

INTERNATIONAL REPORTS



The Fight for Democracy

INTERNATIONAL REPORTS

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Editorial

Dear Readers,

Democracy is not a matter of course, as a glance beyond our immediate horizon illustrates. To paraphrase Konrad Adenauer, democracy must be filled with life every day and, where necessary, defended vigorously, both internally and externally. 50 years after his death, this dictum by the first chancellor of the Federal Republic of Germany holds true now more than ever, as is shown by Christopher Walker in his article for this issue. He illustrates that for some time now, we have been witnessing how authoritarian regimes are attempting to increasingly expand their influence beyond their own borders. There is a need to take decisive and swift action to put an end to this “globalisation of authoritarianism”.

In his “Interjection”, Frank Priess also sees cause for concern in view of these developments. Nevertheless, he believes that one should not overlook the many positive developments made in advancing democracy and the rule of law that have taken place throughout the world since World War II, and he commends trying to take a differentiated view.

A look at Latin America illustrates the importance of strong civil societies for democratic structures to develop and persist; after a phase during which mainly socialist-style governments dominated the continent, the Western-liberal idea is once again on the rise. Kristin Wesemann and David Brähler describe how civil societies are putting pressure on their governments and the established political parties to allow them a greater say.

According to Edmund Ratka, authoritarian rulers will, in the long term, not be able to survive in the Arab world either. Instead, political fate will be determined by an increasingly networked younger generation seeking personal freedom and economic opportunities, partly as a natural result of demographic developments. However, Tunisia is the only country in which democratic change has so far flourished to some degree. Despite persisting corruption and an unstable security situation, the country continues to act as a “beacon of hope”, showing that there is a way to negotiate social conflicts in a peaceful manner and to balance power relationships through dialogue.

Watched closely by the international public, Myanmar too has been undergoing a process of opening up since 2010, reaching its

preliminary peak at the end of 2015 with the first democratic elections since a quarter of a century. According to Norbert Eschborn, the governing party of Nobel Peace Prize Laureate Aung San Suu Kyi is, however, finding it difficult in practice to fulfil the high expectations for genuine democratic change among its own population and the international public.

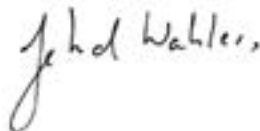
The fact that a functioning democracy requires more than regular elections is not least illustrated by the situation on the African continent. Here, a number of aging long-time rulers exemplify the critical state of democracy. Many Sub-Saharan countries are characterised by a mixture of democratic and authoritarian tendencies. Mathias Kamp concludes that ultimately, the future of democracy in Africa will primarily be determined by the social developments in the respective countries – regardless of external support.

Particularly in places where suppression and despotism reign instead of freedom and democracy, there is a need for an instrument such as the International Criminal Court. As Franziska Rinke et al. show in their article, its operational capability remains limited although it has been 15 years since its founding as some major states have still not joined and others even intend to leave. However, political will is central to the success of the democratic idea, and consequently, the role that the court will be able to play in future will depend crucially on receiving support from strong member states.

Free elections, strong civil societies, mechanisms of peaceful conflict resolution and instruments for enforcing the principles of the rule of law – the articles on the key topic of this issue illustrate the diverse elements of liberal democracy. In addition, they remind us that we must not take achievements in this area for granted, but instead need to bring them to life afresh every day and defend them vigorously, both internally and externally and – to paraphrase Konrad Adenauer – make a conscious decision to choose freedom.

I wish you a stimulating read.

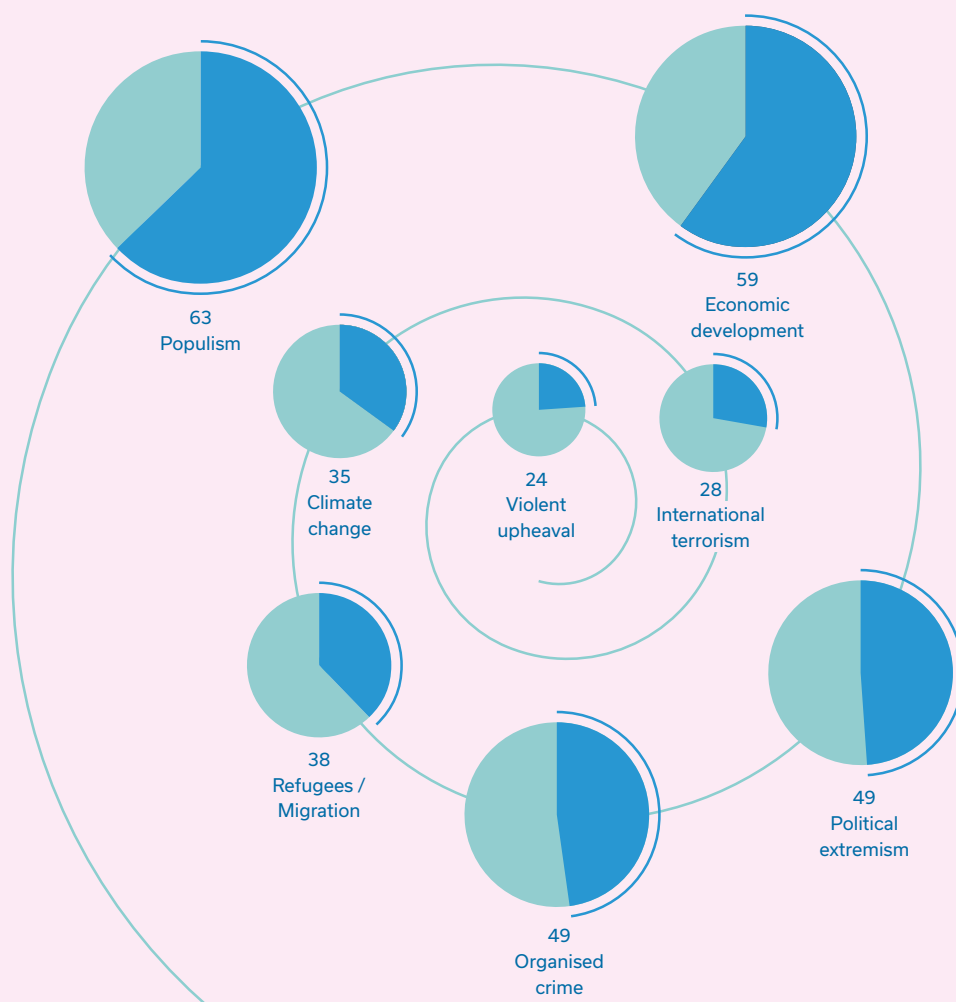
Yours,

A handwritten signature in black ink that reads "Gerhard Wahlers". The signature is written in a cursive style with a large, looped initial 'G'.

Dr. Gerhard Wahlers is Editor of International Reports, Deputy Secretary General and Head of the Department European and International Cooperation of the Konrad-Adenauer-Stiftung (gerhard.wahlers@kas.de).

Populism : Worldwide Stability Risk No. 1

“The political stability of a country can be jeopardized by a variety of factors. How do you assess the influence of the following factors within your country on the political stability in five years?” Figures in per cent.



All figures are from the Global Future Survey 1/2017 of the Konrad-Adenauer-Stiftung. More than 500 experts from around 100 countries were asked for their opinions and assessments on developments within the next five years. About 63 per cent see populism as a great or very great risk for the stability of their country. Thus in an assessment of risk, populism is considered

more dangerous than economic development (59 per cent), political extremism (49 per cent) and organised crime (49 per cent).

Noticeably less pronounced are the expectations of a negative impact on the political stability of states from migration and refugee matters (38 per cent).

Countertrend: Western Ideas Prove to Be Persuasive

“Freedom, equality, the rule of law, separation of powers, the freedom of the press and expression, as well as democratic principles, are important cornerstones of the model of western liberal democracy. Over the next five years, how much influence do you expect western liberal ideas to have on political action in your country?” *Figures in per cent.*



Against all odds: In the next five years, the impact of the western-liberal notion of political action will increase in almost all parts of the world, according to the experts. This trend is especially pronounced in Africa and Latin America. Only in Europe the majority of experts

predict the influence of western liberal ideas to be diminishing.

All results of the Global Future Survey can be found on: www.kas.de/futuresurvey

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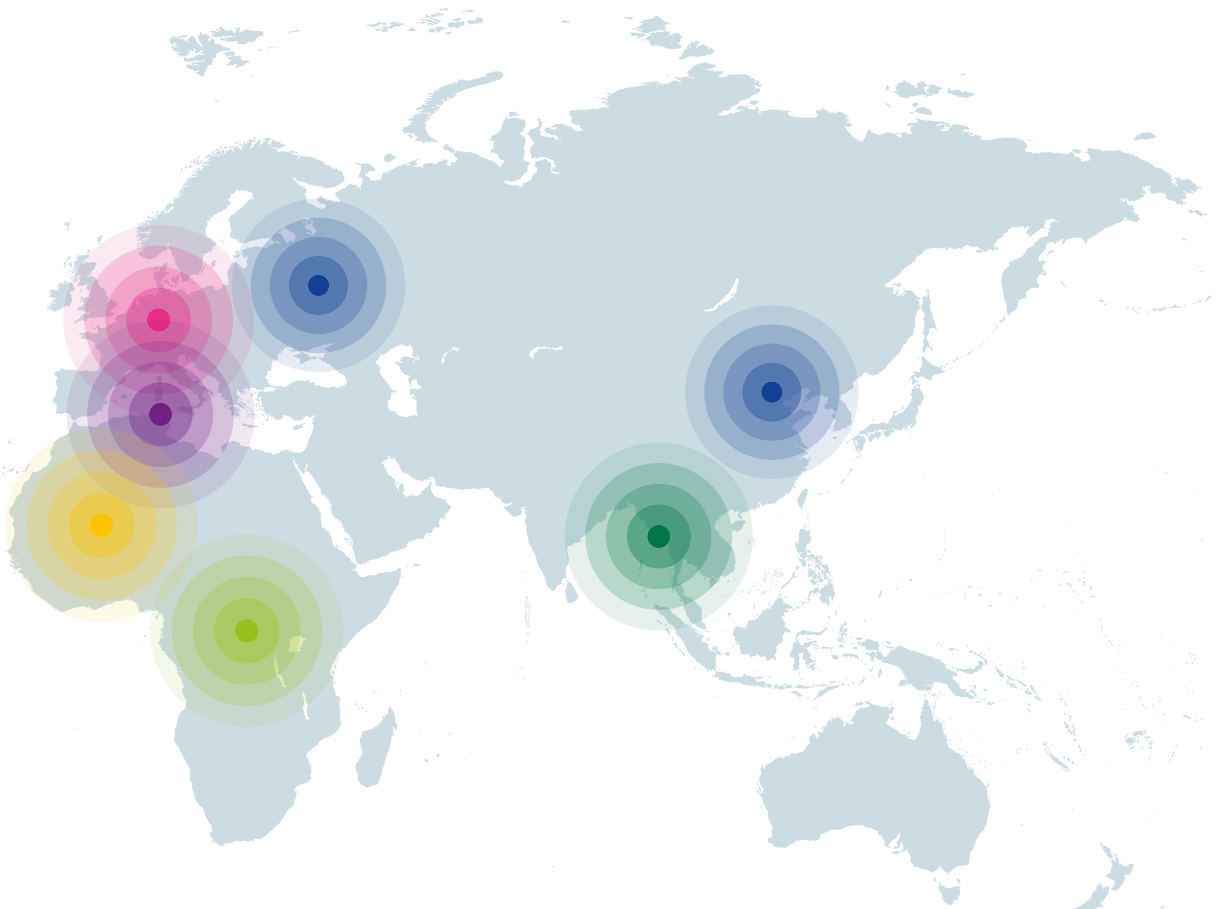
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Interjection

The Fight for Democracy

The Desire for Freedom Cannot Be Suppressed!

Frank Priess

In this issue of International Reports, which focuses on the pressures placed on democracy and the rule of law around the world, Christopher Walker writes for good reason against the backdrop of many relevant current events about a proliferating “authoritarian virus”. There is truly a great deal to be concerned about. The issues begin in our neighbourhood and extend to the furthest corners of the world – seen from our perspective. Positive developments can easily fade into the background, but they do exist as well. And when one takes the long view, not everything looks quite as bleak as it may appear at first blush: in 1963, the Konrad-Adenauer-Stiftung began its international work in Venezuela, Chile and Brazil – but it would take until 1989 for the first office to be opened in Central/Eastern Europe; and it was not until the middle of the nineteen-nineties that the Konrad-Adenauer-Stiftung was able to begin working in former communist countries such as Vietnam and Cambodia, as well as the People’s Republic of China. Even in a country like Mexico, it took until 2000 for an opposition party to win for the first time at national level. Sometimes it takes enormous perseverance – and there can be setbacks along the way.

Care should also be taken to differentiate and not pigeonhole all manifestations of authoritarian conduct. After all, it does make a difference whether we are dealing with a totalitarian system that operates with extreme brutality – “authoritarian” would almost be a euphemism here – or with a fundamentally democratic country from which alarming signals emanate indicating that civil liberties are being curtailed. Current developments fall at various points between these two poles.

It is also worthwhile to take a look at the reasons, justifications and motives for various forms of conduct. We tend to consider the status the debate on values has reached in Germany to be the norm and pillory for the democratic deficits or lack of human rights of countries that may not – yet – have come as far. Not all states around the world will, for instance, want to accept the statements of the

current red-red-green Berlin coalition agreement on gender issues as the norm. You don’t need to be of advanced age to remember a time when homosexuality was criminalised in our country as well, a situation that now elicits talk of compensation. Discussions on family politics were also based on a completely different understanding of people’s roles not so very long ago, and a message from the church pulpit still carried some weight. Not everywhere does the balance between individual and community interests lean as clearly towards the individual’s right to self-development as in our country. And it is most definitely not true that everything that seems conservative and not much in tune with today’s zeitgeist is somehow undemocratic. It is no wonder that new complexities are making many people feel insecure because they long for clear structures, feel some nostalgia for the past and find refuge among those who promise them “peace and order” – here in Germany and particularly in countries where things don’t develop at as frenetic a pace as in modern industrialised and service societies.

We are also finding out once again that in turbulent times the national state, which had mistakenly been considered a thing of the past in Western Europe, is seen as a protector and a life-line, and that national pride is not frowned upon everywhere as it is in “progressive circles” in our country. The statement that dealing with migration in a manner we view as a humane obligation invokes the notion of “moral imperialism” elsewhere may be a mere side note, but it illustrates how not everyone will automatically follow us on our path to what we consider to be the realisation of Western liberal values. That said, it is practically a tradition for most Germans not to mind almost everyone else having a different opinion from their own.

All the more important, then, to bring our values into the debate – the speeches people give on our behalf at prominent forums do not, in fact, always spell these out. The right approach requires people to have a clearly coordinated system for their own values; even the oft-cited dialogue of cultures can

only be conducted by those who know at least their own culture. The ease with which value systems based on religion are dismissed as outdated makes Europe an exception among world regions – some would say pioneers – but who knows: maybe there will be something of a religious renaissance here as people search for orientation and certainties, at the latest via the burgeoning immigrant communities. That does not obviate advocating for a clear separation of Church and state, different versions of which developed in Europe over the centuries. Religious freedom is a great good that must be defended vigorously throughout the world. It is shocking to see religious fanaticism gaining ground, suppression and even manslaughter being justified in the name of God. It is crucial to build a worldwide coalition for tolerance in this regard: there are perpetrators and victims in all religions, although the picture is currently dominated particularly by Islamist terror.

The most difficult states to deal with are of course those that invoke ultimate religious truths to justify their actions, leave the last word to religious authorities, punish “deviants” rigorously and make concerted efforts to also enforce their norms in other countries. In most cases they too have signed the UN Human Rights Charter and regularly sit on the United Nations Human Rights Council – sufficient cause not to refrain from issuing robust reminders of their obligations under the charter.

Courageous people in such systems deserve special solidarity from us; efforts should be made to strengthen the usually poorly developed civil society and especially young people as the drivers of change; many of them still pin their hopes on “the West”, although they have experienced many disappointments, not least the tendency of the West to treat undemocratic regimes they regard as allies with considerably greater indulgence than those they see more as enemies, undermining its credibility. This conduct may be referred to as “realpolitik”, but it is ultimately not fruitful. Stability and democracy are not opposites – and the former is not furthered by brutal repression, the most likely outcome

of which will be to breed the terrorists of the next generation. Simply abandoning efforts to promote democracy, participation and transparency in the short term for the sake of superficial stability is not an acceptable approach, particularly for a democratic political foundation.

There remains, however, the question as to the means available to achieve change and make a difference – measures differ greatly in their effectiveness. In many cases, it is not the vociferous public declaration that brings about a change in behaviour, although it is mostly not very helpful either to beat about the bush with respect to one’s differences. However, speaking one’s mind requires trust and open channels of communication. Authoritarian regimes tend to interpret an exceedingly kid glove approach as weakness. Being too deferential will not gain any respect – and therefore ultimately prevent achieving one’s goal of making an impact. As is well-known, it is not just “Western” democracies that have interests: Europe, the USA, Japan and several others are still the largest donors of public development aid, provide great proportions of the funding for international organisations, form part of the most interesting markets, invest worldwide, offer technology transfer, and, thanks to the openness of their universities and scientific communities, are essential to innovation, which in turn can only flourish in the long term in free societies. One should also add that their financial system is a refuge for flight capital from all over the world and that their property markets attract those who do not yet trust the “rule of law” in their home country, although this can only be considered a positive thing with reservations. But surely it can be used to an advantage!

Of course it would be helpful if there was a degree of unity in the approach taken by democratic countries instead of opportunistically seeking short-term benefits from bilateral deals as is seen all too frequently, particularly when dealing with economically attractive “partners”. And, naturally, one has to practice what one preaches, for example as a member of the “Community of Values” that the EU represents.





Orange – the colour of hope: “Descriptions of ‘colour revolutions’ as being controlled from outside or denouncements of the ‘Arab Spring’ revolutions as Western conspiracies are defensive declarations, intended to politicise the situation.” [Source: © Gleb Garanich, Reuters.](#)

The EU in particular cannot afford to fail meeting its own standards and must keep a keen eye on problematic tendencies among its own members. It does have the tools to do so in principle, as, by the way, does the Council of Europe with its Venice Commission. It could prove fatal to create the impression that once the criteria for accession were fulfilled, a country would then be free to ignore the common values and dismiss any admonitions as external interference – in some cases combined with the sort of

EU-bashing that is more likely to undermine the community than foster it. However, the relevant actors should also avoid applying double standards, widening gulfs unnecessarily and treating friends roughly or condescendingly, sometimes more roughly than those who would clearly be more deserving of such treatment.

“Western values”, the Western lifestyle, Western culture still exert an enormous attraction, as is illustrated impressively in the destination

countries of the current migration. The over five hundred experts responding to the Global Future Survey of the Konrad-Adenauer-Stiftung even expect the Western-liberal idea to gain ground in almost all parts of the world in the coming years. These expectations provide some hope particularly for Africa and Latin America, and positive voices are also in the majority in Asia. The fact that Europe is the only region the experts view with scepticism provides food for thought: Is this very continent, on which many people around the world are pinning their hopes, in trouble? Is there a certain fatigue affecting its aging societies? Are policies once again driven by a sense of panic resulting from lengthy economic crises in the continent's south, are Central and Eastern European countries suffering identity issues, are there concerns regarding the ability to master the current challenges that have arisen due to the migration? No doubt it is worth looking into these questions in greater detail, but there also needs to be a certain level of self-confidence: Europe is stronger than it maybe believes itself – as long as it combines forces, strengthens its institutions and intensifies cooperation particularly in areas where it matters. The continent will need to project an image of a successful and attractive region not least economically if it wants to be heard in the debate on values. Attractive countries attract imitators, good examples make an impact!

And that is precisely what authoritarian systems of all types view as a threat, especially as new information channels and social networks make isolationism and censorship considerably more difficult, if not impossible. Descriptions of “colour revolutions” as being controlled from outside or denouncements of the “Arab Spring” revolutions as Western conspiracies are defensive declarations, intended to politicise the situation. The pressure for change comes from within: the affected systems are simply not attractive for their citizens, least of all for young people who still have their lives ahead of them and wish to shape their own destinies. The failure of these states to offer their citizens prospects of economic development is exacerbated by the stifling atmosphere created by excessive

state control in all areas. At some point in time, the pressure in the pressure cooker becomes too high, particularly when there are no safety valves such as those available in Western democracies.

In this situation, it is a sign of weakness when a state attempts to restrict the activities of civil society with ever more NGO laws and regulations. One of the measures these states use is to restrict international aid and tar it with the brush of “foreign agency” – the opportunities of domestic funding are usually already blocked, and there is hardly any public support for a living, pluralistic range of NGOs – or at least brand such activities as inadmissible external interference in the domestic affairs of a sovereign state. It is amazing to see such arguments being accepted here in Germany as well and serious politicians occasionally comparing political foundations to Islamist sects. There is most definitely a need to enlighten people on the role of civil societies! Of course it is legitimate for environmental movements to network globally, for anti-corruption networks to collaborate across borders, and for likeminded political parties to jointly promote their values.

In line with its partner principle, the Konrad-Adenauer-Stiftung, for instance, picks up on local concerns, seeks out a community of values, takes local interests seriously, and does not simply attempt to export German models all over the world. It wishes to act as a dialogue partner, offer its services, and in turn learn from its experiences in other countries and take these experiences back into the German debate, an approach that is pursued by many organisations of German International Cooperation. Without this exchange systems are at risk of suffocating.

This is no argument in favour of doing away with rules; there are laws here as well, of course. But it is often not helpful to equate our experiences and terminology with those formally similar in other countries. To give a current example: a presidential system of government is not necessarily worse than a parliamentary system, and there are, of course, plenty of democratic

presidential systems. Therefore, the matter requires closer examination: if a presidential system concentrates all the power in one person, fails to implement the separation of powers, undermines the independence of the judiciary, then the situation gets dangerous. Authoritarian regimes invoke the latter in particular, but the fundamental requirements are frequently not met. There is no truly independent jurisdiction – and the Konrad-Adenauer-Stiftung has experienced this itself in Egypt.

It is not for nothing that the five regional rule of law programs of the Konrad-Adenauer-Stiftung form a key component of its efforts to promote democracy and good governance. Authoritarian states tend to put on a show of upholding the rule of law – and regularly succeed in duping foreign observers – as is currently in evidence in the unedifying conflict in Venezuela between the democratically legitimised parliament and the regime-controlled Supreme Court. Laws with partly identical wording can have totally different consequences depending on the circumstances. In some countries, anti-terror laws are interpreted in such a way that the voicing of any opinion deviating from the regime line can be criminalised – it can be a very short path from being a journalist doing investigative reporting to being a spy or even a supporter of terrorism. There are also laws in almost all countries intended to protect individuals' honour. But the way they are interpreted arbitrarily in some countries, they become an instrument for suppressing press freedom completely, at the latest by the time the imposed – totally disproportionate – financial penalties have ruined people's livelihoods. And when all that does not silence a person, there is always the option of having a compliant tax authority carry out a tax fraud investigation. Then, someone will disappear in a penal camp for alleged tax offences, and the naïve foreigner may think: Well, you should be honest in your tax affairs, the case probably has nothing to do with politics.

Freedom of the press and journalists being allowed to carry out their work are generally good indicators of the level of democratic

development in a country – and things look decidedly bleak based on the statistics of “Reporters Without Borders” or Freedom House. Whenever press freedom is curtailed, so is the right of mature citizens to freely obtain information from pluralistic sources and to form their own opinions, a prerequisite of a functioning democracy. This is where the regional media programmes of the Konrad-Adenauer-Stiftung come in, since investigative journalism and data-driven journalism are important means to ensure transparency and to make democracy possible and better today. Once again: closer examination is needed to detect manipulations in state-controlled “journalism”, to identify campaigns, and to denounce attempts at interference. In many cases, states that restrict freedom of information severely at home are all too eager to take advantage of all the opportunities to engage in unhindered “public relations” abroad.

Self-assured states would be able to deal with criticism confidently; autocrats who feel threatened try to buy time by resorting to repression where efforts to co-opt and manipulate are no longer effective. But even this is not deterring many people, especially younger ones, from once again taking to the streets to demand their rights, denounce injustices and insist on change. The desire for freedom is innate to humans – and it cannot be suppressed forever.

Frank Priess is Deputy Head of the Department for European and International Cooperation at the Konrad-Adenauer-Stiftung.



Source: © Benoit Tessler, Reuters.

[The Fight for Democracy](#)

A New Era of Competition

The Growing Threat from Authoritarian
Internationalism as a Global Challenge to Democracy

[Christopher Walker](#)

With the benefit of hindsight, it is clear that democracies long failed to realize that a new era of competition was underway between autocratic and democratic states. Such competition is visible in a number of spheres, including geopolitics. But it is massive investments in their own autocratic forms of “soft power” that have enabled regimes in Russia and China to make dramatic inroads in challenging the integrity and prestige of the democratic systems of the West.

Following a period of remarkable success for democracy after the Cold War, the tide has turned. Around the world, powerful anti-democratic forces have taken the initiative. In recent years, formidable state and non-state actors alike have gained momentum, seized the advantage, and sought to undermine liberal democracy.

The forces working against democracy are not limited to any single country or region but instead have multiple sources. First among these is a group of influential and ambitious authoritarian states that have organized themselves to directly contest democratic development and ideals. Regimes in Russia, China, Iran, and elsewhere are devoting vast resources and a good deal of thought to making the world more agreeable to their interests, which favor governance systems based on the monopolization of politics and state control. Another way of looking at this is that trendsetting authoritarian powers have made a priority of containing democracy, applying a twist to the ideas expressed in George Kennan’s “X-Article” that argued for a policy of containment to combat the spread of Soviet influence.¹

To achieve their aims, these regimes are swiftly adapting, learning from one another, and sharing know-how and technology. They not only repress reform-minded voices at home but today are determinedly working to reshape the political operating environment beyond their borders. Given the resilience exhibited by the authoritarians so far, it would be inadvisable for the

democracies to underestimate the threat these predatory, corrupt regimes pose to the global political order.²

At the same time, illiberal non-state actors, including ISIS and other Islamist extremist groups, are pursuing a complex, global strategy to disrupt the current political order. Democrats are front-line targets of these radical groups, whose violent vision and actions pose a threat to the governance structures in settings that have already been made fragile by decades of authoritarian misrule, including many countries in the Middle East and Africa.

The wider erosion of democracy is also visible in countries that not long ago were seen as democratic hopefuls. The swift decline in democratic accountability in countries as diverse as Turkey, the Philippines, Hungary, South Africa, Bangladesh, and Tanzania is indicative of the global scope of what could be called a spreading “authoritarian virus”.

Taken together, the forces working against democracy are more powerful than at any time since the end of the Cold War. In taking the initiative against democracy, authoritarians have shown a clear ability to learn and improve their methods of repression and manipulation, both at home and abroad. Leading authoritarian regimes devote extraordinary resources to advancing their preferred worldview and interests – through international media outlets, the development of powerful state-backed digital capabilities, state-friendly policy institutes, and

cultural outreach – something that has been underappreciated by the democracies. An estimate of China’s current annual investment in international information activities, for example, is seven to ten billion U.S. dollars,³ which may not reflect the true scope of the resources the Chinese state devotes to such purposes. Given the extent of the shift in the balance of influence away from Europe and the United States in recent years, it will be critically important for the leading democratic states to seriously rethink the passive approach they have taken to safeguarding and defending democratic ideals and interests.

The Projection of Authoritarian Influence

By their nature, authoritarian regimes deny space for moderate political voices that could offer a viable alternative to existing policies and leaders. Authoritarian leadership has no interest in relinquishing power, especially given the massive unchecked corruption that transforms politics in authoritarian regimes into a brutal zero-sum game. In settings in which accountable and transparent institutions are absent, state corruption invariably grows deep and powerful roots. It is no coincidence that state capture and kleptocracy have taken hold in Russia, China, Azerbaijan, Angola, and other countries.

For a decade now, authoritarian regimes have become increasingly more repressive.

Meanwhile, reform-minded political figures, activists, and independent organizations are in the crosshairs to a degree not seen since the Cold War. For more than a decade now, already repressive regimes have become even more so. A large share of the declines assessed by Freedom House over this period have occurred in countries already classified as “Not Free,” including such influential states as China, Russia, Saudi Arabia, and Iran. Under these harshly repressive

conditions, the law is used as an instrument by ruling parties that devote their energies to retaining political dominance at all costs, rather than as a dispassionate guide for setting forth the rules of the game. State-dominated media in these settings are employed to discredit opposition voices, to prevent meaningful scrutiny of the policies and actions of incumbent powers, and more generally, to create a parallel reality for audiences. In the Middle East, Eurasia, and Africa, this sort of political manipulation and marginalization of moderate voices can lock societies into dangerous cycles of extremism, a state of affairs already apparent in so many unfree societies. Given the ongoing marginalization, and even extinguishing of independent institutions and alternative elites, these states will find it dramatically more difficult to reform if their authoritarian leadership should fall.

As the autocratic leadership systematically degrades the independent human and organizational capital within their borders, there is also a corrosive international dimension to such deepening authoritarianism. This is due to the fact that these increasingly internationalist regimes, led by those in Moscow and Beijing, are reshaping the political environment beyond their borders in ways that are at odds with the interests and ideals of the democracies. The effort takes a number of forms, including the targeting of critical democratic institutions such as the media and elections. The manner by which diverse authoritarian regimes counter democracy can vary. Russia takes an antagonistic and combative stance, as does, for instance, the leadership in Iran and Venezuela. The Chinese government takes a more nuanced approach to curbing the development of democracy, although it has become increasingly active in this regard since Xi Jinping has assumed the role of China’s paramount leader.

Undermining Democratic Institutions and Norms

Regional and international rules-based bodies are seen as a threat by authoritarian regimes, which target the human rights and democracy components of the institutions that are critical





Propaganda 1.0: In the past it was set in stone, but today, interpreting historical events is increasingly battled out on the Internet. [Source: © Gleb Garanich, Reuters.](#)

for safeguarding democratic standards. Russia, Azerbaijan, and Kazakhstan, for example, have sought to limit the human rights and democracy initiatives of the Organization for Security and Cooperation in Europe (OSCE) by curbing its budget and subverting genuine election monitoring, often by promoting “zombie” election observers who sanction fraudulent votes.⁴ The OSCE’s Office for Democratic Institutions and Human Rights (ODIHR) has been a consistent target of the authoritarian regimes that are among the 57 OSCE member states. The

Council of Europe, especially its Parliamentary Assembly, also has been the target of efforts to undermine its integrity when it comes to its democracy and human rights activities.⁵ Venezuela and allied Latin American countries like Ecuador and Bolivia have sought to neutralize the democracy-related work of the Organization of American States and its Inter-American Commission on Human Rights.

These regimes are also building a set of authoritarian groups such as the Shanghai Cooperation

Organization (SCO), the Gulf Cooperation Council (GCC), and the Eurasian Economic Union (EAEU) that seek to institutionalize authoritarian preferences expressed through norms of sovereignty, non-interference, and state dominance. In the Middle East context, Saudi Arabia has effectively pursued what scholar Frederic Wehrey calls an approach of “political quietism,” devoting enormous political and economic resources to smother any form of meaningful political reform in the region.⁶ This is a component of regional strategies that utilize associations at the regional level to reinforce domestic repression by helping regimes share techniques of political control, exchange dissident “watch lists,” and promote agreements for the forcible *refoulement* of exiles and refugees who are labeled terrorists.

A crucial case in point is the competition over the rules and norms that will govern cyberspace. In this sphere, the authoritarian regimes operate in unison, arguing that the internet should be controlled by governments, while seeking to exclude private business, civil society, and any other non-state participants from decision-making. This line of attack on the international level is a natural outgrowth of authoritarians’ domestic suppression of independent voices and institutions of any sort.

Arguing on behalf of “Internet sovereignty” and multilateral (rather than multistakeholder) Internet governance, authoritarian regimes are single-mindedly working to neutralize democratic discourse and to limit independent voices in cyberspace. Repressive governments now routinely work to apply restrictive local standards to platforms such as Google, Facebook, and YouTube, with the aim of constraining the free flow of independent information. The pursuit of greater control over the Internet is not only taking place at the most high-profile intergovernmental bodies such as the International Telecommunication Union, Internet Corporation for Assigned Names and Numbers, and the Internet Assigned Numbers Authority, but also at the regional level, where China, Russia, and Saudi Arabia are using bodies such as the SCO and GCC to this end.

While the Edward Snowden disclosures have focused attention on the U.S. National Security Agency’s extensive surveillance apparatus, Russia and China have developed their own far-reaching surveillance systems, which operate outside the rule of law and without any meaningful accountability or transparency. In Russia, the System of Operative-Investigative Measures (SORM), a national system for the interception of all electronic communications, is used by the FSB (the successor agency to the KGB) to collect, analyze, and store all data transmitted or received on Russian networks, including phone calls, website visits, and e-mail. Russia’s Central Asian neighbors have also adopted illiberal SORM standards, and it seems apparent that these democracy-unfriendly cyber norms will spread further still in the region. The governments of China and Iran, for their part, have developed some of the world’s most repressive techniques for the manipulation and control of cyberspace. The ongoing effort to reshape the norms for cyberspace toward authoritarian preferences is simply one piece of a larger effort to influence the global media space.

Subverting the Media Space

Because these regimes understand the importance of information and ideas, they have built a formidable media infrastructure that is designed to systematically discredit – and delegitimize – civil society in the eyes of the wider public. They have also invested in international media enterprises that enable them to project messages globally about their own achievements and the alleged failures and decadence of Western societies. Media conglomerates such as Russia’s RT and China’s CGTN (until 2017 CCTV) devote much of their worldwide programming to questioning and assailing the West and the idea of democracy. In today’s fragmented world of media, authoritarian regimes have learned to use modern media to their advantage. They are investing heavily and exploiting the opportunities offered by the new media environment to sow confusion and distrust.

With the benefit of hindsight, it is now apparent that the democracies long failed to realize that

a new era of competition was underway between autocratic and democratic states. Such competition is visible in a growing number of spheres, including geopolitics. In recent years, Russia has flexed its muscles with greater frequency, using its military in Georgia, Ukraine, and Syria. China has taken an increasingly tough posture in the South China Sea. Iran, along with Russia, has served as Bashar al Assad's crucial lifeline in Syria.

Massive investments in modern (non-kinetic) influence instruments, however, have enabled these regimes to make especially significant inroads. China, Russia, and Iran in particular invest billions of dollars in their own forms of "soft power" and "public diplomacy". Such investments have often been misunderstood by analysts in the West, who believe they are aimed solely at improving the image of these countries. While some decision makers in Beijing, Moscow, and Tehran may be seeking to improve their repressive regimes' image in the world, this is a tall order, given the extent of corruption, brutality, and mismanagement found in each of these countries.

Over time, it has become clear that the authoritarians are aiming at challenging the integrity and prestige of the democratic systems of the West. Russia in particular seeks to undermine the democracies from within. The "Lisa Affair" in Germany, the story of a 13-year-old Russian-German girl who was allegedly sexually assaulted in January 2016 by a group of immigrants in Berlin, is emblematic of Russia's playbook. This story was not true; it was a creation from the alternate universe of Russian media. It was first reported on a minor website for Russian expatriates in Germany and then broadcast by the Kremlin's Channel One, which is viewed by many of Germany's four million Russian speakers. With the backing of the Kremlin's state propaganda machinery, the story grew into a much larger challenge to Germany's political system. While most observers believe this effort at manipulation by the Russian authorities backfired, the "Lisa Affair" nevertheless provides a troubling example of the projection of authoritarian influence into the democratic space.

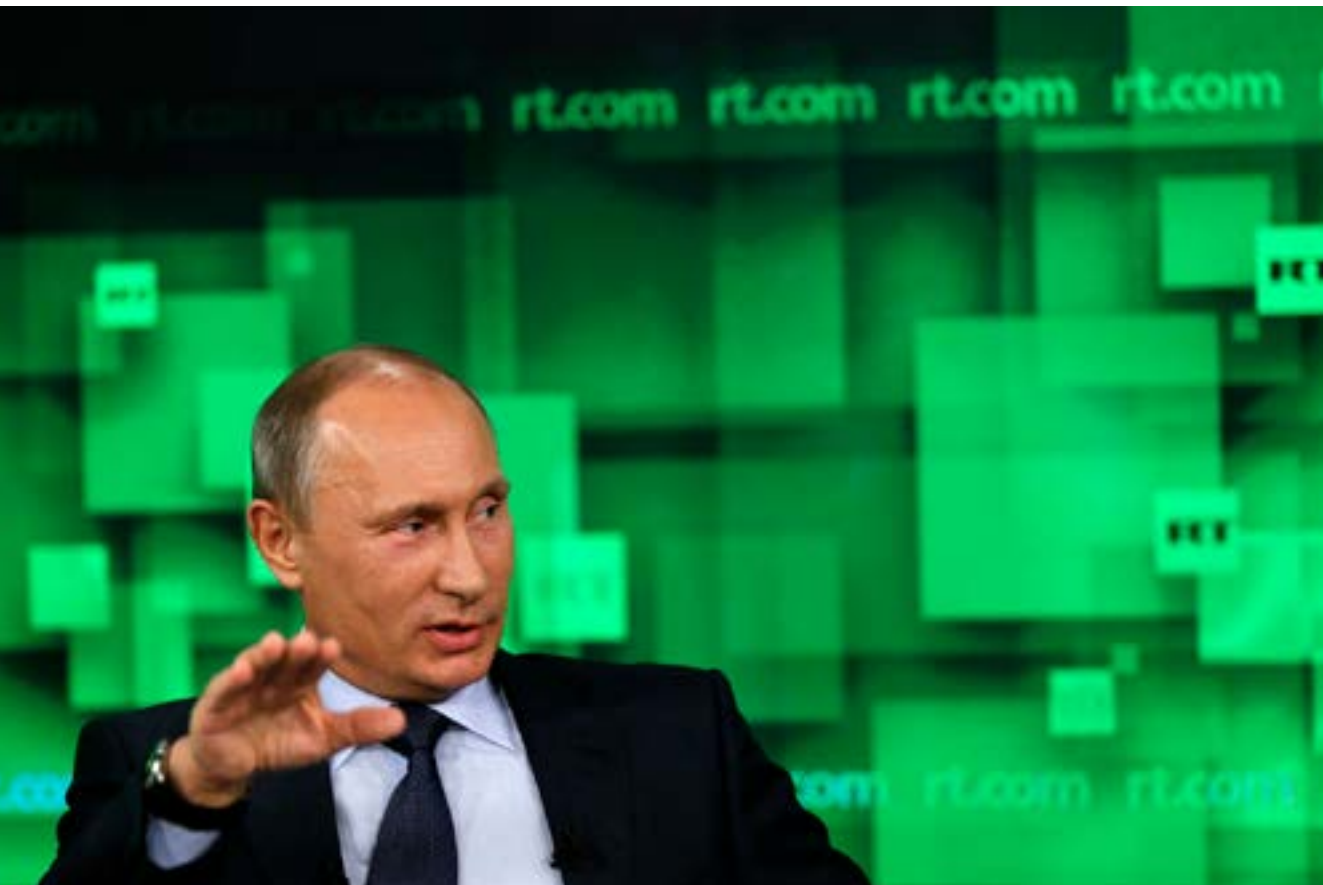
The effort revealed the multidimensional nature of Russia's approach: Moscow's state-backed digital and traditional media are used to inject information into the public domain; state-backed front organizations, often referred to as "GONGOs" (government organized non-governmental organizations), seek to cause confusion, and other surrogates are used to manipulate political discourse. Russia stands out for its toxic use of "soft power," but other authoritarian regimes also are developing their media and other tools of influence for international application.

Authoritarian regimes invest heavily to challenge the integrity of Western democratic values.

The Russian effort to exert influence in the public sphere is not solely devoted to creating confusion, however. Several key themes underlie the array of information that Russia either overtly or surreptitiously supports. Russian-backed messaging systematically focuses on such themes as moral decay within Europe, NATO hostility toward Russia, the impending collapse of the West, and the fallibility of liberal democracy. Objective and independent media outlets are often depicted as untrustworthy, and Ukraine in the aftermath of the EuroMaidan is cynically portrayed either as a fascist or failing state.

As the sophistication of Russia's manipulation and disinformation campaigns has evolved, they are increasingly aimed at the electoral processes of democratic systems. Precisely because the election process in democracies is open and competitive, and outcomes can be close, elections are vulnerable to outside interference. This is especially the case in the digital age, and Russia has developed its capacity to exploit such vulnerability.

Policy makers on both sides of the Atlantic have noted that Russia actively meddled in



Russia today: Via its own media and information channels, Vladimir Putin's regime seeks to influence and manipulate global public opinion. Source: © POOL New, Reuters.

France's recent election. Shortly in advance of the May 7 runoff between presidential candidates Emmanuel Macron and Marine Le Pen, a massive hack bearing the hallmarks of a Kremlin cyber disruption operation targeted the Macron campaign. For her part, Marine Le Pen has taken an openly pro-Moscow stance. Her National Front Party in 2014 took a multi-million Euro loan from the Moscow-based First Czech Russian Bank. Similar concerns have been voiced with regard to Germany's Bundestag elections slated for September 2017. German *Bundeskanzlerin* Angela Merkel already has been subjected to a fearsome campaign of false stories and conspiracy theories generated by fringe websites that have apparent links to Russian state disinformation.⁷

The authoritarians are exerting influence across a wide range of countries, including in the established democracies. The United States is contending with the challenges to free expression and academic integrity presented by Chinese state-funded Confucius Institutes,⁸ as well as the pollution of the information space by an array of Russian and Chinese state-backed media. Established democracies within the European Union are likewise facing an onslaught of Russian initiatives in the arenas of media, culture, and politics. China's influence in the realm of ideas is growing in Europe, too, along with its expanding economic and commercial activities.

But Russia, as well as China and Iran, have taken their efforts a step further. Today, new forms of influence are evident in Latin America, Africa,

and Europe, settings where political relationships and alliances are more actively contested in the new environment. The authoritarians invest heavily in international media, policy outlets, and cyber instruments because they appreciate that it is in this space where ideas take hold and today's political battles are fought and won.

As part of this new global competition, the authoritarians are placing particular emphasis on regions where young, weak, or partial democracies predominate and where democratic standards and values are being actively contested. Russia's rapid scaling up of influence in the EU member states of Central Europe has caught policy makers by surprise. Russia is increasingly active in the Balkans as well. China has similarly built up its influence in Latin America and Africa, coordinating its large economic investments there with wide-ranging initiatives in media, culture, and education. Beijing, through its "16+1" initiative, is quickly deepening its economic and political engagement with eleven EU member states and five countries in the Balkans.⁹

Interests Are Animated by Political Preferences

China, Iran, and Russia of course pursue their own interests. But the direction taken by these regimes in the spheres of media, human rights, and international institutions is a stark reminder that such interests are animated by authoritarian political preferences, which privilege state dominance above all else. This is clear from the way the regimes in Beijing, Tehran, and Moscow treat their own media and civil society. In an era of globalization, ambitious regimes that play by their own corrupt and predatory rules at home seek to shift the goalposts toward authoritarian preferences internationally. This authoritarian ambition to reshape the international playing field is in turn highly relevant to the interests of the democracies in Europe, including Germany, as well as to the United States.

Reckoning with the New Environment

The sharp growth in authoritarian influence comes at a time when the European Union and

United States are scaling back their own ambitions with regard to supporting democracy and the ideals underlying it. Increasingly, the leading authoritarian regimes show solidarity and coordination with one another, at least when it comes to limiting the spread of democracy. The challenge presented by the regimes in Moscow, Beijing, and Tehran is being taken to an entirely new level by virtue of their projection of influence beyond their own national borders.

A perception is now taking hold that raises doubts about the global balance of power, and we may be approaching a tipping point at which the balance shifts toward authoritarian forces. If such a swing in the balance were to occur, it would dramatically change the world we live in into one that would no doubt be more corrupt, unstable, and hostile to the interests of EU members, as well as the United States. The new competition from the forces hostile to democracy requires a more serious, concerted, longer-term response.

Given the potent forces now challenging democracy, a status quo approach will not suffice. If current trends continue, they will seriously jeopardize the liberal order in which the democracies have invested so much. Today, a determined effort is urgently needed to reclaim the initiative by defending democratic institutions and norms, safeguarding the media space, and supporting moderate, reform-minded voices. Such a response should include:

1. *Affirming democratic ideals and standards* as part of a dedicated effort to effectively compete with authoritarian power projection in the sphere of ideas. The leading democracies must explain their ideals and put down clear markers regarding their standards – or else others will continue to do this instead of the democracies. Autocratic regimes are investing hundreds of millions of dollars in their international media infrastructure, while learning and modernizing their capacity to advance authoritarian views and interests. The democracies ignore this disparity and the challenge it presents at their peril, and must



Behind the scenes: The People's Republic of China is far away from "net freedom". Not without reason, it is instead often talked about as the Great Firewall of China. [Source: © Aly Song, Reuters.](#)

make a far more serious commitment to supporting independent journalism and modernized international broadcasting efforts that transmit independent news and information to unfree societies.

2. *Reinvigorating the democracy and human rights functions of key organizations*, including the OSCE and the Council of Europe. Over the past decade, autocratic regimes have made a concerted effort to hollow out such institutions. The democracies that are members of the OSCE and the Council of Europe must take democracy into account

at least as much as the autocrats prioritize autocracy in their own regional organizations such as the Shanghai Cooperation Organizations and the Gulf Cooperation Council. This challenge is increasingly relevant for the defense of Internet freedom and standards, a sphere in which autocrats' interests are aligned and where the regimes in Beijing, Moscow, Tehran, and Riyadh are seeking to institutionalize authoritarian norms.

3. *Cultivating counterweights* to address the regional impact of Russia, China, and Iran, which are projecting power in neighboring

countries (as well as farther afield). In addition to supporting the reform efforts of those who seek to help themselves within the authoritarian trendsetter countries of Russia, China, and Iran, work in places such as Iraq, Lebanon, Yemen, and Afghanistan to provide help to actors and institutions that offer an alternative to groups that Iran uses to project its influence in the region. Support independent organizations and people in countries in close geographic proximity to Russia in order to ensure that alternatives and positive demonstration effects can emerge as a counterweight to Russia's closed, corrupt, and increasingly expansionist regime.

4. *Inoculating democratic societies* from the malign influence of increasingly sophisticated foreign forces. The democracies have grossly underestimated the national security threat posed by the authoritarians' export of manipulated media, cyber subversion, and various forms of corruption, including transnational networked kleptocracy. A serious and comprehensive response to this multi-front challenge is required. It must include initiatives for education at the mass and elite levels; systemic efforts to safeguard democratic societies from the ever-adapting forms of cyber pollution and subversion; and a much clearer understanding of the threat to the democracies of modern kleptocracy, which is integrally linked to autocratic governance systems.

The phenomenon of authoritarian internationalism has not emerged overnight. It has built momentum over a period of years. But it is clear now that the autocrats' growing ambitions present a significant strategic vulnerability to democracy. It is for this reason that the democracies will need to devise a more grounded, longer-term response if they are to take up and prevail in the face of this serious, multifaceted challenge.

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- 1 Cf. Walker, Christopher 2015: The New Containment: Undermining Democracy, *World Affairs*, 178:1, pp. 42-51.
- 2 Cf. Diamond, Larry / Plattner, Marc F. / Walker, Christopher 2016: Authoritarianism goes global: The challenge to democracy, pp. 3-19.
- 3 Cf. Brady, Anne-Marie 2015: China's Foreign Propaganda Machine, *Journal of Democracy* 26:4, pp. 51-59.
- 4 Cf. Walker, Christopher / Cooley, Alexander 2013: Vote of the Living Dead, *Foreign Policy.com*, 31 Oct 2013, in: <http://atfp.co/2rPx6Gk> [13 May 2017].
- 5 Cf. Freedom Files Analytical Center 2017: European Values Bought and Sold: An Exploration into Azerbaijan's Sophisticated System of Projecting its International Influence, Buying Western Politicians and Capturing Intergovernmental Organizations, in: <http://bit.ly/2sGuLxm> [13 May 2017].
- 6 Cf. Wehrey, Frederic 2015: Saudi Arabia's Anxious Autocrats, *Journal of Democracy*, 26:2, pp. 71-85.
- 7 Cf. Nardelli, Alberto / Silverman, Craig 2017: Hyperpartisan Sites and Facebook Pages are Publishing False Stories and Conspiracy Theories About Angela Merkel, *Buzzfeed*, 14 Jan 2017, in: <http://bzfd.it/2rYE12c> [13 May 2017].
- 8 Cf. Peterson, Rachele 2017: Outsourced to China: Confucius Institutes and Soft Power in American Higher Education, *The National Association of Scholars*, New York.
- 9 The 16 countries are: Albania, Bosnia and Herzegovina, Bulgaria, Croatia, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Macedonia, Montenegro, Poland, Romania, Serbia, Slovakia, and Slovenia.



The Fight for Democracy

Between Aspiration and Reality

15 Years of the International Criminal Court (ICC)

Franziska Rinke / Arne Wulff / Gisela Elsner / Simon Bruhn / Marie-Christine Fuchs /
Peter Rimmele / Anna Miriam Schütt / Hartmut Rank

The International Criminal Court (ICC) was created in 2002 as an instrument against atrocities “that have outraged the conscience of mankind”. More than 120 states have joined since then. The global criminal court continues, nonetheless, to struggle for acceptance. Influential stakeholders such as the USA, China and Russia have not joined the agreement to date, while others are already considering withdrawing from it. Now, where does the ICC stand 15 years after its founding?

Introduction

Franziska Rinke

Even now, 15 years after the Rome Statute entered into effect, the International Criminal Court (ICC)¹ is still struggling to gain worldwide acceptance. Although the ICC can list a number of judgments and criminal investigations in many parts of the world, the Court is still faced with huge challenges to this day.

On 17 July 1998, at the UN Conference of States in Rome, agreement was reached on creating an international criminal court. Known as the Rome Statute², the treaty was signed by 139 states and entered into effect in 2002, enabling the ICC to begin its work in The Hague in 2003. In contrast to the International Court of Justice, it is not part of the United Nations, but an independent international organisation.³ While before the International Court of Justice only states can form a party, the international legal and political achievement of the ICC is precisely that, by removing immunity, individuals must stand responsible before an independent judicial institution that is part of a community of states.⁴ The ICC is not designed to replace or verify national law enforcement by any means; but only intervenes if the country affected is either unwilling or unable to prosecute crimes committed by its own nationals.⁵ For this reason, the ICC’s jurisdiction is limited to particularly grave crimes: genocide, crimes against humanity, war crimes and – in future⁶ – crimes of aggression⁷ committed after the inception of the Rome Statute.⁸

So far, a total of 124 states have officially recognised the international treaty.⁹ Not all signatory states have ratified the international treaty, however. In 2002, the USA officially announced its intention to not ratify it. At the end of last year, there were concerns about a number of states withdrawing, after Russia and then three African states (South Africa, Gambia and Burundi) had officially announced their withdrawal. These concerns did not prove out, however. Russia had never ratified the Rome Statute, so the declaration of its withdrawal has not caused any repercussions. Gambia reversed its decision at the start of the year and, in South Africa, the High Court has decided that the declaration by the South African government is unconstitutional.¹⁰ Nonetheless, it is important to remember that other countries are openly considering a withdrawal¹¹ and that populous and emerging countries such as China and India are not among the signatory states.¹² Taking a glance at a map, it becomes apparent quickly that the ICC is restricted in its jurisdiction already in terms of its geographical range. This argument is often used by critics to question the overall significance and power of the ICC and to undermine the Court’s authority hence. We should not forget, though, that the Court can not only exercise its jurisdiction if a crime takes place within a state that recognises the ICC’s jurisdiction, but also where the alleged perpetrator holds the nationality of one of these states.¹³

In the 14 years of the Court’s existence, six¹⁴ judgments have been pronounced. This is the reason for the accusations of inefficiency that is

frequently levelled at the institution. This criticism is voiced mainly due to the complexity of the procedure and the difficulty of obtaining evidence in crisis regions, and its success depends crucially on the aforesaid states' willingness to cooperate.¹⁵ An investigation can be carried out on the initiative of a contracting state, the UN Security Council or the prosecuting authority itself. Investigations are currently being conducted in ten different cases, as part of which eight African countries are affected, whereby these were predominantly handed over by the African governments themselves.¹⁶ The latest investigations have been initiated in Georgia. Preliminary examinations are currently taking place in eleven cases, including Afghanistan, Colombia, Ukraine, Iraq, Nigeria, Cambodia and Palestine.¹⁷ Indeed this shows, on the one hand, that the ICC has not yet adequately fulfilled its goal to enforce international criminal law consistently across the whole world – and also that it cannot fulfil this objective. On the other hand, however, the outcry from a number of states at the end of last year is an indicator of the effectiveness of the International Criminal Court. After all, if these states did not fear any consequences of their actions, there would be no need for them to withdraw.

Within a few years, the ICC developed into a functioning institution.

The efforts to create an International Criminal Court go back to the period before the First World War. In the 20th century, shaped by two world wars, it was not until after the end of the Cold War that the political climate became favourable enough to actually lead to international agreement. Since then, the ICC has struggled to gain acceptance and finds itself in a constant interchange between national sovereignty and international criminal law. Many see themselves as bound by international criminal law only when it proves advantageous for them. Moreover, within the international framework

there is no option to force the contracting states to comply with any coercive measures. Rather, international criminal law is based on the trust that the states comply with it more or less voluntarily.

Despite all the difficulties, the Rome Statute constitutes the most important document regarding international criminal law, since, with the International Criminal Court, it has created an institution that is designed to implement this international criminal law. Within a few years, the ICC developed into a functioning institution. Many hopes were pinned to its founding, above all that of international peace, as lasting peace is not possible without justice.¹⁸

Africa South of the Sahara

Arne Wulff

The latter was also an incentive for many African states to join the Rome Statute. Therefore, the relationship between Africa and the ICC developed initially along promising lines.¹⁹ The fact that 34 of the 124 states who have ratified the treaty are on the continent of Africa not only proves their willingness to cooperate on international criminal law, but also their significance for the Statute and the ICC. This is also the reason the current discussion on the African states remaining in the ICC is being conducted with such compassion, both on the part of the advocates as well as the opponents. The discussion has sparked off over two events in the last few years.

The first concerns the charges levelled against the acting President and Vice-President of Kenya after the 2013 elections, Uhuru Kenyatta and William Ruto. They and others are accused of having been significantly involved in the escalation of violence that broke out after the 2007 presidential elections. This led to the death of more than 1,200 people and the deportation of hundreds of thousands more. For the first time in its history the ICC's prosecutors investigated on their own accord and, before the 2013 presidential elections took place, brought charges

of complicity to murder, deportation, rape and persecution. In December 2014, after a large number of investigations and hearings, the prosecuting authorities withdrew the charges against President Uhuru Kenyatta due to lacking cooperation on the part of the Kenyan government. The legal proceedings against Vice-President Ruto befell a similar fate. In April 2016 the Chamber responsible at the ICC decided to suspend the legal proceedings due to lack of evidence.²⁰ The second situation that caused a stir among many African heads of state was the charge brought against the Sudanese President, Omar Hassan Ahmad Al Bashir. Although wanted under an international arrest warrant due to crimes against humanity, war crimes and genocide, he travelled to a summit of the African Union (AU) in South Africa in June 2015. On appeal of the South African Litigation Center, the High Court of South Africa Gauteng Division decided to use preliminary injunction proceedings to prevent Al Bashir from leaving South Africa.²¹ South Africa's government disregarded this though, and warranted him safe-conduct upon his departure.

It is those lawsuits against acting heads of state which, since 2016, have led to countries deciding to resign or announcing²² resignation, as many government officials feel threatened themselves. The governments of the states in question furthermore took these events as an opportunity to push ahead with the installation of their own jurisdiction. This was decided at the AU summit in Malabo, Equatorial Guinea, in June 2014.²³ It included the renaming of the African Court on Human and People's Rights to the African Court of Justice, while simultaneously expanding it to include an International Criminal Law Section that, amongst other things, can prosecute and pass sentence on crimes against humanity, genocide and war crimes. The goal is to circumvent, as many African states see it, the present weaknesses of the Rome Statute. The Malabo Protocol in Article 46 A thus accords immunity to acting government officials that protects them from prosecution under criminal law.²⁴ Consequently, this type of African Court cannot be a sufficient replacement

for the ICC. Lastly, secure funding is needed for the African Court of Justice, particularly for the new criminal law chamber that is to be created, especially because conducting criminal investigations is extremely costly. In view of the fact that the African Court on Human and People's Rights is already underfunded, it is scarcely conceivable that the AU will raise the funds for the new chamber that is to be formed, including prosecuting authorities (Article 22 A). This last may also be the reason why the Malabo Protocol has been signed by only nine states so far – and why it has been ratified by none.²⁵

It is becoming increasingly clear that some African states have manoeuvred themselves into a dead end in connection with the discussion around staying within the Rome Statute. On the one hand, they discredit the ICC as an instrument of neo-colonial interests that will damage the integrity of heads of state additionally²⁶, yet on the other hand they have not succeeded in creating an adequate replacement through their own regional jurisdiction. The unprecedented campaign against the ICC, for example, which is being led by the governments of Kenya and South Africa in particular, but also those of Burundi and Uganda, is unlikely to have any consequences despite the AU repeatedly addressing this issue. Apart from the fact that every withdrawal requires an individual decision by the respective state in any case and cannot be substituted with AU resolutions, countries including Nigeria, Senegal, Cape Verde, Gambia, Liberia, Botswana, Malawi, Tanzania and the Democratic Republic of Congo have already made clear that they reject a withdrawal.²⁷ It is therefore as unlikely that we shall see an exodus of African states from the Rome Statute in the near future as it is that we shall see a serious African alternative to the ICC.

Asia

[Gisela Elsner/Simon Bruhn](#)

Asia's attitude towards the ICC is reticent for the most part. This applies, too, for the ASEAN states (Association of South-East Asian Nations).

As a consequence only twelve countries in Asia have ratified the Rome Statute. Of these, Cambodia and the Philippines are the only two in the ASEAN region, together with Japan and South Korea in East Asia. It is remarkable, however, that Japan, South Korea and the Philippines are each represented by one of the 18 judges at Court.

Despite the 2003 official ASEAN announcement that the ICC was a positive element in the fight against impunity regarding crimes against humanity, war crimes and genocide,²⁸ this reserved stance is justified by various arguments.

The principles of state sovereignty and the resulting non-intervention in the internal affairs of another state play a large role for the reticence of South-East Asia. These principles are considered to be the essential foundation of intergovernmental relations with regard to the long colonial history of the region and the many foreign interventions in many ASEAN member states. At the same time, they serve as a pretext for concealing an unwillingness to bring the perpetrators prosecuted by the ICC to justice for the crimes they have committed. State sovereignty and a non-interventionist policy are largely and without complaint set aside in favour of, for instance, the WTO conflict resolution or the International Court of Justice. Moreover, most states in the region are committed to large parts of the Rome Statute already through the overlap with international criminal law, such as, for example, the Geneva Convention or the Convention on the Prevention and Punishment of the Crime of Genocide.

Furthermore, the contentious relationship between rule of law and peacekeeping is often cited. Those states that are engaged in internal conflicts, such as with or between rebel groups, are especially apprehensive about being restricted in their choice of conflict resolution measures within the scope of the ICC. When tackling conflicts against this backdrop the question is as to whether the principle of rule of law applies at any cost, or whether preserving

peace takes precedence over this. It would be counterproductive if, once internal conflicts were to subside, there were a fear of renewed unrest sparking once more due to the intense nature of the process.

Ultimately, the tiny number of cases that have been dealt with and resolved together with an apprehended focus on Africa, are certainly both decisive factors within Asia. The Court is regarded as inefficient here too and, in the absence of sufficient jurisdiction, criticised for the legal uncertainty in the interpretation of the Rome Statute.

While Japan and South Korea have been markedly engaged and actively involved since joining²⁹, the Filipinos, who have traditionally been open-minded towards international legal obligations, have made a sharp U-turn under President Rodrigo Duterte. At the end of last year Duterte reacted to a critical statement by the prosecution authorities about his drugs policy with the announcement that he wanted to withdraw from the ICC.³⁰ The systematic homicides of Filipino drug dealers were brought to the attention of the ICC by the prosecution authorities as a possible case.³¹

The possible creation of an ASEAN Criminal Court is brought up in discussions from time to time.³² There are, indeed, no official plans to proceed with this at present; it is to be expected, however, that the Member States would more favourably respond to having their own court for their approximately 650 million people than towards joining the ICC. A regional criminal court such as this would certainly have plenty of cases to attend to. Serious human rights violations occur again and again within ethnic conflicts, as is befalling for example the Muslim Rohingya people in Myanmar and neighbouring countries at the moment. Moreover, after the work of the Extraordinary Chambers in the Courts of Cambodia (ECCC) in Phnom Penh in prosecuting the Khmer Rouge for the crimes committed, this court could bring charges against other individuals responsible operating at lower levels down the chain of command.³³





Loss of culture: 2016 Ahmad al-Faqi al-Mahdi, a member of the Islamist group Ansar Dine, was sentenced to nine years imprisonment for destroying cultural assets in Timbuktu. Source: © Joe Penney, Reuters.

Cambodia and the Asian region as a whole could therefore still come under the scrutiny of the ICC in other ways, too. In a policy paper on case selection and case prioritisation³⁴ from September 2016, the prosecution indicated that the offence of crimes against humanity, for example, would in future also draw on actions that accompany the destruction of the environment, the exploitation of natural resources, or the illegal and often forcible seizing of land (land grabbing) – a widespread problem in Asia.

Latin America

Marie-Christine Fuchs

Although there has been a multitude of cases recorded concerning systematically committed crimes against humanity and war crimes

on the continent of Latin America over the past 20 years, e.g. the case of 43 students killed in Ayotzinapa, Mexico, which has still not been properly investigated by the State of Mexico, there is currently no ICC investigation pending against a Latin American country. In the past there were and have only been preliminary investigations in three cases on the continent of Latin America: in 2015 preliminary investigations were completed; they concerned the devastating human rights violations following the 2009 coup against the former president of Honduras, President Zelaya. The prosecution found insufficient evidence of crimes being systematically carried out against the civilian population and the opposition during the coup; this meant that the responsibility was not passed on to the ICC. Although terrible crimes are being committed in this poverty-ridden country, which has the

highest homicide rate in the world, the international community is paying little attention. The law enforcement authorities in the country are certainly not fully meeting their international obligations for prosecution and punishment as set out in the Rome Statute in terms of the situation in Honduras. In Venezuela, preliminary investigations were likewise carried out without these leading to an official investigative process. Only in Colombia are there ongoing investigations at present. Thus in Latin America, too, voices can be heard criticising the ICC's focus on African countries, having so far perceived its powers of crime intervention within Latin America as a "blunt sword".

In contrast to other regions of the world, the Latin American countries were filled with euphoria at the ICC's founding and had high hopes, even in its initial phase: out of 22 Latin American countries 17 countries³⁵ ratified the Rome Statute, including the most important countries in the region in geographic and economic terms, such as Brazil, Mexico, Argentina, Chile and Colombia. The majority of the Latin American signatory states did this immediately after signing the Rome Statute in 1998, most recently joined by El Salvador in March 2016.³⁶ Additionally, Latin America has always been well represented on the ICC through a multitude of judges from the continent. As well as this, the former President of the ICC, Silvia Fernández de Gurmendi, comes from Argentina.³⁷

When it subsequently came to aligning national criminal law and criminal proceedings with the provisions of the Rome Statute, lower activism rates were already listed on the continent of Latin America. Only Argentina, Paraguay, Trinidad and Tobago and Uruguay have created cooperation norms accordingly and enshrined the complementary jurisdiction of the ICC in law. In Chile, Colombia and Costa Rica only cooperation norms were created.³⁸ In 2010, the only Latin American countries to adopt the newly created element of offence of aggression were Uruguay – frequently the continent's pioneer where rule of law is concerned – and Trinidad and Tobago.

As aforementioned, Colombia is the only Latin American country in which the ICC's prosecution authority is currently conducting an investigation. Hereof the ICC's prosecutors have been conducting preliminary investigations in Colombia since 2004. The ICC believes there is merit to the allegations that, since 2002 (when the Rome Statute and the consequent legitimisation of the ICC's jurisdiction came into effect) war crimes and crimes against humanity have been perpetrated by the Colombian military, paramilitary and FARC rebels. Due to the ICC's subsidiarity, no charge has as yet been made, since the Colombian prosecution office has been investigating since 2005 and, even before the "Special Jurisdiction for Peace", which is now to be formed, there was sentencing of the crimes committed, especially those perpetrated by the paramilitary and military.

Initial euphoria in Latin America gave way to disillusionment.

The opening of an official investigation by the ICC in Colombia is like a red rag to a bull in this region, however, and urges the authors of the transitional justice system created as part of the peace agreement made in 2016 with the FARC rebels to monitor its compliance with the standards of international criminal law closely. The compatibility of the amnesty law, which was adopted as part of the transitional justice system at the end of December 2016, with the provisions of the Rome Statute is under discussion.³⁹ Due to the existing uncertainties surrounding the transitional justice system in Colombia, in January of this year the ICC's Chief Prosecutor announced that the Court will intervene if the actual prosecution of war crimes and crimes against humanity by the "Special Jurisdiction for Peace" fail.

The case of Colombia shows very clearly that the stated acceptance of the ICC often reaches its limits also within Latin America if states are

actually to be held accountable and brought to justice. While the Court's help was valued in the discussions on the preparation of the peace agreement with FARC, and emphasis was put on the obligation towards the Court, the possible intervention by the ICC is at least partly perceived as interference with state sovereignty.

Middle East/North Africa

Peter Rimmele / Anna Miriam Schütt

In countries in the Middle East and North Africa the ICC is met with scepticism and a sense of reserve. Although over the course of the Arab Spring many states announced they were joining the ICC, Tunisia and Jordan were the only two countries in the MENA region to actually join. Many other states (Egypt, Algeria, Bahrain, Israel, Yemen, Kuwait, Morocco, Oman, Syria and the United Arab Emirates) signed the Rome Statute but have not yet ratified it. Iraq, Qatar and Libya all rejected the Rome Statute outright.

This rejection on part of the governments in the Middle East and North Africa is opposed by over 300 civic organisations from the region that form part of the Coalition for the International Criminal Court (CICC).⁴⁰ Apart from this, national coalitions have formed in ten Arab states. These coalitions actively support the ratification of the Rome Statute and work on raising awareness of the ICC's work.⁴¹

As one of the few Arab member countries, Jordan takes an especially active role within the ICC. Between 2002 and 2005 Jordan occupied the Chair in the Assembly of States Parties to the Rome Statute (ASP) internally and actively supports the Trust Fund for Victims in accordance with Article 79 of the Rome Statute.

The state of Israel is a special case in the region. It initially rejected an accession to the ICC, then, in 2000, did in fact sign the Rome Statute, although it did not ratify it.⁴² In 2002 Israel informed the UN Secretary-General that it no longer intended to remain a member of the ICC.

A controversy arose out of the accession of the Palestinian territories to the ICC. At the end of 2014, after the president of the Palestinian territories, Mahmoud Abbas, declared recognition of the ICC's jurisdiction and, in January 2015, submitted the ratification documents for the Rome Statute to the United Nations, the Palestinian Autonomous Territories became the 123rd member of the ICC on 1 April 2015. Their accession has enabled the ICC to prosecute crimes perpetrated by Palestinians or took place within Palestinian territories.⁴³ The accession of the Palestinian Autonomous Territories to the ICC led to irritation in Israel, since it now sees itself confronted with investigations in connection with Operation Protective Edge.⁴⁴ In response, Israel cancelled the transfer of tax funds to Palestinian authorities that had already been collected.⁴⁵ Indeed, rhetorically, Israel has of late taken, again a more moderate position towards the ICC⁴⁶, yet this had negligible impact on Israel's fundamental attitude of rejecting it. On the one hand, Israel invokes the subsidiarity of the ICC, which would lead to the superiority of its own investigations regarding the 2014 Gaza war. On the other hand, Israel does not recognise Palestine as an independent state and therefore rejects Palestine joining.⁴⁷

In Lebanon, as in many states within the region, there is a coalition that advocates the ICC; nonetheless, the Lebanese Republic has not signed the Rome Statute. There are various causes at play here. This could, on the one hand, be ascribed to the intense pressure from the USA not to sign the Rome Statute. The USA is concerned that, should Lebanon join the ICC, Israel would make accusations of war crimes in the context of the 2006 Lebanon war. On the other hand, like many governments in the region, Lebanese politicians might also be apprehensive of charges being brought against them. There is, therefore, great unwillingness on the part of these states to sign or ratify the Rome Statute.⁴⁸

Moreover, often the view is taken that the ICC is just another instrument of international law under control of the world's superpowers.⁴⁹ The role of the Security Council in ICC investigations




Srebrenica: The offences committed during the war in Yugoslavia came too early for the ICC. Instead, they were prosecuted by the International Criminal Tribunal for the former Yugoslavia, an ad hoc Criminal Tribunal. [Source: © Damir Sagolj, Reuters.](#)

is met with particular criticism, because the five permanent members can influence the ICC by it in order to realise their own political goals and, under the pretext of protecting human rights, impose western values on the Middle East.⁵⁰ This attitude was clearly in evidence among many Arab states in the rejection of conviction of the Sudanese president, Umar al-Bashir, in 2009. At the same time, various actions by Israel are considered war crimes, which is why there is a perceived imbalance in the appraisal of Arabic-Muslim and Israeli-Western actions.⁵¹ The result of the preliminary ICC investigations that have been taking place since January 2015 into the events in Gaza, the West Bank and East Jerusalem remains to be seen.⁵²

The past few years have also seen a trend showing a positive attitude to the ICC, however. A first step to that effect was an ICC conference in Doha in 2011: while many Arab states had openly turned against the ICC two years previously and declared their support for Sudan, there were also numerous demonstrations of sympathy as well as constructive debates on the structure and operation of the ICC.⁵³ Interest continues to increase in the work of the ICC.⁵⁴

Many are currently calling on the ICC to prosecute the crimes of the so-called Islamic State (IS) that have been perpetrated by IS fighters in recent years. This seems to be exactly the type of crime that the ICC was created to address.



The Chief Prosecutor announced publicly, however, that the ICC was neither authorised to prosecute war crimes in Iraq or Syria, nor would the ICC do this without authorisation from the UN Security Council.

South-Eastern Europe

Hartmut Rank

In contrast to Eastern Europe, for example, almost all south-eastern European countries have not only signed but also ratified the Rome Statute. The sole exception in the region is the Republic of Kosovo, which is not yet a contracting state. This is primarily due to its still limited recognition internationally.

At the end of the 20th century, due to the ethnic diversity and the associated armed conflicts, especially in the course of the disbanding of Yugoslavia, there were many offences from the catalogue of the Rome Statute in the south-eastern European region.⁵⁵ These were not directly prosecuted by the ICC, however, but mainly by the International Criminal Tribunal for the former Yugoslavia (better known under the colloquial moniker of the “Hague tribunal” or “Yugoslavia tribunal”), which was set up in 1993. This was due, in particular, to the fact that the requisite minimum figure of 60 ratifications of the Rome Statute was only reached in 2002. The ICC has no responsibility for offences perpetrated prior to this point in time.

The International Criminal Tribunal for the former Yugoslavia is an ad hoc criminal court that was set up directly by the United Nations⁵⁶ and therefore, unlike the ICC, is not based on its own international treaty. The legal successor to this non-permanent court is the International Residual Mechanism for Criminal Tribunals, which was set up in 2012 to bring an end to the work of various ad hoc criminal courts (among them that for the former Yugoslavia), in particular ongoing appeal proceedings.

The International Criminal Tribunal for the former Yugoslavia had a presence in the media over

several years: its most prominent defendant was probably the former Yugoslavian and later Serbian president, President Milošević. This court brought charges against more than 100 people and dozens were sentenced to prison sentences lasting many years.⁵⁷

In comparison, the ICC has played virtually no role in south-eastern Europe’s legal practice up until now. It is therefore a fallacy to claim the ICC has been unsuccessful in the region. On the contrary, the work of the ad hoc criminal courts set up in the 1990s has had a direct effect on accelerating the truly difficult discussions on the creation of a permanent International Criminal Court.⁵⁸ The nearly universal ratification of the Rome Statute by the region’s states is proof of acceptance of the Court. Furthermore, to date three south-eastern European states (Albania, Croatia and Macedonia) have already ratified the necessary changes to the extension of the offence of aggression.⁵⁹

Alongside the international courts described, there are also “internationalised” hybrid courts. These are national courts that pass judgement on war crimes with international participation. Thus there is the War Crimes Chamber in Bosnia-Herzegovina and, since the end of 2016, the Kosovo Specialist Chambers and Specialist Prosecutor’s Office in The Hague, which are engaged in reviewing the Kosovo war judicially with international participation.⁶⁰ Both types of courts are completely unconnected to the ICC, however, even if their primary objectives are similar.

Many of the still newly minted south-eastern European constitutions – like the German constitution – stipulate immunity for state officials. The Rome Statute does not recognise this type of privileged status for, for instance, heads of state, government officials, members of parliament or judges.⁶¹ These regulations were problematic in countries where absolute immunity was stipulated, e.g. in Bulgaria. In 2003 Bulgaria changed its constitution because of this – but also especially in connection with the then ongoing EU accession negotiations.⁶²

In Albania, by contrast, no change was made to the constitution as part of the adaptation to the Rome Statute.⁶³ In another decision from 2002, though, the Albanian constitutional court decided that the constitution was compatible with the Rome Statute.⁶⁴ The deciding factor in connection to this is whether immunity can be lifted under a specific set of conditions. If this is the case, it creates considerable potential for conflict in political terms, yet it suffices for the purposes of implementing the Rome Statute into national law.

Conclusion

Franziska Rinke

When one looks at the various parts of the world, one can see that the development of the ICC has been very different in different places. The states of Sub-Saharan Africa, South-East Europe and South America are strongly represented, whereas countries in Asia and the Middle East/North Africa approach the ICC with considerable scepticism. The problems and controversies in dealing with the ICC are, however, the same all over the world. In each case, the heart of the matter concerns the question of the individual state's sovereignty. There is talk of independent criminal courts that are restricted to individual regions as an alternative to the ICC; yet, so far, these have not managed to establish themselves either in Africa or Asia.

The amount of support the ICC receives from its member states and the extent to which it can free itself from the accusation of primarily only investigating crimes against humanity and other criminal offences on the continent of Africa, are decisive factors in determining its future. In addition, as victorious powers in the Second World War, the U.S. and Russia, ought especially to reconsider their position, as the ICC is also regarded as the "continuation of the legacy of Nuremberg".⁶⁵ The United States has even gone so far as to conclude bilateral agreements with over 100 countries that stipulate that Americans cannot be handed over to the jurisdiction of the ICC.⁶⁶ It is not enough to support proceedings

against the violation of law and justice only against third countries and to evade any potential violations of international jurisdiction by one's own citizens. There are serious human rights violations all over the world. The declared goal must therefore be for the ICC to be recognised by all states, in order to put its intended universal jurisdiction into practice.

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- 1 Official website of the ICC: <https://www.icc-cpi.int> [21 Jun 2017].
- 2 ICC 2011: Rome Statute of the International Criminal Court, in: <http://bit.ly/2rFKHPz> [21 Jun 2017].
- 3 Cf. Bundeszentrale für politische Bildung (German Federal Agency for Political Education, bpb) 2013: Internationale Gerichtsbarkeit, 11 Nov 2013, in: <http://bpb.de/52814> [21 Jun 2017]. The International Court of Justice was established in 1946 and is part of the United Nations and located in The Hague. It consists of 15 judges. Cf. Schneider, Gerd / Toyka-Seid, Christiane 2017: Internationaler Gerichtshof, bpb, in: <http://bpb.de/161246> [21 Jun 2017].
- 4 Cf. bpb, n. 3.
- 5 Annan, Kofi 2016: Gerechtigkeit ohne Grenzen, Süddeutsche Zeitung, 26 Nov 2016, in: <http://sz.de/1.3266629> [21 Jun 2017]; Art. 17 Para. 1 (a) Rome Statute, ICC, n. 2.
- 6 The crime of aggression was defined at the first Review Conference of the Rome Statute in Kampala in June 2010 with the consensus of the contracting states, and the very complicated conditions for the exercise of the jurisdiction were set forth at the same time. On 26 June 2016 Palestine became the 30th state to ratify the amendments to the Rome Statute, thus realising a necessary condition for jurisdiction over the crime of aggression. Furthermore, after 01 Jan 2017 a further resolution with a two-thirds majority of the contracting states is required in order to activate the jurisdiction. Cf. Federal Foreign Office 2015: Internationaler Strafgerichtshof, 15 Jul 2015, in: <http://bit.ly/1Glthqd> [21 Jun 2017]; ICC 2016: State of Palestine becomes thirtieth State to ratify the Kampala amendments on the crime of aggression, 29 Jun 2016, in: <http://bit.ly/2tNn9sX> [21 Jun 2017]; Art. 15^{bis} Para. 2 and Art. 15^{ter} Rome Statute, ICC, n. 2 (“The Court may exercise jurisdiction only with respect to crimes of aggression committed one year after the ratification or acceptance of the amendments by thirty States Parties.”); Art. 15^{bis} Para. 3 Rome Statute, ICC, n. 2 (“The Court shall exercise jurisdiction over the crime of aggression in accordance with this article, subject to a decision to be taken after 1 January 2017 by the same majority of States Parties as is required for the adoption of an amendment to the Statute.”).
- 7 For complete information on the definition and conditions of exercising jurisdiction cf. Ambos, Kai 2010: Das Verbrechen der Aggression nach Kampala, in: Zeitschrift für Internationale Strafrechtsdogmatik 5:11, pp. 649-668, in: <http://bit.ly/2sYTrol> [22 Jun 2017].
- 8 Cf. Art. 5 and 11 Rome Statute; ICC, n. 2; bpb, n. 3.
- 9 An overview of the states who have signed the Rome Statute can be found at UN: Treaty Collection, 10. Rome Statute of the International Criminal Court, <http://bit.ly/2sTIQLg> [21 Jun 2017].
- 10 The High Court of South Africa Gauteng Division declared the decision by the government in relation to the withdrawal from the Rome Statute to be unconstitutional because the government had failed to obtain a parliamentary resolution. Cf. The High Court of South Africa Gauteng Division, Pretoria, 22 Feb 2017, Case No: 83145/2016.
- 11 The governments of Kenya, Uganda and Namibia also declared their intention to leave the ICC, likewise the Philippines. See in the Asia section. Cf. Momoh, Mohammed 2016: Nigeria will not leave ICC, says Minister, in: The Standard, 29 Apr 2016, p. 42.
- 12 The two giants in Asia – China and India – were invited to attend the Assembly of States Party as observers. This does not seem to have led to greater probability of the Statute being signed though, which certainly prevents a more positive development in the region.
- 13 Cf. bpb, n. 3.
- 14 To date, there have so far been nine convictions and one acquittal. On 14 Mar 2012 the ICC enacted its first judgement against the former militia leader Thomas Lubanga Dyilo, who was given a 14 year prison sentence for recruiting and using child soldiers.
- 15 Cf. Hoven, Elisa 2017: Geschwächte Richter, in: Die Zeit, 5 Jan 2017, p. 14.
- 16 An overview of the “situations under investigation”: ICC, in: <https://icc-cpi.int/pages/situations.aspx> [21 Jun 2017].
- 17 An overview of the “preliminary examinations”: ICC, in: <https://icc-cpi.int/pages/preliminary-examinations.aspx> [21 Jun 2017].
- 18 “Lasting peace is not possible without justice. [...] Peace and justice are thus two complementary requirements, states the declaration of Kampala [...]”. Schabas, William A. 2013: Kein Frieden ohne Gerechtigkeit? Die Rolle der internationalen Strafsjustiz, Hamburg, p. 67.
- 19 Cf. Werle, Gerhard / Vormbaum, Moritz 2015: Afrika und der Internationale Strafgerichtshof, in JuristenZeitung 70:12, pp. 581-588, here: p. 581.
- 20 Cf. Spiegel Online 2016: Verbrechen gegen die Menschlichkeit: Haager Strafgericht beendet Prozess gegen Kenias Vize-Präsident, 5 Apr 2016, in: <http://spon.de/aeIx2> [21 Jun 2017].
- 21 “President Omar Al-Bashir of Sudan is prohibited from leaving the Republic of South Africa until a final order is made in this application, and the respondents are directed to take all necessary steps to prevent him from doing so.” The High Court of South Africa Gauteng Division, Pretoria, 14 Jun 2015, Case No: 27740/15.
- 22 See introduction.
- 23 Cf. AU 2014: Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights, 27 Jun 2014, in: <http://bit.ly/2tsYtX7> [21 Jun 2017].

- 24 Direct quotation: “No charges shall be commenced or continued before the Court against any serving AU Head of State or Government, or anybody acting or entitled to act in such capacity, or other senior state officials based on their functions, during their tenure of office.” Cf. AU, *ibid.*, Art. 46 A^{bis} Immunities.
- 25 Cf. AU, n. 23. Worth noting in this respect is that the states of Guinea-Bissau, Mauretania and São Tomé and Príncipe are not member states of the Rome Statute (UN, n. 9).
- 26 Tull, Denis M./Weber, Annette 2016: Afrika und der Internationale Strafgerichtshof. Vom Konflikt zur politischen Selbstbehauptung, SWP-Studie, German Institute for International and Security Affairs, Mar 2016, p. 16, in: <http://bit.ly/2rTTZML> [21 Jun 2017].
- 27 Cf. Momoh, n. 11, p. 42; cf. The Guardian 2017: African leaders plan mass withdrawal from International Criminal Court, 21 Jan 2017, in: <http://bit.ly/2keZSMK> [22 Jun 2017]; cf. Sendker, Marion 2017: Austritte beim IStGH. Nicht mehr als ein bedeutender Rückschritt (interview with Gerhard Kemp), Legal Tribune Online, 2 Jan 2017, in: http://lto.de/persistent/a_id/21623 [22 Jun 2017].
- 28 “15 Ministers acknowledged that the establishment of the International Criminal Court is a positive development in the fight against impunity for crimes against humanity, war crimes and genocide.” Cf. ASEAN 2003: 14th EU-ASEAN Ministerial Meeting Brussels, 27-28 January 2003, in: <http://bit.ly/2rUtk1T> [22 Jun 2017].
- 29 Cf. Dukalskis, Alexander 2015: Northeast Asia and the International Criminal Court: Causes and Consequences of Normative Disposition, Seoul.
- 30 Cf. Frankfurter Allgemeine 2016: Auch Philippinen drohen mit Austritt aus Weltstrafgericht, Frankfurter Allgemeine, 17 Nov 2016, in: <http://faz.net/-hzv-8nh3b> [22 Jun 2017].
- 31 Cf. ICC 2016: Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda concerning the situation in the Republic of the Philippines, 13 Oct 2016, in: <http://bit.ly/2sTx96x> [22 Jun 2017]. Furthermore at the end of April it was announced that a Filipino lawyer was aiming to initiate proceedings against President Rodrigo Duterte at the ICC on account of targeted killings of drug dealers and petty criminals and had submitted extensive materials to the Court as evidence to this end. Cf. taz. die tageszeitung 2017: Anwalt will Präsident vor Gericht bringen, 25 Apr 2017, p. 11, in: <https://taz.de/15399657> [21 Jun 2017].
- 32 As an example in recent times cf. Hunt, Luke 2016: Time for an ASEAN Criminal Court? A look at a proposal for the regional grouping, The Diplomat, 16 Dec 2016, in: <http://bit.ly/2sX5qmc> [22 Jun 2017].
- 33 The ECCC (also known as the Khmer Rouge Tribunal, KRT) was established in 2006 jointly by the United Nations and Cambodia. It is composed of judges from Cambodia and elsewhere. It is limited to crimes by the key protagonists and leading members of the Khmer Rouge, as perpetrated between 17 Apr 1975 and 6 Jan 1979. The Khmer Rouge is estimated to have killed around 1.5 million people.
- 34 Cf. Office of the Prosecutor, ICC 2016: Policy Paper on Case Selection and Prioritisation, 15 Sep 2016, in: <http://bit.ly/2tRyoAt> [22 Jun 2017].
- 35 These are Argentina, Bolivia, Brazil, Chile, Costa Rica, Dominican Republic, Ecuador, El Salvador, Honduras, Colombia, Mexico, Paraguay, Peru, Puerto Rico, Uruguay, Venezuela and Panama (UN, n. 9).
- 36 Guatemala has so far only joined the Statute and has not ratified it. Haiti, Cuba, Nicaragua and Puerto Rico are missing entirely (UN, n. 9).
- 37 In 2003, when the ICC first began operating, it had judges from both Costa Rica and Bolivia. The first Chief Prosecutor came from Argentina.
- 38 Cf. Guevara Bermúdez, José Antonio 2014: La Corte Penal Internacional y América Latina y el Caribe, in: Anuario de Derechos Humanos, 10, pp. 17-33, here: p. 19.
- 39 According to the amnesty law, all political crimes perpetrated by the FARC rebels such as the Rebellion and the associated crimes are applicable for amnesty, though not crimes against humanity or serious war crimes. The Rome Statute prohibits an amnesty not only for serious war crimes, but also for any type of war crime. There is further potential for conflict between the regulations included in the Colombian peace agreement on the liability of superiors that many consider to be narrower as a consequence than the corresponding regulation in Art. 28 of the Rome Statute (ICC, n. 2). According to the peace agreement, those “top-ranking superiors” who, through negligence, were not aware of the crimes committed by their troops, should not be punished for the crimes of their subordinates. Art. 28 a) 1 of the Rome Statute (ICC, n. 2) allows for criminal liability, however.
- 40 Cf. Coalition for the International Criminal Court: Factsheet: The ICC and the Arab World, in: <http://bit.ly/2sXr3TG> [22 Jun 2017]. CICC is a coalition of over 2,500 non-governmental organisations around the world. As an NGO, CICC campaigns for a fair, effective and independent ICC and the ratification of the Rome Statute by other national governments.
- 41 Cf. *ibid.*
- 42 Cf. bpb, n. 3.
- 43 Cf. Levac, Alex 2015: Internationaler Strafgerichtshof: Das Ende der Straflosigkeit im Nahostkonflikt, Zeit Online, 24 Jan 2015, in: <http://bit.ly/2stlwTn> [22 Jun 2017].

- 44 “Operation Protective Edge” was a military operation by the Israeli Defence Force. It began on 8 Jul 2014 as a reaction to sustained rocket bombardment of Israel by Hamas and other militant Palestinian groups from the Gaza Strip and ended on 26 Aug 2014 with an indefinite ceasefire. The equivalent expressions “Gaza war” or “Gaza conflict” are often used to describe it.
- 45 Cf. Sinja, Shreeya 2015: Palestinians the International Criminal Court: What You Need to Know, *The New York Times*, 24 Jun 2015, in: <https://nyti.ms/2tQXqjn> [22 Jun 2017].
- 46 In 2016 the government spokesperson announced that Israel had nothing to conceal from the Court and would be pleased to show the Court how professionally and independently the Israeli legal system worked. Cf. JusticeInfo.net 2016: Israel forced to cooperate with the International Criminal Court, JusticeInfo.net, 8 Sep 2016, in: <http://bit.ly/2cES9E3> [22 Jun 2017].
- 47 Cf. Charney, Avi 2015: ICC Absurdity, Arutz Sheva, 28 Jan 2015, in: [http://ch7.io/dd-2\\$Fw](http://ch7.io/dd-2$Fw) [22 Jun 2017].
- 48 Cf. Young Initiative on Foreign Affairs and International Relations (IFAIR) 2011: ICC Ratification Patterns in the Middle East, 21 Nov 2011, in: <http://bit.ly/2sXbktZ> [22 Jun 2017]; cf. Jamshidi, Maryam 2012: The International Criminal Court and the Arab World, *open Democracy*, 4 Jul 2012, in: <http://bit.ly/2sDN86s> [22 Jun 2017].
- 49 Cf. Wander, Andrew 2009: Justice campaigners say US urged Lebanon not to join International Criminal Court, *The Daily Star Lebanon*, 12 Mar 2009, in: <http://bit.ly/2rFloxz> [22 Jun 2017].
- 50 Cf. IFAIR, n. 48; cf. Jamshidi, n. 48; cf. Abdellah, Mohamed 2008: Arab ministers criticize ICC Sudan charges, *Reuters*, 19 Jul 2008, in: <http://reut.rs/2sWqrxv> [22 Jun 2017].
- 51 Cf. Abdellah, *ibid.*; cf. Kersten, Mark 2011: The Arab World and the ICC: A New Chapter or Smoke and Mirrors?, *Justice in Conflict*, 30 May 2011, in: <http://bit.ly/2rY0kS4> [27 Jun 2017].
- 52 Cf. ICC: Preliminary examination Palestine, in: <https://icc-cpi.int/palestine> [22 Jun 2017]; Office of the Prosecutor, ICC 2016: Report on Preliminary Examination Activities 2016, 14 Nov 2016, in: <http://bit.ly/2ftv6iT> [22 Jun 2017].
- 53 Cf. ICC 2011: Newsletter May 2011 ASP Special Edition #6, in: <http://bit.ly/2tRtWBG> [22 Jun 2017]; cf. Kersten, n. 51.
- 54 The Hague Institute for Global Justice 2013: The International Criminal Court in the Middle East, 4 Mar 2013, in: <http://bit.ly/2rEWRsd> [22 Jun 2017].
- 55 When speaking of south-eastern Europe in the following, this refers in particular to these countries: Albania, Bosnia-Herzegovina, Bulgaria, Croatia, Kosovo, Macedonia, Montenegro, Republic of Moldova, Romania and Serbia.
- 56 UN: Resolution 825 (1993) from 25 May 1993 by the United Nations Security Council, in: <http://bit.ly/2sEAXqn> [22 Jun 2017].
- 57 United Nations International Criminal Tribunal for the former Yugoslavia 2016: Key Figures of the Cases, in: <http://icty.org/en/cases/key-figures-cases> [22 Jun 2017].
- 58 Wahl, Susen 2013: Osteuropa und die Zusammenarbeit mit Internationalen Strafgerichtshöfen, Berlin, p. 269.
- 59 UN: Treaty Collection, 10. b Amendments on the crime of aggression to the Rome Statute of the International Criminal Court, in: <http://bit.ly/2tR5Zuw> [22 Jun 2017]; pursuant to the concept of aggression cf. Ambos, n. 7, p. 649.
- 60 In January 2017 Dr. Ekaterina Trendafilova, a Bulgarian judge, was named President of the Kosovo Specialist Chambers. Cf. Hopkins, Valerie 2016: Bulgarian Judge appointed head of Kosovo Specialist Chambers, *Prishtina Insight*, 14 Dec 2016, in: <http://bit.ly/2sDQjeo> [22 Jun 2017].
- 61 Cf. Art. 27 Rome Statute, ICC, n. 2.
- 62 Cf. Wahl, n. 58, p. 426.
- 63 Cf. *ibid.*
- 64 Cf. *ibid.*
- 65 Cf. Sendker, n. 27.
- 66 This is possible in accordance with Art. 98 of the Rome Statute. Approx. 40 bilateral agreements are currently in force. Cf. Georgetown Law: Countries that have Signed Article 98 Agreements with the U.S., in: <http://bit.ly/2tQRAOR> [22 Jun 2017].



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[The Fight for Democracy](#)

On the Emergence of an Arab Democracy

Social Divides and Political Compromises in Tunisia

Edmund Ratka

Hopes for a life in freedom and dignity, which had materialised in the “Arab Spring”, have long since been shattered in many places. Tunisia is the only country that has succeeded in undergoing democratic change since 2011. Social divides have been dealt with in a spirit of dialogue and consensus. In order to embed democracy and the rule of law with lasting effect, however, the gap between elites and citizens as well as the regional imbalances of power and development need to be overcome.

It is either us or them. One of the reasons democratic change faltered in most of the Arab world after the upheavals of 2010/2011, was the intransigent fierceness with which the fight for power was conducted in many places. Egypt is a typical example of how the fighting between al-Sisi’s military regime and the supporters of the toppled Muslim Brotherhood blocked all political development. In Syria, the brutal suppression of the opposition movement by the regime triggered a vicious cycle of violence that plunged the country into civil war, allowing terrorist groups to flourish. In Libya, two governments, one based in the west and one in the east of the country, opposed each other for a long time, each claiming sole legitimacy. But when political victory or defeat no longer determines who is in power and has influence, but instead has an impact on the physical existence of entire groups of the population, the region will find no peace.

Tunisia demonstrates that there is an alternative. The Northern African country has managed its democratisation process successfully by making conscious efforts towards consensus, dialogue and inclusion. The virtually unanimous adoption of a new constitution on 27 January 2014 and the free elections in the same year, followed by a peaceful change of power, marked the formal conclusion of Tunisia’s political transition. The key to the peaceful and democratic change was the way in which the process of negotiation dealt with the social conflicts that exist in Tunisia just as in most of the other Arab countries.

From the overthrow of the regime in 2011 until today, development in Tunisia has been characterised by a double compromise: between revolution and continuity and between modernists and Islamists. Other areas of conflict, however, have not yet been dealt with and therefore harbour the potential to disturb the social order, create political instability or even a relapse into authoritarian models of government. First and foremost, there is the rupture between the centre and the periphery, i.e. the imbalance of power and prosperity between the capital and coastal region on the one hand, and the neglected inland regions on the other. Another divide that is becoming increasingly apparent is that between the ruling elites and a frustrated population that is consequently turning away from political processes. International partners must keep an eye on this development so they can provide assistance to Tunisia in a purposeful and sustainable way.

First Compromise: Between Revolution and Continuity

Dégage! Demonstrators shouted the French expletive for “Get out!” at their autocratic ruler on the Avenue Bourguiba in Tunis on 14 January 2011. “The people want the fall of the regime!” was another unmistakable popular slogan of the Tunisian revolution, which was soon echoed beyond the country’s borders. The protests were directed against a status quo that people had come to find increasingly unbearable. They were aimed at the corrupt ruling clique, and at

the entire system, whose nepotism only created greater unemployment instead of prospects for the future, leaving citizens at the mercy of arbitrary acts of state authorities and a repressive police apparatus. After President Zine el-Abidine Ben Ali had fled, some allies of the regime, led by Mohamed Ghannouchi, who had held the office of Prime Minister since 1999, attempted a gentle change through a moderate opening up and by involving some established opposition groups. But further demonstrations followed, which became known as Kasbah I and Kasbah II, named after the seat of government in Tunis, in front of which the protests were held. The young revolutionaries wanted a complete break with the *ancien régime*.

The young revolutionaries called for a complete break with the *ancien régime*.

There is also, however, a distinct affinity with the state apparent in Tunisia, particularly among the urban middle class. This has resulted not least from pride about the progressive achievements made since independence, such as the relatively well-developed education system and the advances in women's rights, which are unparalleled in the rest of the Arab world. In view of the fact that Tunisia is a relatively small country with few natural resources, "continuity of the nation" and stability are valued particularly highly as prerequisites of national sovereignty. It was not by chance that the reestablishment of the "prestige and authority of the state" (*haybat ad-dawla*) was one of the most popular election campaign promises of the successful presidential candidate Béji Caid Essebsi in 2014. However much Tunisians may be annoyed by the bloated, bureaucratic and partly corrupt administration, people frequently show their relief over, or even appreciation of the fact that the administration simply carried on working after the overthrow of Ben Ali's 23-year rule – and has continued to do so through all the turbulent years of the transition.

Reflecting this dialectic, the Tunisian transformation process soon levelled off between radical change and continuity. While the Ghannouchi government, which included many former Ben Ali allies, had to resign under pressure from the street, the "establishment" took back control with Béji Caid Essebsi's appointment as interim prime minister on 27 February 2011. Essebsi, who had held various government positions from the 1960s, embodied the continuation of the Tunisian project of nation and state building from the independence era. He had also withdrawn from politics 20 years earlier and had therefore distanced himself sufficiently from the excesses particularly of the last years of the Ben Ali regime. Popular with the people and statesmanlike at the same time, Essebsi quickly undertook a number of steps of symbolic significance as interim prime minister, such as dissolving the state party RCD, the two chambers of parliament and the political police as well as suspending the 1956 constitution. This meant that the "revolutionaries" who advocated an even more radical new start were no longer able to mobilise the public. Their attempt at a "Kasbah III" failed. It was Essebsi himself who finally told the last few remaining demonstrators in front of the seat of government to go home.

In parallel with these developments, three commissions were formed. These emerged from traditional opposition groups and revolutionary social movements and comprised their representatives as well as legal experts. The most important of these was the "Higher Authority for Realisation of the Objectives of the Revolution, Political Reform and Democratic Transition". The commission, also known as the Ben Achour Commission after its chairman, acted as a type of consultative "revolutionary parliament" until the elections. Legally, this was a dubious construct, as the interim prime minister had been appointed by the now defunct regime and nobody had elected the commission members. But it managed to unite the continuity of the state (embodied by the head of government Essebsi) with the legitimacy of the revolution (embodied by the Higher Authority) credibly.¹

With the election results of 23 October 2011, the Tunisians then made it clear once again that they wanted a new political start. The three parties that explicitly invoked the legacy of Ben Ali's state party, the RCD, did not even achieve four per cent of the votes in total. The results of the greatly splintered "modernist" camp, whose parties were dominated by the urban liberal elites, also fell short of expectations. The Islamist party *Ennahda* (37 per cent), which formerly had been banned and persecuted, embodied the desire for a break with the *ancien régime* particularly strongly and attracted the highest share of the votes, followed by the Congress for the Republic (CPR) as the second-strongest party with 8.7 per cent. Its chairman, the human rights activist Moncef Marzouki, who became president soon afterwards, had very explicitly been advocating a "revolutionary agenda" (at that time still following a more secular-progressive line, while placing more stress on Tunisia's Arab-Islamic identity in later years).

However, the subsequent "troika government" (including the social-democratic *Ettakatol* in addition to *Ennahda* and the CPR) itself now reverted to the tools of patronage and nepotism that were familiar from the old regime. Providing their own supporters with jobs (particularly in the public sector) resulted in an "additional layer" of already existing bureaucracy apparatus. The left-wing intellectual Aziz Krichen, who was an advisor in Marzouki's presidential office and subsequently resigned after having become disillusioned, expressed his bitterness about this government under the leadership of the then *Ennahda* Secretary General Hamadi Jebali: "Denying the logic of the revolutionary break, it instead sought cooperation with the persons and networks of the Ben Ali system – with the naïve ulterior motive of flattering them, winning them over and ultimately having them work for their own benefit."²

On the opposition side, the foundation of *Nidaa Tounes* as a collective anti-Islamist movement allowed the reintegration of former RCD supporters, including regional and local structures of the former state party that were important

for voter mobilisation. Instead of the still discredited Ben Ali, the 'anciens' now invoked the national-enlightened tradition of the state's founding father Bourguiba, whose identity-endowing legacy Essebsi and his entourage knew to revitalise. And it worked. Particularly the middle class in the coastal regions now perceived the danger of Islamisation (and thereby the end of the Bourguibist project of the modern and progressive nation state) to be greater than that of authoritarian restoration. At the same time, the deteriorating security and economic situation meant that to many Tunisians, who were increasingly battling everyday problems, the pre-revolutionary era looked less bad.

So the reconfiguration of the political party landscape definitely allowed room for former Ben Ali supporters. Tunisia did not adopt an "exclusion law" like Libya, which categorically barred Gaddafi's followers from any participation in politics. But that did not mean a return to the status quo ante or a general amnesty for the henchmen of the old regime. At the end of 2013, the "Truth and Dignity Commission" (IVD) was set up, creating an independent (albeit controversial) transitional body of jurisprudence, intended to investigate the human rights violations perpetrated by state authorities since independence. Legal proceedings were initiated and arrest warrants issued against the members of the former ruling family, most of whom had fled abroad, and other high-ranking officials. The fact that these investigations still have public backing was illustrated in 2015 by the controversy about the "economic reconciliation" bill. Launched by President Essebsi upon taking office to facilitate the reintegration of businesspeople and functionaries, this initiative failed due to opposition from civil society (and partly from his own party members), who viewed this as a way for people to "buy their way out" of corruption charges without due process. The reintroduction of the bill in the spring of 2017 again triggered street protests and encountered resistance from various parties, including some from the modernist spectrum.




"Freedom is a daily practice": Regarding women's rights, Tunisia is the most progressive country in the Middle East and North Africa. Source: © Anis Mili, Reuters.

Thanks to the interaction between (or the mutual balancing of) the different political and civil society actors, the Tunisian transition was thus kept on a middle course between revolutionary change and continuity of state affairs and personnel. Does this mean the country has missed its opportunity to truly make a new start? Yadh Ben Achour, an expert on constitutional law, who had a significant hand in shaping the transition phase of 2011, now complains that the "current majority coalition is increasingly implicated in the return of the *'anciens'* and in blatant forms of corruption. [...] The new troika of *Ennahda*, *Nidaa* and RCD can be regarded as an extreme insult to the revolution. This is probably the price we have to pay for civil peace, even though it must break the heart of the friends of the revolution."³ In fact – particularly in view of

the bitter and frequently violent confrontations between regime and opposition, between the forces of continuity and change elsewhere in the Arab world – this "integrative" Tunisian method of transition has proved to be a feasible way of ensuring both stability and democratisation at the same time, at least so far.

Second Compromise: Between Modernists and Islamists

The debate between "Islamists" and "modernists"⁴ has a long tradition in the Arab world. It goes back to the question of how to go about catching up to the West, the need for which had become obvious and painfully noticeable by the time of the colonisation at the latest: either by copying and adopting European advances in



technology and education, for instance, up to and including religious interpretation, or instead by a return to what were seen as original Islamic values and ways of living inspired by the early days of Islam. As in other countries of the region, such as Egypt under Gamal Abdel Nasser, the “progressive” camp came out on top in Tunisia after independence in 1956, based ideologically on Arab nationalism (and in terms of economic policy on variations of socialism). Tunisia’s first President Habib Bourguiba, a lawyer educated in Paris and leader of the independence movement against the French protectorate, imposed a type of modernisation that disempowered the traditional religious elites and enshrined personal liberties, especially also for women. From the end of the 1970s onwards, inspired by the example of the Muslim Brotherhood in Egypt, Islamic-conservative forces organised in opposition to the secular-authoritarian regime and finally founded the *Ennahda* party, which would be prohibited until the 2011 revolution. Behind the modern façade, which the Ben Ali regime was very keen to display to raise its international reputation, Tunisia had also been affected by the trend towards the Islamisation of society that has spread throughout the Arab world over the preceding few decades.

During the early days of the transition process in 2011, as elsewhere in the Arab world, both the Islamists and the modernists were concerned that the respective other camp would impose its specific political and social model on the country. Once *Ennahda* had become the strongest single party in the first free elections and dominated the ensuing so-called *troika* coalition government, the idea that “it’s (finally) our turn” initially drove the leading party’s conduct. Consequently, key positions in administration and the security apparatus were filled with supporters, and party members (including the victims of the Ben Ali regime) were suitably looked after. *Ennahda* gave free rein to the nefarious activities of radical Islamist groups, at least during its first year in government, and it advocated stronger references to Islam and Islamic law in the constitutional process.⁵

In view of this dynamic – catalysed by the murder of two left-wing opposition politicians in February and June 2013 – the modernist camp mobilised. Mass demonstrations and the influence of the media as well as intellectuals mainly critical of the government helped the predominantly secular civil society to win back opinion leadership. In the meantime, Essebsi succeeded in establishing a political alternative to *Ennahda* with the *Nidaa Tounes* party, which he had founded in June 2012. This party attracted proponents of a secular state from a variety of backgrounds – from trade union representatives and human rights activists to liberal-minded entrepreneurs and supporters of the old regime.

In the summer of 2013, the two camps in Tunisia were in opposition to each other on greater ideological differences than ever before. The international context was changing at the same time. On 3 July of that year, with broad popular support, the military assumed power in Cairo and ousted the Muslim Brothers, who had won in free elections the previous year. The ascent of political Islam in the course of the “Arab Spring” appeared to have come to an end. There was also an air of expectancy of a potential coup in Tunis. But the domestic balance of power between Islamists and modernists that had been achieved by then along with the disquieting scenario in Egypt, where violence was escalating, and international pressure on Tunisia, depending on financial aid, resulted in both sides ultimately realising that they needed to come to a consensus. The Tunisian actors were able to pick up on a tradition of cooperation and dialogue that the modernist and Islamist members of the opposition in the Ben-Ali-era had developed.⁶

Against this background, civil society organisations led by the (traditionally rather secular) trades union *Union Générale Tunisienne du Travail* (UGTT) succeeded in bringing the political parties together within a “National Dialogue”, thereby restarting the work in the National Constituent Assembly, which had been blocked until then. At the same time, the country’s two most important politicians, who had already

developed into the generally acknowledged leaders of the modernist and Islamist camps, came to an agreement. On 14 August 2013, Essebsi and the *Ennahda* president Rached Ghannouchi met in France. The “National Dialogue” and the “Paris handshake” marked the turning point in the Tunisian transition and prevented a violent confrontation between modernists and Islamists. A threefold compromise approach was agreed and subsequently implemented successfully: the appointment of a technocratic transitional government, the completion of the constitutional process, and the preparation of general presidential and parliamentary elections.

The political cooperation of Islamists and modernists is controversial in both camps.

The following election campaign, however, once again featured the modernist-Islamist polarity. Under the slogan *vote utile* (useful vote), Essebsi and *Nidaa Tounes* warned against renewed splintering and defeat by the Islamists. They ultimately managed to unite the modernist camp under their banner and were able to gain a clear victory both in the parliamentary and the presidential elections. The party received close to 37 per cent of the votes, thereby winning 86 of the 217 seats in parliament; in the second round, Essebsi beat the incumbent Marzouki (44 per cent and 1.4 million votes) with 56 per cent (1.7 million votes). While theoretically a majority would have been possible against *Ennahda*, becoming the second-strongest force in parliament with some 28 per cent (69 seats), Essebsi opted for a grand coalition with the Islamists.

In his opinion, that was the only way to guarantee a stable government and to prevent *Ennahda* distinguishing itself as an opposition party and potential alternative government. Essebsi intended to make the Islamists share in the responsibility for the difficult tasks ahead instead of them using their power to mobilise

forces against a government dominated by modernists and technocrats. Ghannouchi, for his part, wanted to embed his party in the mainstream by government involvement and prevent the state apparatus from being used against it (as had happened under the old regime in Tunisia and was happening again in Egypt to the Muslim Brotherhood). He also believed this was a way to avoid political and social isolation of *Ennahda*, as had happened especially in 2013. The celebrated appearance given to President Essebsi at *Ennahda's* party conference in May 2016, where the party distanced itself (at least on the face of it) from its fundamental Islamist rhetoric, was a clear illustration of this new era of modernist-Islamist cooperation at the highest level. Nonetheless, this approach does by far not enjoy unanimous support in the two camps, and the question as to “How much Islam?” has still not been resolved in politics and society and has therefore the potential of being remobilised in the political sphere. With the current restructuring of the party landscape and in view of the upcoming local elections, this contentious issue might intensify again.

Persistent Divides: Between Centre and Periphery, between Elites and Citizens

The double compromise between revolution and continuity as well as between modernists and Islamists was probably necessary, but is by no means a sufficient prerequisite for the consolidation of the Tunisian democracy. This compromise, which was first and foremost a compromise between elites with a limited scope of impact, left some social divides ignored and possibly even contributed to their worsening. This applies particularly to the conflict lines between the centre and the periphery and between the governing elites and the population at large.

The inequalities in power and prosperity as well as the cultural and identity-related differences between the north-eastern coastal region (the Tunisian Sahel) on the one hand and the inland regions in the northwest, the centre and (parts of) the south of the country on the other

have been a characteristic element of Tunisia's development for decades. Average unemployment inland is twice as high as on the coast. 85 per cent of Tunisian economic output is generated in the three largest cities of Tunis, Sousse and Sfax. There is an imbalance in the standard of infrastructure in practically all areas – from healthcare to education. Examples of this include the maternal death rate, for instance, (three times as high in the town of Kasserine in the northwest than in Tunis), illiteracy (32 per cent in Kasserine, twelve per cent in Tunis) and the proportion of households connected to the water system. While the latter is as high as 90 per cent in Tunis, it is less than a third in Kasserine.⁷ This divide goes back to the time of the French protectorate, which recruited its administrative staff from the coastal cities, and has been perpetuated through economic and structural policies since independence (such as measures to promote mass beach tourism and focus manufacturing on exports). The rural exodus to the coastal cities, which began with the failed socialist agricultural experiments in the 1960s, resulted in suburbs springing up, frequently in an uncontrolled fashion, which must still be considered part of the periphery due to their socioeconomic and cultural characteristics. It was in the neglected central region of Tunisia that the revolution was then sparked on 17 December 2010 and where most of the bloodshed took place.

Over the last decades, the government repeatedly launched large-scale projects and the overall poverty level declined. But the inland regions still lag far behind in terms of structural development – even though six years have passed since the revolution. The economic and political inclusion of the protesting youth both from the hinterland and the sprawling suburbs of the larger cities has failed to materialise so far. Only half of Tunisians voted in the first free elections in the country's history on 23 October 2011. Remarkably, the non-voters included many young people and inhabitants of the regions where the revolutionary movement was especially strong.⁸

The second disconnect is between the elite and the wider population. While there was some broadening of the governing stratum during the transition phase thanks to the integration of the (moderate) Islamist spectrum as well as cooperation between democratic forces and actors from the *ancien régime* willing to reform, large swathes of the population, whose high expectations of democracy had been disappointed, turned away from politics and particularly the political parties. The public spirit and the feeling of national unity that many Tunisians still talk about with their eyes lit up did not survive past the transition phase. Voter turnout, which dropped further to under 40 per cent in 2014 (only one in five young voters went to the polling station), is only one symptom. Similar to the situation in the entire North Africa/Middle East region, the trust rating for political institutions in Tunisia is below ten per cent (contrary to the army, the family or local religious authorities, which are trusted by some 80 per cent of citizens).⁹

Tunisian civil society has flourished since the revolution; the number of clubs and associations has doubled to 20,000. While the initial euphoria has died down, civil society is still an important actor (particularly in its “watchdog” function) and provides opportunities for committed Tunisians to engage beyond the political parties. However, even here it is the established groups that are more successful in making themselves heard as they can fall back on some structures from before 2011 and have appropriate funds and connections. The “mobilizations from the margins”¹⁰, involving victim support groups representing those who lost family members or were injured in the revolution and frequently come from the lower classes and neglected regions, are hardly visible in public discourse. Due to structural deficiencies as well as a lack of awareness in the inland regions, social engagement (with all the positive consequences it entails for the individual and collectively) threatens to become a privilege of urban young people from the middle and upper classes cementing social divides further.

Three main reasons can be cited for the disconnect between the elite and the citizens or for the widespread political apathy. Firstly, the economic situation has not improved for the majority of Tunisians since the revolution; the economic “democracy dividend” did not materialise. Even though the structural causes of the economic crisis stem from the time before the revolution or are not directly linked to the democratisation process, such as the terror attacks of 2015, the “transformation patience” of many Tunisians has been exhausted. Because of price rises, particularly for food, and other everyday problems, people are predominantly concerned with making ends meet. Secondly, the “party culture” is still underdeveloped. With some 200 registered parties, the political landscape is not only splintered (particularly in the modernist camp), but also still far removed from engendering a truly democratic (party) political awareness. Large swathes of the elites and ordinary citizens do not understand parties as being the vehicles to transmit the interests of (part of) the public or ideas about society as a whole but rather as means for personal advancement. Perpetual internal crises and hard-fought power struggles played out in public, especially in the governing parties, further discredit political engagement.

Thirdly, the compromises described above, although to be welcomed in principle, have eliminated two moving causes that mobilised the young before: fighting for a new start in line with the revolution’s goals in 2010/2011 and later on, from 2012 to 2014, fighting against threatening Islamisation through an overpowering *Ennahda*. To date, efforts to channel the energy of young Tunisians into sustained engagement for the institutions of democracy have failed. Instead, competences and responsibilities have become even less clear with the coalition and unity governments as well as the dominant roles played by Essebsi (whose domestic competences as president should, in fact, be limited according to the constitution) and by Ghannouchi (who does not even hold a government post officially). Institutional processes, such as the interplay between legislature and executive, become

established only at a slow pace as the most important decisions are taken informally. Protest and even constructive engagement of citizens have thus difficulties of finding a clear target. There is also no effective opposition within the system any longer. This in turn leaves a vacuum to be filled by radical groups, such as Salafists and Jihadists, and drives people who are dissatisfied with the status quo into their arms.

“The Revolution has revealed the deep rift between the political, social and economic elites and the marginalised masses of traditional society, who triggered the revolutionary process,” the Tunisian historian Mustapha Kraiem commented in 2014. The latter would no longer accept this marginalisation, and as the political parties were “not embedded in society”, the rift between the governing and the governed would keep widening.¹¹ While one needs to consider these types of process over decades rather than years, it does seem painful that this assessment still holds true after three more years of transformation – and notwithstanding the comprehensive international support for Tunisia. The two overlapping divides or cleavages center-periphery and elite-population are reinforcing each other. Not only does this harbour a risk to the consolidation of Tunisian democracy, it also jeopardises the country’s stability in general.¹²

Conclusion: Tunisia as the Exception?

What conclusions can be drawn from the developments in Tunisia for the complex transformation of the Arab world, which has had an overall destabilising impact to date? One must bear in mind that the internal and geopolitical conditions for peaceful democratisation were specific in Tunisia and better than elsewhere in the Arab world from the outset: these ranged from a relatively high educational level to a religiously and ethnically mostly homogenous population to economic links with Europe and a traditionally high level of openness. Consequently, the small north-African country cannot serve as a blueprint for democratisation. Nonetheless it does remain a “beacon of hope”, as Angela Merkel declared during her visit to the Tunisian



Looking ahead into the future: Tunisia's destiny is not least going to depend on whether it manages to translate the energy of the Tunisian youth into engagement for the country's institutions of democracy. Source: © Anis Mili, Reuters.

parliament in March 2017. Tunisia has embarked on a path that can offer greater political and economic participation to its citizens. It has shown that the deep divides in Arab societies can be addressed by peaceful negotiation and that new power constellations can be worked out in dialogue with each other – however laborious and lengthy this journey may be.

There are some prerequisites for a successful “moderation” of such lines of conflict – the example of Tunisia suggests this at least. These include not only willingness and some good sense on the part of the key actors but also a domestic balance of power that allows room for this good sense to develop. International pressure can make a contribution here, particularly in those countries that rely on economic or security cooperation with the West. But it is even more important to foster the appropriate political culture among the elites and in society as a

whole. While external interference that comes across as too aggressive and intransigent can be counterproductive – particularly if it comes from the West that has been discredited in terms of its morality and is easily accused of imperialist intentions – international actors working closely with local partners definitely have the capability of helping to establish suitable forms of dialogue and cooperation mechanisms as well as furthering appropriate training programmes.

But they must not stop halfway with their efforts. Development cooperation and the promotion of democracy always harbour the risk of cementing existing power structures and thereby keeping social divides open. At the local level, international organisations are frequently and inevitably more likely to work with those who are closest to them in terms of socio-cultural background, who “speak the same language”. The same accounts for Tunisia, where large

numbers of new foreign actors, not necessarily familiar with the country, arrived on the scene after 2011; also here, one can see how sought-after those local partners are, who already have certain management skills or an international profile, while other groups and strata of society remain inaccessible. This situation requires greater creativity in finding new ways of accompanying and supporting individuals and groups as well as a greater political courage to remind the dominant elites of these countries of their responsibility to the whole of society. That poses new challenges for the German and European foreign policy in the region, which must become even more differentiated and must engage more “in-depth” with the Arab societies.

The so-called authoritarian bargain is becoming obsolete as a political model in the Arab world.

As open as the outcome of the Arab transformation may be: The deadly silence of former times, when too many international actors believed they could rely on “strong men” to sort things out, will not return, at least not in the medium and long term. The so-called authoritarian bargain – the absolute ruler guarantees security and prosperity, and citizens give up their civil liberties in return – is a political model that is becoming obsolete in the Arab world; also due to some fundamental developments in these states, such as demographic change and structural economic difficulties.¹³ Resource-poor countries can simply no longer afford it and even oil-rich states such as Saudi Arabia now see themselves forced to diversify their economy. But the farewell from the rentier state model will hardly be mastered without allowing greater freedoms to the citizens. While the generation of the states’ founding fathers were still able to justify their claim to power “historically”, the basis of legitimisation of the incumbent regimes, which are incapable of providing decent prospects for their populations, is crumbling. The currently escalating

inter-state and sectarian tensions in the region may have a stabilising effect on some ruling structures – with the appropriate propaganda. But in the long term, this will not keep the youth at rest, who is increasingly networked and striving for individual opportunities in life; already today they account for the majority of the population in Arab countries.

These structural dynamics, which were already fuelling the protests and upheavals during the “Arab Spring” in 2010/2011, still prevail. In parallel with the current geopolitical restructuring of the Arab world, the national social contracts will therefore also have to be renegotiated. These “processes of negotiation” harbour a potential for further violence and destabilisation; but they also offer the prospect of forming more inclusive (and therefore more sustainable) models of government and development. The course and outcome of the complex transformation in the Arab world will also depend on whether the divisions between Islamists and modernists, or the centre and the periphery as well as between the generations or between denominations and ethnic groups, can be tackled in a peaceful manner. Each country has to also find its appropriate and specific balance between continuity and change.

It is not and never has been a law of nature that the collapse of old-established patterns, such as the “Arab Spring” set off, must end in violent chaos or autocratic restoration. Tunisia is still testament to that today. And maybe it is a good thing that the country’s schoolchildren call this to mind every day when they sing the national anthem, which includes verses by the Tunisian poet Aboul Kacem Chebbi: “When the people will to live / Destiny must surely respond / Oppression shall then vanish / Fetters are certain to break.”

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- 1 On the genesis and role of the commission, see Ben Achour, Yadh 2016: Tunisie. Une révolution en pays d'islam, Tunis, pp. 274-279.
- 2 Krizen, Aziz 2016: La promesse du printemps, Tunis, pp. 126-127. Here and in the following text, translation into English based on the author's translation from French into English.
- 3 Cf. Ben Achour, n. 1, pp. 351-352.
- 4 In this article, the terms are used as analytical categories, and not to ascribe values. At the same time, they are also used as political battle cries, whether in political practice in Tunisia or in the academic discourse. They are or were frequently used by the respective actors to describe themselves. Ever since its party conference in May 2016, *Ennahda* distanced itself from the term Islamism, now preferring the term "Islamic democrats" or "Muslim democrats" instead. Members of the modernist camp also like to use the attributes "democratic", "republican" and "progressive" (*progressiste*) to describe and distinguish themselves from the Islamists. The term "secular", on the other hand, is used mainly by international observers.
- 5 Cf. Faath, Sigrid / Mattes, Hanspeter 2014: Hindernisse bei der Bekämpfung islamistischer Gewalt in Tunesien, Wuqûf-Kurzanalyse No. 24, Berlin; Kraiem, Mustapha 2014: La révolution kidnappée, Tunis, pp. 339-520.
- 6 First and foremost, the meeting of members of the secular left has to be mentioned, which included the two subsequent governing parties CPR and *Ettakatol*, and the Islamists, which took place in the French town of Aix-en-Provence in May 2003 and resulted in the "Appel de Tunis du 17 juin 2003", which called for democratic reforms. On 18 October 2005, several leading opposition figures began a 32-day hunger strike, a supporting committee consisted of regime critics from every political quarter. In addition, left-wing (or modernist) lawyers such as the politician Chokri Belaid, who was murdered by radical Islamists in 2013, regularly provided legal aid to *Ennahda*-followers persecuted by the Ben Ali regime.
- 7 Cf. Mestiri, Mhamed 2016: Disparités regionales. Etat des lieux d'une discrimination, Nawaat, in: <http://bit.ly/2rDEKX3> [5 Mar 2017]; Sbouai Sana 2015: Kasserine se constitue région victime, Inkyfada, in: <http://bit.ly/2qzZMBH> [5 Mar 2017].
- 8 Cf. Gana, Alia / Van Hamme, Gilles / Ben Rebah, Maher 2012: Géographie électorale et disparités socio-territoriales: les enseignements des élections pour l'assemblée constituante en Tunisie, in: *l'espace politique* No. 18.
- 9 Cf. The World Bank 2014: Tunisia. Breaking the Barriers to Youth Inclusion, Washington D.C., p. 11 (2012 figures). In a survey among young Tunisians conducted by *Sigma Conseil* in November 2016, 82 per cent agreed with the statement that "the responsible politicians are not sufficiently interested in the concerns of our generation" and only three per cent felt represented by political parties. Cf. *Sigma Conseil/Konrad-Adenauer-Stiftung* 2016: Être jeune en Tunisie aujourd'hui et demain, Tunis.
- 10 Antonakis-Nashif, Anna 2016: Contested transformation: mobilized publics in Tunisia between compliance and protest, in: *Mediterranean Politics* 21/1, pp. 128-149.
- 11 Kraiem, n. 5, p. 523.
- 12 The "multi-dimensional marginalisation" (economic, social, political, civic, geographic and cultural) of some strata of the population also provides a breeding ground for Islamist radicalisation in Tunisia and explains the high number of Tunisian foreign terrorist fighters. Cf. Ratka, Edmund/Roux, Marie-Christine 2016: Jihad instead of Democracy? Tunisia's Marginalised Youth and Islamist Terrorism, in: *International Reports* 1/2016, pp. 64-82, <http://kas.de/wf/en/33.44290> [31 May 2017].
- 13 Cf. also Klingholz, Reiner / Müller, Ruth 2016: When Education Turns into a Problem. The Impact of Demographic Factors on Political Stability in the Middle East and North Africa: *International Reports* 4/2016, pp. 14-27, <http://kas.de/wf/en/33.47596> [31 May 2017].



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[The Fight for Democracy](#)

Young Continent, Old Rulers

What Does the Future Hold for Democracy in Africa?

Mathias Kamp

The African 2016 “super election year” made both positive and negative headlines and demonstrated the heterogeneous paths the development of democracy is taking in Africa. Bearing in mind that many elections lacked democratic quality, and given that authoritarian tendencies are on the rise in numerous countries, one cannot speak of progress on the whole. The future development of African democracy will depend on various external and internal factors, which, while entailing certain risks to stability, will ultimately provide opportunities to provide new democratic incentives.

In Germany, Africa’s public image tends to oscillate between that of a continent in crisis and prospects. Generally the pessimists are in the majority, as is seemingly the case in current discussions about the state of democracy on the continent. Recently, there has been increasing talk of a “democratic recession”. Indeed, for all the heterogeneity and contradictions, negative trends predominate in the current development of democracy.

With some exceptions, the search for consolidated democracies in Sub-Saharan Africa¹ remains unsuccessful. Instead, there is a mix of authoritarian regimes, hybrid systems as well as a very few solid democracies. And that is the case although the continent did, in fact, undergo a great democratic awakening from the long-term, historical perspective. Particularly in the 1990s, democratisation and liberalisation made great strides. But the mere presence of superficially democratic institutions and elections being held do not in themselves say a great deal about the quality of democratic governance.

To gain a first impression of the state of democracy in Sub-Saharan Africa, it is helpful to examine the main indices. The latest issue of the annual Freedom in the World Report (2016 figures) published by Freedom House only rates nine of the 49 countries of Sub-Saharan Africa as “free”. A further 21 are classified as “partly free” and a similar number “not free”. Of the

ten countries worldwide whose index rating had declined most significantly, half are in Sub-Saharan Africa.²

The “Democracy Index 2016” of the Economist Intelligence Unit only identified one “full democracy” in Sub-Saharan Africa, namely Mauritius. Of the 44 countries surveyed, seven are categorised as “flawed democracies”, 13 as “hybrid regimes” and 23 – that is more than half – as “authoritarian regimes”.³

Both reports have estimated the development of democracy and political freedom in Sub-Saharan Africa to be ranging between stagnation and regression over the last few years. Investigations conducted by the foundation of the British-Sudanese telecoms pioneer Mo Ibrahim have come to similar conclusions. The Ibrahim Index of African Governance has been tracking the democratic development of all 54 African countries since 2006. Once again, the results make rather sobering reading. Although 37 of the 54 countries showed some improvement in overall governance over the period from 2006 to 2016, the average rating for all countries surveyed was a mere 50 out of a possible 100 points. Compared to 2006, this average increased by just one point, indicating stagnation rather than significant progress.⁴ The Mo Ibrahim Foundation does, in fact, have another instrument: an annual prize, which includes a highly-remunerated award, for former African heads of state who have excelled in

exemplary democratic governance throughout their term in office and then resigned in a dignified manner. However, the prize has only been awarded four times in the last ten years. For the rest of the years, the jury could not identify a single worthy laureate on the entire continent. This is undoubtedly another telling indication of the state of democracy in Africa.

A great majority of the African population shares democratic values.

But what about the people's stance towards democracy? Despite all prophecies of doom, democratic values are also shared by the great majority of people in Africa. Surveys conducted by the Afrobarometer network show that over two-thirds of African citizens (71 per cent) support democracy. However, the same surveys also indicate a discrepancy between demand and supply with respect to democracy: fewer than half (48 per cent) of the population felt they were living in a democracy; even fewer (43 per cent) were happy with the performance of democracy.⁵

“Tunnel Vision” on Elections?

To gain a better understanding of current developments in addition to what can be learned from the general rankings, it is worth taking a brief glance at the events of the “African super election year” of 2016. Presidential elections were scheduled in no fewer than 16 African states for that year. Six new presidents were elected into office, nine incumbents were confirmed in their post. In the Democratic Republic of the Congo, the election was postponed under controversial circumstances.

In most cases, the elections were influenced by similar developments: harassment against the opposition and critical media, allegations of manipulation, public protests, and the opposition's refusal to accept the results. Such trends

could be observed in connection with the elections in Uganda, Equatorial Guinea, Gabon, Niger and Chad, among others, as well as, rather surprisingly, in Zambia, a country that had been considered a beacon of democratic development for a long time. Positive examples were the exception, Ghana and Benin were among them. In both countries, well-organised, free and fair elections brought about a democratic change of government.

The presidential elections in the miniature state of the Gambia made headlines around the world. There, the admission of defeat of the eccentric President Yahya Jammeh, who had governed the country in dictatorial fashion long-time, elicited temporary jubilation about a “signal of strengthening democracy”. But Jammeh reversed his decision a few days later and sent the army onto the streets. Ultimately, external intervention by the regional organisation ECOWAS and Senegalese troops was required to remove him from power.

All in all, the events of the 2016 election year suggest that the quality of elections is backsliding in Africa. Apart from a few positive exceptions, the competitive conditions become more difficult for the opposition, the scope of action for the media and civil society is shrinking, and political tensions and conflicts in connection with elections appear to be increasing.

Even where elections meet the minimum standards of freedom and fairness, they do not necessarily translate into a democracy beyond pure formalities. A substantial understanding of democracy includes strong democratic institutions and the separation of powers, the safeguarding of political and civil liberties, social equity, inclusive participation opportunities, and scope for a free and independent press and civil society to operate. But in diplomatic circles and among people involved in development cooperation, there is still a disproportionate focus on elections as an indicator of democracy. Yet this focus does not sufficiently consider the complex dynamics in the African countries. Furthermore, many of the (semi-)authoritarian rulers have

long since become wily and learnt how to influence elections to their advantage and use them as an instrument for retaining and legitimising their power. In many of the so-called “defective” democracies in Africa, the elections are at best controversial, in some cases descending into a total farce.

In its report on Electoral Integrity in Africa, the Electoral Integrity Project states that the degree of electoral integrity is lowest in Sub-Saharan Africa in comparison to all other regions of the world. While the types of problems associated with elections are similar everywhere, nowhere are the threats to electoral integrity greater than in Africa. During the period covered by the report, from 2012 to 2015, over half of the elections organised in Africa (22 out of 38) were either flawed or failed entirely.⁶ A view at the elections held in 2016 confirms this picture.

Democracies or Hybrid Regimes?

When you stop focusing entirely on elections and turn to the elements of a substantial democracy, determining trends and characteristics within the heterogeneous group of countries in Sub-Saharan Africa becomes even more difficult. It is impossible to adequately describe the state of democracy in 49 states in all its facets briefly. But as the references to the established rankings have shown, one can at least try to divide the political systems in Africa into several rough categories. It is probably easiest to identify the consolidated democracies and the closed authoritarian regimes. The most difficult task will be describing the many hybrid forms existing in Africa.

The number of consolidated, substantial democracies in Africa is very low. In the various rankings based on governance quality, Africa’s smallest states regularly make it to the top: the island states of Mauritius and Cape Verde as well as sparsely populated Botswana are considered models of African democracy.

At the other end of the spectrum are countries in crisis such as Somalia and South Sudan, where

there can be hardly spoken of democratic governance due to conflict, a failing state and little prospect of political stabilisation along with obvious dictatorships, such as Sudan and Eritrea.

In most African countries, democratic and authoritarian tendencies mix.

In between come the great majority of African countries, where democratic and authoritarian tendencies mix – in varying configurations. These hybrid forms are generally considered lesser variants of democracy and consequently described as “flawed democracies”, “façade democracies” or “illiberal democracies”. Scientists Steven Levitsky and Lucan Way criticise the use of the term democracy with an adjective in these cases as inappropriate. They believe that instead of speaking about lesser or flawed variants of democracy, one should consider the regimes as more moderate variants of authoritarianism in most cases.⁷

It is interesting to see that more or less authoritarian rulers also are keen to present themselves as democrats to the outside world. In discussions on the performance and acceptance of democracy in Africa – also by comparison with alternatives (in this context eyes frequently turn towards China in Africa) – people often fail to realise that while referring to “democracy” they are really talking about something else in relation to the respective regime. In most cases, it comes down to a combination of a rhetorical allegiance to democracy and the existence of certain formally democratic institutions on the one hand and a fundamentally illiberal or even authoritarian exercise of power on the other. The term “hybrid regime” has become established for such mixed forms, particularly in the Anglophone sphere. This is preferable to the term defekte Demokratien, meaning defective democracies, which German speakers tend to use. This latter terminology leads to an inflationary (and often mistaken) use of the label

“democracy” on one side while suggesting that there are indeed democracies without any flaws (an assumption that is open to dispute in view of the current discussions about the state of Western consolidated democracies).

Typical Characteristics of Hybrid Systems in Africa

Despite all the diversity and complexity, there are several identifiable widespread characteristics of hybrid systems in Sub-Saharan Africa, which may be of help in explaining the weakness of democratic governance in many countries:

- **Weak institutions:** Democratic and constitutional institutions, particularly parliaments, are frequently too weak in reality to perform their supervisory functions effectively. This is partly due to the manner the mostly presidential systems operate and the fact that the separation of powers and the system of checks and balances are being undermined, but partly also due to the institutions lacking funding and human resources. In some cases, the governing party holds the absolute majority in parliament, turning it into a mere body of “nodding-orders-through”.
- **Dominance of the executive:** In many African countries, the government institutions are characterised by the dominance of the executive and a concentration of power in the president’s hands. This is sometimes exacerbated by the principles of the rule of law being undermined. Particularly in countries with long-serving rulers or single-party dominance, the dividing lines are frequently blurred and there are noticeable overlaps between state apparatus, government, party and the military.
- **Personalisation of power:** In many African states a strong leadership figure is at the head, towards whom the entire state apparatus is adjusted and who is at the centre of a patronage network. Political power is consequently seen more or less as a personal

possession. The “strong man” at the top frequently stands above the law, in actual fact or at least in public perception.

- **Corruption and lack of transparency:** Nepotism, patronage and a weak rule of law pave the way for widespread corruption. In such a climate, state resources are used less to serve the general good and more to enrich the elites and reward political loyalty. This is frequently encouraged by a lack of transparency





Not every vote counts: Free and fair elections are still an exception on the African continent. Source: © Joe Penney, Reuters.

and accountability. The required control mechanisms are usually missing and freedom of information is hardly guaranteed.

- Weak and inefficient state bureaucracies: Nepotism and patronage also have an impact on the state apparatus. There are frequently bloated, inefficient bureaucratic structures in place, where posts are not assigned on the basis of ability but for the purpose of taking care of, rewarding or co-opting people. The costs for these structures can become a great burden on the national budget. In parallel to the formal structures, informal networks and evasion strategies play an important role.
- Dominance of the military: Long-term instability and experiences of historic conflict frequently form a backdrop to and provide justification for the dominance of the security doctrine and military influence. Many African heads of state and government come

from a military background themselves. Nicholas Cheeseman, a professor of democracy, has calculated that between 1989 and 2016 as many as 45 per cent of 91 African presidents and prime ministers in civilian governments had either served in the military or operated as guerrilla fighters before their political career.⁸

- **Weak political parties:** Many parties in Africa – with the respective dominant governing party being the exception in many cases – are poorly institutionalised and only fulfil their democratic functions to a limited degree. For one thing, many opposition parties are hampered by the restrictive rules applying to political activities, and then there are a number of internal factors in play. These include the frequently poor promotion of the party’s ideology and program, a lack of internal democracy and weak internal structures as well as a high degree of personalisation. Parties also suffer from the same tendency towards patronage and nepotism as other areas of society. The party landscape is also frequently fragmented and strongly dominated by regional and ethnic identities.

Young Continent, Old Rulers: The Phenomenon of Long-Serving Presidents

Africa is by far the youngest continent. The ten countries with the globally youngest populations are all in Africa. Average age is below twenty. The striking observation: this contrasts with a long line of aging rulers, many of them long-serving presidents.

There are two record holders among the African rulers: at 93, Zimbabwe’s President Robert Mugabe is the oldest head of state in office worldwide. He has ruled Zimbabwe since 1980 and has been the country’s only president since independence. The record for the longest time in office is held by Teodoro Obiang Nguema, who has been in power in Equatorial Guinea for 38 years. He is followed closely by Eduardo dos Santos, the Angolan president, who came to

power the same year (1979). But several other presidents do not lag far behind: Paul Biya has been ruling Cameroon since 1982 and Yoweri Museveni has been in power in Uganda since 1986. Long-serving presidents are also holding on to power in Chad, the Republic of the Congo and Rwanda.

On the youngest continent in the world, a number of aging long-serving presidents are in power.

The fact that presidents can remain in power for so long is partly due to the above-mentioned weaknesses of the democratic institutions and processes in many African states. It is hardly surprising that the established studies and indices mostly attest those countries a better quality of democratic governance where a democratic handover of power has taken place or has even become the norm. But those countries where elections ultimately only serve to confirm the incumbent ruler in their office also demonstrate blatant deficiencies where the principles and liberties of democracy and the rule of law are concerned.

In those countries, the main strategic goal of politics is to maintain power (politics of regime survival). On the face of it, this does not necessarily have to be detrimental to the common good. After all, such a strategy can entail efforts to secure voter support by providing decent state services to the obvious benefit of the country’s citizens. But things are usually different in practice. Studies have shown that countries with long-serving rulers – with a small number of exceptions such as Rwanda – also tend to decline in areas measured by development indicators.

A study conducted by the German Institute for International and Security Affairs (SWP), for instance, described the consequences of the growing number of long-time presidencies as “devastating”: “This does not only apply

retrospectively in relation to the violent past of many African states. Present-day long-time presidencies are also characterised above all by corruption, poor economic performance, low levels of human development, authoritarianism and structural instability.”⁹

Outstanding performance can therefore hardly be the crucial factor keeping long-serving presidents in office. If anything, personal charisma and respect for historic achievements may play a role. Presidents like Mugabe and Museveni still enjoy being celebrated for their status as “liberators”.

Besides the general craving for authority and prestige, the aspiration of holding onto power is reinforced by a number of factors in the African context. In many African countries, access to power equals access to economic resources, all the more in the numerous de-facto rentier economies. The concentration of power makes the presidential office the central key. Excessive presidentialism and a majority voting system which fosters the ‘winner takes all’ mentality render political competition a zero-sum game. Coming to a political compromise, inclusive government configurations, let alone power sharing are thereby made more difficult.¹⁰ In the context of neopatrimonialism, access to power also provides the wherewithal to supply clientelism-networks with positions and material incentives. Supporting the strong leader at the top also benefits an extended circle of the political elite; after all, it guarantees them personal security, offices and privileges and, ultimately, protection against potential prosecution for corrupt practices.

The Toolbox for Regime Survival

The incumbent bonus is a ubiquitous phenomenon during elections, but appears to have a particularly strong impact in the African context. While elections have become part of the norm, they do not generally result in a democratic change at the top in Africa. On average, the incumbent wins in 85 per cent of presidential elections, provided they (are allowed to) stand for election.¹¹

Several factors can explain this trend: the massive advantages enjoyed by the current ruler resulting from the configuration of the political system, the structural weaknesses of the opposition, manipulation of the elections or of the political competition as well as general tendencies of authoritarianism and the restriction of political freedoms.

Even without massive vote-rigging on election day itself, the incumbent often has unfair advantages and many possibilities of manipulating the political competition to his own benefit in more or less subtle ways. One particularly helpful advantage is the utilisation of the state apparatus and state resources by the incumbent or the relevant government party in the election campaign and beyond. And the lack of transparency and constitutional control mechanisms in many cases make the misuse of state resources particularly easy.

Important democratic institutions such as the judicial apparatus frequently do not provide the necessary counterweight, while security forces, such as the military and the police, mostly act in line with the incumbent’s interests or are deployed by them specifically to crack down on opponents. The electoral commission is usually also under the incumbent’s de-facto control, and in many cases he appoints its members.

Media reporting is often biased in favour of the incumbent, not only through their use of the state media but also due to the state actively influencing private and independent media.

Opposition candidates and election campaigners are frequently subjected to massive harassment. This includes campaigning appearances being prevented, opposition activists being arrested more or less arbitrarily, and campaigning materials being confiscated. Occasionally, this goes as far as presidential candidates from the opposition landing in jail on dubious charges – as recently occurred in Niger and Uganda.

The influence of the politics of regime survival can also be seen in general tendencies to restrict



Colourful water cannons: Oppositional powers have to fight in many countries – like here in Uganda – against considerable reprisals. [Source: © James Akena, Reuters.](#)

political liberties even outside electioneering periods. This affects critical media and civil society in particular. In this context, the respective governments also make use of legislative means, for example by adopting restrictive laws to regulate media and non-governmental organisations. Many African countries have, for instance, recently adopted laws that massively curb the funding and registration of NGOs. This is aggravated by the fact that there are new laws that restrict freedom of assembly. Examples

include the Public Order Act in Zambia and the Public Order Management Act in Uganda. Both made it easier for the government and security services to prohibit or break up undesirable demonstrations or opposition events.

Of course incumbents also benefit from the weakness of the respective opposition parties as is frequently in evidence. The parties suffer not only from funding problems (there is usually no or only rudimentary party or campaign

funding provided by the state) but also from weaknesses in terms of organisation, strategy, personnel and policy content. Added to this is the fact that there are hardly any ways for the parties to promote themselves at a local level because of the centralist structuring of most of the African states. A survey by Afrobarometer from 2014/2015 showed that opposition parties received the lowest trust ratings of all essential democratic institutions.¹²

The proliferating use of the Internet and social media represents a new challenge. While these offer opportunities to network, exchange information, organise opposition and reach out to the public, many African governments appear to respond with apprehension. Last year, there were, for instance, no fewer than four cases (Uganda, Republic of the Congo, Gabon and Chad) where access to the Internet or social media, as e.g. Facebook and Twitter, was blocked during election time. Cameroon is currently in the headlines due to weeks of a total block on Internet access in the Anglophone regions of the country after the outbreak of anti-government protests there.

Term Limits vs. Permanent Hold onto Power

One important tool to curb the above-described tendencies to hold onto power at any price consists of term limits, which are also common in many presidential democracies outside Africa.

Term limits minimise the described advantages of incumbency and prevent elected presidents from holding onto power indefinitely in view of the tendencies towards abuse of power and manipulation of political competition. The point of limiting the terms in office is to ensure a healthy rate of regular change at the top. At least theoretically, it is also meant to prevent corrupt and networks of clientelism from becoming entrenched. In the course of the period of liberalisation and democratisation during the 1990s, corresponding clauses were enshrined in the constitutions of over 30 African countries. Generally, the time in office is restricted to two terms. But over time,

these rules have come increasingly under pressure. More and more incumbents are querying the constitutional barriers to a third term. Between 1999 and 2016, there were a total of 18 attempts by incumbents to amend the constitution to be able to extend their time in office. Twelve of these attempts were successful – and in all twelve cases, the incumbents did, in fact, go on to win the elections.

In some countries, the incumbents found it relatively easy to secure the constitutional amendments to remove the term limits, particularly as the respective governing party usually had the majority in the country's parliament. In some cases, as most recently in Rwanda and the Republic of the Congo, the relevant constitutional amendments were legitimised via a referendum. In Uganda, on the other hand, the removal of the term limits was “piggy-backed” onto the reintroduction of multi-party democracy in 2006. In other countries, the attempts proved more difficult and even triggered some serious political crises. One case in point is Burundi, where President Pierre Nkurunziza's candidacy for a third term led to massive protests, ethnic tensions, an election boycott and a failed coup attempt by the military, taking the country to the brink of civil war.

But there are some positive examples, too. In Malawi (2002), Nigeria (2006) and Zambia (2001), the respective parliament opposed a constitutional amendment. In Senegal, voters punished President Abdoulaye Wade, who had to relinquish his office after standing for a third term without a constitutional amendment, which he was able to do because of some legal loopholes despite term limits being in place. The downfall of President Blaise Compaoré, who had governed Burkina Faso for 27 years, aroused particular attention. Contrary to many of his colleagues on the continent, he miscalculated when he attempted to ease the term limits via a constitutional amendment in 2014. Country-wide mass protests and demonstrations ultimately resulted in the army removing the president from office, a civilian transitional government being put in his place and the election

of a new president in 2015. The elections, which were peaceful and attracted praise from observers, marked a turning point in the country's democratic development.

Many observers regard the – sometimes more, sometimes less successful – protests in many countries against attempts to remove the term limits as an indication of an increasing political awareness among the population. The growing pressure on Africa's long-serving presidents does indeed predominantly come from the people themselves rather than from outside. Surveys conducted by Afrobarometer have found that in Africa, three-quarters of the population on average are in favour of term limits.¹³

Even though they represent an important tool, term limits alone, of course, do not guarantee democratic change. Mozambique and Tanzania, for instance, demonstrate that the upholding of term limits does not necessarily prevent single-party dominance. In these countries, the same parties have been in power continuously since independence, namely FRELIMO in Mozambique and *Chama Cha Mapinduzi* (CCM) in Tanzania.

Main Trends and Influencing Factors: Where Does the Journey Take Democracy in Africa?

Considering the complex dynamics, it is difficult to provide a clear prognosis for democracy in Africa. That said, a number of key trends and influencing factors are becoming apparent, which will all have a significant impact on future developments:

1. Demographic Development

Population growth in Africa is continuing unabated. According to forecasts, the population number of roughly one billion is set to double between now and 2050. Consequently, the population is becoming ever younger. Over half of all Africans are under 14 today already.

This trend entails opportunities and risks. On the one hand, the young population offers a great deal of innovative strength. And the younger generation may exert stronger pro-democratic pressure; there are definitely signs of the necessary political awareness growing. At the same time, many countries will reach the limits of their capability to guarantee their growing population appropriate developmental progress. If this progress fails to materialise, the relevant political systems may come under increasing pressure and ultimately suffer a legitimisation crisis. If the people's frustration were to boil over, that would inevitably make for political instability. To prevent this from happening, job opportunities and opportunities for participation must be provided for the young in particular. Youth participation will increasingly become a key issue for democratic development in Africa.

2. Economic Development

After a phase of euphoria about the supposed "African economic miracle", disillusionment makes itself felt. Declining demand from China and falling natural resource prices have had a serious impact on African economies, many of which are overly reliant on the export of a limited range of natural resources. But the growth forecasts for the continent as a whole remain positive, albeit seen with a view that focuses rather on the long-term perspective than has been usual to date.

These circumstances are not necessarily detrimental to democratic development. As African governments become more aware of the need for economic diversification, this could result in more inclusive growth. Most Africans have felt little benefit from the economic upturn to date as the focus on natural resource exports has hardly generated any added value or jobs domestically. Instead, it is first and foremost a small elite that has benefited financially. Diversification could also mean that the currently still rather small African middle class would grow significantly. Experiences from other countries have shown that a growing middle class can have a positive



Old presidents: The growing number of long-term rulers has devastating consequences for the continent – some have been holding on to their power for decades. [Source: © Carlo Allegri, Reuters.](#)

impact on democratic development. Growing prosperity favours democracy. Conversely, the rule of law and democratic governance encourage sustainable and inclusive forms of economic activity. In an ideal scenario, growth and diversification on one side and democratic progress on the other could reinforce one another in Africa. But in many countries, it is unlikely that this will materialise without greater pressure from their own populations.

3. *Urbanisation*

Not only is the African population undergoing dramatic growth, it is also set to become increasingly urban in future. The growth of cities and the rural exodus will mean that around half of the African population will probably live in urban areas within twenty years from now. That may make it more difficult for many governments to hold onto power by dint of the usual

methods. The urban population is generally better informed, better networked and more critical. It is therefore no wonder that there is considerably more support for opposition forces in the cities in most countries.

4. *Digitisation*

Of course, rapid technical progress and digitisation have not bypassed the African continent. People are increasingly better informed thanks to mobile communication and the Internet – and this includes global developments. The diversity of methods and sources for obtaining information raises political awareness and makes it more difficult for governments to manipulate public perception. Social media also offer networking opportunities that civil society, social movements and opposition forces in particular can use to their advantage. The potential in this area is still nowhere near being fully exploited in Africa. With the impending increase in Internet penetration and decreasing costs for online access and smart devices, the proliferation and utilisation of the possibilities will expand massively. This entails huge opportunities for democratic development. Yet, African governments are adapting to this trend as well, for instance by increasing investments in digital monitoring and by adopting laws to impose stronger regulation. In extreme cases, online access and social networks are simply blocked, as was recently the case in Uganda, Cameroon and some other African countries.

5. *The China Factor*

China's influence in Africa has grown significantly over the last decade. Making rapid and massive investments, China has outstripped Western actors in many areas and has risen to become the continent's most important trading partner. In doing so, China is not very discerning in its choice of partners when it comes to matters of democracy and human rights and, in line with its sovereignty doctrine, applies few political conditionality. Being able to turn to China as an alternative has strengthened the self-confidence of many African governments

in their dealings with Western donors. And yet, China's dominance and particularly its political influence should not be overstated. It is not in China's interest to become the first port of call for authoritarian regimes seeking an injection of funds. Instead, it is taking a pragmatic stance and looking for investment opportunities and sales markets. Also, there is growing criticism in many African countries about the rapid investments from China as people become more aware of the growing debt these involve. And reservations against cheap Chinese imports and Chinese-led infrastructure projects are increasing among the population as these generate little added value or jobs locally.

Furthermore, consideration of the Chinese way as an alternative development and governance model is rather a rhetorical exercise in most cases; in practice, it is only seen as a genuine option for serious implementation in very few exceptional cases.

6. *Western Influence*

Western actors remain important partners for Africa although they may have lost in credibility and partly also in influence. Generally, the West is considered too complicated in its development cooperation, too incoherent and inconsistent in the exertion of political influence and too restrained where investments are concerned. The handling of the financial crisis, the problems within the European Union and the Brexit decision as well as the rise of populist and illiberal forces have in African perception resulted in a loss of credibility and raised doubts about Western democracy as a model of success. Of course, Donald Trump's early days as US president were watched with particular interest in Africa as well. To date, there is still no indication as to what the future Africa policy of the United States will look like; but one can hardly assume greater engagement in the areas of democracy and human rights. The numerous African autocrats and pseudo-democrats would no doubt be relieved to receive less pressure and interference from Washington.

7. *Security and Terrorism*

The security risks resulting from terrorism and armed conflicts on the continent exert considerable impact on democratic development. Not only do conflicts and violence affect political stability directly and undermine the exertion of democratic governance. The dominance of security aspects can also weaken democracy indirectly. In a number of African countries, the fight against terrorism is thus used as a pretext for restricting personal and political freedoms. Conflicts and instability further the already strong dominance of the military in many countries on the continent. And the rightly increased focus on security policy and the fight against terrorism on the part of the Western partners sometimes results in contradictions, for instance when lower democratic standards are accepted in dealings with partners who are strategically relevant in these areas.

The Western partners have lost credibility and influence in Africa.

Coherent Advocacy for Democracy

Despite the importance of numerous external factors, the development of democracy in Africa ultimately depends on the population of the respective countries. The population will become increasingly younger as well as generally more prosperous and urban, better educated and better networked; but probably also more critical and more frustrated. This is bad news for many governments and above all for the “old guard” of the long-serving rulers, but good news for democracy – at least in the long term.

The situation is clear: there is a great demand for democracy in Sub-Saharan Africa, and there is no adequate supply. The majority of the African population supports universal human rights and democratic standards – and not a “special African way”. This important fundamental truth

should not be ignored. There are numerous different ways for external partners from Europe and particularly from Germany to promote democracy. These include measures to foster the free media and civil society and to strengthen citizenship through political education as well as specific measures to foster important democratic institutions: strong parliaments, an independent judiciary, political parties. The latter have been sorely neglected all too frequently in the efforts to further democracy, apart from the work done by the political foundations. But especially where young people are concerned, one must take into account that they tend to seek participation increasingly via non-traditional means and appear to shy away from involvement in political parties, for example. In this scenario, new options must be explored, such as the use of social media and the dynamics of social movements. For external actors, however, engagement for the purpose of promoting democracy and political rights and liberties is becoming increasingly more difficult. Such efforts are a thorn in the side of many (semi-) authoritarian regimes, which are increasingly developing counter-strategies. It is therefore no surprise that recent measures to limit the scope of political action – for instance through stricter regulation of civil society engagement – are no longer aimed just at domestic targets but increasingly also at external actors such as international human rights organisations and political foundations.

It will therefore become all the more important to develop and consistently apply stronger coherent approaches to further democracy. This is not incompatible with a pluralism of measures and instruments. Instead, there is a need to not only recognise the links between foreign, economic, development and security policies, but to utilise them systematically – not only out of idealism and a feeling of responsibility but also in the interests of Germany and Europe entirely.

Promoting democracy as the key element of engagement in Africa is based on the conviction – and empirical findings – that democracies are better guarantors of peace and prosperity in the long term. Warnings of potentially destabilising

effects of democratisation should not serve as an argument against promoting democracy. It is the above-described hybrid regimes forming the majority on the African continent which harbour the greatest risks to stability. That is also where the fragility of the state and the threat of conflict are most immense. At the same time, they are also the countries where there are the greatest possibilities for measures to further democracy. Such measures should above all be aimed at encouraging social pluralism and political participation while simultaneously strengthening capabilities in the area of conflict resolution to prevent escalations.

Promoting democracy is becoming more difficult in Africa for external actors.

In the short term, the current trends could definitely mean greater instability, particularly if autocratic governments see themselves confronted by a frustrated and protesting population and respond with greater repression. This may make some Western observers uncomfortable, but in view of the dominant issue of refugees and migration, promoting stability is a central concern. How things will develop depends above all on the ways in which the frustration will be vented and on whether pro-democratic pressure can be guided into constructive channels. The motto should be: less revolution, more (democratic) evolution.

The African continent is currently attracting special interest in connection with the ongoing refugee debate. This attention is important and offers great opportunities. Interest in promoting democracy on the one hand and aspects such as the fight against terrorism and curbing refugee movements on the other only appear to entail conflicting goals when seen from a very short-term perspective. Germany's Africa policy appears to be in a state of re-orientation. The pressing problems and the observed lack of success of development cooperation in the past

seems to bring about a desire for a new comprehensive approach. This is reflected in the rhetorically ambitious "Marshallplan with Africa" of the German Federal Ministry for Development Cooperation (BMZ) and the "Compact with Africa" -initiative of the German Finance Ministry. The latter is connected to the current G20 presidency, during which Germany is making "Partnership with Africa" a key point on the agenda. This focus provides a good opportunity to generate some important impulses for the international engagement to further democracy in Africa. In the "Marshallplan" of the BMZ the aspect of democracy and rule of law is highlighted as one of three key pillars. But just like in the "Compact with Africa", the emphasis is mostly on the relevance of political framework conditions for private investment. Creating this linkage is right and important. However, it also comes with the risk of a narrow understanding of the complexity of democratic development. Democracy promotion should not just be seen as a short-term means to economic ends, but rather as an integral and long-term oriented component of development cooperation with African states.

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- 1 The following text relates to the 49 countries in Sub-Saharan Africa (i.e. excluding the Arab countries of North Africa).
- 2 Cf. Puddington, Arch / Roylance, Tyler 2017: Freedom in the World 2017: Populists and Autocrats: The Dual Threat to Global Democracy, in: <http://bit.ly/2r1OjeJ> [26 Apr 2017].
- 3 Cf. The Economist Intelligence Unit 2016: Democracy Index 2016. Revenge of the “deplorables”, in: <http://eiu.com/topic/democracy-index> [26 Apr 2017].
- 4 Cf. Mo Ibrahim Foundation 2016: A Decade of African Government 2006-2015. 2016 Ibrahim Index of African Governance (IIAG), in: <http://mo.ibrahim.foundation/iiag> [26 Apr 2017].
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[The Fight for Democracy](#)

Finally on the Right Track?

In Latin America, the Desire for Greater Participation
Is Swirling up the Party Systems

[Kristin Wesemann](#) / [David Brähler](#)

Excessive violence, rampant corruption and defective democracies still dominate Latin America's image around the world. But the reality has, in fact, been somewhat different long since. Education, the internet and globalisation have produced a great deal of progress on the continent. Strong civil societies have developed, and they are calling upon their governments to provide answers to their problems. Politics is no longer the exclusive domain of the politicians. Citizens demand their say. Are the political parties ready for this? Can they reinvent themselves? If they want to survive, they have no choice.

Uruguay is once again consulting a physician, just as it did between 2005 and 2010. And it is, in fact, the same doctor as half a decade ago, oncologist Tabaré Vázquez, who is now 77 years of age. When he resumed the presidency on 1 March 2015, it seemed to be merely another triumph for a left-wing politician on the continent, like one of so many since the turn of the millennium. The socialist Vázquez took the baton from José “Pepe” Mujica, the “poorest president” worldwide according to (his own, well-tended) legend. Mujica, a former guerrilla fighter and leader of Uruguay's popular movement, had been a shining light among the left-populist club of Latin-American heads of state. His fellow office holders were Cristina Kirchner (Argentina), Rafael Correa (Ecuador), Hugo Chávez and Nicolás Maduro (Venezuela), Evo Morales (Bolivia), Ollanta Humala (Peru) as well as Luiz “Lula” da Silva and Dilma Rousseff (Brazil). They won elections and then steered the people and the country onto a leftist course, both politically and economically; they promised new beginnings, set up programs for the poor and were successful in their efforts – seemingly, as we know them today. The summits of the regional organisations, be it *Unasur* or *Mercosur*, turned into great socialist-communist reunions. Sometimes, even the eternal Daniel Ortega from Nicaragua and the movement's Cuban father figure, *el Comandante* Fidel Castro, called in.

While Vázquez' election victory in 2014 was hardly surprising, two and a half years on it has taken on much greater significance: it was the last leftist victory to date. Whereas the doctor had always had a style of his own: he is immaculately dressed at all times and observes etiquette. He does not give hour-long public speeches or think in the friend-or-foe paradigm. Nor does he try to curb press freedom; he even refers to the legal certainty in his home country when campaigning for support abroad. Detecting a populist aspect in his agenda takes a long time. In his campaign spots, one could actually see him railing against Uruguay's old elites, those families with domestic staff, large swathes of land and income from inherited wealth. Now, as many as 18 years on from the transition of power after the historic victory of the left coalition of the *Frente Amplio* over the perpetually ruling conservatives at the presidential elections at the end of 2004, the country has become one of the most stable democracies in Latin America. While the alliance of almost 40 parties, including Trotskyist, communist and Christian-democratic parties, do not seem to offer convincing solutions for the typical Latin-American issues of crime and corruption, inflation and economic downturn, it is at least solid and may even defend its hold on power at the next presidential elections scheduled for the end of 2019. Currently, such a victory would make headlines as rather unusual news.

After all, the left-wing populist cadres on the continent have weakened dramatically. Two important members, the Brazilian Rousseff and the Argentinian Kirchner, have already fallen from power, as has Humala in Peru. Ecuador's three-time president Correa is set to hand over power soon as he was not allowed to stand for election again (although he is dreaming of returning to office as others among his former colleagues). Those remaining in power include above all the two heads of state in Venezuela and Bolivia. But Maduro has become highly unpopular, even among the left. Doctor Vázquez himself avoids being pictured with him.

A Continent that's Always Good for a Surprise

For Latin America, 2016 was the 35th year since the beginning of the so-called third wave of democracy.¹ After the end of the military dictatorships of the seventies and eighties, democracy found its way in, but those in government engaged in a great deal of trial and error. The withdrawal by the state in the course of the economic reforms of the Washington Consensus of the 1980s went as far as political experts started to speak about defective democracies. The *marea rosa* – the pink tide that began at the end of the 1990s – entailed an abrupt U-turn, producing a state that considered itself omniresponsible and, it has to be said, omnipotent. For over a decade, three-quarters of all Latin-Americans were governed by left-wing governments, committed to the 21st century socialism born in Caracas to a greater or lesser extent. This tide has been ebbing for just over a year now; its battle cry *¡Vamos por todo!* (Let's go all out!) is fading away, virtually without any violence – another first on this strongly polarised continent.

Latin America has, in fact, always been good for a surprise. Politics and society are polarised, and it always seems to be a case of going all out. People there don't do nuances and compromise, which may in part be due to the fact that the middle class, which could act as a balancing force between the huge numbers of poor and the

tiny number of rich, is still too small and primarily concerned with its own survival. Changes in government on the continent have also often been difficult, even bloody, affairs, particularly if the changeover did not only involve people but also power and ideas. However, Latin America appears to have matured in this area as well. In some places, power now changes hands almost smoothly. The outcome of the Argentinian presidential election (2015) was as close as that of the referendum about a constitutional change to allow the incumbent Bolivian head of state to stand for a fourth time. But the losers – in the former case the Kirchneristas, in the latter Morales and his supporters – accepted the result. Even in Brazil, where parliament deposed Rousseff in a questionable process prompting millions to take to the streets, the protests remained peaceful on the whole. However, there is no cause for jubilation. There is still plenty of bad news reported from the continent. Violence erupted in Brazilian jails at the beginning of the year due to two drug gangs looking to settle scores. Apparently, it has cost 120 lives so far, while politicians and large parts of society watch the slaughter or even welcome it.²

Civil societies on the entire continent are demanding good governance and reliability from their politicians.

One does not have to search intensively to find problems elsewhere either: open violence on Mexico's streets, illegal mining in Colombia, car smuggling on a large scale at the Peruvian-Bolivian border, the globally largest marijuana production in Paraguay, starving children and political prisoners in Venezuela, the abolition of press freedom in Ecuador, as well as corruption scandals of gigantic dimensions and

Ghosts of the past: The wave of left- → populist successes that have characterised Latin America since the turn of the millennium has faded away in the meantime. [Source: © Reuters.](#)





Shining light: Argentina's President Mauricio Macri with his party PRO are one of Latin America's greatest hopes. Source: © Marcos Brindicci, Reuters.

natural disasters of every kind, from droughts and flooding to fires, earthquakes and volcanic eruptions.³ But that is only part of the story about life on the continent. There is one trend that is sweeping virtually all over Latin America: civil societies are growing stronger and demand good governance and reliability from their politicians. If all fails with loud protests, as the innumerable mass demonstrations of the last few years have shown. Latin America is “back on the right track”, as *The Economist* stated recently, albeit adding the sceptical addition, “mostly” in brackets.⁴ Venezuela’s Maduro may ignore the

parliament and plan to rob the opposition of its rights. Evo Morales may believe that all courts of law should be instruments of his government. But to most people in Latin America democracy is “the only game in town”.⁵ Even if some presidents do not want to admit it.

Politics as an Elite Project?

As recently as July 2013, the US professor of politics Kurt Weyland wrote the following in *The Atlantic* newsletter: “For the first time in decades, democracy in the region is facing a

sustained, coordinated authoritarian threat.”⁶ The Venezuelan President Chávez had died only a few months previously and was resurrected – or more accurately laid out – immediately after drawing his last breath: as the continent’s saviour of the populist left. In later life, Chávez had become more radical, evolving from an admired man of the people into a feared autocrat and simultaneously demonstrating to his counterparts elsewhere in Latin America how to secure and maintain power: take the holding of referenda to abolish term limits; have a few internal and external enemies, who demand things such as freedom of speech and press freedom and do not want the people’s will to be done; and finally weaken all other state powers and throw money down the drain for social programmes until resources run out. This is 21st century socialism at its best. Its imitators from Buenos Aires to Managua attempted to dismantle their own democracies, albeit with different levels of intensity and success.

The great majority of Latin Americans believe the political elites act in their own personal interest.

Latin America has learned its lessons. After all, people have followed know-it-alls, supposed reformers and jacks-of-all-trades and even self-proclaimed saviours long enough. But that did not help the continent to get on the right track. Perhaps there is no “right track”. Things were, are and will probably always be complicated. Certainly, the enormous inequalities that are an enduring constant in the region can be reduced by initiating social programmes, but only if they are above board and not only help those people whose favour and votes are in return expected by those dispensing the aid. Of course, a president can uncouple his or her country from the global economy – or attempt to do the exact opposite. But neither extreme approach has resulted in a particularly good outcome on the continent. Latin America has

recently come to appreciate the benefits of what people elsewhere in the world are currently struggling to master: making compromises, balancing opposing positions, and the laborious, lengthy wrangling for a solution that can win the support of all opponents without them losing face. But politics still has a difficult time. While surveys indicate that over half of all Latin Americans regularly support the idea of democracy and consider it the best form of government,⁷ the great majority – 73 per cent on average according to a 2015 survey – believe the political elites act in their own personal interest; that was the highest percentage in twelve years.⁸ And that is grounds for a certain degree of pessimism. Citizens are worried about a number of issues, including the economic uncertainty, corruption and – particularly in Central America – violent crime. And yet, they want their countries to open up economically and work together more closely. Integration, currently definitely not a popular topic in election campaigns in Europe and the USA, promises hope, a way out of the economic crisis that the continent has been suffering from for at least six years, since the end of the natural resources boom.

In Latin America, politics remained an elite project for a long time. The independence heroes themselves predominantly originated from the upper class, and the people followed them. So the liberation from the colonial masters was definitively not a textbook revolution. This is where the ruling principle of *caudillismo*, the unwavering trust in the creative power of the leader who looks after one’s family like a patron, has its roots. But now, the continent is about to liberate itself a second time, but this time from the figure of the *caudillo*, the authoritarian father figure. What people want now is to have a say, participate, take their future into their own hands. Given that, maybe the widespread mistrust of politicians is actually in tune with the zeitgeist, probably even important and at the very least, understandable. It appears the times of lethargy and pessimism, during which people were resigned to accept whatever was happening, are over. The *Latinobarómetro* shows that there has been an increasing willingness

on the part of the people since 2013 to take to the streets and organise themselves in support of transparency, better healthcare, democratic rights and against abuses of power and mismanagement; at a value of six to seven on a scale from zero to ten, this willingness is rated to be “very high”.⁹ The leaders themselves are also learning and practicing the abdication of power. While government forces still frequently deal rather harshly with demonstrators, the heyday of military coups now lies in the distant past. The military as a political actor have been retreating for quite some time. It appears that Latin American democracy has finally come out of puberty – it was about time! And all of a sudden, one topic interests political scientists and politicians alike: does a democracy need political parties? Because according to the textbooks, political parties are meant to channel numerous different opinions and translate them into policies. In Europe and North America, they have been absolutely crucial (to date).¹⁰ Latin America, on the other hand, has been conforming to old clichés in its recent past. Time and time again, one encounters strong men like Sebastián Piñera in Chile for example, who win elections almost single-handedly, social movements that are looking for an alpha male to lead them (Morales in Bolivia, Lula da Silva in Brazil) as well as people such as Guatemala’s comic actor Jimmy Morales, one of those upstarts who outshine the staid establishment politicians. But there is hardly any sign of stable party systems and structures, not even further towards the front of the history book.

Despite democracy, the number of consolidated political parties in Latin America is limited.

A number of younger political scientists have therefore recently examined the conditions under which political parties emerge – and the reasons why only very few stay the course. Latin America was the ideal location for conducting

some field studies as the number of consolidated parties there is limited despite democratic systems being in place. In many countries, traditional forces with a long history have virtually disintegrated; out of the 255 parties that formed since the beginning of democratisation from 1978 to 2005, only eleven have taken root, a mere four per cent.¹¹ Hardly any of the rulers have taken an interest in establishing reliable, stable party structures. Particularly the left-wing populists believed (and still believe) that a ruler must communicate with the people directly to appear truly democratic. The tasks that political parties are actually meant to perform in democracies, which academics describe by terms such as policy formulation, policy implementation, parliamentary control and recruitment for public office, are carried out by the traditional Latin American leader on his or her own, with his or her entourage, without any attempt at transparency. There is no party-internal decision-making process in the classic sense. The candidates for parliamentary elections, for instance, are not nominated at a party conference but by *la mesa chica*, in other words, the leader him- or herself, possibly in consultation with a small circle of confidants. The Argentinian newspaper *Clarín* described the selection process that was common under the left-wing Peronist president Kirchner, as reaching for the *lapicera y guadaña*,¹² ballpoint pen and scythe. Parties are consequently predominantly instruments for exerting power. People are rewarded for their loyalty, not to say obedience. Debates are undesirable, positions change and are adjusted to the chances of success.

Outsiders, who only set up a political party to be able to stand in the next election, benefit from the fact that civil societies no longer stick to the left-right spectrum, and religion hardly plays a role any more as content-related uniting force. Social networks, however, have great influence. In this area, the continent is definitely part of the First World. Eight out of every ten Latin Americans live in cities; not everybody there has access to drinking water, but life without a smartphone is hard to imagine. 60 per cent of the people now have access to the Internet.¹³

The ten countries whose citizens spend the most time online include Argentina, Mexico and Brazil, even ahead of the USA and any European country.¹⁴ At 50 per cent, more people in Latin America use social networks than in Europe. Over half of the more than 600 million Latin Americans actively use Twitter, Facebook, Instagram, Snapchat, etc.; only in North America and some Asian countries are the figures higher.¹⁵ Facebook alone has 322 million users in the region.¹⁶

The great influence of social media also offers opportunities for the political parties.

The digital revolution is changing politics, and with it, the political parties, and not only in the way parties communicate with their voters or members. Debates and meetings akin to party conferences could take place in the digital sphere. On a continent that is twice the size of Europe and more inaccessible in the truest sense of the word, that need not be a disadvantage. On the contrary. It represents an opportunity for finally overcoming barriers such as paternalistic organisational structures and the lack of member participation.

In the course of the research for their study on Latin American political parties, political scientists Steven Levitsky, James Loxton and Brandon Van Dyck defined when such forces can be deemed to be stable. And they only included parties in the list at all if they had received at least one per cent of the votes in a national election. In their opinion, a party cannot be considered successful until it has won at least ten per cent of the vote in five or more consecutive national legislative elections, and also survived the departure of its founding leader.¹⁷

However, the figures constituting the database do not go up to anywhere near the study's publication date; it is consequently difficult to say how many political parties are currently in

existence in Latin America. Reliable numbers are missing. Some parties are thus classed as "incomplete" cases although they have been in government for over a decade. These include the *Movimiento al Socialismo* (MAS) of Bolivia's leader Morales and the *Partido Socialista Unido de Venezuela* (PUSV), which Maduro inherited from the founding president and "Eternal Leader"¹⁸ Chávez.

Learning from Soccer

Seeing the large number of political parties that have come and gone over the last few years, one may well ask: How do they emerge? Why do they frequently disband very quickly? And what needs to happen for them to survive and ultimately strengthen democracy and its rules? The political scientists around Harvard professor Levitsky make one thing clear: neither democracy as a system of government nor electoral laws and the functioning of state institutions appear to have any influence on a country's political party system. And that is bad news for all those whose work starts precisely there. Some authors, for instance, even describe the link between percentage thresholds at elections and the strengthening of parties as "trivial".¹⁹ The assumption that parliamentary systems strengthen parties therefore does not apply to Latin America. Also, the rules governing elections change so frequently in Latin America that they cannot even be used as constants in the examination of the matter.

One other aspect is typical of Latin America: it is not a stable democracy that encourages new parties to be set up. As was the case in Europe and the United States, many of the historically grown parties were formed in times of violent conflict; "polarization and violence were also a major source of party-building during the third wave" of democratisation.²⁰ Examples cited in the above-mentioned studies include the MAS in Bolivia and *chavismo* in Venezuela. Today, other parties have taken their place: the *Demócratas* in the Andean country and *Primero Justicia* in the Caribbean republic. The current Argentinian president's party PRO also fits the mould,

although it is still categorised as “incomplete” in the analyses of Levitsky and his team. One thing becomes clear particularly in this context: parties that operate in an autocratic environment, and are therefore restricted not only in their scope for political action but also in their access to the media and state apparatus, can only survive and grow if they organise themselves.

According to Levitsky and his colleagues, there are three simple things that all those who wish to make a party successful need to strive for. *Firstly*, they must cultivate a strong partisan identity. In other words, the party must stand for something and its supporters and members must identify with the party. *Ponerse la camiseta* is the way this is referred to in Latin America, i.e. put on the shirt and show your allegiance. Because only those who stand behind the party and are loyal to it in the same way as to their soccer team will engage on its behalf and know what differentiates it from other political organisations. “You may be able to change your wife, but never the colours of your club,” goes an Argentinian saying. Soccer fans live in the so-called state of *aguante*, endurance even in difficult times and after heavy defeats. Many parties with a long tradition – the Peronists and the radicals in Argentina, the *Blancos* in Uruguay, the supporters of Mexico’s *Partido Revolucionario Institucional* – draw special strength from their followers’ resilience in the face of adversity and from their pride.

Secondly, a party’s success requires presence, not only in the form of the president but preferably throughout the country. That means it needs a reliable structure, be it in official form via bodies and formal membership, via grassroots organisations and social movements, which abound in Latin America, or via informal clientelist structures or systems of patronage. The reasons are obvious: those who are close to the people will find it easier to coax them to the ballot box on election day. A resilient structure also makes it easier to survive crises. And, those who are familiar with local issues can stand for election in cities and regions, thereby demonstrating their capability to serve in government.



The *third* element for a party’s success is, consequently, cohesion. This simply means a solid link between the top echelon and the party members. Particularly in times of crisis, it is important that the leadership stands together so as not to unsettle the party base and the voters.



Unconditional: Only if the party succeeds to – similar to soccer – secure loyal followers also in bad times, they will be successful in the long run. Source: © Mariana Bazo, Reuters.

No doubt the secretary general of a well-organised Western traditional party will just shrug their shoulders wearily at these recommendations because they merely represent the hard graft central to any party's political work. But in Latin America, the realisation that strong and well-organised political parties will be successful in the long term, and can win elections as a

result, is quite novel. Maria Lagos, the director of *Latinobarómetro*, said to *The Economist* that the progress made during the last few decades had raised expectations in Latin America as well, but that citizens still had little trust in the institutions. The parties must counter the dissatisfaction with what the current leadership has to offer by putting forward solutions for the most

urgent problems such as crime, inequality and corruption if they do not want to run the risk of being replaced by less democratic alternatives.²¹ That requires people who are dedicated to this task and can encourage others to join them to serve their country.

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[The Fight for Democracy](#)

The Art of Transition

Will the Democratic Transition Bring
Genuine Change to Myanmar?

Norbert Eschborn

In 2010, after decades of enforced self-isolation under a dictatorship, the country formerly known as Burma set out on a slow journey of opening up, reaching its peak to date in November 2015 with the first democratic elections in a quarter of a century. The government formed by the National League for Democracy (NLD), the party of Nobel Peace Prize Laureate Aung San Suu Kyi, is finding it difficult to manage the unfamiliar tasks of running the country and measuring up to the people's and the international public's expectations as well as meeting the innumerable challenges of the multi-ethnic country of Myanmar, which is still marked by internal unrest.

The hype is over.* Since the time when Myanmar was featured regularly in the world's leading media during the initial phase of its alleged transition to democracy between 2010 and 2015, interest has waned notably. Particularly for renowned prophets of world events, the country was not even worth mentioning in the latest issue of their predictions "The World in 2017".¹ It appears that the international public is under the misapprehension that political change towards democracy is completed once general elections have been conducted successfully. In the case of Myanmar, the situation is obviously aggravated by the fact that the shining light of the transition, the Nobel Peace Prize Laureate and NLD chairperson Aung San Suu Kyi, was beyond reproach for a long time – abroad almost even more than at home. Her public image was associated too closely with the aura of a martyr suffering years of house arrest, while that was not necessarily the way she saw herself.² Consequently, it took a long time for a more questioning and informed discourse to arise, capable of critically examining the country's situation in the new era under the NLD's leadership and clearly explaining it to the international public.³ Taken as a whole, the situation in Myanmar, which gives no cause for optimism, does not really come as a surprise.

The 2015 Elections: Difficult Beginning despite a Convincing Mandate

No doubt the elections of 8 November 2015, which ended in an overwhelming electoral victory for the NLD at all levels of the political system and in almost all parts of the country, can be seen as marking a turning point in Myanmar's recent history.⁴ The party won 79 per cent of all the electable seats in the two houses of the Assembly of the Union. This NLD wave also swept aside the political competition in the seven parliaments in the Ayeyarwady, Bago, Magway, Mandalay, Sagaing, Tanintharyi and Yangon Regions, where the party won majorities ranging from 63 to 75 per cent. Its election victory was not quite as overwhelming in the ethnic states. In the Chin, Kayah, Kayin and Mon States, the NLD won majorities ranging from 50 to 61 per cent. Only in the Kachin, Rakhine and Shan States was the party not able to achieve an absolute majority despite very good results.

The outcome of the eagerly anticipated elections met with a euphoric reaction, not only in Myanmar but also around the world. The headlines spoke of a landslide, celebrated as a "triumph of hope".⁵ However, even back then many commentators pointed out that the new government would have to contend with numerous challenges and forecasted troubled times to come. What they referred to was the task of translating the weighty mandate obtained from



Leading figure: Although she cannot be appointed president for constitutional reasons, Aung San Suu Kyi de facto leads the new government. Source: © Soe Zeya Tun, Reuters.

the people in the election into successful policies and simultaneously finding a modus vivendi for working with the military (*Tatmadaw*), who would continue to exert political influence. Even at the moment of greatest jubilation, the military did not leave the NLD and its chairperson in any doubt as to who was ultimately responsible for initiating the change. Former President Thein Sein made this very clear when speaking to journalists shortly after the elections: “The election is the result of our reform process”.⁶ Looking back, the self-assurance needed by the former junta general at home and abroad seems necessary; especially to establish – from the military’s point of view – its own role in the context of the nascent changes in the political landscape before 2010 in the historiography. There has been a great deal of discussion nationally and internationally about the reasons

for the change of mind among the military leadership. Figures from the ASEAN region saw the change not so much as an act of self-preservation of a despondent authoritarian regime but as something more prosaic: “The generals could see that the country was in a cul-de-sac. There were no options left.”⁷ Even cyclone *Nargis*, which devastated Myanmar in 2008 and took more than 100,000 lives, as well as the much-criticised unprofessional crisis management by the government in Naypyidaw have been cited as possible reasons, as was, to a lesser degree, the so-called Saffron Revolution led by monks in the autumn of 2007.⁸

Whatever the motivation ultimately tipping the scales in favour of the controlled opening of the country, the generals’ approach was in line with the trend of public opinion from 2010 onwards.

In various surveys published even before the 2015 elections, a majority of the Myanmar population expressed their preference for a different political system, and most of the respondents advocated democracy. This is surprising insofar as the same surveys show clearly that Myanmar has the most traditional and conservative political culture in Southeast Asia with hierarchical thinking and a deep-rooted respect for authority.⁹ Nevertheless, as many as 88 per cent of respondents already voiced the opinion that things in the country were heading in the right direction back in 2013, when the opening process was still evolving.¹⁰

Myanmar has the most conservative political culture in Southeast Asia; nevertheless, a majority was in favour of political transformation in 2015.

The NLD's election victory was followed by a relatively long phase during which the preceding administration gradually transferred government responsibility. These five and a half months were characterised by wrangling between the two sides, which were unable for a long time to even agree on the procedures of the formal handover of power. According to the media, the dispute dragged on for several weeks, reportedly prompting Aung San Suu Kyi to say that Myanmar was a global leader in the length of transitions. Politically more significant was the hope, which the NLD still clung to for some time after its election victory, that the overwhelming mandate received from the public would ultimately persuade the military, contrary to their former and consistently expressed stance, to drop their opposition against Aung San Suu Kyi standing for president. After all, there could be no doubt that the overwhelming majority of the population wanted to see Aung San Suu Kyi as head of state: In no other way is the broad support for the NLD in the parliamentary elections to be understood. This idea was

also promoted vociferously by NLD supporters living in the West,¹¹ although there had been a widely conducted debate about the controversial Article 59 (f) of the Myanmar constitution¹² for several months beforehand. Subsequently, there was a general consensus that the Nobel Peace Prize Laureate would be barred from the highest public office for constitutional reasons, namely because her two sons had foreign citizenship; this was the case despite the fact that the applied 2008 constitution had no democratic legitimacy and one could undoubtedly assume that the foreign citizenship of the "Lady's" sons was and remains of minor importance to the people. Nevertheless, the charter formed the basis of the transition plan conceived and implemented by the military-controlled predecessor government. Everyone adhering to this plan was a prerequisite for the military's continued support for the transition process. Consequently, Aung San Suu Kyi was merely left with the prerogative of being able to select the candidates for the office of the head of state, based on her position as NLD chairperson and her personal charisma. She had announced that if she were not allowed to take over the top job herself she would govern by directing a person of her trust in the presidential office. She also said she would insist on having the final say on all key issues on an informal basis. This political outsourcing of the presidency and the prospect of a quasi-constitutional body in the person of Aung San Suu Kyi, which has no basis in the constitution, led to a wide debate in the media. To many, this option seemed to be too inconceivable, too impractical and too unlawful. However, her announcement was implemented exactly as stated with the nomination and subsequent election of her long-term confidant Htin Kyaw to the office of the head of state in March 2016. This decision was the first indication of the determination of Myanmar's new political leadership figure to adhere to her strategic goals.

Achieving Power through a Loophole: The Route to Becoming "State Counsellor"

Aung San Suu Kyi, who was initially slated to take over four challenging ministerial posts in

the new government, an incredible number to Western eyes,¹³ was not willing to direct policy guidelines merely on an unofficial basis, without a formal assignment of competences, responsibilities and budgets. The post of Foreign Minister alone would, in fact, have suited her affinities and also matched what she could bring to this office by virtue of her personality. One can also assume the military wanted to see her in this office, helping to have the sanctions against the country lifted by showing a face representing a new, democratic Myanmar and thereby furthering an economic upturn. But Aung San Suu Kyi and her party obviously wanted more, although constitutional reform was beyond their influence. After the unsuccessful inofficial presidency initiative, the NLD leadership devised a new strategy instead by drafting a “State Counsellor Bill”, which would allow the party chairperson to perform this advisory function for the government, making her a de-facto head of government, a position the constitution did not provide for.¹⁴ This elicited a furious reaction from the surprised military faction in the assembly; its constitutionally enshrined blocking minority of 25 per cent of the seats may be helpful for preventing changes to the constitution, but it proved ineffective in blocking the adoption of a simple bill via a majority vote in the two chambers of the Assembly of the Union dominated by the NLD.¹⁵ The “Lady” and her party had thereby created political facts and demonstrated how far they were prepared to go to implement their agenda. The suspected mastermind behind this tactical political move, top NLD lawyer and Muslim human rights activist U Ko Ni, was shot and killed in broad daylight at Rangoon airport on 29 January 2017.¹⁶ He was known to be critical of the 2008 constitution and the way it enshrined the military’s position of power. For the very reason the network behind the murder consisted mainly of ex-military personnel, as the police investigation uncovered, the military felt compelled to issue an official denial of any involvement in the act.¹⁷

Not Yet on Equal Footing: Parliament Working under Stringent Limitations

When the NLD took over government responsibility, there were many new members in both chambers who were totally unfamiliar with the parliamentary tasks now assigned to them. This posed the question as to whether this inexperienced legislature would ever be able to work on equal footing with an executive that has always been able to push through its policies thanks to the country’s centralised government structure. The seemingly unaccentuated way the new President Htin Kyaw was performing his role also left no doubt that the power structures had been set up precisely as Aung San Suu Kyi had intended. A news magazine reported as follows about the concentration of power in the person of the State Counsellor: “Suu Kyi addressed her party’s lawmakers the afternoon before the presidential vote in March, lecturing them on exactly what to do and reminding them of their responsibility to carry out her will.”¹⁸ In parallel, the party leadership issued strict instructions regarding the NLD parliamentarians’ public relations: no talks with media representatives and no participation in civil society events without approval, nor any questions in parliament that had not been previously vetted – modes of practice the media perceived as worrying.¹⁹ These restrictions imposed on the elected people’s representatives are exacerbated by a lack of knowledge in key areas of political communication (media relations and public relations) and personal branding, the public self-marketing of individuals in political competition. People have currently to put up with the parliamentarians not yet being capable of fulfilling their function appropriately due to inadequate working conditions. Particularly the lack of funding as well as shortages of support personnel and technical resources clearly need rectifying. The situation is made worse by procedural issues with the conduct of parliamentary business, for instance in the House of Representatives (*Pyithu Hluttaw*). Among other things, representatives complain that the current procedure for submitting proposed resolutions disadvantages the representatives from minority parties.

Representatives are also not happy about the fact that only one supplementary question can be asked in addition to those questions submitted according to the rules during the regular question-time sessions. Other representatives are not permitted to ask questions of their own relating to a question submitted by a colleague. Responding members of the government can only read out prepared answers and are not allowed to add any impromptu comments of their own. Currently, committees can only conduct hearings with the approval of the Parliament's Speaker. All these restrictions prevent the parliamentary operation from developing the dynamic that should exist between legislature and executive and deny the parliamentarians important information and control instruments.²⁰

According to Aung San Suu Kyi, ensuring solid development progress will not be possible in Myanmar without an enduring and binding peace agreement.

Political Priorities and Problems: Peace Process and Rakhine Unrest

Despite the NLD only having been in government since April 2016, the party and its chairperson have defined several clear political priorities, particularly in the area of domestic policy. The most important is the resumption or continuation of the internal peace process with the ethnic armed organizations (EAOs).²¹ Aung San Suu Kyi's intention was to complete a historic process that her father Aung San had begun in 1947 with the Panglong Conference, named after the location of the event in Shan State. In collaboration with representatives from the Chin, Kachin and Shan minorities, he wanted to determine some very general conditions for the different ethnic groups living together after independence.²² According to this agreement, which predated independence of 1948, the constituent

states were to be awarded fundamental rights and privileges and they were to retain their existing autonomy.²³ There was no mention of any federalist concept and this was, if present at all, an implicit part of the agreement. The Karen, Karenni, Mon and Rakhine minorities were not involved. While the 1947 constitution enshrined the theoretical possibility of the secession of constituent states, the military governments in power after the assassination of Aung San consistently strove for a centralist state. Aung San's daughter, keen at all times to maintain her father's legacy and uphold his public image as a national hero, made it clear in public statements even before the new government took office that in her opinion there was virtually no chance of solid progress being made in the country's development without an enduring and binding peace agreement. After the NLD's election victory, Aung San Suu Kyi consequently declared that the peace process would be the first priority of the new government.²⁴ After close to 60 years of civil war with ethnic groups that had organised themselves in 21 EAOs, 14 bilateral ceasefire agreements were made between individual groups and the government between 2011 and 2014. From 2013 to 2015, President Thein Sein's administration conducted collective negotiations, which ultimately resulted in the Nationwide Ceasefire Agreement (NCA) of 15 October 2015. However, that was initially only signed by eight of the 16 EAOs that had been involved in the negotiations, and it did not prevent several outbreaks of armed violence in Kachin State as well as in the north of Shan State. Aung San Suu Kyi must have seen this as a threat to her own agenda, because as early as 2015, she called upon those involved in the NCA negotiations not to conclude any hasty agreements with the then government.²⁵ This should be left to a process under her leadership, which was subsequently initiated with the so-called 21st-Century Panglong Conference held in the capital Naypyidaw, the State Counsellor's first significant attempt to guide the peace process. Among the total number of participants estimated at 1,500, she brought together over a dozen EAOs as well as government and military representatives. It was noticeable that the government had

been lowering expectations of a decisive breakthrough beforehand. In the end, the conference resulted in a sequence of prepared statements or position papers by various involved parties being read out without any negotiations on important issues being conducted. Nevertheless, the different stakeholders clarifying their positions in this way is seen by some as a necessary prerequisite to embarking on further discussions and negotiations.²⁶ Further aspects perceived as encouraging included the presence of former UN Secretary Ban Ki Moon and the fact that the organisers had succeeded in bringing so many stakeholders together, even though three EAOs did not attend due to their differences with the government and the military about the conditions of their attendance. All the signatories as well as the non-signatories of the NCA were involved in the conference, which differentiated this one from the *Union Peace Conference* of the predecessor government in January of the same year, which was restricted to NCA signatories. A procedural error caused the premature departure of the delegation of the country's largest EAO, the United Wa State Army (UWSA), after just one day. In the spring of 2017, Myanmar's press expressed fears of the peace process stalling and losing its momentum as it appeared that adhering to the six-monthly cycle was unrealistic and that initially the first follow-up conference already seemed not compliant. Observers concede, however, that the peace process is more challenging for the NLD government than it had been for the previous administration. The reasons include the difficulty in bringing together the agendas of different stakeholders and the fact that the EAOs have so far failed to spell out what they would consider an acceptable negotiation outcome.²⁷ This lenient attitude contrasts with the consistently negative assessment by long-time Myanmar observers. In view of the continuing armed clashes, they do not see what is happening as a peace process but rather as a conflict process and consequently think that the numerous types of foreign engagement in the peace process are unhelpful, not to say: useless.²⁸ This perspective chimes in with criticism of the military's persistent demand that only the NCA signatories

should be accepted as negotiating partners and belittles what has been achieved so far, particularly the NCA. Meanwhile, the armed clashes continue, claiming numerous lives once again in the spring of 2017.²⁹

The most serious strain on the NLD in its first year in office, in the domestic and foreign policy areas, developed from October 2016 onwards in Rakhine State, with attacks on border police posts and military units, which, according to the official interpretation, were carried out by





Able to resist: The ethnic group Wa is one of the ethnic minorities in the multinational state Myanmar. Their armed wing, the United Wa State Army (UWSA), is said to be the biggest of the so-called Ethnic Armed Organisations (EAO). Source: © Soe Zeya Tun, Reuters.

Muslim insurgents with foreign support and left several people dead. The subsequent retaliatory crackdown by the military resulted in thousands of Muslims fleeing their homes,³⁰ some 120,000 of them seeking refuge in camps, near the regional capital of Sittwe among other places, while around 21,000 refugees had crossed the border to Bangladesh by the beginning of December 2016 according to the International Organisation for Migration (IOM).³¹ The refugees accused the Myanmar military of numerous, partly very serious crimes against

the Muslim minorities during its operation in northern Rakhine State – accusations that were refuted by the president’s spokesman.³² International pressure on Naypyidaw ultimately led to an investigation committee being set up headed by the First Vice-President and former Chief of Military Affairs Security U Myint Swe. However, this government measure left international bodies unimpressed for the most part. On 24 March 2017, the UN Human Rights Council not only extended the mandate for the Special Rapporteur on the situation of human

rights in Myanmar³³ by a further year, but also approved the urgent dispatch of an independent international fact-finding mission to investigate the alleged human rights violations by military and security personnel in Rakhine State.³⁴ The Myanmar government must have seen that as an international vote of non-confidence in its own investigation, with the result that it immediately distanced itself from the resolution.³⁵ In addition, the *Advisory Commission on Rakhine State* had already been set up under Aung San Suu Kyi in August 2016, headed by the former UN Secretary General Kofi Annan. Its remit was to compose general recommendations to improve living conditions in Rakhine State. The commission presented the preliminary results of its work in Rangoon on 16 March 2017, with its 30 recommendations focusing on humanitarian emergency measures, media access, closure of refugee camps, the clarification of open questions of Burmese citizenship rights,³⁶ but above all also the prosecution of crimes in the area of human rights.³⁷

Myanmar's critical situation one year on from the NLD coming into government is self-made to a large extent.

The Unresolved Question: Change – if, how and when?

Myanmar's critical situation one year on from the NLD taking over the country's government is self-made to a large extent. The party is rightly being criticised for proclaiming slogans rather than implementing actual programs³⁸ and the consensus is that it only received its high approval rating in 2015 because of Aung San Suu Kyi's involvement. It also failed to equip many of its future office and mandate holders adequately with expertise about relevant policy matters so that they are now facing challenging tasks and realising their own deficiencies, fully aware of the fact that the population is expecting visible progress in the country's development. These

deficiencies cannot remain hidden from the public for long. The governing party, however, prefers to act as moral watchdog regarding its representatives' conduct,³⁹ while the party itself and its chairperson have not done nearly enough to strengthen political institutions – a fundamental prerequisite for a successful democratic transition. Beside the described weaknesses of the parliament, the judiciary has also failed to play a significant role to date. While the Constitutional Tribunal⁴⁰ in particular does exist, it is not being included in the construction of the rule of law framework to a sufficient extent. The executive, on the other hand, can continue to push ahead with its agenda disregarding the other powers thanks to Myanmar's centralised government structures – with three military figures in key cabinet posts (Home Affairs, Defence, Border Affairs). The minorities, which had placed their trust in Aung San Suu Kyi as a leader who would act without any ethnic allegiance, are beginning to view her much more critically as they see the State Counsellor acting as a Bamar – a member of the ethnic majority that she belongs to – in many matters. One way in which this criticism has manifested is an increase in protests in the minority regions and states about public buildings and memorials being named after the state's founding father Aung San.⁴¹ And the fact that she has placed the peace process at the top of her domestic policy agenda also means that any constitutional reform, whatever form it may take, and with that truly democratic change cannot become possible until after the materialisation of such a peace agreement. Even if peace could be achieved in the foreseeable future with the support of all stakeholders (which seems an illusory hope right now), the current incidences of unrest allow the armed forces to present themselves permanently as the guarantor of security and order, particularly to the majority ethnic group of the Bamar, and especially as the preserver of the unity of the multi-ethnic state. This should not be underestimated in terms of its significance for the Bamar. Many of them are concerned when they see the ethnic minority regions almost encircling the areas inhabited by the Bamar, and they do not have a totally negative view of the *Tatmadaw*.⁴² It would therefore

be entirely mistaken to think, as some Western news stories seem to imply, that the military has adopted a different, less influential role since 2015 or that it is no longer in a position to exercise governmental power. On the contrary: it remains unclear whether and, if so, which concessions Aung San Suu Kyi made or had to make to the armed forces to be able to take on the political role she plays today. It is obvious that this could include a promise not to champion the causes of particularly controversial minorities such as the Rohingya.⁴³ The more far-reaching strategic goal of the State Counsellor and her party – to maintain the political power base they have only just won – forces her to toe the line for now. In Myanmar, being in government means above all being part of the system,⁴⁴ and that also applies to the NLD. Western observers are slowly beginning to appreciate all these correlations,⁴⁵ and they should also accept that there need to be differences in the public conduct between Nobel Peace Prize Laureates who remain activists and those who take on political responsibility and have to be pragmatic. Observers have wondered why the State Counsellor has not been making greater efforts to cultivate allies outside the party and parliament to support her course. One point of criticism in this context relates to her overly distant relationship with civil society. In addition, militant Buddhism has emerged as a disruptive factor jeopardising the peace process, which will require particular monitoring.⁴⁶ And even the most loyal NLD representatives are now calling for the government to put greater emphasis on measures to revive the ailing economy.⁴⁷ Without making progress on the economic front, the government will hardly be able to realise the remaining goals of Aung San Suu Kyi's agenda, and the balance sheet of its achievements will look rather meagre. Finally, Myanmar is also discovering political competition, and the formation of a third political power (besides the NLD and the military-backed Union Solidarity and Development Party, USDP) comprising activists of the 1988 protest movement is now on the cards.⁴⁸ So what will become of the hope for genuine democratic change in Myanmar? In an ASEAN (Association of Southeast Asian

Nations) comparison, the country's situation appears acceptable for now in terms of its democratic development. Looking ahead to the future in a recent speech he gave in Rangoon, the association's former secretary general and former Thai foreign minister Surin Pitsuwan said "Myanmar's success is ASEAN success".⁴⁹ But in 2017, there is still no knowing whether the transition will end in success or failure.

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- 1 The Economist 2016: The World in 2017, 9 Nov 2016.
 - 2 Cf. DVB: Aung San Suu Kyi: I started as a politician not a human rights defender, 29 Oct 2013, in: <http://bit.ly/2shPs2I> [27 Mar 2017].
 - 3 For example see: Lindborg, Nancy 2017: Burma is still on the rocky road to democracy, The Hill, 16 Mar 2017, in: <http://bit.ly/2rthaeL> [19 Mar 2017].
 - 4 For an in-depth overview of the results see Moe Thuzar 2015: Myanmar's 2015 Elections: New Hope on the Horizon? Singapore. To date, Myanmar's Union State Commission has made the official results available exclusively in Burmese, Cf. Union Election Commission, <http://bit.ly/2srCO03> [16 Mar 2017]. Many government websites still do not adequately fulfil foreign users' justified need for information.
 - 5 Washington Post 2015: Burma's elections represent a triumph of hope, 9 Nov 2015, in: <http://wapo.st/1kHLkE7> [16 Mar 2017].
 - 6 ABC News 2015: Myanmar president Thein Sein says election is 'result of reform', vows smooth transfer of power, 15 Nov 2015, in: <http://ab.co/2rYOpZG> [17 Mar 2017], emphasis by author.
 - 7 According to Singapore's long-serving prime minister (1959-1990) in: Lee, Kuan Yew 2013: One Man's View of the World, Singapore, pp. 197-198.
 - 8 Cf. Lall, Marie 2016: Understanding Political Reform in Myanmar. People and Society in the Wake of Military Rule, London, pp. 29-32.
 - 9 Cf. Welsh, Bridget / Huang, Kai-Ping 2016: Myanmar's Political Aspirations & Perceptions 2015. Asian Barometer Survey Report, Petaling Jaya, pp. xii-xvii.
 - 10 Cf. International Republican Institute 2014: Survey of Burma Public Opinion. December 24, 2013 - February 1, 2014, p.10, in: <http://bit.ly/2qEI2Fm> [17 Mar 2017].
 - 11 See for instance here: <http://on.fb.me/2qEwpyn> [17 Mar 2017].
 - 12 Myanmar's 2008 constitution in English can be found here, for example: <http://bit.ly/2srGxeq> [17 Mar 2017].
 - 13 The government departments earmarked for her were "foreign affairs, education, electric power and energy, and head of the office of the president", according to Ei Ei Toe Lwin, Lun Min Mang, Htoo Thant 2016: NLD leader takes four cabinet posts, The Myanmar Times, 23 Jun 2016, in: <http://bit.ly/2rorZws> [17 Mar 2017]. In the end, Aung San Suu Kyi took office as Minister of Foreign Affairs and Minister of the President's Office.
 - 14 In the debate within Myanmar, the creation of this position by the NLD was occasionally justified by reference to the constitution, specifically Article 217, which states among other things that "Nothing in this Section shall prevent the Pyidaungsu Hluttaw from conferring functions and powers upon any authoritative body or person".
 - 15 Cf. The Myanmar Times: Military MPs slam bill to create 'state counsellor' role, 1 Apr 2016, in: <http://bit.ly/2rocZzi> [17 Mar 2017].
 - 16 A comprehensive profile of and tribute to the lawyer U Ko Ni can be found here: Crouch, Melissa 2017: A personal tribute to U Ko Ni, New Mandala, 31 Jan 2017, in: <http://bit.ly/2roCFev> [26 Mar 2017].
 - 17 Cf. Htoo Thant: Tatmadaw not involved in U Ko Ni's murder, says General, in: The Myanmar Times, 1 Mar 2017, p. 3.
 - 18 Nyang Hlain Lynn 2016: Keeping Democracy in Check, Frontier, 30 Jun 2016, p. 14.
 - 19 Cf. Frontier 2016: Accountability required, 30 Jun 2016, p. 3.
 - 20 The Myanmar KAS office will publish a paper with recommendations on how the parliamentary work in the Myanmar House of Representatives can be improved during the course of 2017.
 - 21 Based on the term "Ethnic Armed Organizations", which is in common use internationally, the associated abbreviation EAO is used throughout this article.
 - 22 Zöllner, Hans-Bernd / Ebbighausen, Rodion 2015: Die Tochter. Aung San Suu Kyi, Angermünde, p. 230.
 - 23 The text of the 1947 Panglong Agreement is available in: <http://bit.ly/2rICOGd> [19 Mar 2017].
 - 24 Cf. Slow, Oliver: Aung Naing Oo, the patient peace advocate, Frontier Myanmar, 29 Feb 2016, in: <http://bit.ly/2rXOlrz> [16 Mar 2017]. Aung Naing Oo is also the author of a more recent paper providing an overview of the peace process: Aung Naing Oo 2016: Pathway to Peace. An Insider's Account of the Myanmar Peace Process, Dec 2016, Yangon.
 - 25 Cf. Ganesan, Narayanan: Ethnic Insurgency and the Nationwide Ceasefire Agreement in Myanmar, in: Asian Journal of Peacebuilding 3:2, pp. 273-281, here: p. 275, in: <http://bit.ly/2thvTew> [27 Jun 2017].
 - 26 Cf. Wansai, Sai 2016: Aftermath of 21st Century Panglong: Positive symbolism throws the door of earnest negotiations wide open, Shan Herald Agency for News, 4 Sep 2016, in: <http://bit.ly/2rXrc8Q> [19 Mar 2017].
 - 27 Cf. Mizzima 2017: Seeking an enduring peace, 23 Feb 2017, p. 3. One can assume that the greatest challenge will be the disarmament of the non-signatories of the NCA as they maintain that retaining their arms is essential for their capability to maintain their ethnic interests. Consequently, disarming the EAOs is likely to be a difficult and lengthy process.

- 28 These include the well-known Swedish journalist Bertil Lintner, a by no means uncontroversial Myanmar observer with decades of experience and a store of knowledge, who does not hold back from expressing harsh criticism. Cf. Lintner, Bertil 2016: Burma's Misguided Peace Process Needs a Fresh Start, *The Irrawaddy*, 11 Oct 2016, in: <http://bit.ly/2ssOPeV> [20 Mar 2017]. Cf. similar, but more blunt: Lintner, Bertil 2017: No peace in sight for Myanmar, *Asia Times*, 19 Feb 2017, in: <http://ati.ms/BjvEG> [20 Mar 2017]. Observers who do not share Lintner's critical view of foreign involvement in the peace process point to the important role foreign countries play in funding the negotiating process and the associated institutional structures.
- 29 On 6 March 2017, 30 civilians were killed during an incident according to government sources. Cf. *The Global New Light of Myanmar* 2017: China suspends bank account of MNDAA [Myanmar National Democratic Alliance Army], 23 Mar 2017, p.1. BBC News 2017: Myanmar rebel clashes in Kokang leave 30 dead, 6 Mar 2017, in: <http://bbc.in/2qEmEjG> [23 Mar 2017].
- 30 This is the population group referring to itself as "Rohingya", a term that the government does not recognise officially and that polarises large numbers of the majority ethnic Bamar as well as military Buddhist groups. They vehemently reject the Rohingyas' claim to citizenship rights and accuse them, among other things, of merely wanting to improve their own living conditions in Rakhine State on the back of the indigenous population.
- 31 Cf. NEWS18.com 2016: 21,000 Rohingya Flee to Bangladesh From Myanmar, Says IOM, 6 Dec 2016, in: <http://bit.ly/2qEsVvT> [25 Mar 2017].
- 32 Cf. Reuters 2016: Exclusive: Rohingya women say Myanmar soldiers raped them amid crackdown on militants, in: <http://reut.rs/2shZQrc> [26 Mar 2017].
- 33 The mandate has been in place since 1992 and has been exercised by the South Korean law professor Yanghee Lee since 2014. Cf. United Nations High Commissioner for Human Rights (UNHCHR): Special Rapporteur on the situation of human rights in Myanmar, in: <http://bit.ly/2si6r4T> [26 Mar 2017].
- 34 Cf. UNHCHR 2017: Human Rights Council decides to dispatch a fact-finding mission to Myanmar to establish facts on violations, especially in Rakhine State, press release, 24 Mar 2017, in: <http://bit.ly/2qEuk5n> [26 Mar 2017].
- 35 Cf. Ministry of Foreign Affairs 2017: *The Global New Light of Myanmar*, press release, 25 Mar 2017, p.9; *ibid.*: Gov't rejects UN Rakhine investigation, p.1.
- 36 International reporting in particular does not give adequate attention to this complicated topic, which is crucial for an understanding of the Rohingya issues. An introduction to the subject matter can be found in Su Myat Mon 2016: Push for Citizenship Verification Brings Contentious Law Into Focus, *The Irrawaddy*, 12 May 2016, in: <http://bit.ly/2ss6URb> [26 Mar 2017].
- 37 Cf. Nyan Lynn Aung: Rakhine Advisory Commission presents 30 recommendations, in: *The Myanmar Times*, 17 Mar 2017, p.2. The commission's recommendations were officially welcomed by the Myanmar government, cf. State Counsellor's office, press release, in: *The Global New Light of Myanmar*, 18 Mar 2017, p.1.
- 38 The remarkable thing here is the assessment in recent literature that once in power Aung San Suu Kyi would not excel through political thinking but allow herself to be guided by the bureaucracy, in: Taylor, Robert H. 2013: Myanmar's "Pivot" to the Shibboleth of Democracy, in: *Asian Affairs* 44:3, pp. 392-400, here: pp. 397-398.
- 39 Cf. Htet Naing Zaw 2016: NLD to Discipline Lawmaker After Extramarital Affair, *The Irrawaddy*, 10 Oct 2016, in: <http://bit.ly/2qjHSf2> [27 Mar 2017].
- 40 Cf. Myanmar Constitutional Tribunal: <http://bit.ly/2shSTpT> [27 Mar 2017].
- 41 Cf. for example the long-lasting protests in Mon State in the spring of 2017 against a road bridge being named after Aung San, in: Pyae Thet Phyoo 2017: Mon bridge name a state matter: Union Minister, in: *The Myanmar Times*, 17 Mar 2017, p.3.
- 42 The Facebook page of the commander-in-chief of the armed forces appears to be a good indicator: <http://on.fb.me/2rIGDlp> [1 Jun 2017].
- 43 A background study on the Rohingya problem was provided by the Konrad-Adenauer-Stiftung's office in Myanmar in 2017: Rüländ, Anchalee 2017: Myanmar's Rohingya Problem in Context, ETH Zurich, Center for Security Studies, May 2017, in: <http://bit.ly/2sBvUKA> [3 Jul 2017].
- 44 Cf. Lall, n.8, p.82.
- 45 Cf. for example Darwin Peng: 2017: Understanding Aung San Suu Kyi's Silence on the Rohingya, *Harvard Political Review*, 21 Feb 2017, in: <http://bit.ly/2rIxsBs> [27 Mar 2017].
- 46 Cf. *Der Spiegel* 2017: Maulkorb für den Hetzer, 18 Mar 2017, p.71.
- 47 Cf. Chan Mya Thwe: Time to fix the economy with action, not words, *The Myanmar Times*, 21 Apr 2017, in: <http://bit.ly/2rYqZC2> [11 May 2017]; even more clearly in Gilmore, Steven/Robinson, Gwen 2017: Myanmar business sector disappointed with pace of reform. One year on, red tape and regulatory holes are hobbling growth, *Nikkei Asian Review*, 6 Apr 2017, in: <http://s.nikkei.com/2o50s3i> [11 May 2017].
- 48 Cf. Hein Ko Soe 2017: 88 Generation faction to form political party by end of 2017, *Frontier Myanmar*, 2 Feb 2017, in: <http://bit.ly/2rovNhh> [28 Mar 2017].
- 49 Cf. *The Myanmar Times* 2017: Myanmar's success is ASEAN success, says Surin Pitsuwan, 23 Mar 2017, in: <http://bit.ly/2rtMtpO> [28 Mar 2017].

„Seeking Light“

Some 200 photographers participated in the Konrad-Adenauer-Stiftung's first photo competition with the theme "Confidence in the Future". A jury of experts selected the best photos from all entries, and awarded the top prize of 1,500 euros to 24-year-old Zahara Abdul from Kampala, Uganda, for her photo entitled, "Seeking Light".

The jury noted that "Zahara Abdul's photograph transmits a positive, hopeful attitude while still retaining its ambivalence and tension. The photo is well composed and of a high technical standard. The father enables his son to read by generating light mechanically. In this way, the picture is a plea for the importance of education in shaping the future."

All the winning photos can be viewed here:
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Ominous Alliances

On the Correlation between Weak Statehood, International Cocaine Trading and Islamist Terrorism in West Africa

Isabella Hermann

The African continent is increasingly in the spotlight of Germany's foreign and security policy, not purely due to the refugee and migration crisis. Weak states in West Africa in particular are proving to be a security problem in that they offer an almost ideal breeding ground for both organised crime and Islamist terrorism.

On 26 January 2017 the German *Bundestag* decided in favour of increasing its involvement in the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA) and extending its support until 31 January 2018. Germany has participated in the mission since its inception in 2013 by providing air transport capabilities in order to improve the security situation in the north of the country. The German Chancellor, Angela Merkel, had previously already visited Mali as part of a three-day visit to Africa from 9 to 11 October 2016. During her visit to Mali, the German Chancellor also met with German soldiers in the UN Peace Operation MINUSMA, which is currently considered one of the most dangerous UN operations. She pledged further support for Mali to its president, Ibrahim Boubacar Keïta.

Germany is not only involved in the MINUSMA mission to improve the security situation in northern Mali but also supports the EU training mission for soldiers in the Malian army, as well as the training of Malian police officers. This is designed to stabilise the country, implement the peace agreement and secure the borders.¹ Why is this in Germany's interests? In her press conference with Keïta, Merkel referred in particular to the objective of securing borders to prevent human trafficking and drug smuggling, "which is a source of income for all fundamentalist forces here".² Drug trafficking, which to a large extent supplies the demand in Europe, is, in itself, already a barrier to security and development in West Africa. The fact that drug trafficking also finances fundamentalist and terrorist forces, is a further threat.³ In Mali and West Africa the primary concern is the profitable

smuggling of cocaine – just as in Latin America, where the cocaine is produced. Connections with terrorist groups also exist in various Latin American countries. Cocaine production represents a lucrative source of income for these groups, such as Fuerzas Armadas Revolucionarias de Colombia (FARC).⁴

In the following report we will first discuss the origin of the cocaine, which finds its way to Europe via West Africa, before then examining in greater detail the illegal cocaine trade and cocaine smuggling in West Africa, focussing mainly on the situation in Mali. The article further highlights the connection to human trafficking, as well as the existing links to jihadist terror groups – which are not to be overestimated – who also rely on the cocaine trade to finance their activities. A solution that achieves security and stability can ultimately only lie in strengthening statehood.

Cocaine Trafficking From Latin America to Europe

Even though, in global terms, cocaine is most frequently consumed in North America, consumption in Europe is stagnating at a high level. Cocaine is the most frequently consumed stimulant drug in Europe, accounting for some 91 tonnes annually and an estimated market of approximately 5.7 billion euros. The countries of entry and distribution centres are mainly Spain and Portugal, as well as the Netherlands and Belgium.⁵

The cultivation of coca plants and production of cocaine take place in Colombia, Peru and

Bolivia. According to the latest information from the *United Nations Office on Drugs and Crime* (UNODC), the amount of cocaine produced in 2014 can be estimated at around 745 tonnes – in the same year we can infer a confiscation rate of between 43 and 68 per cent. These production figures are slightly higher than those from 2013, but are still 24 to 27 per cent less than the previous peak in production in 2007. The current state of affairs is comparable to the late 1990s, albeit with an upwards trend.⁶ The quantity of cocaine produced in the countries specified is strongly dependent on the respective prevailing political situation.⁷ Since the onset of 2000 the cultivation of coca plants in Colombia has decreased by more than half, thanks to herbicide spraying from the air and manual destruction of the plants, as well as provision of subsequent alternative income options for the farmers. Yet, in Peru and Bolivia cultivation increased by around double the amount up to 2010. The abatement of production after 2010 in Peru and Bolivia was due, firstly, to successfully offering alternative opportunities for making a livelihood; and secondly, in Peru, to intensified destruction of the plants; in Bolivia, to exerting social pressure on the farmers.⁸ In Colombia cultivation of coca is rising again and, according to the latest figures from between 2013 and 2015, has even doubled. The reason behind this was the peace negotiations with FARC, during which coca fields were not destroyed from the air by using plant poison.⁹

Cocaine comes from Latin America and travels by air or sea to Europe. The points of origin are predominantly Brazil, Colombia, Ecuador and Venezuela, from where one transit route crosses the Caribbean. Despite the increasing spectrum of criminal players in operation, the Colombian cartels and the Italian Mafia continue to dominate there.¹⁰ Another important transit region is West Africa as well as nearby islands such as Cape Verde and the Canaries. Since the end of the 1990s West Africa has become more important as a transit zone for cocaine, also due to the fact that controls have been increased within the Caribbean transit area. Between December 2014 and March 2016 at least 22 tonnes of

cocaine were seized en route from Latin America to Europe via West Africa.¹¹ Its geographical location between the production sites in Latin America and the western European end markets makes West Africa the ideal trading hub for the drug, because this allows the risk of transport to be dispersed as widely as possible.¹² The countries of entry are Guinea, Guinea-Bissau, Togo, Benin, Ghana and Nigeria. If, as wholesalers, the Colombian cartels succeed in transporting the cocaine to West Africa via the South Atlantic, they will sell it to West African traders. The cartels from Latin America therefore make their profit regardless of whether the cocaine subsequently reaches Europe or even if it is seized.¹³ Through the introduction of West African actors, the role of West Africa has changed from being purely a transit country for Latin American criminal organisations to a marketplace from which the cocaine is trafficked further or even sold within Africa itself.¹⁴

The weak statehood and volatile political situation in many West African countries is advantageous for the black market and drugs. Drug traffickers benefit from widespread corruption, readily available opportunities for money laundering, a weak prosecution system and porous borders. The amalgamation of state, military, business and organised crime undermines governance capabilities and not only hinders economic development but also has a negative effect on the provision of healthcare and education. It is a vicious circle, since the more extensively the drug traffickers exploit these weak national frameworks, or even form part of them, the weaker these frameworks become. In turn, political and social instability promotes a system in which it cannot be denied that getting involved in drug trafficking represents an opportunity to secure its livelihood.¹⁵ Guinea-Bissau is a very pertinent case in point: the country is de facto governed by organised crime, made up of a combination of Colombian and local cartels, state officials, members of the economic elite and military forces.¹⁶ The Latin American drug business was therefore open enough to allow local African players to enter. The major syndicates emerged within Ghana, Guinea and Nigeria.¹⁷





On a high: The majority of cocaine produced worldwide comes from Latin America. Final consumption, however, occurs especially in North America and in Europe. Source: © Tomasz Stanczak, *Agencja Gazeta*, Reuters.

They developed their own distribution and smuggling capabilities based on the Colombian model. Nigerian organisations, which often use air carriers to transport the goods to Europe, are especially successful. Where the cocaine is not transported directly to Europe by plane, it is taken north by one of various routes through the Sahara, where it is passed on to a new set of middlemen. The route frequently travels through northern Mali, which, due to the lawlessness there, is one of the largest hubs for illegal black market trading,¹⁸ before the cocaine reaches the European countries of entry via Algeria or, further still, via Morocco or Libya.¹⁹ Due to its significance, the following report places greater emphasis on Mali's complex set of problems in particular.

The Situation in Mali

Mali's desert areas in the north are lawless, no-man's-land zones with porous borders. In this unregulated area drug trafficking is a consequence of weak statehood and, in turn, has negative repercussions on state frameworks through its corrupting nature. After gaining independence from France in 1960, for a long time Mali was a beacon of stability in a region rocked by disasters. In view of the regularity of elections being held in Mali, the country appeared to many to be a flagship democracy, even though it had huge political, social and economic challenges to overcome.²⁰ Yet its putative stability concealed enormous potential for conflict. The Tuareg

people, a nomadic tribe in the peripheral north of the country, had long accused the government in the south of marginalising them and not recognising their culture. As the National Movement for the Liberation of Azawad (MNLA), the Tuareg and other tribes demanded the creation of an independent Berber state of *Azawad* in the north. These demands gained new momentum after the fall of the Gaddafi regime in Libya in 2011, when Tuareg, who had fought on the side of Gaddafi, returned to Mali heavily armed. They attached themselves to the MNLA and, at the start of 2012, began an offensive against the central government. The weak Malian government troops in the north did not last long, allowing the MNLA to proclaim its Independent State of Azawad as early as April 2012. At the same time, a group of officers organised a coup against President Amadou Toumani Touré in the capital Bamako in the south, triggered by his poor crisis management. Islamist terror groups, such as “al-Qaeda in the Islamic Maghreb” (AQIM)²¹, “Movement for Unity and Jihad in West Africa” (MUJAO), which arose out of AQIM in 2011, or *Ansar Dine*, which the Amadou Toumani Touré government tolerated and allowed to operate in the north of the country, knew to make the most of their opportunity. For their part, they demanded an independent Islamic state and the introduction of Sharia law. In June 2012 these jihadist groups had forced the MNLA out of all major cities, while the fighting with the weakened Malian army continued. When they took the capital city of Bamako in their sights in 2013, France decided in favour of a military intervention and freed northern Mali from the terrorists. A support mission was undertaken at the start of 2013 by MINUSMA, initially under African leadership. In June 2015 the government signed a peace agreement with the Tuareg-dominated rebel group *Coordination des mouvements de l’Azawad* (Coordination of Azawad Movements, CMA) and the Platform, a coalition of rebel groups supporting a unified country.

The implementation of the peace agreement, which ought to set in motion a process of reconciliation and national dialogue, as well as provide more autonomy and development for

northern Mali, is proceeding rather slowly. It lacks both political will from the government in Bamako, as well as unity within the CMA and with the Platform group.²² Against the background of the negotiations there is also the matter of control over key trafficking routes, whereby cocaine smuggling is immensely significant because it promises enormous profits. The collaborations and alliances are erratic and obscure. Links between the rebel groups, criminals and terrorists definitely exist when their interests appear to overlap.

The considerable profits from drug trafficking exceed by far other opportunities for earning an income in Mali.

Trafficking through Mali and Niger and the formation of the associated networks started in the 1970s with legal goods such as petrol, cigarettes, vehicles and foodstuffs. This laid the ground for the black market, trading illegal goods with higher profit margins, such as weapons, narcotics and drugs. Cocaine found its way into these networks at the start of 2000, after Latin American cartels discovered West Africa as a foothold for further trading to Europe.²³ The nomadic Tuareg knew their way around the vast expanses of northern Mali’s deserts, since their settlement area extends over the Sahara desert and the Sahel and therefore, across Mali. Even if, as nomads, the Tuareg do not lay claim to “their” land, as people who pass through, the people have to pay protection money to ensure safe passage during their journey, which is known as *droits de passage* or rights of passage. Through drug trafficking these symbolic tribute payments have opened up completely new possibilities for wealth generation.²⁴ Members of the Tuareg initially acted as guides or carriers, selling their knowledge of the area to traffickers. This slowly changed as they identified the business potential of becoming active themselves in the smuggling of weapons, cigarettes or illegal drugs. Since Mali is a transit country, however,

the smugglers remain in the role of middlemen, without necessarily having a stake in the rest of the supply chain. They are only responsible for the secure transport of the goods through the expanse of Mali's deserts, which can be a very lucrative business. They then send them on their way to Europe.²⁵ In Mali, the high profits from illegal trading, especially when it comes to drugs, are not comparable with other opportunities for earning an income, particularly for young people. This may also be one reason why the Tuareg are fighting for their own national state, which constitutes a concept of land ownership, something that is alien to them as a nomadic people. A national state of Azawad would nonetheless make it possible to be able to better control illegal trafficking, to enshrine the rights of passage in a constitutional context and, in doing so, to secure the high revenues from the black market – either by taking over the trafficking themselves or by providing traffickers with a convoy escort.²⁶

Cocaine is, however, only the most profitable tip of the iceberg of an illegal economic system that has solidified over the years and includes, for example, the trading of cigarettes and weapons. This illegal system and the associated large-scale influx of money through the black market with profitable goods fundamentally altered the balance between the various different groups and lead to a change in culture and mentality, to new power structures and, as part of this, to new conflicts.²⁷ While cocaine consumption is a problem in itself for public health in Europe – and in African consumer countries too, such as Nigeria – the cocaine trade contributed to state disintegration in northern Mali due to its high profitability. Since the existing networks have an interest in the unstable set-up, there seems to be no clear will to change or stabilise the situation. This has other negative repercussions.

The Link to Human Trafficking

Angela Merkel also cited the end of human trafficking when talking about Germany's objectives regarding its involvement in Mali. Following the closure of the Balkan Route, Germany's Minister

for Development, Gerd Müller, anticipates a further large-scale surge of refugees wanting to travel to Europe via the Mediterranean Sea. In the first three months of 2017 their number has already doubled. In 2016 more than 180,000 refugees in total travelled to Europe via the Mediterranean; in 2017 this figure could rise to 300,000 to 400,000.²⁸ Human trafficking represents a new and major market and has grown since the 1990s with the rise of irregular migration from Africa to Europe. Human trafficking is increasingly linked to illegal trading and drug smuggling. Goa in Mali or Agadez in Niger are no longer simply hubs for black market cigarettes and drugs, but also act as transit stations for migrants to Morocco or Libya on the way to Europe via the Mediterranean.

As UNDOC states, there opinions vary as to whether and to what extent we can speak of transnational, organised crime with fixed structures in relation to the refugee business.²⁹ It is, however, undisputed that most African migrants are forced into irregular migration to Europe due to the lack of legal options. If they lack the financial means for a flight and false passports or visas, they can either struggle on to Europe, travelling alone via land or sea, and using the services of ad-hoc traffickers en route as necessary. Or, the more expensive option is to trust their fate to local middlemen who will organise the route as far as possible beforehand.³⁰ Most migrants from central or western Africa favour the first “pay-as-you-go” method over the second “full package” option. In both instances, however, the migrants are faced with transnational networks and middlemen who organise transport, food and accommodation and negotiate bribes with customs authorities and police officers at numerous junctures along the way. We can assume the traffickers' operations are becoming more professional in nature as a result of the increased demand over the last few years.

Migrants' vulnerability is particularly exploited by protagonists and organisations that are either active in trafficking both humans and drugs, or see potential for profit in both sectors. The fact that the trafficking of both humans and



Human trafficking: Destitute and without papers many refugees fall into the hands of human traffickers who try to make profit out of their emergency situation. [Source: © Siegfried Modola, Reuters.](#)

drugs takes place along the same routes leads to migrants, who are on their way north with limited financial means, and have to pay for the costs of their transport and other related costs, smuggling heroin or cocaine. This is either arranged in advance or as a type of retrospective debt repayment obligation. The exploitation of migrants introduces a new facet to people smuggling and makes them de facto victims of human trafficking, i.e. victims of actions that they are forced to carry out against their will.³¹ The same phenomenon can be seen in Mexico, where, just like in (West) Africa on the way to Europe,

irregular migration routes overlap with those of the black market in cocaine trading, from the south to the north of the USA. Here, too, there are links between the human traffickers, known as “coyotes”, and the drug cartels, which exploit people travelling to the USA.³² In similarly problematic scenarios there are no solutions in sight, except for recognising that purely restrictive and prohibitive measures on the part of the supply market – whether concerning drugs or migration – do not bring about fundamental success. The adaptable, flexible and professionalised networks continue to seek out and identify new

routes and possibilities. The situation is rendered increasingly explosive by the threat of financing terror.

The Link to Terrorism

The perpetuation and expansion of jihadist groups in western and northern Africa requires money. Members of MUJAO, the faction of affiliated persons as well as the wings and individual members of AQIM are regularly involved in drug trafficking as a means of finance, which is a real threat, both for the region there and for Europe. Yet, in the media coverage, the involvement of terror groups in the international drug trade – and in part in human trafficking – is often directly linked to their rise and financing.³³ According to this logic, focusing on fighting the terrorists would be an effective means of putting a stop to the drug trade and transnational crime.³⁴ Even if groups such as AQIM and MUJAO have come to finance their activities through drug smuggling, this nonetheless firstly happens on a regional basis, limited to West African land routes and, secondly, the revenues from this are not responsible for the rise in these groups, nor are they their main source of income. In fact, from the mid-1990s it was actually ransom demands that accounted for the main source of finance for Islamist networks in the region and that established and exploited the complicity of state players.

Fundamentalist terror groups such as AQIM have operated in northern Mali since the start of 2000. As a result of the ransom demands, ominous alliances were forged between AQIM and – once it was founded – MUJAO, as well as with political and state representatives.³⁵ As is the case with cocaine trafficking, weak statehood was and is initially exploited and further strengthened. The groups kidnap westerners, for whose release Malian and European governments must rely on dubious intermediaries who work with the groups. Politicians and state players are also involved. Once European governments have paid millions in ransom money, the profits are shared with the intermediaries and accomplices in the state system.

It is estimated that, between 2008 and 2012, the revenues from ransom money amounted to 40 to 65 million U.S. dollars, whereby a sum ranging from 1.5 to 4 million U.S. dollars was paid for each western hostage.³⁶ The fear of kidnappings had a negative effect on tourism, thereby further restricting the opportunities for making a livelihood not reliant on illegal activities.

Jihadist groups are also financed through drug trafficking, though not exclusively by this means.

In trafficking illegal goods and drugs the Islamist groups are able to benefit from a system based on bribery and complicity with state officials that they established in the course of dealing with ransom demands. It must be noted, though, that AQIM and MUJAO are neither the sole nor the most prominent groups actively involved in cocaine trading. The focus on jihadist groups under the key words of narco-terrorism and narco-jihadism distorts the discussion and steers political measures away from fighting the drug trade to fighting terrorist groups. This belies the fact that drug trafficking within the entire region is based on a network of politicians, state officials and the business elite enriching themselves, which existed independently prior to the involvement of Islamist groups.³⁷ A one-sided fight against the illegal drug trade will be equally ineffective in doing away with Islamist groups, who, as described above, have financed themselves through extortion right from the beginning.

Perspectives

What is needed is a fully integrated strategy rather than one focused on terrorism. Fighting terrorism will not make the illegal frameworks that have embedded themselves in the culture of northern Mali and many West African countries disappear. The situation is comparable with that in Colombia, where the peace agreement concluded with

the terrorist FARC organisation in the past year was not solely responsible for bringing cocaine production to an automatic standstill. On the contrary, a vacuum is created that is filled by other groups who are prepared to use violence. In Colombia, too, the drug trade infiltrated the state, economy and society. The various groups – cartels, paramilitary, guerrilla – compete with powerful means for cultivation areas, access and trading and trafficking routes.³⁸ There is fighting in northern Mali over access to business and control of income. As long as there are significant profits to be made from illegal trading there will always be people – criminals, terrorists or state officials too – who will try to gain a piece of the pie. Like Colombia, Mali must also regain sovereignty over its territory and ensure security and alternative forms of development. Only a single all-encompassing approach paired with new ideas will lead to a solution – in Colombia, options to legalise drugs were also considered to target the demand market.

The link between terrorism and organised crime emerges in lawless and unregulated areas. The people who live here no longer trust or expect anything from the government. Gradual and long-term improvements are only possible when borders are controlled, laws and criminal prosecution are implemented, corruption and corruptibility are combated and integrated development approaches are thought through. Integration also means that the international community and regional stakeholders and states must be just as involved as the economy and civil society. The MINUSMA mission and Germany's ongoing assignments to train soldiers and police officers are starting in the right places. To make continuing involvement at all possible, the country first needs to be stabilised. The total capabilities of the mission, 11,000 soldiers, do not, however, seem to be sufficient for a country that is more than three times the size of Germany and characterised by expansive, lawless desert regions. The decentralisation approach should also be reassessed, since greater autonomy and less control currently seem to mean the consolidation of organised crime. This is especially relevant when it already pervades the state and social frameworks so deeply.

There is, therefore, no change for the better at present in Mali. At the end of March the "Conference of national unification" met in the Malian capital, Bamako, to continue to work on a lasting peace. Representatives from the government, the Opposition and rebel groups all took part. The key Tuareg group, CMA, and representatives of the civil society were absent from the proceedings, however.



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- 5 Cf. European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) 2016: Cocaine trafficking to Europe, Perspectives on Drugs, in: <http://bit.ly/2rizoPN> [18 May 2017].
- 6 Cf. United Nations Office on Drugs and Crime (UNODC) 2016: World Drug Report 2016, p. 36, in: <http://bit.ly/2sw8T7b> [18 May 2017].
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- 8 Cf. UNODC, n. 6, p. 35 f.
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- 11 Cf. UNODC, n. 6, p. 39.
- 12 Cf. The Global Initiative against Transnational Organized Crime 2014: Illicit Trafficking and Instability in Mali: Past, Present and Future, p. 5, in: <http://bit.ly/2rrLFzO> [18 May 2017].
- 13 Cocaine trafficking emanating from Venezuela or Brazil to West Africa is primarily transported along "Highway 10". The route along the 10th northern parallel is the shortest distance between the two continents. Cf. Mazzitelli, Antonio L. 2011: The New Transatlantic Bonanza: Cocaine on Highway 10, Western Hemisphere Security Analysis Center, 3/2011, in: <http://bit.ly/2riBWNH> [18 May 2017].
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- 17 Cf. Guéniat, Olivier / Gasser, Anaïs 2016: Trafic de drogue: "Les secrets des mafias ouest-africaines de la cocaïne", L'Hebdo, 30 Jun 2016, in: <http://bit.ly/2rrKvV1> [18 May 2017].
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- 23 Cf. Lacher, Wolfram, n. 19, p. 4 ff.
- 24 Cf. Strazzari, Francesco 2015: Azawad and the rights of passage: the role of illicit trade in the logic of armed group formation in northern Mali, NOREF report, Jan 2015, p. 4, in: <http://bit.ly/2rioj1c> [18 May 2017].
- 25 Cf. Global Initiative against Transnational Organized Crime, n. 12, p. 5.
- 26 Cf. Strazzari, n. 24, p. 9.
- 27 Cf. Global Initiative against Transnational Organized Crime, n. 12, p. 9 ff.
- 28 Cf. Die Welt 2017: Regierung rechnet 2017 mit bis zu 400.000 Flüchtlingen aus Afrika, 30 Mar 2017, in: <http://bit.ly/2riuD8C> [18 May 2017].
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- 31 Cf. The Global Initiative against Transnational Organized Crime 2014: Smuggled Futures: The dangerous path of the migrant from Africa to Europe, Research Report, May 2014, p.15, in: <http://bit.ly/2rM3bSj> [18 May 2017].
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- 36 Cf. Lacher, n.19.
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Brexit Impact Assessment

On the Effects of Great Britain's Withdrawal from the
EU on European Foreign and Development Policy

[Thomas Henökl](#)

Due to the unexpectedly close result in the British general elections on 8 June 2017 and the loss of the Conservative majority, the hard Brexit approach by Prime Minister Theresa May suddenly appears to no longer be set in stone. Whether the British position changes and how the withdrawal ultimately takes shape might have far-reaching consequences for European foreign and development policy, and the potential damage is considerable. This article offers an overview of the thorny issues in the Brexit negotiations and highlights opportunities for mitigating the expected negative effects.

In her Lancaster House speech of 17 January 2017, the Prime Minister, Theresa May, announced that she still wished to work closely with the EU on issues such as external affairs and security and defence matters following her country's withdrawal from the EU.¹ Whether and to what extent this might hold true for European development policy as an integral part of EU external relations remained largely unaddressed. Also, the Brexit White Paper published by the UK Government on 2 February² failed to establish clarity over substantial issues, as did the paper on the "Great Repeal Bill". On 27 March Theresa May reasserted to employees of the Department for International Development (DfID) that Britain did not want to shirk its international responsibility. Her "farewell letter" to the President of the EU Council stated that Great Britain felt committed to shared European values and, henceforth, would remain Europe's "closest friend and neighbour".

This article takes stock of the negotiating positions based on factual evidence and attempts to provide a perspective of the possible effects on EU development policy and implications for European external relations.

Added to the challenges that confront the EU and multilateral cooperation, there are short-term issues around existing legal obligations and the safeguarding of business continuity, as well as the longer-term course-setting decisions that will need to follow in answer to Great

Britain's withdrawal. At present, ongoing processes such as the participation in the financing, planning and implementation of programmes and projects, as well as the management of UK's departure, are occupying significant attention and resources.³ There is also the question of the legal certainty of international treaties such as trade agreements and membership of organisations; in brief: Great Britain's legal succession in the context of EU agreements. Quite apart from all the emotions, the settlement of this estate is a highly labour-intensive process that will shape the agendas of the EU and Great Britain for years to come, binding considerable administrative capacity on both sides. The key focus ought to be on shielding development policy as far as possible from the trade-offs of the bargaining poker game and place shared goals and values beyond dispute.

Against this backdrop, the article will first examine how the loss of Great Britain as an EU Member State will affect Europe's clout and role in the world. It will subsequently scrutinise the level of significance the development agenda will have within British foreign policy. Finally, it will discuss the consequences Brexit may have on the European Union's trade policy – especially with developing countries.

1. Brexit – and the Effects on Europe’s Role in the World

After the constitution of a minority government in London, the EU must commit itself to the withdrawal process of a major Member State under uncertain terms over the course of the negotiations. This process comes at an inopportune time, in a global situation that could hardly be trickier for Europe – not just because of awkward transatlantic relations – and that has shaken the EU to its core. Now, a Union in search of renewal is preparing to enter the ring to face an adversary who, although weakened by the snap elections in June, remains a versatile opponent when it comes to British core concerns.

Since Theresa May’s Lancaster House speech of 17 January 2017, it had at least been clear that the UK is pursuing a “hard” Brexit, with a view to withdrawing from the Common Market and the Customs Union. Following the loss of an absolute majority for the Conservative Government in the parliamentary elections on 8 June, it is, however, no longer as certain that the original negotiation course will be adhered to.

Legally, the withdrawal must be concluded within two years of Article 50 of the EU Treaty being triggered, which would currently mean that an agreement between the EU and Great Britain would need to be signed in April 2019 in order to avoid a disorderly divorce without a treaty, which would be one possible scenario⁴. If the negotiation period is not extended – which would require a unanimous EU-Council decision –, less than two years actually remain since Article 50 was triggered, namely around 18 months. This is because the outcome, the withdrawal agreement, will need to be ratified by the European Parliament and the parliaments of the EU Member States. The reappointment of the House of Commons has further delayed the start of the substantial negotiations and, on account of the verbal escalation during the election campaign, has not contributed to a positive atmosphere for discussions between the EU and Great Britain. It is improbable that, in

the remaining time after the official start of the talks on 19 June, it will be possible to negotiate all points comprehensively in a way that is satisfactory to both sides. The overriding concern of the two-step procedure proposed by the Commission is to lay the foundations of a transition agreement first, while, for the remaining bulk of the negotiations – as is frequently the case with large package deals – it may hold true that nothing is agreed before everything is agreed. This process could be protracted over years and conflicts will inevitably occur: while Great Britain wants to start arranging trade deals with other third countries in parallel, this is taboo for Brussels as long as Britain legally holds member status. In the light of these divergences, as well as the scope and complexity of the matter, no one is prepared to predict how long it will take for a trade agreement between Great Britain and the EU to emerge as the core of the separation agreement.⁵

It is uncertain whether the new British Government will continue to pursue its “hard” Brexit strategy.

According to previous statements, the UK wants to “cut” as many bureaucratic “chains” as possible and avoid all future entanglements in EU law and EU institutions. May simply underscored in her speech that her country wishes to work together with its European partners – or, from now on, “neighbours” – on issues of security policy and fighting terrorism. The fact that foreign policy is generally, and particularly in the case of the “soft power” from Brussels, closely bound up with development cooperation (DC) and multilateral cooperation is not new. Whether and to what extent security issues should be connected with sustainable development policy and, more recently, migration policy, has often proven to be a contentious subject for discussion. It is likely to be the case that the current challenges and their political framing – and therefore the guidelines regarding what the approach to these challenges



Goodbye kiss: Where the Brexit negotiations are concerned in particular, tough dealings are to be expected.
Source: © Phil Noble, Reuters.

ought to be, have a tendency to strengthen their interdependence. The effects can be seen in a step change regarding asylum and migration policy, in the securitization of border management and the EU Emergency Trust Fund for Africa (EUTF), in the lowered ambitions for democracy promotion, and in the bloodless discourse of resilience. Regardless of hard or soft Brexit, the EU and the UK will still have to cooperate with regard to these same challenges. In pragmatic terms it rather seems advisable that, in the forthcoming negotiations, the chapter of “European development cooperation” is not treated as merely the settling of a legacy, but that efforts are made to actively find a constructive role for Great Britain in international EU cooperation.

Indeed, opinions are divided over the course of globalisation, the necessary regulations for multinational corporations and the finance

industry, the value of the free movement of people, as well as over the many differences as regards “burden sharing” for global common good policies, migration, climate change, food security and other externalised costs of our economic system and the resultant structural imbalances. Nevertheless, there is fundamental consensus over the necessity of cooperation, the existence of multilateral obligations, as well as shared goals such as that of sustainability or combating poverty. In these and other areas the EU and Great Britain have very similar areas of priority, as is also the case in the promotion of peace and democracy and in terms of fragile states, crisis management and international security. It therefore appears rather unhelpful when Theresa May in her withdrawal notification linked the exchange of intelligence, security information and police data to access to the Single Market.

The start of official Brexit negotiations is taking place at the same time as a raft of other important political decisions, including the start of the talks on the EU's multiannual financial framework (2021 to 2027), including the discussions on the reshaping of the development cooperation instruments. In addition, alongside the endnote after the 2030 Agenda⁶ there are several external policy goals on the programme, such as the new Neighbourhood Policy, the Juncker plan for external investments in Africa,⁷ the evaluation of shared EU border management⁸ and an action plan for defence⁹. At the same time the question of the reorientation of EU cooperation policy is emerging in European development cooperation, beginning with the reform of the European Consensus on Development from 2005.¹⁰ It is questionable whether the new Consensus signed in Brussels on 7 June 2017 presents a vision that can unite the EU institutions and the Member States in its wake (and possibly Great Britain, too, as a DC stakeholder), thus creating a new development policy model. Parallel to this, the end of 2016 saw the exploration of the idea of future cooperation with the African, Caribbean and Pacific Group of States (ACP States) and a potential renewal of the Cotonou Agreement, which expires in 2020. The EU's position in the negotiations over its continuation will be weakened by the departure of Great Britain. 41 of the 53 States of the Commonwealth are ACP States, thus they also represent the majority among the ACP Group, which comprises 78 states. Collaboration with the ACP States is therefore of strategic importance to Great Britain for political and economic reasons, and London might try to keep its foot in the door on this issue. Very tellingly, reported statements by Whitehall officials referring to an "Empire 2.0" in view of former British colonies in the ACP Group and other African states do not inspire trust.¹¹ In the short term Great Britain could attempt to have a say over remaining British funds, at least regarding allocation decisions, since the ongoing funding period (11th EDF) only expires in 2020, that is to say after the scheduled Brexit date.

The long shadow of Brexit is already looming over all these processes. Its destabilising effect will be extremely noticeable and will be reflected in a decline of influence and, ultimately, in a curtailed role for both the EU and Great Britain within the world. Besides the tarnished image of the European model, the weakening of the EU's market power, its foreign policy, humanitarian and military capacity and therefore its negotiating weight are also being felt negatively.

Great Britain is a country that has manifold connections and interests all over the world thanks in part to its past history of empire. The country's diplomatic and intelligence network, as well as its expertise in terms of development, foreign and security policies, will be sorely missed by the EU when it comes to political influence, access to information, civil and military interventions, crisis management and the planning and implementation of aid programmes. The material losses are also significant: the decrease in population linked with the withdrawal of Great Britain, from approximately 510 to 446 million, and the reduction in Gross National Product (GNP) by 16 per cent will severely diminish Europe's soft power, which is based not least on the volume of the market as a whole. Furthermore, the drop in the Union's overall budget from a total of over twelve billion euros annually will be felt by net contributors and net recipients.

2. The Importance of International Cooperation in Great Britain

The UK has been a forerunner in the field of official development aid (ODA), though it has enshrined the previously undisputed 0.7 per cent target (ODA as a proportion of GNP) in law for over ten years and reached this target for the first time in 2013. In absolute figures, British DC expenditure almost doubled between 2006 and 2016, from 7.4 billion pounds sterling to 13.6 billion (adjusted for inflation). With its DC budget accounting for a share of 0.71 per cent calculated in terms of the overall budget, Great Britain sits in fourth place among the EU Member

States, behind Sweden, Luxembourg and Denmark (fifth place in Europe if we take Norway into account, too).¹²

PM May recently defended the 0.7 per cent goal against pressure from right-wingers in her party.¹³ It is not yet possible to predict whether this might change against the backdrop of the current political climate. In the field of development policy in particular there is concern that, when it comes to the anticipated wrangling over citizens' rights of foreign residents, trade, research funding or fisheries and agricultural policy, international development cooperation could suffer from the negotiation gamble and fall victim to a horse-trading situation. In the context of a national political debate in Great Britain, as well, development cooperation is far from being the top priority. The "Economic Development Strategy" presented by the British Department for International Development in January 2017 must accordingly also be seen as an attempt to justify the continued existence of the Department following Brexit. It maps out a restructuring of the fight against poverty through a stronger weighting towards promoting growth and employment in developing countries.¹⁴ According to a legislative proposal, the Department will invest over seven billion euros (instead of approx. 1.7 billion euros up until now) in African and South-East Asian countries

through its development funding instrument (DFI), the CDC Group.¹⁵ Just how easy it is for multilateral cooperation to become collateral damage in the Brexit skirmish can be shown by another sensitive bargaining chip: according to media reports, the UK government could follow the advice of the pro-Brexit association "Lawyers for Britain" and threaten to demand repayment of the British share of the capital of the European Investment Bank (EIB), 10.2 billion euros.¹⁶ This would naturally have a negative effect on the EIB's external operations – with direct consequences for current programmes, project financing and the EU trust funds.

The Effects of Brexit in the Short and Medium Term

In international and European development cooperation Great Britain was previously considered a crucial donor and linchpin, as well as a central stakeholder and driver of reform. With an annual overall budget of circa GBP eight billion (9.4 billion euros) for international cooperation, the country is responsible for about 15 per cent of Europe's DC funds. At 4.48 billion euros for the funding period from 2014 to 2020, the contribution to the European Development Fund (EDF) is particularly important. At 14.7 per cent of the overall amount of the 11th EEF, this is higher than Great Britain's proportional

Table 1: Level of Development Aid of EU Member States 2016

GNP share in per cent	
< 0.15	Poland, Slovakia, Czech Republic, Greece, Hungaria
0.15 > 0.5	Portugal, Italy, Austria, Irland, Finland, France, Belgium, Spain
0.5 > 0.7	Netherlands
=/ > 0.7	Great Britain, Denmark, Germany, Luxembourg, Sweden

Source: OECD Development Assistance Committee, 2016. Only OECD-DAC members have been included in these figures (excluding Bulgaria, Croatia, Cyprus, Estonia, Latvia, Lithuania, Malta, and Romania). The OECD figures on DC contributions in 2016 ought, therefore, to be put into context, since some Member States, including Germany, include various expenditure sums that do not qualify as DC in the strictest sense, such as spending on refugee support in their own country.

contribution to the Union's overall budget, which amounted to 11.7 per cent (2013). The sum of British EU DC payments totals around 1.5 billion euros annually. Although the DfID rates the EU as its most important multilateral partner for British development cooperation in its "Multilateral Development Review", which was published in November 2016,¹⁷ the Government is looking for opportunities to reallocate these funds to other channels as part of the multilateral programme of cooperation, such as the World Bank, the UN system, GAVI, Global Fund and, not least, the Commonwealth Secretariat.

Presently, UK development funding already incurred a loss, caused by the depreciation of Sterling, which, after the Brexit referendum in June 2016, plummeted internationally by around ten to 15 per cent. The real purchasing power of British development aid funds in third countries is therefore affected and the DfID is confronted with unexpectedly higher expenditure, because the financing is mostly transacted on a dollar or euro basis. In the medium term, the question remains as to whether Great Britain might contribute further financially to European development cooperation in future, i.e. after the end of the current funding period in 2020. The signs of this happening are not especially promising at present, since Downing Street is moving steadily towards the decoupling and disentangling of British and European interests. Given the rising budgetary pressure on the Chancellor of the Exchequer it is likely that, in London, the contribution to EU DC funds will be offset against the open bill of 60 to 100 billion euros that arises from, amongst other things, the payment obligations within the current EU multiannual financial framework.¹⁸ Research published by the European Parliament projects that, in the longer term, the EU's share of the global development funding could fall by ten to 13 per cent.¹⁹ One option for involving Great Britain would be to place the African Peace Facility (APF) outside the EEF and set it up as an intergovernmental instrument that the United Kingdom could also invest in. Another approach might follow the Norwegian and Swiss model of contributing the substantial resources to the Emergency Trust

Fund for Africa. Contributions from non-member countries to other EU trust funds that operate as flexible instruments and enable ad hoc participation are also possible. A further option would be to create an independent DC instrument resourced and steered by the UK in partnership with third countries. Notably, the setup of the EEA and Norway Grants Scheme to back EU cohesion policies could be an organizational model for continued UK engagement in EU DC, in exchange for access to the Single Market.²⁰

There is speculation as to whether Great Britain will focus more strongly on cooperation with the Commonwealth nations in future.

3. Collateral Damages for Trade with Developing Countries

With respect to the focus of British development policy, there is speculation as to whether the country in future might turn more in the direction of its colonial history and concentrate more on cooperation with the Commonwealth nations. Prime Minister May highlighted the significance and closeness to these nations several times in her inaugural address. How this relationship will play out in practice is still unclear – and its impact is probably limited: Commerce with the Commonwealth countries merely accounts for nine per cent of UK foreign trade, two per cent thereof is constituted by trade with Australia alone. The interpretation of statements and declarations of intent by British politicians following the Brexit vote clearly demonstrates the contempt for EU cooperation policy, not solely amongst supporters of the withdrawal.²¹ Apart from the vague assurance that Great Britain will continue to meet its international obligations, the British government's white paper offers no further information on this issue.²² Recently reappointed Secretary of

State for International Development Priti Patel clearly articulated her critical stance towards EU development policy, and even called for the abolition of DfID prior to taking office.²³ Because of this type of statements and on the basis of the new development strategy it can be seen that the post-Brexit development policy, like British foreign policy in general, will be more strongly subject to national interests and, in particular, to British commercial interests.²⁴ Market deregulation, liberalisation and private investments are considered to be the best route for economic development, according to the new doctrine. There is controversy, though, over whether a total liberalisation of trade, as leading Conservative politicians like Liam Fox appear to be pushing for, is the right approach for all developing countries. For several developing countries, full market opening on the basis of reciprocity would still represent enormous challenges. One could therefore assume that there are other reasons, hidden agendas at play behind this radical liberal stance. Mark Langan points out, for instance, how the interests of landowners, the agricultural industry and the finance capital interact in this regard:²⁵ these three extremely influential groups in economic and political terms are making use of the National Alliance for Food Security and Nutrition (NAFSN) instrument to improve conditions for private foreign investors and reinforce their ownership rights. It is very well documented by reputable sources²⁶ which perfidious strategies are used to leverage the financial interests of investors within a host of African countries. There are no qualms preventing local subsistence farmers from being driven forcibly from their land, which is why researchers, NGOs and the media openly talk of “land grabbing”.²⁷ Should this trend be what emerges from the British post-Brexit cooperation policy, we cannot expect that the UK can continue to act as a credible advocate of progressive EU development cooperation. Monitoring this through the European Parliament and civil society actors will then become all the more important.

In the scope of the World Trade Organization (WTO), of which the UK would be a simple member following withdrawal, there are clear regulations binding the country in its dealings with other trading partners. Privileges afforded to one party must also be granted to all others, with exceptions for developing countries, regional free-trade areas and customs unions. Under WTO rules, a privilege granted by one party only extends to other states who reciprocate that privilege, while in a multilateral reciprocal relationship the same privilege would be extended to the group that negotiated a particular privilege. The divorce agreement to be negotiated between the EU and UK could limit the leeway available to London when offering trade preferences – with uncertain consequences for developing economies. In addition, such WTO renegotiations are highly complex and involve a large number of other actors. The requirement for unanimity of all 164 WTO members could result in other positions and claims being put on the table, which would entail a long drawn out process.²⁸ It is therefore important for Great Britain to have the support of the least developed countries (LDC) and to work with these on a position of consensus.

The renegotiation of bilateral agreements holds both opportunities and risks for developing countries.

After Great Britain has withdrawn, both Community and mixed agreements will no longer formally apply to it. The LDC will continue to benefit from preferential access to the European market. The regulations will need to be redefined initially for the British market. Due to the withdrawal from the Customs Union, the hard Brexit that has been announced will also affect legal certainty regarding trade with other developing countries and will compel Great Britain to sign new bilateral agreements with third countries after it withdraws. The imports from developing countries, amounting to approximately





Profit instead of help? The British development policy is expected to consider national commercial interests significantly more in future. Source: © James Akena, Reuters.

39 billion euros annually, are relatively small in relation to British total imports, which are in the region of 641 billion euros. It cannot be ruled out that the interests of the developing countries might be neglected when competing with those of companies and consumers (far greater attention and resources would likely be accorded to a free trade agreement with the USA in particular)²⁹. On the other hand, Brexit represents an opportunity for Great Britain to introduce a new, generous preferential scheme

for all LDC (or a redefined, expanded LDC group) that could be more balanced than the EU's current everything-but-arms model, and thus present an approach that European development cooperation could learn from. Generous regulations with regard to rules of origin for products from developing countries and the complex provisions regarding value chains also carry particular significance. One element of uncertainty is whether Great Britain will adopt the EU framework or pursue its own regulatory

framework – which would create new legal and administrative trade barriers for developing countries.

A similar question concerns the UK’s approach to product standards, particularly phyto-sanitary standards. If a new framework is established, third-countries could face the difficulty of having to adjust to two different sets of rules for exporting to Europe, representing a significant additional hurdle for these states, having already invested heavily in building capacity to respect EU regulations and fulfil technical requirements. In the medium term the UK is to continue applying the EU laws in a “Great Repeal Bill” until separate British regulations can be drawn up. In the subsequent legislative procedure of drafting its own rules, especially those that lead to the definition of new product standards, or also when redefining the rules of origin, particular attention will need to be paid to the situation of partner countries, to avoid creating additional red-tape and trade hurdles, leading to export losses, disruption to value chains, or permanent damage to trade relations.

A new arrangement will also be necessary for the Economic Partnership Agreements, which, as a result of the unilateral withdrawal of a European state, can result in very specific problems for the partner countries besides the issue of the general legal certainty and validity of the treaties, especially in the area of imports on agricultural products: how should, for example, the scheduled concessions in the form of import quotas be treated where the withdrawal of the UK means that approximately 15 per cent of goods destined for that country no longer have a market?³⁰ These product-specific quotas would need to be renegotiated again for each country and for each of the concessions. Whether the EU-27 simply accept the concession certificates of the common trade policy of the EU-28 on a one-to-one basis or advocate a separation of property with Great Britain, this gives rise to a series of political issues – particularly with regard to the importing of goods from the Commonwealth states. Tea exports and the production of cut flowers for the European market (Kenya), or the textiles

sector (Bangladesh), are of key importance for the developing countries. Belize, Mauritius, Fiji, Gambia and Sri Lanka depend heavily on the British market.³¹

4. Bottom Line: Damage Control and Ways Out of the Crisis

London has articulated its desire for a “clean break” numerous times. Prime minister Theresa May has announced her intention to negotiate hard, regardless of the election results on 19 June. There is a real danger that this results in international cooperation taking on a rather more subordinate role and turning into a negotiating chip or a footnote in the settlement protocol. From the point of view of development policy, it is therefore advisable for both sides to tackle the pending negotiations expeditiously and to discuss the pressing questions openly and transparently, while bearing in mind continuity, predictability and reliability for third countries, as well as conducting the talks in the spirit of “sincere cooperation” and according to the “do no harm” principle. Otherwise, the damage caused by a “dirty” Brexit to international cooperation could be difficult to repair.

In light of the current global upheavals, Europe will need to forge new alliances.

In the medium term the EU states need to think deeply about what lessons can be learned from Brexit. How can political coherence and the coordination of Member States be improved in the EU’s external relations? The integration of competences at the European level could lead to a significant increase in effectiveness together with a lever through bundling with other policy areas. Since, in the field of international cooperation, matters of economic development overlap with healthcare policy, environmental and climate protection, gender policy, migration, research and education, with the interests of external policy, commercial policy and, of

course, with security policy. In light of the fundamental upheavals that are taking place in and around Europe, the EU will need to forge new alliances. Multilateral and global fora for collaboration, such as the G20 or regional partnerships for instance, are especially suited to this. Germany's current tenure of the presidency of the G20 gives it the opportunity to emphasise the key points. The German government is using this opportunity to, for example, launch wide-ranging initiatives in the area of sustainable growth by the G20-Compact with Africa for education and employment.³²

While on the other side of the Atlantic everything points to a new era of unilateralism and isolationism, which has most recently manifested itself in the one-sided termination of the Paris Climate Accord, the question remains whether and how the uncertainties and disruptions caused by Brexit might also paradoxically have a positive effect on the EU and the cohesion between its Member States. The resurgent dynamic of the Franco-German couple after the elections in France gives reason to hope. At present, though, there is not yet any real sense of committed solidarity in Europe in terms of development policy. At the same time, according to a number of different surveys, it seems that the Brexit vote had a positive effect on the acceptance of the EU by its citizens: in autumn 2016, support for the EU rose by around five percentage points on average among Member States in reaction to the vote. For months, pro-European movements such as Pulse of Europe have succeeded in mobilising hundreds of thousands of people to take part in peaceful demonstrations across a multitude of cities and different Member States.³³ A survey commissioned by the Group of the European People's Party in the European Parliament in April 2017 that surveyed 1,000 citizens in nine Member States found that eight out of ten people surveyed advocated the firm safeguarding of European interests and taking a hardline approach to negotiations with Great Britain.³⁴ Whether and how the British position and its relationship to Europe will now change due to the government's unstable majority in parliament remains to be seen.

While the outlook is therefore such that Brexit may strengthen the sense of unity within the (rest of the) Union, there is still no clearly recognisable political will at the leadership level to utilise this pro-EU momentum in the form of progressive, proactive and integrative action strategies, especially as regards EU development cooperation. Brexit should offer a window of opportunity to tackle necessary reforms, drive forward the Europeanisation of cooperation and, through improved coordination between Member States and individual policy areas, reduce the fragmenting of development cooperation and simultaneously increase its coherence and efficiency. In light of global turbulence, humanitarian challenges concomitant with the refugee movements and migration flows, European determination and implementation capabilities in multilateral development cooperation are especially in demand at present, for implementing the UN's 2030 Agenda, for emergency measures in relation to climate protection and for the continuation of the fight against poverty.

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