012 introduced respective legislation. These cases alone did cost the South African government more than five billion rand¹⁶ in income tax.¹⁷

The South African Revenue Service examined several cases of profit shifting and transfer pricing, which results in a tax shortfall of five billion rand.

DIMENSIONS OF THE ISSUE OF ILLICIT FINANCIAL FLOWS

The annual reports of the American think tank Global Financial Integrity (GFI) are based on a comprehensive data collection on the topic of illicit financial flows, and are held in high esteem of the development banks and multilateral organisations. The comparison of IFFs over time clearly indicates that IFFs increased by around 9.4 per cent per annum between 2003 and 2012.

In sub-Saharan Africa, IFFs even grew by 13.2 per cent per year¹⁸ in the same period, well above the mean. On average, African countries lost an annual 60.3 billion U.S. dollars due to IFFs in the same period.¹⁹

Compared to the volume of IFFs in Asia (2.6 trillion U.S. dollars in the period 2003 to 2012), the numbers for sub-Saharan Africa appear to be rather low at first glance (528.9 billion U.S. dollars in the same period). However, the illustration of IFFs in relation to BNP yields a far more somber picture.

Taking into consideration and adding up, illegal capital flows across borders, legal capital flight, and inadequate tax collection capacities of governments, the complex problem of finance capital in African States becomes evident. Africa requires around 100 billion U.S. dollars for the development of infrastructure, but loses 63 billion U.S. dollars by IFFs every year. States generally require 25 per cent of their capital income for economic development.

16 | Approx. 361 million euros at current exchange rates.

17 | Cf. Lisa Steyn, "Clampdown on tax avoidance", *Mail & Guardian*, 21 Nov 2014, <http://mg.co.za/article/2014-11-20-clampdown-on-tax-avoidance> (accessed 18 Aug 2015).

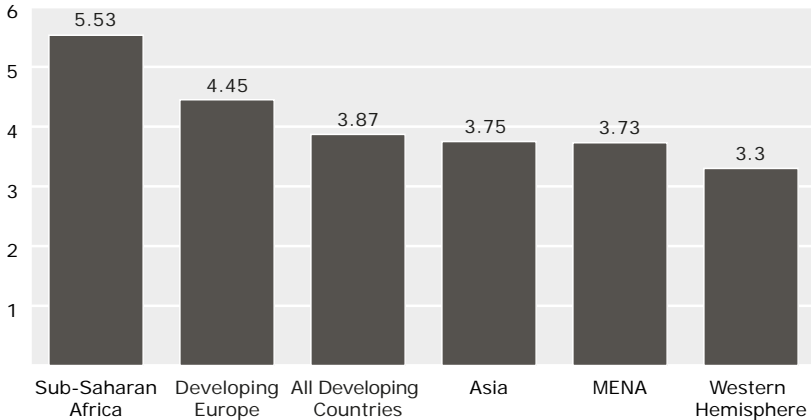
18 | Cf. Kar/Spanjers, n. 1.

19 | Cf. *ibid.*

African countries without oil production revenues, for example, dispose of a mere 11.8 per cent.²⁰

Fig. 1

Illicit Financial Outflows to GDP (in per cent)



Note: The denomination developing Europe includes Albania, Belarus, Russia, Ukraine, Bulgaria, Moldova, Croatia, Bosnia and Herzegovina, Macedonia, Serbia, Montenegro and Turkey. | Source: Dev Kar / Joseph Spanjers, "Illicit Financial Flows from Developing Countries: 2003-2012", 16 Dec 2014, Global Financial Integrity, <http://gfin integrity.org/report/2014-global-report-illicit-financial-flows-from-developing-countries-2003-2012> (accessed 16 Sep 2015).

Inter-African comparisons are complicated by inadequate and poor-quality data. The GFI data indicate that West and Central Africa are those regions with the most IFFs. However the values for Nigeria, the African country with the highest volume of IFFs by far, distorts the picture and draws the focus to West Africa.

Correlating the capital outflow due to IFFs with official development assistance (ODA) for sub-Saharan Africa and foreign direct investment, it becomes evident that the capital outflow has exceeded the inflow since 2005. And this took place at a time when many African countries experienced immense economic growth rates.

20 | Leonce Ndikumana, "Savings, Capital Flight, and African Development", Political Economy Research Institute, Workingpaper Series 353, 2014, p. 8, http://peri.umass.edu/fileadmin/pdf/working_papers/working_papers_351-400/WP353.pdf (accessed 18 Aug 2015).

Table 1
Top 10 IFFs African Countries²¹

Country	Cumulative IFFs (1970-2008) in billion U.S. dollars	Share in Africa's total IFFs in per cent
Nigeria	217.7	30.5
Egypt	105.2	14.7
South Africa	81.8	11.4
Morocco	33.9	4.7
Angola	29.5	4.1
Algeria	26.1	3.7
Ivory Coast	21.6	3.0
Sudan	16.6	2.3
Ethiopia	16.5	2.3
Republic of Congo	16.2	2.3

Source: Kar/Cartwright-Smith, n. 8, p. 33-36.

Given the lack of public funds for infrastructure development and poverty reduction, the loss of capital from IFFs becomes even more significant. Studies expect that a radical cut of IFFs would result in an average economic growth rate of three per cent in those countries concerned. Similarly, most of the countries concerned would be debt-free, if they manage to get a grip on the problem of IFFs.²²

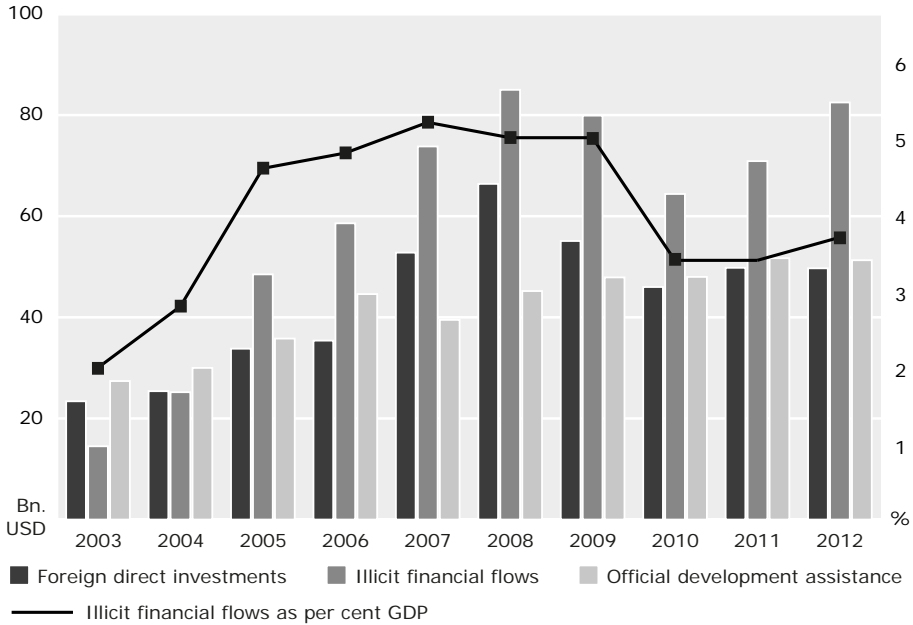
Against the backdrop of shrinking development aid budgets of bilateral donors, it is therefore only consequent for the international donor community to enhance the efforts to tackle the problem of IFFs.

21 | Table from presentation of Koen Roovers, *EU Lead Advocate, Financial Transparency Coalition: Tackling illicit financial flows from Africa to Europa – Current Situation and EU Policies*, Brussels, 23 Apr 2015.

22 | Cf. James K. Boyce/Léonce Ndikumana, "Capital Flight from Sub-Saharan African Countries: Updated Estimates, 1970-2010", Political Economy Research Institute, 22 Oct 2012, p.8, <http://www.peri.umass.edu/236/hash/d76a3192e770678316c1ab39712994be/publication/532> (accessed 18 Aug 2015).

Fig. 2

The Evolution of Illicit Financial Flows in Relation to Foreign Direct Investment and Official Development Assistance



Source: EurActive, "Infographic: Curbing illicit financial flows is a resource for Africa", 23 Jul 2015, <http://euractiv.com/sections/development-policy/infographic-curbing-illicit-financial-flows-resource-africa-316534> (accessed 30 Sep 2015).

NECESSITIES AND REALITIES IN THE FIGHT AGAINST IFFS IN SUB-SAHARAN AFRICA

The effective fight against IFFs requires shifting the focus of attention beyond the perpetrators. Policy makers that establish both the necessary legal framework and have the power to build state capacities play an equally important role.

A glance at the ranking of the top ten of IFFs in sub-Saharan Africa reveals that all are natural resource economies with the exception of South Africa. Deficient resource management systems by the government facilitate illicit financial flows. The problem starts as early as during the negotiation of contracts, and the capacity of the respective government to realistically assess the value of the subject of contract. The administrative capacities of the states are also often insufficient to verify discrepancies between the declared and extracted quantities of raw materials. The government of the Democratic Republic of Congo assumes that there is wide-spread

under-reporting in terms of the quantity, quality and composition of the extracted minerals by the mine operators.²³

According to the former Zimbabwean Minister of Finance, Tendai Biti, the state budget of Zimbabwe during his tenure amounted to just a third of the IFF-outflows from Zimbabwe. Just the diamond trade from Marange mine, which is not subject to state control, was responsible for around 50 per cent of the illicit outflows from Zimbabwe.²⁴

To address this problem, control capacities must be established, and technical expertise must be acquired at the state level, in addition to the generally required political will of the governments. However, the extracting countries as well as the states that host the processing industries must also strengthen the legal framework. Although the Dodd-Frank Act has raised the levels of transparency in the extractive industries, the legislation is mainly concerned with the quality, or rather conflict-neutral origin of raw materials. The criterion of quantity and the associated payment of levies to the state of origin are not included.²⁵

Initiatives such as the Extractive Industries Transparency Initiative (EITI) are also powerful tools for curbing corruption. However, they are voluntary in nature, and therefore depend on the presence of political will.

Beyond questions regarding the sustainable extraction and use of national resources and their contribution to the development of the country, the state tax system is another fundamental factor in the context of IFF. Most states of sub-Saharan Africa only manage to raise 17 per cent of BNP by tax levies (for comparison, the figure for Portugal is 20.5 per cent; for Norway 26.8 per cent). African governments have little capabilities or capacities to investigate the transaction costs of multinational companies to reveal profit transfers or abusive pricing. The South African Revenue Service (SARS), which has proven capable of investigating various

23 | Minister of Public Service, S.E. Jean-Claude Kibala on 24 Sep 2014 technical discussion of the CDU/CSU faction, "Investing together in Africa's future: opportunities for German-African economic cooperation".

24 | Tendai Biti was the Minister of Finance of Zimbabwe from 2009-2013 and spokesman for the ENoP event "Financing for Development and Africa-EU Relations – ODA and the challenge of tax evasion and illicit financial flows", which took place in Lisbon on 29 May 2015.

25 | Cf. n. 5, p. 58.

cases, is a notable exception. Quite often, the value of goods is stated too low at export to avoid taxes, to bypass any existing quota arrangements, or even to launder money.

Improving the tax system of developing countries will only prove partially effective if the proportion of the population that can be taxed grows at the same time.

In recent years, much has been initiated from donor side and on bilateral level to make the tax systems of developing countries more efficient, and to increase government revenues in the medium and long term. However, this will only prove effective, if the proportion of the population that can be taxed grows at the same time. In many African countries, the informal economy is greater than the formalised share. In booming Mozambique, for example, only 32 per cent of workers are employed in the formal labour sector, which is concentrated in the urban regions. The vast number of young people entering the labour market every year (300,000 per year in the case of Mozambique) only find employment in the informal sector, and are therefore not subject to taxation.

Some efforts to build more efficient tax systems are also thwarted since tax relief rules are commonly used as incentives for foreign investors, and such tax benefits are not always designed under consideration of the balance of costs and benefits. Again, Mozambique is a good example in this context:

The Mozambican government established special tax regimes to attract FDI as early as during the late 1990s. The Belulane Industrial Free Zone was established on the Mozambican side of the Maputo Corridor, which links Mozambique and South Africa, as well as the Nacal Special Economic Zone for the Nacala corridor in the province of Nampula. Companies that settle in the two zones are exempt from taxes and duties on all imports of raw materials and equipment. In the designated industrial zones, businesses are exempt entirely for ten years, with a reduction in tax of 50 per cent for the following five years, and tax relief (25 per cent) for the remaining period. This special arrangement leads to a situation where the major aluminium smelters in southern Mozambique (MOZAL) hardly bring any tax revenue to the state coffers.

Beyond the previously mentioned lack of capacity in the ministries in charge of commodity agreements, it is mainly the weakly developed financial, tax and law enforcement agencies which fail to counter the IFFs. The problem begins with a lack of information on IFFs by governments. The inadequate legal framework

as such, but also unequal levels of legal expertise in government agencies compared to the expertise found in multinationals, turn the mitigation of commercially motivated IFFs into a battle of David against Goliath.



Letter box in Mombasa: The lack of transparency and poor governance do foster the phenomenon of IFFs. | Source: Marcel Oosterwijk, flickr ©©©.

The inefficiencies inherent in the present government systems are also a result of the lack of transparency, cooperation and coherence between involved government agencies, which end up degrading the governmental position from the outset.

Reducing the problem to the lack of information and technical expertise on the part of the developing countries would, however, also be a mistake and overly simplistic. It might be true to a certain extent. The lack of transparency and poor governance do foster the phenomenon of IFFs. Anti-corruption agencies are commonly established without expert staffing, nor do they dispose of the necessary independence. As the example of the anti-corruption unit Scorpions in South Africa demonstrates, political interference also occurs. The Scorpions unit that had launched investigations against South Africa's President Jacob Zuma and others, and was subsequently dissolved in 2009 and superseded by a new, far more dependent unit, the Hawks, now being part of the police.

The effective combating of IFFs requires national political elites to recognise that IFFs gradually undermine already weak state structures due to their nature and connection to organised crime and terrorist groups. This also presupposes that capital outflows

from commercial activities, which account for 65 per cent of the IFFs, are accepted as a problem for the development process of the country, and are targeted both by the developing country and the industrialised nations and the donor community.

INTERNATIONAL INITIATIVES TO COMBAT IFFs

The topic IFF has been placed on the agenda of the multilateral organisations. At the recent G7 meeting in Elmau, the intention to present the G20/OECD Base Erosion and Profit Shifting (BEPS) Action Plan by the end of the year was reiterated. The initiatives to combat tax evasion and corruption, both related to the mitigation of IFF, are also to receive continued support. However, the G7 leaders did not issue a statement on the significance of IFFs in respect of development policy, the debate on development financing, as well as the post-2015 development agenda.²⁶

The OECD regularly examines the scope of measures targeting IFFs among its members. Here, the focus is on the areas of money laundering, tax evasion, corruption, as well as the freezing, recovery, and repatriation of stolen assets. The OECD members are however only partially following the recommendations of the Financial Action Task Force (FATF) in their fight against money laundering.²⁷ In the area of tax evasion, there is still "room for improvement", and the envisaged automatic exchange of information is still the exception. The exchange of information with developing countries is failing due to the low data collection capacities, as well as the susceptibility of the competent tax authorities to corruption.²⁸ The report also shows that even OECD countries are often lenient in investigating and prosecuting bribe payments to recipients in developing countries. This affects both the legal framework for anti-corruption measures, as well as law enforcement itself.²⁹ The OECD verdict is sobering even in respect of the return of stolen assets:

26 | Cf. "Abschlussklärung G7-Gipfel", 8 Jun 2015, p. 3, http://bundesregierung.de/Content/DE/_Anlagen/G8_G20/2015-06-08-g7-abschluss-deu.html (accessed 18 Aug 2015).

27 | "OECD anti-money laundering regimes have improved since the first set of Recommendations was established in 2003, but not evenly across the board. On average, OECD countries' compliance with central FATF Recommendations is low." Quoted in: OECD, "Illicit Financial Flows from Developing Countries: Measuring OECD Responses", 2014, p. 11, http://oecd.org/corruption/Illicit_Financial_Flows_from_Developing_Countries.pdf (accessed 18 Aug 2015).

28 | Cf. *ibid.*

29 | Cf. *ibid.*, p. 12.

“Progress in OECD countries in repatriation has been modest, however, with only a limited number of countries having frozen or returned assets.”³⁰

The EU, as well as bilateral donors, support initiatives to improve national tax revenue in developing countries (domestic revenue mobilisation),³¹ as well as the aforementioned global efforts of the OECD, World Bank, G7/G20 and non-governmental initiatives such as the Extractive Industries Transparency Initiative. The subject of IFFs appears continuously on the agenda at meetings between EU and AU representatives, and form an integral part of the 2014 to 2017 roadmap for the implementation of the Joint Africa-EU Strategy (JAES):

“We shall deepen our cooperation in international tax matters to broaden domestic revenue mobilisation and tackle illicit financial flows, through increased cooperation in line with the principles of transparency, exchange of information and fair tax competition.”³²

Since IFFs must primarily be combated at the member state level, the efforts of the EU in this area may appear to be in good faith, but are of limited effectiveness. They certainly help in reminding African partner governments of their responsibilities. However, any possible influence on the African side requires Europe to first meet its own obligations (see OECD report).

The 2012 action plan to strengthen the fight against tax fraud and tax evasion (COM (2012) 722 final), which also contains recommendations to the member states, still requires an evaluation of its implementation.

The tax transparency package presented in March 2015 is commonly cited in the context of tackling IFFs, overlooking that it is primarily designed to promote justice in the internal market. The

30 | Cf. *ibid.*

31 | Cf. in this context Odd-Helge Fjeldstad, “WP/2013/010 Taxation and Development. A review of donor support to strengthen tax systems in developing countries”, Unu-Wider, Wider Working Paper, 2013/010, Feb 2013, http://wider.unu.edu/publications/working-papers/2013/en_GB/wp2013-010 (accessed 18 Aug 2015).

32 | “Fourth EU-Africa Summit, 2-3 April 2014, Brussels. Roadmap 2014-2017”, p. 8, http://africa-eu-partnership.org/sites/default/files/documents/2014_04_01_4th_eu-africa_summit_roadmap_en.pdf (accessed 18 Aug 2015).

effects of corporate profit shifts from developing countries to the EU area do not constitute a priority of the regulation.

The regulation to combat money laundering was launched on 26 June 2015, which the member states have to implement in national law within a period of two years, is more likely to be effective in leading to more transparency in the field of financial transactions. In the age of Bitcoin and other virtual ways of transferring money, however, the focus on the existing banking system may have already been overtaken by reality, and the actual regulatory framework for digitalisation might lag behind in this area too.

The work of the High Level Panel on Illicit Financial Flows, established by the AU and UNECA and headed by ex-President Thabo Mbeki, appears particularly promising in the fight against IFFs. The panel has presented not only a comprehensive status quo assessment for sub-Saharan Africa, but has also issued specific recommendations for the three IFF components (commercial, corrupt, criminal activities). The recommendations range from mandatory declarations on financial assets of office holders, close monitoring (lifestyle audits) of so-called politically exposed persons (PEPs), improved public access to information relating to the state budget, more transparency in public procurement, as well as greater transparency in the international banking system.³³

Some reactions to the report, however, clearly demonstrate the attitude of the ruling political class. In Nigeria, which lost 142.27 billion U.S. dollars due to IFF in the period from 2002 to 2011 alone, then incumbent President Goodluck Jonathan rejected the publication of assets proposed by the High Level Panel outright:

“The issue of public asset declaration is a matter of personal principle. That is the way I see it, and I don’t give a damn about it, even if you criticise me from heaven.”³⁴

In the DRC, the Constitution even provides for a declaration of the assets of the president and his government in Art. 99. This constitutional provision has been continuously ignored since the constitution came into force in 2006.

33 | Cf. n. 5, p. 79-87.

34 | Bassey Udo, “AU asks Jonathan, other African leaders to publicly declare their assets”, *Premium Times*, 3 Feb 2015, <http://premiumtimesng.com/news/headlines/176172-au-asks-jonathan-african-leaders-publicly-declare-assets.html> (accessed 18 Aug 2015).

At the Third International Conference on Financing for Development, which took place on 13 to 16 July 2015 in Addis Ababa, the developing countries had demanded the formation of an International Tax Commission at the UN to counter tax evasion and avoidance by multinational corporations. However, this was rejected with reference to the existing structures and initiatives of the OECD. In NGO circles, this has led to particularly vehement criticism, and has been regarded as sending the wrong signals.³⁵ However, this critique fails to recognise that the absence of actions of states and governments are the hurdle for a more efficient solution to the problem rather than the lead organisation, whether it be the OECD or UN.

CONCLUSION

The volume of illicit financial flows has been in excess of both the volume of foreign direct investment and official development assistance for ten years and counting. Bluntly stated, Africa could even be regarded as a "net lender".³⁶ However, such a conclusion would ignore the complex dimensions, and, especially, the largely illegal nature of the problem. Nevertheless, the fact remains that the African countries would be capable of financing their development efforts largely autonomously if they were capable of coping with the issue of IFFs. Both the African governments, as well as the Western industrial nations and international donor community should take an interest in this outcome. The efforts of both sides, however, remain behind expectations, as well as the need for action. Before we allow ourselves to get carried away by basically supporting the budget of partner countries, the primary goal should be to ensure that all national options for revenue mobilisation are explored, and that development-oriented use of national resources is assured. Accompanying measures in this respect are essential. On the part of donor countries, the responsibilities of multinational entrepreneurs must be addressed, as well as transparency and control tools for the banking system improved.

African countries would be capable of financing their development efforts largely autonomously if they were capable of coping with the issue of IFFs.

35 | Cf. "Finanzbeamte für die Entwicklung der Welt", *Frankfurter Allgemeine Zeitung*, 17 Jul 2015.

36 | African Development Bank/Global Financial Integrity, "Illicit Financial Flows and the Problem of Net Resource Transfers from Africa: 1980-2009", May 2013, http://gfintegrity.org/storage/gfip/documents/reports/AfricaNetResources/gfi_afdb_iffs_and_the_problem_of_net_resource_transfers_from_africa_1980-2009-web.pdf (accessed 18 Aug 2015).

A range of useful measures have been implemented; others are still awaiting their implementation. The correct initiatives and recommendations were launched, and the negative effects of the IFFs are repeatedly debated in various fora. The Addis Ababa Action Plan (point 23 to 30) presents a detailed declaration of intent for IFFs.³⁷ However, the final decisive factor will be the extent to which these initiatives and recommendations are realised, or forestalled due to the lack of political will on the part of the industrialised and the developing countries.

37 | United Nations, "Outcome document of the Third International Conference on Financing for Development: Addis Ababa Action Agenda", Draft Resolution, 69th session, 23 Jul 2015, p. 8-10, http://un.org/ga/search/view_doc.asp?symbol=A/69/L.82 (accessed 18 Aug 2015).

TIME TO RETHINK EU STRATEGY?

THE EUROPEAN UNION'S ROLE IN THE PALESTINIAN TERRITORIES AND THE ISRAELI-PALESTINIAN CONFLICT

Julia Bimler / Hans Maria Heÿn

INTRODUCTION

The European Union's (EU) role in the Palestinian territories and in the Israeli-Palestinian conflict is frequently limited to the EU's financial functions in the territories. In 2010, Bouris Dimitris, research fellow at the College of Europe, wrote: "It is clearly evident, that the EU is behind every aspect of Palestinian state-building and has supported numerous projects, making Palestine the first country in the world that has received so much assistance from the EU."¹ However, while the EU has supported every aspect of state building, this support has not translated into substantial political influence on the peace talks. Instead, this somewhat cynical, though not necessarily incorrect, slogan has defined the last decades of the Middle East Peace Process: "The US decides, [...] the EU pays and the UN feeds."

European financial aid was provided as a result of the 1993 Oslo Accords, wherein Israel and the Palestinian Liberation Organisation (PLO) agreed to pursue a peaceful process by which to implement a two-state solution based on the United Nation's Security Council Resolutions 242 and 338. The underlying rationale was that through financial aid the EU would support the building of a Palestinian state and the subsequent realisation of the two-state solution. This *raison d'être* remains true today.

However, taking into consideration the current context it is both pertinent and important to revisit this *raison d'être*. First and foremost, the peace talks between Palestinians and Israelis have



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1 | Dimitris Bouris, "The European Union's Role in the Palestinian Territory after the Oslo Accords: Stillborn State-building", *Journal of contemporary European Research* 6, 3/2010, p. 383.

broken down yet again and there is little impetus on both sides to restart them. On the one hand, the current Israeli government has shown little interest in reviving the peace talks. Despite later qualifying his statement, the Israeli Prime Minister Benjamin Netanyahu publicly rejected the establishment of a Palestinian state during his term in office. On the other hand, Palestinians are internationalising the conflict and seeking alternative fora, such as the United Nations, the International Criminal Court and recently FIFA, to address their demands. Secondly, the *raison d'être* of paying for state building has not produced a Palestinian state; instead the bulk of funding has been used for humanitarian and emergency assistance and budgetary support.² In the meantime, “while humanitarian symptoms are assuaged and a semblance of stability is maintained, there is little incentive to resolve the conflict”.³ Finally, there is increased frustration among EU politicians with the status-quo and a growing debate on how to alter the situation. Therefore, it is in the interest of the EU and the Palestinian people to revisit the role of the EU in the Palestinian territories and explore opportunities for change that could shift the current dynamics of the Palestinian-Israeli conflict beyond the status-quo.

In order to discuss the EU’s role in the Palestinian territories, this essay is divided into two parts. The first part will provide an overview of the current role of the EU in the Palestinian territories and the obstacles it faces in implementing its agenda. The second part of the essay will focus on the opportunities the EU has to increase its political involvement and challenge the status-quo that has defined peace talks over the last decade.

THE EU IN THE PALESTINIAN TERRITORIES

The Framework – Structures and Mechanisms

Technically, EU engagement with the Palestinian territories is defined by the European Neighbourhood Policy (ENP), which is an EU mechanism based on mutually beneficial political and economic reforms as a means to promote peace, stability and economic prosperity in the region.⁴ The European Neighbourhood

2 | Cf. Yezid Sayigh, “Inducing a Failed State in Palestine”, The International Institute for Strategic Studies, *Survival*, 49, 3/2007, p.7.

3 | Anne Le More, “Killing with kindness”, *International Affairs*, 81, 5/2008, p.995.

4 | Cf. European Commission, “EU & Neighbours – a renewed commitment”, http://issuu.com/actionglobalcommunicationsltd/docs/eni_leaflet16_eu/1?e=6346130/8143223 (accessed 28 Aug 2015).

Instrument (ENI) regulates the financial engagement. Underlying the ENI is the European reward principle of “more-for-more”. Initiated in 2010, the more-for-more principle is incentive based, providing more funding when partners implement EU policy and programs and apply EU valued norms, such as democratic reform and respect for human rights. Incentives include greater access to European markets, easier mobility for peoples and increased financial aid.

Currently, the EU spends an average of 300 million euros per annum in the Palestinian territories via four different mechanism and institutions.⁵ The EU’s Mécanisme Palestino-Européen de Gestion de l’Aide Socio-Economique (PEGASE) is the EU’s largest financial mechanism and currently provides 178 million euros per year. PEGASE provides direct financial support to the Palestinian Authority (PA), supporting it in its financial obligations, including payments and salaries for civil servants, pensioners, vulnerable families and maintaining vital public services.

The EU’s Mécanisme Palestino-Européen de Gestion de l’Aide Socio-Economique attempts to promote long-term development goals, such as infrastructure, sanitation and electricity systems, and educational facilities.

It attempts to promote long-term development goals, such as infrastructure, sanitation and electricity systems, and educational facilities.⁶ The EU also provides 82 million euros via the United Nation’s Relief and Works Agency (UNRWA), making the EU and its members states UNRWA’s largest donor. Ten million euros are allocated specifically to East Jerusalem and another three million euros are provided to focal sectors. A further 20 million euros are assigned to themed projects and allocated via advertised call for proposals.

Political Realities

However, the provision of extensive funding has not been enough to realise the two-state solution. Instead, an evaluation of the European Union’s cooperation with the Palestinian territories, published by the European Commission in July 2014, indicated that the current state of affairs will not lead to a two-state solution: “Little was done to remove the most significant obstacles to sustainable cooperation outcomes and the achievement of a viable,

5 | Interview with Sergio Piccolo, Head of Cooperation at EU Representatives Office in Jerusalem, 11 May 2015.

6 | The European Institute for Research on Mediterranean and Euro-Arab Cooperation, PEGASE, <http://medea.be/en/countries/occupied-palestinian-territories/pegase> (accessed 28 Aug 2015).

democratic and contiguous two-state solution.”⁷ In reality, the EU (and the international donor community in general) faces three major political realities that stymie the effective implementation of aid and the subsequent realisation of a two-state solution: (1) The on-going Israeli occupation; (2) the state of Palestinian politics; and (3) regional and international political realities.

1. The Occupation

The international donor community identifies the Israeli occupation as one of the greatest obstacles that prevent the development of the Palestinian territories.⁸ The PA lacks autonomy and enjoys only limited jurisdiction. Furthermore, the Israeli occupation ensures that Palestinians continue to lack de facto control over land and resources, which hinders progress and economic growth. While the Oslo Accords stipulated that Area C would gradually be transferred to the PA, today 61 per cent of the West Bank remains under the control of the Israeli administration and Palestinian access to Area C continues to be very limited. Instead, economic development in the West Bank has focused on Areas A and B, where the Palestinian Authority has greater autonomy, however, Area C is the agricultural and resource rich land. According to a recent World Bank study, access to Area C’s agricultural land, water resources, quarries and mines, as well as developmental and tourism opportunities would add an estimated 35 per cent to the Palestinian GDP.⁹

The lack of autonomy and access to land further accentuated by Israeli settlement activity and land confiscation.¹⁰ The EU regularly condemns the building of settlements as illegal under international law, settlement activity has continuously increased. Similarly, the Gaza Strip, from which Israel withdrew in 2005, continues to be

7 | European Commission, “Summary of the Evaluation of the European Union’s cooperation with Palestine and support to Palestinian people”, http://ec.europa.eu/europeaid/how/evaluation/evaluation_reports/evinfo/2014/1327_ev_en.pdf (accessed 28 Aug 2015).

8 | Cf. Ministry of Planning and Administrative Development, “National Development Plan 2014-16”, http://mopad.pna.ps/en/images/PDFs/Palestine%20State_final.pdf (accessed 28 Aug 2015).

9 | Cf. The World Bank, “Palestinians Access to Area C Key to Economic Recovery and Sustainable Growth”, <http://worldbank.org/en/news/press-release/2013/10/07/palestinians-access-area-c-economic-recovery-sustainable-growth> (accessed 28 Aug 2015).

10 | Cf. Renee Lewis, “Israel confiscates nearly 1,000 acres of Palestinian land in the West Bank”, *Al Jazeera America*, <http://america.aljazeera.com/articles/2014/8/31/bethlehem-israelconfiscates.html> (accessed 5 Oct 2015).

under the Israeli blockade. The blockade limits and controls all movement across the border, hindering economic development and sustainability. Unemployment in Gaza was 43 per cent in the last quarter of 2014, with 60 per cent youth unemployment.¹¹ The result is that the development of a self-sustaining Palestinian economy remains restricted and the West Bank and Gaza continue to depend on foreign aid to prevent deterioration. In fact, Palestinians are among the largest per capita recipients of international development assistance in the world.¹²



Teenagers in Gaza: Unemployment in Gaza was 43 per cent in the last quarter of 2014, with 60 per cent youth unemployment. | Source: © Jens Büttner, picture alliance/dpa.

2. Domestic Realities

The current Palestinian domestic reality is a further obstacle that prevents the development of a Palestinian state. Most prominent is the Palestinian Authority's deepening paralysis. This is clearly evident in its lack of a democratic mandate. Since 2006 neither presidential nor parliamentary elections have been held, leaving both the current President and the Legislative Council without a democratic mandate. 68 per cent of Palestinians wish to see

11 | Cf. UN OCHA, *Humanitarian Bulletin – Monthly Report*, Apr 2015, http://ochaopt.org/documents/ocha_opt_the_humanitarian_monitor_2014_05_29_english.pdf (accessed 28 Aug 2015).

12 | Cf. Jim Zanotti, "U.S. Foreign Aid to the Palestinians", Congressional Research Service, 3 Jul 2015, <http://fas.org/sgp/crs/mideast/RS22967.pdf> (accessed 28 Aug 2015).

elections held either within several months or within the next six months.¹³ It is also evident in the neo-patrimonial leadership style of the Palestinian presidency and the concentration of power in said office.

The political situation is further complicated due to the persisting political split between Fatah and Hamas in the West Bank and Gaza Strip. The political split came about following the 2006 elections and despite numerous attempts to form a reconciliation government, real political progress has been limited. Political elites in the West Bank show an astounding lack of interest in the political progress in Gaza. Instead, both political factions are somewhat pleased with the status-quo. Diana Buttu, former legal advisor to Mahmoud Abbas, reported in an interview that despite the constraints “both sides [were] apparently pleased with ‘ruling’ a piece of territory without any democratic oversight”.¹⁴ In fact, since the schism, factional interests have been prioritised at the expense of the national wellbeing and further fragmented the Palestinian people, with interests of the West Bank and Gaza increasingly at odds with one another. Despite attempts at a national unity government, these have been unsuccessful to date.

3. EU and International Political Realities

The historical responsibility Germany has toward Israel results in a unique relationship that often differs to mainstream sentiments within Europe.

European political realities and the subsequent inability of the EU to speak with one voice are just as incapacitating. The different national relations EU members states share with Israel have prevented a coherent European approach. For example, the historical responsibility Germany has toward Israel results in a unique relationship that often differs from that of mainstream sentiments within Europe. This diversity was particularly visible following the Swedish initiative to unilaterally recognise a Palestinian State. In a parallel effort to strengthen the two-state-solution on the basis of the pre-1967 borders, the British, Spanish, Portuguese, Irish, Belgian and French parliaments passed motions pressing their governments to recognise a Palestinian state on these terms. However, these actions were neither coordinated by

13 | Palestinian Center for Policy and Survey, “Press Release – Palestinian Public Opinion Poll No (55)”, 24 Mar 2015, <http://pcpsr.org/en/node/603> (accessed 28 Aug 2015).

14 | Institute for Middle East Understanding, “Expert Q&A: Palestinian National Unity & The Schism Between Fatah and Hamas”, 26 May 2015, <http://imeu.org/article/expert-qa-palestinian-national-unity-the-schism-between-fatah-and-hamas> (accessed 28 Aug 2015).

the EU nor among the member states and once again reflect the inability to establish cohesion and an effective European voice and policy approach. The same applies as regards EU members states voting at the United Nations.

Table 1

EU Member States and their Recognition of a Palestinian State

State of Relations	Countries
EU Member States that have recognised a Palestinian State	1988 <ul style="list-style-type: none"> ▪ Recognition by the Eastern Bloc countries; Bulgaria, Cyprus, Hungary, Poland, Romania, Slovakia and the Czech Republic (but de facto no recognition today) ▪ Malta 2014 <ul style="list-style-type: none"> ▪ Sweden
EU member states who have passed a parliamentary resolution urging for the recognition of a Palestinian State	2014 <ul style="list-style-type: none"> ▪ United Kingdom, Spain, Portugal, Ireland and France 2015 <ul style="list-style-type: none"> ▪ Belgium
EU Member states that do not recognise a Palestinian State	<ul style="list-style-type: none"> ▪ Austria, Croatia, Denmark, Estonia, Finland, Germany, Greece, Italy, Latvia, Lithuania, Luxembourg, Netherlands and Slovenia

Table 2

EU Member States Voting at the UN General Assembly

2012 UN General Assembly Recognition of Palestine as a "Non-Member Observer State"	Countries
In favour	Austria, Belgium, Cyprus, Denmark, Finland, France, Greece, Ireland, Italy, Luxembourg, Malta, Portugal, Spain, and Sweden
Abstain	Bulgaria, Croatia, Estonia, Germany, Hungary, Latvia, Lithuania, Netherlands, Poland, Romania, Slovakia, Slovenia and the United Kingdom
Against	Czech Republic

The information in the table was compiled using the following sources: Permanent Observer Mission of the State of Palestine to the United Nations, "Diplomatic Relations", <http://palestineun.org/about-palestine/diplomatic-relations> (accessed 28 Aug 2015), "Portugal's parliament calls for recognition of Palestinian state", *Haaretz*, 13 Dec 2014, <http://haaretz.com/1.631519> (accessed 28 Aug 2015).

Furthermore, in the past the EU has frequently conceded to American leadership in the Middle East Peace Process. Despite providing extensive financial support and diplomatic initiatives,

the EU has not taken an active leadership role and has all too willingly accepted and even supported the American leadership style. Needless to say the U.S. has always fiercely protected its role as lead negotiator and applied pressure to ensure all political initiatives have prior U.S. approval. This is further bolstered by the special friendship Israel and the U.S. share and the Israeli apprehension toward Europe. Considering that the events of World War II and the Holocaust are enshrined in the Israeli national memory, Israel is apprehensive of all European initiatives, particularly when it comes to Israel's security interests.¹⁵ This perception continues despite the insistence by the EU and its member states that support for a Palestinian state based on the 1967 borders should not in any way be considered as an act against Israel, but as the only step toward a two-state solution.¹⁶

The emergence of the Islamic State in Iraq and Syria and the resulting refugee and migration crisis has become a European and international priority, sidelining the Palestinian issue.

Also, attention toward the Israeli-Palestinian peace talks has subsided as regional events and crises have grabbed European and international attention. Headlines now focus on the deterioration of stability that we are witnessing in Libya, Yemen, and increasingly Egypt. Furthermore, the emergence of the Islamic State in Iraq and Syria and the resulting refugee and migration crisis has become a European and international priority, side-lining the Palestinian issue. However, despite these challenges there are avenues the EU can pursue to increase its influence on the Israeli-Palestinian peace talks. There are the changing realities on the ground which allow for greater European involvement as well as incentives and pressure the EU can use to entice change.

WHAT CAN THE EU DO?

A Changing Reality

There are observable shifts in regional leadership the EU should capitalise on. The U.S. has been the traditional powerhouse and leading international political force regarding the Israeli-Palestinian peace talks. However, the critical debates that erupted as a result of Benjamin Netanyahu's congressional speech and the resistance Israeli has shown toward the P5+1 and EU

15 | Cf. Caroline du Plessix, "The European Union and Israel – A lasting and ambiguous 'special' relationship", *Bulletin du Centre de recherche français a Jerusalem*, 2011, p.11.

16 | Cf. *ibid.*

brokered Iran nuclear deal, reflect a new low in American-Israeli governmental relations.¹⁷ On his visit to Jerusalem in March 2015, former President Carter officially expressed his hope that Europe would take a more active leadership role considering the low point of America influence in Jerusalem.¹⁸ While the U.S. will continue to be an influential and powerful player, there is room for Europe to take greater initiative and allow for greater EU leadership.

Also, the current political context is also ripe for a shift in approach. The Oslo process has failed to bring about a two-state solution. The optimism that accompanied the Oslo Accords and hope for the two-state solution have long evaporated. In fact, it seems the international community supports an "Oslo-Dream" that the PA and the Palestinian public have given up on.

The PA is increasingly willing to go beyond the status quo, which defined the last decades, and is seeking alternative fora (such as the UN, the ICC and lately even the FIFA) by which to achieve recognition for an independent Palestinian state. Furthermore, there is steadily growing disillusionment among Palestinians. A Konrad-Adenauer-Stiftung poll conducted in March 2015 showed that only 29 per cent of the population still believe that the establishment of a Palestinian state in the next five years is possible.¹⁹ Instead, "Palestinians are now contemplating a future with no state at all, at least not one to call their own".²⁰ Simultaneously, the implementation of a two-state solution is becoming increasingly difficult due to the growing number of settlements threatening the geographical integrity of a future Palestinian state. It is therefore in the interest of the EU, as a fierce proponent of the two-state solution, to provide a viable political strategy that promotes Israeli-Palestinian peace talks and ensures the viability of a future Palestinian state.

A poll conducted in March 2015 showed that only 29 per cent of the population still believe that the establishment of a Palestinian state in the next five years is possible.

There is historical precedence for greater European involvement. The EU has for many years been at the forefront of providing diplomatic solutions to the Middle East Peace Process, long before these became mainstream policies. The EU's Venice Declaration

17 | Cf. Julie Hirschfeld Davis, Administration Official Criticizes Israeli Ambassador Over Netanyahu Visit, *The New York Times*, 28 Jan 2015, <http://nyti.ms/1DiEBnK> (accessed 28 Aug 2015).

18 | Cf. Hans-Christian Rößler, "Fototermin mit Reizfigur", *Frankfurter Allgemeine Zeitung*, 4 May 2015.

19 | Cf. Palestinian Center for Policy and Survey, n. 13.

20 | Nathan Brown/Dimitris Bouris, "Can the EU Revive the Cause of the Middle East Peace?", Carnegie Endowment, 2014, <http://ceip.org/1EqKX39> (accessed 28 Aug 2015).

passed in 1980, which introduced the idea of including the PLO in negotiations, would become the blueprint for future negotiations. However, when it was introduced, both the U.S. and Israel rejected it, taking another decade until the Oslo Accords to accept the PLO as a negotiating partner.²¹ Similarly, the 1999 Berlin Declaration, in which the EU presented the acceptance of a future Palestinian state, was initially rejected. It too was eventually accepted as legitimate.



Jewish settlers in Hebron: The growing number of Jewish settlements on Palestinian land makes a realization of the two-state solution increasingly difficult. | Source: © Mamoun Wazwaz, Apaimages/Picture Alliance/Landov.

In fact, the EU has become a more critical player. Back in the 1990s the EU consensus was that little or no pressure was to be exerted on Israel or the newly established Palestinian Authority, so as not to threaten the peace process.²² Consequently, the EU continued to support Palestinian state building as a means to a two-state solution, without taking into consideration the violations that consistently undermined the viability of the future Palestinian state. Today, the EU is much more vocal in its criticism and subsequently has the ability to make use of available incentives and apply political and economic pressure to ensure that both

21 | Cf. *ibid.*

22 | Cf. Policy note by CIDSE Working Group Palestine/Israel, "The EU's aid to the occupied Palestinian territories – One year after the Paris Donors' Conference", Dec 2008.

Palestinians and Israelis return to serious final status negotiations.²³ Also, the reappointment of an EU special envoy to the Middle East is a step in the right direction, providing the EU with a continued presence and voice in the proceedings.²⁴

Applying EU Norms

Based on its experience, the EU believes in democracy as a means to peace and as such should focus on backing Palestinian democratic structures and processes. This can be achieved in two ways.

First, Europe should press for the holding of Palestinian elections. The continued delay, as discussed above, only further undermines Palestinian democratic structures. Second, there should also be greater European promotion of political reconciliation, a prerequisite to holding elections and continued Palestinian state building.

This would require that the EU review its approach toward Hamas, considering that the political side-lining of Hamas since the 2006 election has not yielded the desired results and instead revealed that a solution to the ongoing crisis in Gaza and the creation of a Palestinian state cannot be achieved by excluding Hamas. This realisation has been expressed by EU officials, including Javier Solana, in his former role as the European Union High Representative for Common Foreign and Security Policy: "Whether we like it or not, Hamas will be part of the solution."²⁵ The Israeli government has come to a similar realisation, as the last months have confirmed talks between Israel and Hamas regarding a long-term truce.²⁶ Therefore, the EU should pressure the entire Palestinian Leadership to follow a non-violent political approach, while always taking into consideration the security of Israel and the region.

The EU needs to review its approach toward Hamas. A solution to the ongoing crisis in Gaza and the creation of a Palestinian state cannot be achieved by excluding Hamas.

Also, EU assurance that human rights and international law are applied is another means by which the EU can positively engage the Palestinian-Israeli conflict. Highlighting both the Israeli and Palestinian violations of human rights and international law and

23 | Cf. Bouris, n. 1.

24 | Katherine Ashton had chosen not to appoint an EU special envoy, with a subsequent lack of EU presence in the conflict.

25 | Javier Solana, "Europe's Global Role – What next steps?", *Ditchley Foundation Annual Lecture*, http://consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/discours/109193.pdf (accessed 28 Aug 2015).

26 | Shlomi Eldar, "Abbas must accept Gaza, Westbank will not unite", *al-Monitor*, 20 Aug 2015, <http://al-monitor.com/pulse/originals/2015/08/israel-gaza-hamas-truce-abbas-west-bank-renew-negotiations.html> (accessed 28 Aug 2015).

the way in which they impede the development of the peace process is a framework within which the EU can legitimately raise concerns. For example, the building of Israeli settlements violates international law, and severely undermines the peace process. The EU should therefore follow up on its statements, such as one made in May 2015: "Israel's determination to continue its settlement policy despite the urging of the international community, not only threatens the viability of the two state solution but also seriously calls into question its commitment to a negotiated agreement with the Palestinians. Settlements are illegal under international law."²⁷

Applying Economic Pressure

The European Union is the largest multilateral donor to the Palestinians – since 1994 they have provided more than 6.5 billion euros in financial support.²⁸ However, the European Court of Auditors has concluded that "the EEAS does not make sufficient use of its large scale funding to leverage reform from the PA".²⁹ Therefore, the EU should make more use of its financial prowess to advance the Israeli-Palestinian peace talks.

Most importantly, EU funding to the Palestinian Authority should not be unconditional. This is especially relevant as the European Neighbourhood Instrument is based on conditionality and the EU principle of more-for-more. John Gatt-Rutter, the EU Representative for the West Bank and Gaza, himself expressed his hope that "the ENI will help to provide greater incentives to the Palestinian Authority to carry out further policy reform in crucial sectors such as justice and security, human rights and good governance, and energy and water".³⁰ To some extent this is already being implemented by the EU Representative Office for the West Bank and Gaza. In early 2015, based on the EU's more-for-more principle, the office initiated the pilot phase of its Result Oriented Framework. The underlying rationale of the framework is that following

27 | Statement by the Spokesperson on the latest announcement on settlement expansion in Ramat Shlomo, 8 May 2015, http://eeas.europa.eu/statements-eeas/2015/150508_02_en.htm (accessed 28 Aug 2015).

28 | Cf. European Court of Auditors, Special Report No. 14, "European Union Direct Financial Support for the Palestinian Authority", http://eca.europa.eu/Lists/ECADocuments/SR13_14/SR13_14_EN.pdf (accessed 28 Aug 2015).

29 | Ibid.

30 | EU Neighbourhood Info Centre, "Three Questions to the EU Representative (West Bank and Gaza, UNRWA), John Gatt-Rutter", 12 Feb 2014, <http://enpi-info.eu/medportal/features/718> (accessed 28 Aug 2015).

the successful compliance with EU requirements, the project and cooperation can move forward. In the case of non-compliance, Palestinians have to provide detailed evidence as to why not. However, while this mechanism is being implemented on a local level, the implementation of such conditions at a state level would be beneficial. It would allow senior EU officials to bring to the forefront the issue of national Palestinian reconciliation and the necessity to hold elections. Such an initiative would also address the growing donor fatigue among EU member states.³¹

The same logic applies to relations with Israel. The EU continues to provide funds and strengthens its economic and political agreements with Israel, despite the disagreements the two actors share.³² Israel is the only non-European country to be included in the EU's 80 billion euros research and innovation program "Horizon2020". However, the extensive and valuable financial relationship the EU and Israel share should also be based on conditionality and a means to ensure Israeli compliance with EU peace initiatives.

Europe is also Israel's largest trading partner. 32 per cent of total Israeli exports go to European markets.³³ In 2014, exports amounted to 1,542 billion U.S. dollars.³⁴ To some extent the EU has used this to exert economic pressure.

Since 2013, the EU prohibits the issuing of grants, funding, prizes or scholarships to projects/entities that are based beyond the 1967 border, much to the chagrin of the Israeli government.

Since 2013, the EU prohibits the issuing of grants, funding, prizes or scholarships to projects/entities that are based beyond the 1967 border, much to the chagrin of the Israeli government.³⁵ Currently, the EU is once again considering labelling Israeli settlement products, to raise consumer awareness in Europe. It has been argued that "differentiating between Israel and settlement activities within the EU's bilateral relations is one of the most powerful tools at the EU's disposal for challenging the incentive

31 | An interview with Sergio Piccolo revealed that for the first time in many years, the EU Representative Office in East Jerusalem faced difficulties in accruing the standard 300 million euros the EU provides to the Palestinian territories.

32 | Cf. du Plessix, n. 15.

33 | Cf. European Commission, "Israel", <http://ec.europa.eu/trade/policy/countries-and-regions/countries/israel> (accessed 28 Aug 2015).

34 | Cf. The Israeli Export and International Cooperation Institute, *Development and Trends in Israeli Exports*, 2014, http://export.gov.il/UploadFiles/04_2015/IEICIDevelopmentsandtrendsInIsraelExports2014summary.pdf (accessed 28 Aug 2015).

35 | Cf. Harriet Sherwood, "EU takes tougher stance on Israeli settlements", *The Guardian*, 16 Jul 2013, <http://gu.com/p/3hbb3/stw> (accessed 28 Aug 2015).

structure that underpins the Israeli support for the status quo.”³⁶ The move has been the repeated subject of debates but never implemented. However, in April 2015 16 EU foreign ministers wrote the EU’s High Representative Frederica Mogherini, requesting her to expedite the moves requiring the labelling of goods produced in illegal Israeli settlements.³⁷ European companies, from Denmark and the Netherlands for example, have already ceased collaboration with Israeli partners because of their activities in the West Bank.³⁸



Pickled gherkins from Israel: The EU is currently discussing a special label for products from illegal Israeli settlements. | Source: © Wolfgang Kumm, picture alliance/dpa.

- 36 | Hugh Lovatt/Maria Toaldo, “EU differentiation and Israeli settlements”, 22 Jul 2015, European Council on Foreign Relations, http://ecfr.eu/publications/summary/eu_differentiation_and_israeli_settlements3076 (accessed 28 Aug 2015).
- 37 | Cf. Peter Beaumont, “Foreign ministers petition EU to urge labelling of settlement products”, *The Guardian*, 16 Apr 2015, <http://gu.com/p/47tvb/stw> (accessed 28 Aug 2015).
- 38 | Cf. Daniella Cheslow, “Business Boycott: Israelis feeling the Pinch”, *Deutsche Welle*, 14 Feb 2014, <http://dw.com/p/1B8W8> (accessed 28 Aug 2015).

Finally, the EU can provide economic and political incentive via the Special Privileged Partnership. This partnership would allow Israel to elevate its relations with the EU beyond the current ENP, similar to that enjoyed by full member states. Benefits would include further access to the European market, closer cultural and academic ties, the facilitation of trade and investment, on top of increased political dialogue and security cooperation.³⁹

CONCLUSION

The EU's role in the Palestinian territories and in the Palestinian-Israeli conflict is defined by its role as the financial backer of the Oslo Peace Process and Palestinian state building. And while the EU has expressed that it will continue to play this role, the current context is ripe for greater European involvement.⁴⁰ The current domestic situation in Israel and the Palestinian territories, the failure of the last rounds of peace talks and the shifts in regional politics, as well as the means the EU has at its disposal present an opportunity for the EU to take a greater responsibility in the Israeli-Palestinian conflict and ensure that EU tax payers' money is not being spent on the continuation of the status-quo but on a tangible peace.

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39 | Cf. Michael Mertes, "Uneasy Neighbours. The EU and Israel – a Paradoxical Relationship", *KAS International Reports* 4/2015, <http://kas.de/wf/en/33.41161> (accessed 21 Sep 2015).

40 | Cf. Nathan Brown/Dimitris Bouris, "Can the EU Revive the Cause of the Middle East Peace?", Carnegie Endowment, 29 May 2014, <http://ceip.org/1EqKX39> (accessed 28 Aug 2015).

AUSTRALIA'S NEW REFUGEE POLICY AND THE IMPLICATIONS FOR CAMBODIA AND SOUTHEAST ASIA

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INTRODUCTION

The number of people who became displaced by armed conflicts, persecution, poverty and environmental changes hit 51 million at the end of 2013 – the highest since World War II.¹ Many were forced to flee civil wars or seek better economic opportunities abroad. Whenever normal travel routes are unavailable, many migrants use hazardous, irregular channels as they attempt to reach their destination.

Pursuing the promise of a better life through such channels has led, in conjunction with other already implied risks, to a rising number of dead migrants who drown at sea, die of thirst while crossing deserts or suffer from other accidents in transit. While Europe faces an ongoing tragedy in the Mediterranean Sea, reports from other regions are also emerging that indicate even more clearly the worldwide nature and global scope of this issue.

However, the international community has not yet found a common approach towards this issue. In the search for appropriate and effective strategies, a variety of approaches was chosen by single states or regional state unions.

In the case of the European Union (EU), the migration law consists of numerous acts, statutes and conventions. The critical Dublin Regulation No 604/2013 also has implications for national

1 | Cf. UNHCR, *Global Trends 2013, 2014*, <http://unhcr.org/5399a14f9.html> (accessed 18 Sep 2015).

administrative law, provisions of individual national Constitutions and the European Convention on Human Rights (ECHR). The complex system lacks a coherent, swift and efficient asylum procedure; a proportional distribution of migrants and implied expenses; an enforcement that is compatible with human rights and ethical standards as well as a common political determination.

Accordingly, some voices in the EU appeal to Australia's refugee policy in search for more effective alternatives.² Australia indeed has reduced irregular oversea arrivals in the past few years to an insignificant number. This has mainly been achieved through strict compliance with and application of the Pacific Solution, which is based on the military-led mission Operation Sovereign Borders and the maintenance of offshore processing facilities for migrants and their asylum claims. The border mission and especially the detention camps have been strongly and repeatedly criticised by refugee and human rights organisations and the United Nations High Commissioner for Refugees (UNHCR). However, with the political will to stick to the Pacific Solution, the Australian Government extended its engagement in Southeast Asia by establishing a new offshore processing facility in Cambodia. To determine whether the Australian approach can be a role model for migration policy, it is important to closely examine not only Australia and the short-term implications of its policy, but the long-term outcomes for the whole region as well. Therefore, the historical and political context of the present Australian refugee policy will be set out below and analysed with a focus on the new agreement between Australia and Cambodia and an evaluation of its regional impacts.

AUSTRALIA'S REFUGEE POLICY AND THE "PACIFIC SOLUTION"

As a founding member of the United Nations (UN) and signatory of the Universal Declaration of Human Rights (UDHR), Australia has politically committed itself to fundamental human rights and freedoms and, therefore, to the right of asylum, as expressed in Article 14 of the UDHR.

2 | Cf. Paul Farrell, "Could Australia's 'stop the boats' policy solve Europe's migrant crisis?", *The Guardian*, 22 Apr 2015, <http://gu.com/p/47y77/stw> (accessed 18 Sep 2015); "Wie Australien den Flüchtlingsstrom stoppte", *Der Tagesspiegel*, 22 Apr 2015, <http://tagesspiegel.de/politik/11673810.html> (accessed 18 Sep 2015); Monika Griebeler, "Australia's refugee policy: Should Europe emulate it?", *Deutsche Welle*, 22 Apr 2015, <http://dw.com/p/1FCUU> (accessed 18 Sep 2015).

Australia has also signed the associated 1951 Convention Relating to the Status of Refugees and passed domestic legislation bringing it into force. The Refugee Convention provides the basic legal definition for refugee status and states the prerequisites and rights attendant to status as a refugee. In 1973 Australia also signed the 1967 Protocol Relating to the Status of Refugees. Using these provisions, the Australian Government and the UNHCR, the leading refugee agency of the United Nations, have worked closely together for many years to enforce the Geneva Refugee Convention.³

This cooperation took on new urgency when the war in Vietnam and domestic repression and genocides in other Southeast Asian countries led to an increasing number of displaced persons after 1975. Many of these persons sought safety by boat and later, after international pressure made it harder to emigrate by sea, gathered in refugee camps set up by the UNHCR. In order to provide services for this growing population of refugees, the UNHCR established a coordinated Refugee and Humanitarian Program for resettlement. Australia participated in this program by sending officials to process refugee resettlement in Australia.⁴

Australia has been a country of immigrants ever since settlers arrived on the continent. Therefore, it soon became a matter of national interest to regulate the immigration process.

In addition to responding to a humanitarian crisis, Australia also aimed to protect its national security and defense interests through its participation in the Refugee and Humanitarian Program. Australia has been

a country of immigrants ever since European and other settlers arrived on the Australian continent. Therefore, it soon became a matter of national interest to regulate the immigration process and prevent irregular migration. With this background, it is clear that Australia already hoped in the beginning of the resettlement program that it could prevent irregular migration of undesirable persons by engaging in this humanitarian resettlement program in Southeast Asia. In other words, there was, in addition to philanthropic motives, the assumption that people would always try

3 | The 1951 Convention Relating to the Status of Refugees and the amended 1967 Protocol Relating to the Status of Refugees are often referred to as the Geneva Refugee Convention, even though this designation can be misleading, as there are actually several conventions drafted in Geneva where many UN agencies have their headquarters. However, the term will be used below in reference to both agreements.

4 | Cf. Jo Coghlan/Robyn Iredale, "Australia and Asia – Refugee Practices and Policies", in: *Seeking Refuge: Asylum Seekers and Politics in a Globalizing World*, 2005, Vol. 1, pp. 50-54.

to reach Australia and that it would be better to have a regulated, controllable procedure for those wanting to migrate.

When Australia has worked together with the UNHCR in the resettlement program, it has annually set aside a number of places for the humanitarian intake of refugees from UNHCR camps and protracted humanitarian situations. In the period of 2012 to 2013, Australia increased its previously provided number of places from 13,750 to 20,000.⁵

In line with the previously set out security policy, one aim of the additional intake of persons was to strengthen the regular program as preferable to irregular migration. At that time, the Labour government preferred this approach to discouraging irregular migration to other approaches.

However, after federal elections and a change of Government in 2013, Australian refugee policy underwent another shift and the Refugee and Humanitarian Program were reduced to its initial number of places.⁶ The – at the time new – Government under Prime Minister Abbott, which had begun already to focus heavily on migration policy during the election campaign, promoted a more restrictive and repressive policy and the strict application of the Pacific Solution to stop irregular migration.⁷

The Pacific Solution was originally invented as an alternative policy to the Refugee and Humanitarian Program after the number of maritime arrivals increased from 200 in 1998 to 3,721 in the following year and remained at higher than historical levels. A

- 5 | Cf. Australian Department of Immigration and Border Protection, Information Paper, Dec 2013, <https://www.border.gov.au/Refugeeandhumanitarian/Documents/humanitarian-program-information-paper-14-15.pdf> (accessed 30 Sep 2015).
- 6 | Cf. Refugee Council of Australia, Australia's Refugee and Humanitarian Program 2014-15, 2014, http://www.refugeecouncil.org.au/r/r/isub/2014-15_Intake%20sub.pdf (accessed 18 Sep 2015).
- 7 | The national security policy of the Abbott Government has actually raised a number of issues relating to international human rights and freedoms, especially due process and freedom of expression. Because the Government keeps the terror alert in Australia at a high level, it has been able to push through several questionable counter-terror laws. An overview is accessible at "National security and anti-terrorism laws in Australia", *The News Manual*, http://thenewsmanual.net/Resources/medialaw_in_australia_06.html (accessed 18 Sep 2015). A profound statement can be found at George Williams, "Anti-terror laws need proper scrutiny", UNSW Australia, 7 Oct 2014, <http://law.unsw.edu.au/news/2014/10/anti-terror-laws-need-proper-scrutiny> (accessed 18 Sep 2015).

new record was reached in 2001 with 5,516 people in 43 boats,⁸ and the Pacific Solution was then established by the Howard Government to prevent further irregular arrivals to Australia outside the obligations under the Geneva Refugee Convention.⁹



Asylum seekers arriving by boat: The Pacific Solution aims at stopping irregular maritime arrivals on the open sea before they reach Australia's mainland. | Source: © Scott Fisher, picture alliance/dpa.

Due to changed political majorities, but also as the number of irregular arrivals dropped to a comparably low level, the Pacific Solution program was dismantled in 2008 by the center-left-wing Rudd Government.

Concededly, the number of irregular arrivals erratically grew again after the suspension, from 985 in 2008-2009 to 5,327 in the following period. The already higher number of unofficial migrants arriving by sea reached its overall peak in 2012-2013 with 25,173 arrivals.¹⁰ In the 2013 federal election Tony Abbott, leader of the right-wing Liberal Party, made unofficial migrants, derogatorily called Boat People, the centerpiece of the party's election

8 | Cf. Janet Phillips/Harriet Spinks, *Boat arrivals in Australia since 1976*, Department of Parliamentary Services, 2013, p.22, http://parlinfo.aph.gov.au/parlInfo/download/library/prspub/5P1X6/upload_binary/5P1X6.pdf (accessed 18 Sep 2015).

9 | The Pacific Solution's legal basis was initially set out by amendments to the Migration Act of 1958 adopted in 2001 and by further amendments in 2013.

10 | N. 8, p. 23.

campaign and won majority support. Afterwards, the Abbott Government reinforced the Pacific Solution with the enactment of Operation Sovereign Borders under the supervision of the Minister for Immigration and Border Protection subject to Division 8 of the Migration Act 1958.

The objectives of the Pacific Solution are set out in s.198AA as combating the regional problem of people smuggling and putting a stop to the undesirable consequences of people migrating by sea in substandard vessels, such as drowning and disease. The mission's cornerstones to achieve these objectives are outlined in the Migration Act 1958 as follows:

First, in the Australian Government and High Court's interpretation of the Geneva Refugee Convention, a nation's responsibility for migrants is defined by its migration zone which is usually, but not necessarily, the state's territory. With regard to the Migration Act 1958, Australia's Parliament excised its external islands from the state territory in 2001 and reduced the migration zone on the mainland. The Migration Act 1958 was further amended in 2013 with a change of s.5 ss.1 that led to the additional excision of the mainland for maritime arrivals.¹¹ Therefore, Australia sees no reason to exercise its jurisdiction in terms of maritime arrivals, or asylum seekers who are at sea. It denies to these irregular migrants access to its administrative and legal system, with no processing of asylum claims by Australia.

Australia denies to irregular migrants access to its administrative and legal system, with no processing of asylum claims.

Second, Australian officers are obligated, in accordance to s.198AD ss.12 under the cooperative leadership of the Australian Defense Forces, to stop irregular maritime arrivals on the open sea before they reach Australia's mainland.

Third, the Minister for Immigration and Border Protection designates, pursuant to s.198AB ss.1 by legislative instrument, regional processing countries.

11 | Migration Amendment (Unauthorized Maritime Arrivals and Other Measures) Act 2013 removed the definition of "offshore entry person" in s.5 ss.1 of the Migration Act 1958 and inserted a new definition of "unauthorised maritime arrivals" in s.5AA. Hence, unauthorised maritime arrivals are persons who enter Australia by sea at an excised offshore place, or any other place, and become unlawful non-citizens as a result.

Fourth, the operatives are required by s. 198AD ss. 2 to “remove as soon as reasonably practicable an unlawful non-citizen” and bring them to a detention center in a regional processing country for the verification of their asylum claims.

For the execution of the Pacific Solution, Australia maintained an offshore detention center on the excised Christmas Island and financed two more facilities operated by its regional processing partners on Manus Island, Papua New Guinea, and Nauru.

The set-up of a regional processing center on Nauru, the smallest state in the South Pacific with a population of 9,434 citizens,¹² was continuously criticized by NGO’s and the UNHCR. The detainees destroyed and burned down most of the detention center in a domestic riot in July 2013.¹³ The UNHCR report on a monitoring visit later in the same year highlighted “significant setbacks” with the inappropriate system for processing refugee claims as well as generally unsafe and inhumane conditions at the center. Accordingly, the UNHCR voiced “serious concerns” about the arrangement of transfers to this processing center.¹⁴

In the search for alternatives, due to the ongoing criticism and the domestic difficulties in Nauru, but with the political will to maintain the Pacific Solution as a policy, Australia’s reaction was to start an in-depth partnership with Cambodia.

The initial information regarding the bilateral agreement between the two nations was revealed in August 2014 by Cambodian officials.¹⁵ Soon after, international newspapers and the UNHCR voiced their concerns about the unexpected involvement of Cambodia in the Pacific Solution.¹⁶ The main issues of concern were from the beginning the low development stage of Cambodia as well as

12 | Cf. Federal Foreign Office, “Länderinformationen. Nauru”, 2015, http://auswaertiges-amt.de/DE/Aussenpolitik/Laender/Laenderinfos/01-Nodes_Uebersichtsseiten/Nauru_node.html (accessed 18 Sep 2015).

13 | Cf. Oliver Laughland, “Nauru detention centre burns down”, *The Guardian*, 20 Jul 2013, <http://gu.com/p/3hee9/stw> (accessed 18 Sep 2015).

14 | UNHCR, “UNHCR monitoring visit to the Republic of Nauru 7 to 9 October 2013”, 26 Nov 2013, <http://unhcr.org.au/unhcr/images/2013-11-26%20Report%20of%20UNHCR%20Visit%20to%20Nauru%20of%207-9%20October%202013.pdf> (accessed 30 Sep 2015).

15 | Daniel Pye/Vong Sokheng, “Deal for refugees expected very soon”, *Phnom Penh Post*, 11 Aug 2014, <http://phnompenhpost.com/national/deal-refugees-expected-very-soon> (accessed 18 Sep 2015).

16 | UNHCR, “UNHCR warns Australia-Cambodia agreement on refugee relocation could set worrying precedent”, 26 Sep 2014, <http://unhcr.org/5425570c9.html> (accessed 30 Sep 2015).

its corrupt administration, ineffective local authorities and the general poor economic conditions.¹⁷ Despite these issues, in September 2014, the Australian Immigration Minister and Cambodian Deputy Prime Minister signed a Memorandum of Understanding (MOU), related to the settlement of refugees to Cambodia.



Asylum seekers receiving a traditional welcome in Nauru: For the execution of the Pacific Solution, Australia set up a regional processing center on the island of Nauru, one of the smallest states in the world. | Source: © Angela Wylie, picture alliance/dpa.

IMPLICATIONS OF THE NEW PARTNERSHIP

The MOU's preamble states that its aim is to achieve the objectives of the Geneva Refugee Convention through regional cooperation. Under this cooperation, Cambodia, which is one of the few states in the region that is a party to the Geneva Refugee Convention,¹⁸ has the role of a safe third country for asylum seekers brought to Nauru by Australia. The MOU states: "The Government of the Kingdom of Cambodia will provide safe and permanent settlement opportunities for refugees from the Republic of Nauru, based on humanitarian spirit" in accordance with Sub-Decree No.224 on "Procedure for Recognition as a Refugee or Providing Asylum Rights to Foreigners in the Kingdom of Cambodia" issued in 2009.

17 | Ian Lloyd Neubauer, "Australia's Plan to Outsource Its Refugee Problem to Cambodia Won't Work", *The Time*, 29 Sep 2014, <http://ti.me/1vq3tbc> (accessed 26 Sep 2015).

18 | Currently, in June 2015, only China, Cambodia, Papua New Guinea, Nauru and the Philippines are member states to the 1951 Convention Relating to the Status of Refugees and 1967 Protocol Relating to the Status of Refugees.

Sub-Decree No.224 is Cambodia's migration law regarding to asylum seekers and found with some reservations commendation in a former UNHCR review. Refugees are defined and legally protected in accordance with the Geneva Refugee Convention and the administrative provisions set out an overall sufficient procedure.¹⁹ Hence, the nation's legal basis to enforce the MOU would be in wide parts suitable if executed as set out in the wording.

The additional clauses of the MOU provide the operational details, including reference to the Operational Guideline (OG), for long-term resettlement. The prerequisites for resettlement under the MOU are: the conferment of refugee status in Nauru, the provision and explanation of information regarding life in Cambodia to refugees and a voluntary commitment to resettle by those with refugee status. Once these steps are fulfilled, the refugees will be transferred to Phnom Penh for processing and then relocated to provincial areas outside the city for the purpose of reestablishing a self-reliant life in Cambodia. The assistance provided in Cambodia will be on par with local community standards, and, like the direct costs of the resettlement, financed by Australia. Another part of the agreement aims for the involvement and cooperation of the UNHCR in line with its supervisory responsibility.



Refugee deal: Despite international concerns, the Cambodian Deputy Prime Minister (r.) and the Australian Immigration Minister (l.) signed an agreement on the resettlement of refugees in 2014. | Source: © Sovannara, picture alliance/landov.

19 | UNHCR, *Submission by the United Nations High Commissioner for Refugees – For the Office of the High Commissioner for Human Rights' Compliant Report – Universal Periodic Review*, 2013.

The Australian Government and its Cambodian counterpart celebrated and presented the MOU with confidence and optimism. Nevertheless, the UNHCR voiced “deep concern [and] a worrying departure from international norms” regarding this partnership.

Cambodia remains a developing country with one of the lowest per capita incomes in the region.²⁰ The Government and civil sector rely on foreign aid and international support. In this context, Australia is Cambodia’s fourth largest national donor, but the annual donation of 86.9 million Australian dollars in 2013-2014 was reduced to an estimated 79 million Australian dollars in 2014-2015.²¹ Additionally, the MOU guarantees special development aid to achieve the agreed upon objectives. Based on its obligations under the MOU, Australia announced that it estimates it will spend 15.5 million Australian dollars for the resettlement services and the refugee’s education, health and training in Cambodia, albeit this amount has been cut from the officially agreed Australian development cooperation assistance budget. At the same time another 40 million Australian dollars special, non-conditional, and therefore strongly controversial fund was earmarked by Australia to the Cambodian Government.²²

Those 15.5 million Australian dollars by which the Australian Development Assistance Budget for Cambodia was cut in 2014/2015 will now be spent on resettlement services and the refugees’ education, health and training in Cambodia.

Due the widespread problem of bribery and other corruption in Cambodia,²³ the Australian Opposition leader in the Lower House raised concerns of who in the end will receive the additional aid money.²⁴ In two protest marches, Cambodian civil society also voiced objections.

20 | Cf. The World Bank, “Cambodia. World Development Indicators”, 2015, http://data.worldbank.org/country/cambodia#cp_wdi (accessed 18 Sep 2015).

21 | Cf. Australian Department of Foreign Affairs and Trade, “Overview of Australia’s aid program to Cambodia”, 2015, <http://dfat.gov.au/geo/cambodia/development-assistance/Pages/development-assistance-in-cambodia.aspx> (accessed 18 Sep 2015).

22 | Cf. Daniel Pye/Cheang Sokha, “Aus reveals refugee funding”, *The Phnom Penh Post*, 27 May 2015.

23 | Cf. Transparency International, “Ending corruption for a better future for all”, 24 Sep 2014, http://transparency.org/news/feature/cambodia-corruption_concerns_amid_hopes_for_the_future (accessed 29 Sep 2015).

24 | Cf. Rodion Ebbighausen, “Australia plans to set up a refugee camp in Cambodia”, *Deutsche Welle*, 29 Aug 2014, <http://dw.de/p/1D3hZ> (accessed 18 Sep 2015).

However, others found the MOU, apart from the material impact, to be: “inappropriate, immoral and likely illegal” on its structural basis.²⁵ This harsh judgment is founded on the undependable application of Cambodian law and the expected role of Australia in light of its political tradition and ethical obligations.

Cambodia seems unlikely to fully implement the MOU. The Cambodian social sector lacks capacity and the Royal Government has

Refugees, who already live in Cambodia, voice serious concerns: The resident cards they have been issued are not accepted as identification documents and are also insufficient for employment or renting accommodation or vehicles.

not demonstrated the experience and functionality to fulfill all of its contractual duties under the MOU. In the past Cambodia has violated the essential rule under the Geneva Refugee Convention of non-refoulement by returning a group of asylum seekers to China without processing their claims or consider-

ing possible persecution.²⁶ Additionally, refugees, who already live in Cambodia, voice different, serious concerns: The resident cards they have been issued²⁷ are not accepted as identification documents and are also insufficient for employment or renting accommodation or vehicles. In the meantime, refugees are charged higher “foreigner” prices, based on the fact that skilled foreigners’ salaries tend to be relatively high, and face other discrimination by state officials and the public. At the same time, Cambodia has a competitive unskilled labour market with many positions available at low salaries. Teachers sometimes expect bribes to accept foreign children into their classes and access to education is often denied.²⁸

According to the MOU, the health insurance for refugees is supposed to be “commensurate with local community standards”.²⁹ Currently, social security standards in Cambodia are very low

25 | Alastar Nicholson (former Chief Justice of the Australian Family Court on behalf of Amnesty International, the Refugee Council of Australia, and Save the Children) quoted by Robert Carmichael, “Australia-Cambodia refugee resettlement deal slammed by rights groups”, *Deutsche Welle*, 26 Sep 2014, <http://dw.de/p/1DLbM> (accessed 18 Sep 2015).

26 | In December 2009, after the adoption of Sub-Degree No. 224, Cambodia deported 20 Uighur asylum seekers to China without due process and violated Article 33 of the Geneva Refugee Convention with their refoulement; since December 2014 also 45 Montagnards were deported and sent back to Vietnam, without their asylum claims being processed.

27 | Subject to clause No. 11 of the OG and Article 15 of Sub-Degree No. 224.

28 | Cf. Human Rights Watch, “Australia: Reconsider Nauru Refugee Transfers to Cambodia”, 20 Nov 2014, <https://shar.es/17haJb> (accessed 18 Sep 2015).

29 | Subject to clause No. 10 of the MOU.

and still need further development and improvement. Freedom of expression is also limited, as refugees cannot freely lodge complaints to the authorities and according to Sub-Decree No.224, they have no access to courts.

Cambodia could be blamed for the long list of difficulties, but as the UNHCR report stressed, with some encouragement, Cambodia shows development progress in many areas. Developing countries cannot be expected to provide the same standards of protection and welfare as industrialised nations could. Therefore, Cambodia might be criticised for signing an agreement it will unlikely be able to comply with. However, with respect to dependence on international aid, Cambodia received a 55.5 million Australian dollars offer, which is difficult to refuse in light of the simultaneous cut of the main donor's development aid. The Royal Government has confidently announced its intention to fulfill the MOU, but it is Australia's obligation to determine if the Cambodian administration and society can actually implement it.

Cambodia shows development progress in many areas. Yet, developing countries cannot be expected to provide the same standards of protection and welfare as industrialised nations could.

The partnership on refugees leads also to Australia's involvement in Cambodia. The responsible Minister for Immigration and Border Protection, Peter Dutton, condemned the criticisms of the refugee arrangement as being non-objective and arbitrary.

The critics complain that by pursuing this partnership with Cambodia, Australia denies its responsibility for vulnerable refugees and contravenes its humanitarian and legal obligations. The UNHCR has repeatedly stressed the necessity for developed countries to take responsibility for the protection of refugees and not shift their responsibilities to developing countries.³⁰ Industrialised nations have the necessary resources to provide shelter and those nations, which signed the Geneva Refugee Convention, the legal obligation to provide comprehensive refuge. If more asylum seekers than projected are coming through regular or irregular channels and when their number begins to challenge the political will and social commitment of society, a price will have to be paid on either side.

30 | Cf. UNHCR, UNHCR warns Australia-Cambodia agreement on refugee relocation could set worrying precedent, 2014.

Australia, however, is willing to buy its way out of political responsibility with extensive financial outlays for the resettlement program. Australia spent an estimated amount of ten billion Australian dollars between 2007 and 2014, with costs of 440,000 Australian dollars per person in offshore processing facilities.³¹ This raises the question, aside from the political implications, as to how financially sustainable the program can be. Moreover, so far only four refugees agreed to resettle and have made the journey to Cambodia.³²

IMPACTS OF AUSTRALIA'S PRACTICE ON THE SITUATION OF REFUGEES IN SOUTH EAST ASIA

It is important to note that the Geneva Refugee Convention binds the signatory states to protect asylum seekers in the signatory's jurisdiction and ensures the fundamental principles of *non-discrimination* on personal grounds, *non-penalisation* for the means of entry and residence, and *non-refoulement* to a territory where asylum seekers fear threats to their life or freedom.

The principle of *non-refoulement* is described in the Geneva Refugee Convention's preface as "so fundamental that no reservations or derogations may be made to it. It provides that no one shall expel or return ('refouler') a refugee against his or her will, in any manner whatsoever, to a territory where he or she fears threats to life or freedom".³³ This ensures the existence of reliable contact points for those in search of refuge and creates signatory states the inviolable obligation to conscientiously process lodged asylum claims under their jurisdiction and provide access to their courts.

Nevertheless, to ensure that the purported humanitarian and the vaunted security elements of Australia's Operation Sovereign Borders can be enforced under any circumstances s. 197C of the Parliament's Migration Act 1958 states that: "For the purposes of section 198 [the legal basis and outline of Operation Sovereign Borders], it is irrelevant whether Australia has non-refoulement

31 | Cf. Nick Evershed, "Mandatory immigration detention is a billion-dollar business – analysis", *The Guardian*, 25 Aug 2014, <http://gu.com/p/4xvmm/stw> (accessed 18 Sep 2015).

32 | Cf. Lauren Crothers/Paul Farrell, "First four refugees from Nauru land in Cambodia in \$ 40m resettlement deal", *The Guardian*, 4 Jun 2015, <http://gu.com/p/49fdb/stw> (accessed 18 Sep 2015)

33 | Cf. UNHCR, *Convention and Protocol Relating to the Status of Refugees*, "Introductory note by the Office of the United Nations High Commissioner for Refugees (UNHCR)", 2010, <http://unhcr.org/3b66c2aa10.pdf> (accessed 18 Sep 2015).

obligations in respect of an unlawful non-citizen.” The term unlawful non-citizen defines a “national from another country who does not have the right to be in Australia; that is they do not hold a valid visa”.³⁴



Protests in Melbourne: Many Australians disagree with their government's policy regarding refugees and asylum seekers. | Source: © Asanka Brendon Ratnayake, picture alliance/Anadolu Agency.

Whoever comes to Australia must have an Australian-issued permit to enter the country and those who violate this rule may not be justified under any circumstances, even by the common standards of international law and agreements. Indeed, irregular maritime arrivals, even if their refugee status is confirmed, are refused entry and remain in detention with the only possibility of resettling to Cambodia.

While the number of irregular arrivals in Australia has declined, its regular resettlement program is clogged with an increasing number of international asylum seekers.³⁵ This increase in asylum seekers and Australia's response raises questions regarding the sustainability of the resettlement program and evinces a distressing shift towards a utilitarian approach to human rights and moral values.

34 | Cf. Phillips/Spinks, n.8, p. 28.

35 | Cf. UNHCR, *Global Trends 2013*, 2014.

In the changing global context, Australia searches for new ways to promote its national objectives. In the area of migration, Australia worked together with Indonesia on a joint strategy and promoted a tougher approach towards asylum seekers in the Southeast Asian context. The objective was to stop maritime arrivals by setting up multiple detention camps in Indonesia to hinder asylum seekers from leaving or passing through Indonesia.³⁶ Australia financially supported the construction and operation of the detention facilities and Indonesia saw them as a suitable solution for its rising number of migrants. Despite the funding, the humanitarian conditions in these camps were poor, and while Indonesia saw itself as not bound by international law, the Australian Government denied its responsibility.³⁷

Although the Pacific Solution is presented as a sustainable, regional solution, its prospects as a long-term strategy may not be feasible. In May 2015, authorities in Thailand found mass graves of Rohingya refugees as well as detention camps run by human traffickers along the Thai-Malaysian border.³⁸ Later in the same month, more mass graves were found on the Malaysian side of the border.³⁹ Both countries then closed their borders to irregular migrants in order to prevent more deaths from human trafficking.

Deprived of the option to travel over land, many more thousands of Rohingya refugees and other migrants from Bangladesh

The Australian Government refuses to offer any assistance or accommodation to the irregular maritime refugees and supports the practice of pushing back the boats.

have attempted the journey towards safe havens in boats. First Indonesia, and later Thailand and Malaysia, rejected them and pushed their boats back out into open water.

Stranded on boats in the Bay of Bengal and Strait of Malacca, they were helplessly forced to wait for support under desperate circumstances. That help arrived late after international pressure from the UN and the U.S. plead with Indonesia

36 | Cf. Amy Nethery et al., "Exporting Detention: Australia-funded Immigration Detention in Indonesia", *Journal of Refugee Studies* 1/2012, 26, pp. 98-102.

37 | *Ibid.*, pp. 105-106.

38 | Cf. Terry Fredrickson, "Border camp horrors revealed, official arrested", *Bangkok Post*, 4 May 2015, <http://bangkokpost.com/learning/learning-from-news/549355/suspected-migrant-graveyard-discovered-in-songkhla> (accessed 18 Sep 2015).

39 | Cf. Jethro Mullen, "Malaysia finds human-trafficking mass graves near Thai border", *CNN*, 25 May 2015, <http://cnn.it/1FwQ71d> (accessed 18 Sep 2015).

and Malaysia to grant temporary refuge several weeks later.⁴⁰ The Australian Government refused to offer any assistance or accommodation to the refugees and supported the practice of pushing back the boats.⁴¹ In search for a regional solution and common strategy for the problem, the U.S., Australia, Myanmar, Bangladesh and the ASEAN countries met together with international organisations in Bangkok. At the conference, Indonesia criticised Australia's hard line of no practical participation or political cooperation and pointed out that Australia, as a signatory to the Geneva Refugee Convention, it should honor its obligations under the treaty and be responsible enough to act accordingly.

In contrast to the Australian course of action regarding a fair regional distribution, the Philippines declared, like the U.S., to accept refugees. Several Filipino officials declared that the Philippine Government sees itself as obliged by the Geneva Refugee Convention and under a moral responsibility to act according to the Christian values of mercy and compassion.⁴²

FUTURE OUTLOOK

In response to the migrant crisis, several high representatives of the UN requested in a joint statement, that the states in the region cooperatively return to humanitarian values as the key principles in their regional migrant policy: the recognition and protection of human rights, including *non-refoulement* and *non-penalisation*, and a revision of immigration laws to expand avenues for safe and legal labour migration.⁴³ Despite limited resources, Countries such as the Philippines demonstrated throughout the crisis that a different attitude towards the refugees is indeed possible. Overall, it is clear that, in order to find long-term solutions for the migration situation, cooperation among the countries in the region and the willingness to take responsibility are indispensable factors for

40 | Cf. Amy Maguire, "Australia can do better on Asian boat crisis than 'nope, nope, nope'", *The Conversation*, 29 May 2015, <https://theconversation.com/australia-can-do-better-on-asian-boat-crisis-than-nope-nope-nope-42255> (accessed 18 Sep 2015).

41 | Cf. Shalailah Medhora, "'Nope, nope, nope': Tony Abbott says Australia will take no Rohingya refugees", *The Guardian*, 2 May 2015, <http://gu.com/p/494n6/stw> (accessed 18 Sep 2015).

42 | Cf. "South-East Asian migrant crisis: 2,000 trapped in boats off Myanmar facing hunger and violence, UN says", *ABC*, 20 May 2015, <http://abc.net.au/news/2015-05-19/6481892> (accessed 30 Sep 2015).

43 | The UNHCR, "UNHCHR, Director General of IOM, and Special Representative of the UN Secretary General voiced their deep concerns and issued ten demands while calling for a change in migrant policy", Geneva, 19 May 2015.

humanitarian refugee policies. After Australian Prime Minister Tony Abbott has been ousted by Malcolm Turnbull on 15 September 2015, it remains yet to be seen, whether and in what way Australia responds to the UN's request on regional cooperation and whether it moves its attitude towards refugees in a different direction.

ON THE OTHER SIDE OF CRISIS OR BACK ON THE BRINK?

OUTLOOK ON THE 2015 PRESIDENTIAL ELECTIONS IN IVORY COAST

Valentin Katzer

INTRODUCTION

West Africa is currently running a veritable election marathon: Nigeria, Togo, Benin, Guinea, Ivory Coast, Burkina Faso, Niger, Ghana – the cards in the region are being reshuffled in the 2015 and 2016 electoral period.¹ Past experience indicates that polls always prove to be a test for security, as well as social and political stability in the electoral democracies between Sahel and the Gulf of Guinea. The presidential and semi-presidential systems of the region have repeatedly given rise to tension and conflict in the past, and even more so where the newly elected head of state is endowed with extensive powers. The “Présidentielles” in Ivory Coast five years ago resulted in a particularly dramatic escalation. Due to the Civil War (2002/2007), the elections, which had been originally scheduled for 2005, were postponed several times, and were finally held against the backdrop of a deeply divided country.

The first ballot of the belated 2010 presidential elections initially put southern incumbent Laurent Gbagbo ahead, but during the run-off, northern challenger Alassane Ouattara was certified to have received the highest number of votes by the Independent Electoral Commission (Commission Électorale Indépendante de Côte d’Ivoire). The Constitutional Council, however, declared Gbagbo the victor. Both candidates took their oath, resulting in two Ivorian presidents being in office at the same time. When

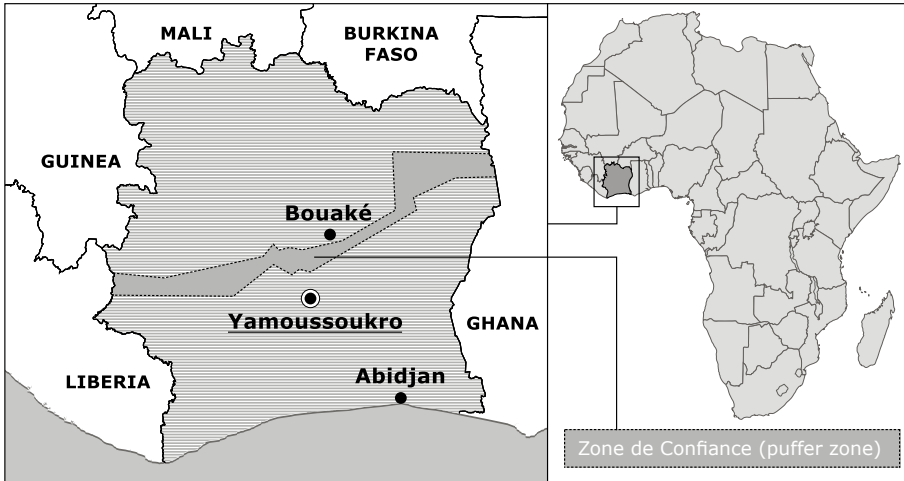


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1 | In March 2015, Jonathan Goodluck was defeated by his challenger Muhammadu Buhari in the race for the presidency of Nigeria. In April 2015, the Togolese President Faure Gnassingbé was confirmed in office. In the same month, parliamentary elections were held in Benin, where the ruling party of President Boni Yayi emerged as the strongest political force despite suffering some losses.

former rebel leader Guillaume Soro submitted his resignation as prime minister and declared his loyalty to Ouattara on the very same day, the government of national unity was history. Once again, the north and the south of the country were irreconcilably divided.

Fig. 1
**Factual Division of Ivory Coast
 Prior to the Peace Agreement in 2007**



The map shows the factual division of Ivory Coast during the Civil War. The north was controlled by the rebels, and the south was ruled by government troops. The 2007 Ouagadougou peace accord ended the war without resolving the lines of conflict entirely. | Source: © racken.

The democratic standards of the election are a source of controversy. African election observers and eyewitnesses reported that Gbagbo voters in the north were subjected to intimidation and violence, and that there was massive electoral fraud in favour of Ouattara.² The European Union (EU) Election Observation Mission, on the other hand, spoke of broadly free elections in their final report, and identified the Gbagbo camp in particular as a source

2 | The independence of these African election observers is difficult to assess. The *Frankfurter Allgemeine Zeitung* reports that residents of the region largely confirmed their assessment in telephone conversations with the newspaper. "Electoral Commission declares Ouattara the winner in Ivory Coast", *Frankfurter Allgemeine Zeitung*, 3 Dec 2010, p. 6.

of irregularities.³ Even though the international community largely stood united behind Ouattara, Gbagbo himself stubbornly refused to acknowledge his defeat. Mediation efforts of African institutions and statesmen failed; instead, the struggle for power escalated into a bloody confrontation resulting in more than 3,000 casualties. Only a UN military intervention with extensive French support put an end to the bloodshed and decided the conflict in favour of Alassane Ouattara, who has since ruled the country as president.



Ruins of a school in western Ivory Coast in 2011: Approximately 30,000 residents of the ethnic group Wé, which is considered loyal to Gbagbo, fled from the pro-Ouattara militia Forces républicaines de Côte d'Ivoire. | Source: Michael Fleshman, Catholic mission, flickr ©11.

Against the backdrop of this traumatic episode in Ivory Coast, the international community is anxiously awaiting the next presidential election on 25 October 2015. Is a repeat of the events of 2010/2011 on the cards? The present article will firstly examine the socio-economic framework conditions and social climate in the country a few weeks before the vote. This is followed by an assessment of the main candidates and their chances of success in the race for the presidency.

3 | "Overall, both ballots were marked by a peaceful and disciplined atmosphere, and are therefore regarded as positive." Translated by the authors from Mission d'observation de l'Union Européenne électorale, Côte d'Ivoire. *Rapport Final: Élection Présidentielle 31 octobre – 28 novembre*, p. 6, http://eeas.europa.eu/eueom/pdf/missions/rapport-final-25012011_fr.pdf (accessed 31 Aug 2015).

THE FRAMEWORK CONDITIONS

Economics

Apart from the occasionally sighted, remaining UN patrols in blue helmets, at first glance very little in Ivory Coast serves as a reminder of the dramatic conflict five years ago.⁴

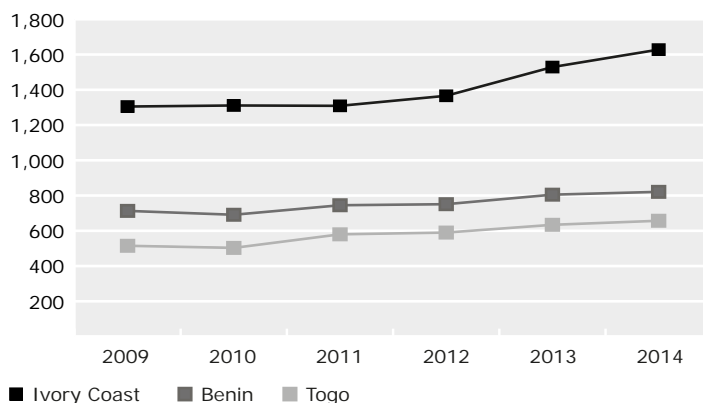
The economic capital of Abidjan, home to a third of the total Ivorian population within its metropolitan area of seven million people, is booming: new roads, bridges and building complexes are under construction everywhere. The skyline and upmarket Cocody and Plateau districts give the city a modern flair.

President Ouattara, former head of the West African Central Bank (Banque Centrale des Etats de l'Afrique de l'Ouest, BCEAO), has set the ambitious goal of turning Ivory Coast into an emerging market by 2020.⁵ This is to be accomplished by significant investments⁶ and a broad-based reform program to structurally build the attractiveness of Ivory Coast as a business location.⁷ The *Doing Business Report* of the World Bank considers Ivory Coast to be on the right track, and counts the nation among the most reform-driven in the world.⁸ The success of Ouattara's liberal

- 4 | The current UN mission in Côte d'Ivoire (ONUCI) began in 2004 and was subsequently repeatedly and significantly expanded during the escalation of 2010/2011. Following the noticeable relaxation of the situation in the country after 2011, the UN contingent has been reduced continuously. The current mandate expires in June 2016. Cf. United Nations Operation in Côte d'Ivoire, "ONUCI", <http://www.onuci.org> (accessed 31 Aug 2015).
- 5 | The BCEAO is the central bank of the West African Economic and Monetary Union (WAEMU), with the CFA franc as common currency. The fixed exchange rate is around 656 CFA francs to one euro. Prior to joining BCEAO, Ouattara was director of the International Monetary Fund for Africa.
- 6 | The current Ivorian Development Plan (2012-2015) includes plans to invest the equivalent of 16.8 billion euros or 54 per cent of gross domestic product (GDP) by 2014. République de Côte d'Ivoire, "Plan national de développement 2012 2015", 2012, p. 53 and The World Bank, "Côte d'Ivoire", <http://worldbank.org/en/country/cotedivoire> (accessed 31 Aug 2015).
- 7 | For instance, starting a new business in Cote d'Ivoire is now possible in 24 hours according to the competent authority (CEPICI, <http://cepici.gouv.ci>). In Nigeria, this process takes 31 days. The World Bank data refers to the period from 2010 to 2014. The value for Côte d'Ivoire at the time was seven days. The World Bank, "Time required to start a business (days)", <http://data.worldbank.org/indicator/IC.REG.DURS/countries> (accessed 31 Aug 2015).
- 8 | Cf. The World Bank, *Doing Business 2015. Going Beyond Efficiency*, 29 Oct 2014, p. 5, <http://doingbusiness.org/reports/global-reports/doing-business-2015> (accessed 31 Aug 2015).

economic policy is also reflected in the key economic figures: the Centre de Promotion of Investissements en Côte d'Ivoire (CEPICI) registered a boost in private investments from 220 billion CFA francs in 2011 to 513 billion CFA francs in 2013.⁹ The economy has been growing by eight to ten per cent over the past three years, inflation rates are low, and the Ivorian per capita income is disproportionately high in comparison with other regional franco-phone countries of West Africa.

Fig. 2

GDP per Capita in U.S. Dollars

Source: Own illustration. Data: The World Bank, African Economic Outlook, <http://africaneconomicoutlook.org/en/outlook> (accessed 16 Sep 2015).

Although the export-oriented agriculture from which two-thirds of Ivorians derive their income remains one of the pillars of the Ivorian economy, the manufacturing industry is also increasingly adding value in Ivory Coast.¹⁰ Industrial growth of 8.4 per cent in the most recent period, the country is ranked 20th in the world.¹¹ The official aim is an increase in the share of value adding industry to GDP to 40 per cent by 2020. The focal points are on the

9 | Vincent Kouassi, "Côte d'Ivoire: un leadership qui s'affirme", *Côte d'Ivoire Economie*, Jan 2015, p. 6-8.

10 | Ivory Coast is the world's largest cocoa producer. Otherwise, coffee, cotton and fruits are also major food crops for export. According to calculations by the French Embassy in Ivory Coast, around 38 per cent of Ivorian exports in 2013 were agricultural goods, 29 per cent oil, and 18 per cent processed products. Ambassade de France en Cote d'Ivoire, "Les échanges commerciaux de la Côte d'Ivoire en 2013", Jun 2014, http://diplomatie.gouv.fr/fr/IMG/pdf/COTE_D_IVOIRE_-_Le_commerce_exterieur_en_2013_cle051f3e.pdf (accessed 31 Aug 2015).

11 | CIA, "Côte d'Ivoire", *The World Factbook*, 25 Aug 2015, <http://cia.gov/library/publications/the-world-factbook/geos/iv.html> (accessed 31 Aug 2015).

exploitation and utilisation of the country's rich natural resources, as well as the further processing of agricultural produce.¹²

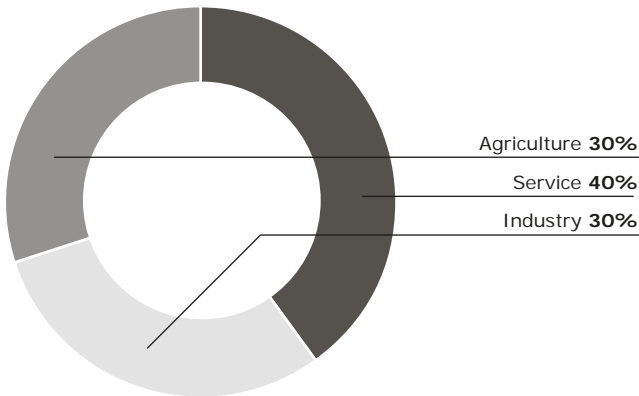


World Cocoa Conference in Abidjan: The Ivory Coast is the world's largest cocoa producer. In the future, however, the industrial value creation is also to be increased. | Source: © Gbekide Barnus, picture alliance/ Panapress/MAXPPP.

Once again, the confidence of international organisations, investors and lenders in the (economic) future of Ivory Coast is gaining momentum: back in 2014, for instance, the African Development Bank relocated its headquarters back to Abidjan after eleven years in exile in Tunisia, and the largest Ivorian Airport, Félix-Houphouët-Boigny, obtained the approval of U.S. authorities to operate direct flights to the United States after 15 years of negotiations, and Ivory Coast successfully returned to the international capital market, where the demand for its bonds, with their comparatively moderate interest yield of 6.625 per cent, was exceeded many times over.

12 | "La Côte d'Ivoire veut accroître la part de l'industrie dans le PIB", *Radio France Internationale (RFI)*, 11 Jul 2014, <http://rfi.fr/afrique/20140711-cote-ivoire-jean-claude-brou-veut-mettre-avant-son-industrie> (accessed 31 Aug 2015).

Fig. 3

GDP Ivory Coast by Sectors

Source: Own illustration. Data: Ministère de l'Industrie et des Mines, Ivory Coast und Ministère de l'Agriculture, Ivory Coast, "Politique Industrielle", <http://industrie.gouv.ci/index.php/page/politique-industrielle> (accessed 14 Aug 2015); Ministère de l'Agriculture, http://agriculture.gouv.ci/index.php?option=com_content&view=article&id=122&Itemid=301 (accessed 14 Aug 2015).

Historical Reappraisal of the Civil War

However, the economic progress and relative stability cannot mask the fact that the political division of the country has not yet been overcome and conflicts continue to smoulder beneath the surface. The reappraisal of the civil war remains a central problem. The reconciliation commission set up by the government (Commission Dialogue, Vérité et Réconciliation, CDVR) was only partially able to meet its goals.¹³ The panel was launched in 2011 and only commenced work three years later. Based on the South African Truth and Reconciliation Commission model, the CDVR was designed as a forum for dialogue, but was not endowed with legal powers. Further criticism stems from the fact that the government did not publish the 2014 final report of the commission. In addition to the superordinate objective of national reconciliation, the successor organisation Commission Nationale pour la Réconciliation et l'indemnisation of Victimes (CONARIV) is also tasked with the awarding of material compensation to the 74,000 war

13 | Cf. Commission Dialogue Vérité et Réconciliation, <http://cdvr.ci> (accessed 31 Aug 2015).

victims officially registered to date. Victims' associations regard this as an important first step, but fundamental criticism of the Commission's structure remains.¹⁴



Fleeing from the civil war: In 2011, numerous Ivorians attempted to get to Liberia by crossing the Cavalla and Cestos River in order to escape the fighting. | Source: Derek Markwell, UK Department for International Development, flickr ©©.

The penal reappraisal of the past before the Ivorian courts is also subject to several deficiencies. International observers have criticised the disregard for legal standards in the criminal prosecutions, and have questioned the independence of the Ivorian judiciary time and again.¹⁵ In fact, to this day mainly members of the old regime were prosecuted. They have criticised the process as "victor's justice". Furthermore, the proceedings have not addressed crimes against humanity as documented by the United Nations and Human Rights Watch for both factions to date; rather, the focus has been on economic crimes or a planned "attack on national security".¹⁶

14 | Cf. "Côte d'Ivoire: indemnisation dès juillet", *BBC*, 6 May 2015, http://bbc.com/afrique/region/2015/05/150506_cote_divoire_compensation (accessed 31 Aug 2015).

15 | Cf. Human Rights Watch, "Rapport mondial 2015, Côte d'Ivoire", <http://hrw.org/fr/world-report/2015/country-chapters/132199> (accessed 31 Aug 2015).

16 | Cf. "Report of the independent, international commission of inquiry on Côte d'Ivoire", Human Rights Council, 17th session, 6 Jun 2011, http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.48_Extract.pdf (accessed 31 Aug 2015); United Nations Security Council, "Special report of the Secretary-General on the United Nations Operation in Côte d'Ivoire", 28 Mar 2013, http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2013/197 (accessed 31 Aug -

For quite some time there were concerns that the tens of thousands of irregular fighters under arms since the civil war could jeopardise the orderly conduct of the elections and the country's stability. The loyalties of the various militias are often opaque. Some groups are considered supporters of President Ouattara, while others sympathise with the former ruler Gbagbo. Often, material interests are of primary importance, which is in turn accompanied by the possibility of political instrumentalisation. The agency established by the government for their disarmament and reintegration (Autorité pour le désarmement, Demobilisation et la Reintégration, ADDR) initially seemed to fail to get a grip on the issue. Faced with the risk of renewed escalation, the Ivorian Episcopal Conference urged in May 2015 increased efforts to provide the mostly young combatants, who often enjoyed little education, with prospects in civilian life.¹⁷ By now, the ADDR is looking back on a period of success: Until the official deadline at the end of June, which offered exchange of war military equipment for impunity, two months of vocational training and financial assistance, just short of 58,000 disarmaments of ex-combatants were reported. The estimated 10,000 remaining fighters nonetheless remain a source of uncertainty, prompting the UN Security Council to extend the ONUCI mission (United Nations Operation in Côte d'Ivoire) in Ivory Coast until June 2016.¹⁸

The loyalties of the various militias are often opaque. Some groups are considered supporters of President Ouattara, while others sympathise with the former ruler Gbagbo.

International Rankings

The continued weak Ivory Coast ranking at 171 out of 187 in the United Nations *Human Development Index 2014* is regarded by Ouattara critics as confirmation of their allegations that his

- 2015); Human Rights Watch, "Transformer les discours en réalité. L'heure de réclamer des comptes pour les crimes internationaux graves perpétrés en Côte d'Ivoire", Apr 2013, http://hrw.org/sites/default/files/reports/CDI0413fr_ForUpload.pdf (accessed 31 Aug 2015). Simone Gbagbo, wife of the former president, was sentenced to a long prison term in early 2015. Cf. "Côte d'Ivoire: Simone Gbagbo condamnée à 20 ans de prison", *Jeune Afrique*, 10 Mar 2015, <http://jeuneafrique.com/226286/politique> (accessed 31 Aug 2015).
- 17 | Cf. "Côte d'Ivoire: 74 000 ex-combattants à désarmer d'ici fin juin", *RFI*, 12 May 2015, <http://rfi.fr/afrique/20150512-cote-ivoire-74-000-ex-combattants-desarmer-reinserer-demobiliser-gbagbo-addr> (accessed 31 Aug 2015).
- 18 | Cf. Joan Tilouine/Alexis Adélé, "En Côte d'Ivoire, les ex-combattants sommés à rendre les armes", *Le Monde Afrique*, 1 Jul 2015, http://lemonde.fr/afrique/article/2015/07/01/e_4666002_3212.html (accessed 31 Aug 2015).

agenda is too narrowly confined to economics at the expense of other significant parameters of democratic and sustainable development.¹⁹ However, a glance at other development indices shows there is an undeniably positive trend in spite of persistent deficits in the country. In the “good governance” section, the *Ibrahim Index of African Governance 2014* reported Ivory Coast as having made the biggest improvements of the 54 listed African countries compared to the previous year.²⁰ Ivory Coast rose 21 places of the *Bertelsmann Transformation Index 2014* compared to the reference year 2010, to rank 95 of the 130 countries covered.²¹ Even though the fight against corruption is facing a long, uphill struggle, the efforts made by the government are nonetheless obvious: Ivory Coast ranked 146 of 178 countries in the *Corruption Perception Index* of Transparency International in 2010, managing to rise to rank 115 in 2014.²²

THE RACE FOR THE PRESIDENCY

Officially, the race for the presidency has not even begun. According to Ivorian law, the election campaign period lasts a mere two weeks (10 to 23 October), so no election posters are as yet to be found in the streets of Abidjan. However, the 14 candidates have been vying for position in the media for the past several months.

The Incumbent

President Ouattara tends to naturally have pervasive media presence, which he is also skilled at utilising for his purposes.

Regardless of the actual outcomes of their mandates, the incumbent (regional) presidents tend to hold an advantage in political competition from their office. President Alasane Ouattara tends to naturally have pervasive media presence,

which he is also skilled at utilising for his purposes. While his numerous challengers must square off against both the incumbent and each other, Ouattara can afford to enjoy his presidential aura,

19 | United Nations Development Program, “Human Development Index 2014”, <http://hdr.undp.org/en/content/table-1-human-development-index-and-its-components> (accessed 31 Aug 2015).

20 | Cf. *Ibrahim Index of African Governance 2014*, Mo Ibrahim Foundation, <http://moibrahimfoundation.org/iiaag> (accessed 31 Aug 2015).

21 | Bertelsmann Stiftung, “BTI 2003-2014_Ergebnisse”, http://bti-project.de/uploads/tx_itao_download/BTI2003-2014_Ergebnisse.xls (accessed 31 Aug 2015).

22 | Transparency International, *Corruption Perceptions Index 2010*, <http://transparency.org/cpi2010/results> (accessed 31 Aug 2015); “Corruption Perceptions Index 2014: Results”, <http://transparency.org/cpi2014/results> (accessed 31 Aug 2015).

and avoid direct confrontations. Following his policy agenda, the present head of state's advertising for another term is primarily based on the economic track record of his first term, as well as his ambitious development goals for the year 2020. Since the economy is undergoing noticeable growth compared to the period of widespread stagnation from 1999 to 2011 and forecasts for the coming years project a continuation of the positive trend, and many Ivorians accordingly hope to win their share of the rising prosperity of the nation under the current president, this would appear to be quite a promising strategy.



A collapsed building in the working-class area of Abidjan: The Ivorian population does not benefit equally from the economic growth in the Ivory Coast under President Ouattara. The difference in prosperity is clearly visible in Abidjan too. | Source: © Cyrille Bah, picture alliance/Anadolu Agency.

Nevertheless, the economic situation is also a starting point for criticism of Ouattara's policy: To date, the benefits of the strong economic growth of recent years have been distributed extremely unevenly among the population. The prosperity of the middle and upper classes, visibly embodied in expensive cars, villas and luxury shops, dominates the town of Abidjan, as does the struggle of the poor and poorest for their daily bread. Unemployment remains a key socio-economic problem, and even well-educated Ivorians frequently fail to find a job in line with their qualifications. Conversations with supposedly ordinary people, such as the employees of private security companies visible across the cityscape, commonly reveal academics who held well-paid jobs

before the crisis, and now have to contend with little more than the minimum wage of 60,000 CFA francs (92 euros) per month.²³ Since numerous people tend to be dependent on the income of a single family member, the situation of many workers remains precarious.²⁴ The number of Ivorians below the poverty line of two U.S. dollars per day has remained stagnant at 46 per cent since 2012, which is only three per cent less than in 2008.²⁵ The World Bank regards this high level, particularly when compared to economic growth and per capita income, as “worrying”.²⁶ If just around half of the population are largely excluded from the welfare gains of the country, the question as to how the economic growth may be channelled into more inclusive and therefore sustainable economic development naturally tends to pose itself.

Between Alliance and Competition: The Governing Parties RDR and PDCI

In any case, Ouattara can count on the broad support of his candidacy by the Rassemblement pour la Démocratie et Houphouëtistes de la Paix (RHDP) during the election campaign. This alliance is composed of the presidential party Rassemblement des Républicains de Côte d’Ivoire (RDR) and four other parties of the liberal-conservative spectrum. Among them, the Parti Démocratique de Côte d’Ivoire (PDCI) of long-standing President Felix Houphouët-Boigny, who ruled Ivory Coast from its independence in 1960 until his death in 1993, and whom Alassane Ouattara

- 23 | The minimum wage was increased by the Ivorian government by 64 per cent from 36,607 to 60,000 CFA francs in November 2014. Cf. Présidence de la République du Côte d’Ivoire, “Décret N°2013-791 du 20 Novembre 2013 Portant Revalorisation du Salaire Minimum inter-professionnell garanti, en abrege smig”, 20 Nov 2013, http://sgg.gouv.ci/photo_doc/1399281753Decret_N_2013_711_du_18_octobre_2013.pdf (accessed 31 Aug 2015).
- 24 | While local produce such as fruits and vegetables, as well as services are comparatively affordable in Côte d’Ivoire, the prices of most imported goods, telecommunications and electricity are higher than in Germany. For instance, in Abidjan, the monthly minimum wage equivalent of three euros per day buys a basket of two baguettes (0.50 euros), two pieces of fruit (0.50 euros), one litre of petrol (one euro) and three litres of mineral water (one euro). For further information see “International Salary Calculator. Cost of Living Review by City and Country: Côte d’Ivoire, Abijan”, Xpatulator, http://www.xpatulator.com/cost-of-living-review/Cote-D'Ivoire-Abidjan_58.cfm (accessed 31 Aug 2015).
- 25 | Bertelsmann Stiftung, “Bertelsmann Transformation Index, Côte d’Ivoire, Country report 2008, 2012, 2014”, p. 2.
- 26 | “Pour la Banque mondiale, le niveau de pauvreté en Côte d’Ivoire reste ‘inquiétant’”, *Jeune Afrique*, 12 Nov 2014, <http://jeuneafrique.com/5203/economie> (accessed 31 Aug 2015).

served as prime minister from 1990-1993.²⁷

The alliance between RDR and PDCI was formally launched in 2005 and became a reality during the 2010 presidential elections. At

that time, Henri Konan Bédié, who succeeded Houphouët-Boigny as president from 1993 until the 1999 military coup, united more than 25 per cent of the vote in the first ballot behind Laurent Gbagbo (38 per cent) and Alassane Ouattara (32 per cent). In the subsequent run-off election, he supported the challenger Alassane Ouattara, and paved the way to his victory over incumbent Gbagbo. This alliance is certainly remarkable given the rather adversarial history of the two statesmen. Notably, it was Bédié who prevented Ouattara's candidacy in the 1995 and 2000 presidential elections citing the controversial concept of *ivoirité*.²⁸ Since the closing of ranks, the PDCI has been in government in coalition with the presidential party, appointed the current prime minister, Daniel Kablan Duncan, and is therefore inextricably allied with Ouattara's politics. Faced with the obvious difficulty of having to distinguish himself from the President in this situation without discrediting his own government work, party leader Henri Konan Bédié made a controversial decision in summer 2014. He announced that his party would refrain from launching a candidacy in the 2015 presidential elections in support of Ouattara. The reason might be a political deal for 2020: Ouattara, who has already announced that he has no intention of succumbing to the "African disease" and intends to resign after the constitutional two mandates, would then express his support for the election of the PDCI candidate as outgoing president.²⁹

The alliance between RDR and PDCI was formally launched in 2005 and became a reality during the 2010 presidential elections.

- 27 | Before he was elected in 1960 as the first president of Côte d'Ivoire, Felix Houphouët-Boigny was instrumental in shaping French decolonisation during his service as minister in the late 1950s. He only had to assert himself against a political opponent in an election after the end of the one-party system in 1990. He won a clear victory against challenger Laurent Gbagbo.
- 28 | The original national unifying concept of *ivoirité* became the subject of increasing political exploitation after 1993 to marginalise certain ethnic groups and religious communities or eliminate political opponents. According to Bédié's definition, only persons whose four grandparents were born in the country are to be regarded as Ivorians, and thus become president of Ivory Coast. The north of the country, where Alassane Ouattara also has his roots, is particularly home to many people with foreign roots. Cf. "Alassane Ouattara et Henri Konan Bédié: amicalement vôtre", *Jeune Afrique*, 31 Dec 2014, <http://jeuneafrique.com/36799/politique> (accessed 31 Aug 2015).
- 29 | "African disease" refers to the tendency of some statesmen of the continent to cling to power into old age, and to stay in power for further tenures by constitutional amendments. The most recent attempt of the former Burkinabe ruler in November 2014 failed due to massive civil society protests, and ended with the dismissal of Blaise Compaoré.



Alassane Ouattara on the campaign trail: Contrary to some of the other African heads of state, Ouattara has already announced that he will retire constitutionally from the position as president after two terms in office. | Source: © Franck Castel, Wostok Press/picture alliance/dpa.

Quite a daring political move. That's because no one can predict how the political landscape will develop in the next five years with certainty, and whether promises made now will be held later. Should there be a break between the coalition parties in the coming years, or if RDR politicians decide to pursue their own quest for power over prior arrangements, then PCDI would find itself in a most unfavourable starting position in 2020. In particular, there is rumour from within the RDR ranks that the current parliamentary speaker and former rebel leader Guillaume Soro has ambitions for the presidency.³⁰ He enjoys excellent relations with the head of state, and, at only 42 years of age, is already regarded as the second most powerful man in Ivory Coast.³¹ Hamed Bakayoko,

30 | Soro was one of the central figures on the side of Ouattara during the 2010/2011 civil war, and is therefore strongly linked with the security sector. While his critics assert that he committed war crimes during that period, this has never been officially confirmed by an independent body. Regarding the allegations cf. "Banny – Soro, la guerre est déclarée: Banny accuse Soro de crimes et de casses de la BCEAO 'Soro devrait chercher à répondre de ses crimes et de ses casses à la BCEAO'", *Ivoirebusiness.net*, 21 Mar 2015, <http://ivoirebusiness.net/?q=articles/banny-%E2%80%93-soro-la-guerre-est-d%C3%A9clar%C3%A9e-banny-accuse-soro-de-crimes-et-de-casses-de-la-bceao-%C2%AB> (accessed 31 Aug 2015); "Crimes Ouattara-Soro: Listes des 134 fusillés, égorvés et disparus de Toulepleu", *La Dépêche d'Abidjan*, 8 Aug 2015, http://ladepechedabidjan.info/Crimes-Ouattara-Soro-Listes-des-134-fusilles-egorges-et-disparus-de-Toulepleu_a15095.html (accessed 31 Aug 2015).

31 | "Côte d'Ivoire: Guillaume Soro, ex-rebelle haut perché", *Jeune Afrique*, 4 Mar 2015, <http://jeuneafrique.com/225978/politique> (accessed 31 Aug 2015).

who as interior minister has been tasked with key political issues such as the reform of the Electoral Commission or the reintegration of ex-combatants also has excellent prospects for succeeding Ouattara. At the age of 49, he is also part of the RDR junior squad.³²

Some of the PDCI do not wish to pursue this risky path, and are insisting on picking their own candidates for this year's presidential elections. Four well-known party members have already thrown their hats into the ring: Amara Essy, Charles Konan Banny, Kouadio Konan Bertin and Jérôme Kablan Brou. The erstwhile close associate of Felix Houphouët-Boigny and former foreign minister Amara Essy is rumoured to have the best chances of success. As a diplomat, he acquired great international prestige as President of the General Assembly of the United Nations and the African Union. Amara presents himself as a "candidate of the reconciliation", and, in fact he is regarded as untainted by the civil war in the eyes of many Ivorians due to his absence of several decades from Ivory Coast; a plus that none of the other candidates can claim for themselves, no matter what party they belong to. Amara's critics are trying to use his international work against him, accusing him of too long an absence from home. Charles Konan Banny started his career at the West African central bank BCEAO before he was appointed prime minister from 2005 to 2007. In 2011, he was appointed head of the Reconciliation Commission by President Ouattara. Critics regarded this as an attempt to prevent his candidacy in the 2015 elections. At the end of 2014, Banny resigned from his post and announced his candidature to the highest public office. Kouadio Konan Bertin once led the PDCI youth organisation. At the age of 46, he is a young politician by African standards, and has been a vehement opponent of the alliance of his party with President Ouattara's RDR for many years. Jérôme Kablan Brou was Vice President of the National Assembly under President Henri Konan Bédié and is an experienced politician, but in the past has been pulling strings more in the background. His low public profile is therefore considered his greatest shortcoming.³³

Amara Essy presents himself as a "candidate of the reconciliation", and, in fact he is regarded as untainted by the civil war due to his absence of several decades from Ivory Coast.

32 | "Hamed Bakayoko, le premier flic de Côte d'Ivoire", *Jeune Afrique*, 4 Mar 2015, <http://jeuneafrique.com/225976/politique> (accessed 31 Aug 2015).

33 | Cf. Maureen Grisot, "Côte d'Ivoire: Qui sont les quatre frondeurs du PDCI?", *Le Monde Afrique*, 28 Feb 2015, http://lemonde.fr/afrique/article/2015/02/28/c_4585142_3212.html (accessed 31 Aug 2015).

The Opposition Alliance Coalition Nationale pour le Changement (CNC)

All four candidates joined the oppositional alliance Coalition Nationale pour le Changement (CNC) in mid-May, although Amara Essy has not yet signed the Charter. The CNC counts public figures and presidential candidates of ideologically rather different parties among its ranks. Mamadou Koulibaly, Chairman of the Liberal Party LIDER (Liberté et Démocratie pour la République), represents an entirely different policy than Aboudramane Sangre and Laurent Akoun from the socialist FPI.³⁴ It is therefore not surprising that there are very few unifying elements within the heterogeneous union beyond the stated goal of preventing Ouattara from winning a second term. A mere few weeks after its establish-

The CNC election campaign is primarily aimed at questioning the presidential qualities of the incumbent, and to demand more efforts for national reconciliation; Ouattara's economic record would not offer much of a target in any case.

ment, an internal disagreement regarding the exact interpretation of the charter and the political agenda of the CNC arose. The CNC election campaign is primarily aimed at questioning the presidential qualities of the incumbent, and to demand more efforts for national reconciliation; Ouattara's economic record would not offer much of a target in any case. As already indicated, there is actually an urgent need for a reappraisal of the civil war. The utopian call for the immediate and unconditional release of Laurent Gbagbo and his supporters, however, nourishes doubts about the constructive intentions, desire for reconciliation, and multipartisan functioning of the CNC. Furthermore, the coalition calls for the replacement of the electoral commission, which claim to be partial, with a new body prior to the October 2015 presidential elections, and the implementation of electoral reforms, which is an impossible undertaking for logistical reasons alone. So far, the CNC therefore does not present itself as a cohesive unit that might yield a joint, serious competitor for the incumbent. The agreement to appoint Charles Konan Banny as head of the coalition, which was reached at the end of July, was immediately followed by the restriction that this does not

34 | Mamadou Koulibaly was acting president of the Ivorian National Assembly for eleven years. In 2011, he left the FPI and founded the party LIDER. Aboudramae Sangre acted as foreign and prime minister, among other roles. Laurent Akoun previously held the post of Deputy Secretary General of the FPI. In 2012, he was sentenced to a six-month prison sentence for assault on public order. Cf. "Six mois de prison ferme pour Laurant Akoun, n°2 du FPI", *RFI*, 31 Aug 2012, <http://rfi.fr/afrique/20120831-cote-ivoire-verdict-proces-laurent-akoun-six-mois-ferme-fpi> (accessed 31 Aug 2015).

constitute any preliminary decision on the candidacy.³⁵ As a result six CNC members continue to compete for the presidency, which will undoubtedly boost Ouattara's chances of an election victory.

Acid Test for the Ivorian Popular Front (FPI)

The largest opposition party, the socialist FPI of former ruler Laurent Gbagbo, would not be expected to win the election in its current constitution. The party's boycott of the parliamentary elections in late 2011, protesting the Gbagbo's arrest, deprived the party of the opportunity to distinguish itself as a serious alternative to the ruling majority through constructive opposition work in the National Assembly. Furthermore, the FPI has been weakened internally by several months of infighting, some of which was even subject to court proceedings. The pragmatic wing around Pascal Affi N'Guessan, the party chairman, is looking to appoint fresh candidates and launch a substantive critique of government policy. The other wing consists of the faithful followers of the ex-president, who was indicted for crimes against humanity by the International Criminal Court in The Hague. They still regard Laurent Gbagbo as the legitimate head of state of Ivory Coast, and are expecting his speedy return to power. The attempt to reappoint him as a first step to the party leadership was initially stopped by judicial decision at the end of 2014, which was an important stage victory for Pascal Affi N'Guessan. Nevertheless, the Gbagbo camp is unswervingly determined in its approach. The wing's recent call to boycott the elections on 25 October is further fuel to the intraparty conflict.³⁶ The FPI is not expected to overcome the internal split and return to its former strength any time soon. A breakup of the party cannot be ruled out.

CONCLUSION AND OUTLOOK

All in all, President Alassane Ouattara is in rather a comfortable starting position. Even though he cannot count on official support in the election campaign from abroad, the international community, and especially the most important economic and strategic partner of the Ivory Coast, France, are quite sympathetic to a further

35 | Cf. "Côte d'Ivoire: Charles Konan Banny dirige la Coalition nationale pour le changement", *Oeil d'Afrique*, 24 Jul 2015, <http://oeildafrique.com/cote-divoire-charles-konan-banny-dirige-la-coalition-nationale-pour-le-changement> (accessed 31 Aug 2015).

36 | Cf. "Côte d'Ivoire: le FPI tendance Gbagbo appelle au boycott de la présidentielle", *Jeune Afrique*, 18 Aug 2015, <http://jeuneafrique.com/257686/politique> (accessed 31 Aug 2015).

Ouattara mandate. He did, after all, succeed in stabilising Ivory Coast politically after a decade of civil war and economic stagnation, and to bring the country back to the growth path. Against this backdrop, many countries are willing to overlook the aforementioned shortcomings of the Ouattara presidency, and hope for improvement in his second, last term of office.



Project "Partnership for Transition": Since the crisis in 2010/11, the European Commission, has supported the Ivory Coast among others in strengthening social cohesion in conflict regions through different projects. | Source: Anouk Delafortrie, European Commission, ECHO, flickr ©🇫🇷🇫🇷.

The fragmented and fractious opposition, which is currently more concerned with itself than with the political opponent, is little cause for alarm to the incumbent at the moment. Some commentators are even invoking the image of an open boulevard as the only obstacle between Ouattara and his second term. However, should the opposition manage to close ranks and agree on a common candidate by the second ballot, the race may turn out to be tight after all.³⁷ Both camps are currently faced with the major issue that interest in this year's presidential election has scarcely increased among the population. The widespread assumption that the election outcome is already decided makes it difficult for both the incumbent and the opposition candidates to mobilise their own supporters. Furthermore, the long years of political infighting

37 | Cf. "Côte d'Ivoire: la présidentielle, un boulevard pour Alassane Ouattara?", *RFI*, 8 Aug 2015, <http://rfi.fr/afrique/20150808-cote-ivoire-presidentielle-boulevard-ouattara-mandat-rhd-fpi> (accessed 31 Aug 2015).

have shaken the confidence of many people in the politicians, and led to a noticeable disenchantment with politics in the country. Particularly young Ivorians are also asking for a true alternative to the incumbent politicians, who have dominated the political stage and also the current election campaign for decades. Whatever the outcome of this year's election, the political sphere in Ivory Coast is faced with the major challenge of regaining lost confidence, and thereby building the foundation of a functioning democracy.

Are they safely on the other side of the crisis – or back on the brink? Both the government and the opposition have the power to prevent future conflict by establishing the conditions for a fair election campaign and transparent polls. The sooner this is achieved, the more difficult it would be for the defeated candidate to challenge the election results and to seek a trial of strength outside of the democratic framework. All in all, the tighter the election outcomes, the greater the conflict potential. A change of power would result in a particularly unpredictable situation. At present, there is a strong case for the election victory of incumbent Ouattara on 25 October 2015, which is widely expected by many Ivorians and international observers. In this scenario, a new escalation similar to the conflict in 2010/2011 is considered unlikely. Even though tensions and sporadic incidents cannot be ruled out, the unique military and political balance of power in the country render a wide-ranging violent confrontation improbable. In this case, the decisive test for the capacity of Ivorian democracy would be postponed to 2020, and the expected power struggle over the succession of Ouattara.

Ultimately, the question of whether Ivory Coast has really overcome its long crisis will remain interesting beyond the vote in October 2015. The fact that the dividing lines outside of politics are much weaker today than they were five years ago certainly constitutes a positive development. Regardless of their political orientation, the majority of Ivorians have come to believe that a crisis like the one following the 2010 presidential elections, which set the country back by several years, must not be repeated under any circumstances. A new awareness of the presence of an overriding, national interest appears to be taking shape among the Ivorian population, which holds precedence over individual political preferences and party leaders' lust for power. This change in mentality would indeed be an invaluable asset to the process of democratic consolidation.

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