

CULTURE SHOCK: OBSTACLES TO BRINGING CONFLICT PREVENTION UNDER THE WING OF U.N. DEVELOPMENT . . . AND VICE VERSA

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I. INTRODUCTION: SHIFTING TO A CULTURE OF PREVENTION

In June of 2001, U.N. Secretary-General Kofi Annan issued a report titled *Prevention of Armed Conflict*.¹ This was the latest significant step in a decade-long trend to move the organization—and the international community as a whole—from a “culture of reaction” to a “culture of prevention.” With the end of the Cold War and its numerous proxy wars, the international community faces serious threats to international peace and security posed by violent civil conflict. In making its shift, the United Nations must confront the intermingling of its political goals with those of promoting development, human rights, and human security.

The United Nations’ reorientation toward conflict prevention requires it to engage those internal political dynamics that it has hitherto been able to avoid in the context of managing interstate conflict. Interstate conflict presents sovereign states with a familiar and convenient framework within which international actors can manage tensions. This is not the case in situations of intrastate conflict, and the old models which rely on state-level engagement will be strained to the extent that it may not be possible to prevent conflict simply by finding recourse to norms founded on state-state relations.² The com-

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1. See *Prevention of Armed Conflict: Report of the Secretary-General*, U.N. GAOR/SCOR, 55th Sess., Agenda Item 10, U.N. Docs. A/55/985—S/2001/574 (2001) [hereinafter *Prevention of Armed Conflict*].

2. For example, the international community has struggled for decades to distinguish combatants from noncombatants in order to establish rules of war. Such norms and distinctions may be difficult to maintain in the high-

bination of this shift from *interstate* to *intrastate* conflict with a shift from *managing* to *preventing* conflict presents a dual challenge for the United Nations as it comes to terms with its mission of preventing the "scourge of war" in a post-Cold War era.³

This dual shift at the United Nations has meant a dramatic change in the traditional ways international actors have engaged conflict-prone societies. For political actors such as the Security Council and the Secretariat, it has meant turning toward activities that are typically viewed as apolitical, namely those activities that fall under the rubric of "structural prevention." For apolitical actors in the development field, the addition of a political mandate to prevent conflict raises serious concerns for their operational modalities on the ground.

Traditional methods of engaging the sovereign state are insufficient to prevent the types of conflict that threaten peace today. An adequate approach will require not only support for civil society to build bridges and grassroots support for democratic processes, but also an understanding of the nature of opposition politics within governments. It will mean sensitivity not just to ethnic tensions, but also to how such tensions are manipulated toward political ends. It will require going beyond engaging merely the traditional or formal power-holders; the real power- and stakeholders must be identified. In addition to confidence building, it will require stake building where communities have no incentive to resolve conflict peacefully. International actors must also gain a sense of humility to understand both how their potential effectiveness is perceived by local actors and how their own well-intentioned initiatives may exacerbate local frictions. Underlying social and economic tensions, which form the groundwork for the generation of political grievances, must be recognized and addressed. Most of all, it must be acknowledged that political dynamics are just that: dynamic. Their changing nature must be met with a great deal of flexibility. In the context of intrastate tensions, the inability of international actors to operate below the state level poses a serious dilemma to the United Nations' goal of shifting to a culture of prevention.

stakes and winner-take-all nature of civil conflicts where civilian populations are deliberately and systematically targeted.

3. See U.N. CHARTER pmbl.

This Note argues that the U.N. system is unprepared to effect this shift to a culture of prevention so long as it relies on state-level engagement. A variety of obstacles make conflict prevention an elusive goal for the state-oriented international system. Instead, as the case studies below demonstrate, international actors must engage local political dynamics, overcoming barriers posed by sovereignty, traditional modes of engagement, and a lack of coordination. Where such engagement is impossible, outsiders may be well advised to avoid excessive engagement for preventive purposes, limiting themselves simply to assuring that their own actions avoid exacerbating the situation on the ground.⁴

A. *History of International Efforts at Conflict Prevention*

Conflict prevention lies at the heart of the United Nations' mission. Article I of the U.N. Charter commits member states to uphold "collective measures for the *prevention* and removal of threats to the peace . . . and settlement of international disputes which *might* lead to a breach of the peace."⁵

4. This suggestion is a modified version of the attitude taken by the Brahimi Report, adapted to the unique nature of civil conflict prevention. See *Report of the Panel on United Nations Peace Operations*, U.N. GAOR/SCOR, 55th Sess., Prov. Agenda Item 87, U.N. Docs. A/55/305—S/2000/809 (2000) [hereinafter *Brahimi Report*]. It is tempting to argue that, in situations where access to local-level political actors and civil society is not readily available, outsiders must either find ways to gain access or seriously consider refraining from any intervention that might signal partiality with the "government" side. Stephen John Stedman argues, "If the international community is unwilling to increase dramatically the overall amount of aid for Africa, then it should explicitly adopt a policy of triage [The present policy is] doomed to produce more, not fewer, humanitarian disasters." Stephen John Stedman, *Conflict and Conciliation in Sub-Saharan Africa*, in *THE INTERNATIONAL DIMENSIONS OF INTERNAL CONFLICT* 235, 237 (Michael E. Brown ed., 1996). Such a recommendation coincides with the Brahimi Report's recommendations for the creation of U.N. Peacekeeping Operations. However, where U.N. agencies are on the ground in a potentially unstable situation, such a view may be somewhat irresponsible. Here, unlike peacekeeping operations, the United Nations already will be involved on the ground in some capacity (i.e., through UNDP or UNHCR), and thus does not have the luxury of choosing to disengage. Early warning also still would be a worthwhile endeavor in such a situation, but if the engagement with local dynamics is already impossible, the early warning advantages to be gained are likely to be minimal.

5. U.N. CHARTER art. 1, para. 1 (emphasis added).

Chapter VI outlines how the United Nations may peacefully handle potential conflicts.⁶ Such actions, however, require the consent of the parties to the dispute. For the U.N. system, based as it is on a community of *states*, this consent requirement typically means consent of the governments concerned. While perhaps appropriate for interstate disputes, this requirement poses a number of potential difficulties in the context of preventing civil conflict. First, the United Nations' hands may be tied by a state that is unwilling to consent to international involvement in its internal affairs. Second, the Charter's conception of prevention commits the United Nations to dealing with governments as the exclusive channel for communication and action. In the event that a government is the cause of—or complicit in—the threatening situation, initiatives that require government support may be compromised. Moreover, the root causes of conflict usually lie within the political, social, and economic dynamics of society, to which the Charter does not envision extending preventive measures.

Thus, over the past half century, the far greater part of the United Nations' peace and security work has been reactive; conflict prevention was more akin to crisis management. While early efforts at prevention were dominated by the political self-interests of major powers, the rise in the number and intensity of internal conflicts in the post-Cold War era has brought renewed attention to the United Nations' capacity for conflict prevention.⁷

Most of these tools, however, are not “new.”⁸ Their newness derives from their being redirected towards conflict prevention goals.⁹ Such newness, however, gives rise to some very

6. *See id.* arts. 33-38.

7. To the traditional tool of preventive diplomacy have been added a battery of new mechanisms: “smart” sanctions, arms embargoes, preventive development, election assistance and monitoring, preventive deployment, peace-broadcasting, and all-inclusive dialogues, to name a few. *See generally* Lilly R. Sucharipa-Behrmann & Thomas M. Franck, *Preventive Measures*, 30 N.Y.U. J. INT'L L. & POL. 485 (1998) (examining the means of preventive diplomacy at the United Nations' disposal).

8. *Id.* at 486.

9. *Report of the Secretary-General on the Work of the Organization, Joint Inspection Unit—Strengthening of the United Nations System Capacity for Conflict Prevention: Comments of the Secretary-General and the Administrative Committee on Coordination*, U.N. GAOR, 52d Sess., Annex, Preliminary List Items 10, 120, ¶ 11, U.N. Doc. A/52/184 (1997) (“[T]he activities which [peace building] com-

old problems. States may object to increased political monitoring on sovereignty grounds. The apolitical mandate of many development actors may conflict with their redefined political roles as preventive actors. The U.N. family of agencies, with its fragmented bureaucracy, may fail to put together a cohesive and comprehensive strategy involving all international actors on the ground and, even if it does this successfully, may be unable to manage and coordinate the implementation of such a strategy. Centrally orchestrated preventive efforts may be unable to respond flexibly or quickly to changing political dynamics in the field. Moreover, preventive interventions that target societies at the national level via the state apparatus will often fail to address the concerns of those opposition groups whose unmet demands and grievances are likely to give rise to tensions. These are not small problems. Such constraints may dictate the success or failure of preventive initiatives. Many of these obstacles reflect the difficulty international actors face when inserting themselves into situations of internal conflict. Whereas traditional interstate conflict typically presents two opposing parties with clear goals, constituencies, and lines of communication, a civil conflict may have none of these.

B. *An Analytical Framework: Operational and Structural Prevention*

The range of preventive measures is frequently organized broadly according to the distinction between operational and structural prevention.¹⁰ Operational prevention may be de-

prises . . . all have an intrinsic value of their own . . . [,] and . . . what gives them added value as peace-building in 'countries in special situations' (to quote UNDP's very apt phrase) is the *political* contribution they can make to preventing the eruption or resumption of conflict.") (emphasis added).

10. This distinction came into common usage after the Carnegie Commission on Preventing Deadly Conflict published its report in 1997. See CARNEGIE COMMISSION ON PREVENTING DEADLY CONFLICT, PREVENTING DEADLY CONFLICT: FINAL REPORT (1997) [hereinafter CARNEGIE REPORT]. Michael Brown also notes:

If the causes of internal conflict can be categorized as permissive conditions and proximate causes, it follows that one should adopt a two-track approach to conflict prevention: one track should be a series of broad-based, long-term efforts to address the underlying structural, political, economic, social, cultural, and perceptual problems . . . ; the other should be a series of focused, aggressive efforts to neutralize the catalytic factors

defined as “strategies in the face of crisis.” It includes (1) early warning and early response, (2) preventive diplomacy, (3) economic measures, and (4) the use of force. Preventive diplomacy—combined with other political and security-oriented tools such as peacekeeping forces, disarmament, election monitoring, and sanctions—forms the core of U.N. conflict prevention. There is an increasing recognition that, while useful, these tools are insufficient to address both the tensions that give rise to conflict in the first place and those issues that prevent a society from falling back into violence after peace has been established. Thus, the United Nations has shifted to the inclusion of structural measures in its preventive efforts.

The Carnegie Commission on Preventing Deadly Conflict has defined structural prevention as “strategies to address the root causes of deadly conflict.”¹¹ The post-Cold War shift to structural prevention has meant a significant change of focus for a number of agencies that traditionally operate outside politics. It has led to apprehension by member states that are unwilling to allow their internal political situation to be monitored, let alone dictated, by outsiders. The incorporation of various agencies’ activities under the political mandate of the Secretariat not only has created tensions between these agencies’ new political mandates and a need for operational neutrality; it has risked the overall effectiveness of their activities as well. Despite these growing pains, the attempt to give U.N. political bodies a hand in structural prevention should be viewed as a positive development that needs to be carefully managed with sensitivity to local political dynamics and greater efforts to engage with local actors who could form the popular base of potential conflicts.

Part II, in the context of exploring theoretical research on the causes of conflict, argues that, in order to address successfully these causes—which implicate tensions within society below the level of the state—international actors must move beyond state-level engagement to understand and address internal political dynamics. Drawing on a variety of case studies, Part III discusses ways traditional operational measures can be reoriented to prevent civil conflict. Part IV then addresses

Michael E. Brown, *Introduction* to THE INTERNATIONAL DIMENSIONS OF INTERNAL CONFLICT, *supra* note 4, at 1, 28.

11. CARNEGIE REPORT, *supra* note 10, at 69.

three separate obstacles to achieving effective structural prevention: the conflicting mandates that arise when apolitical actors are given political roles and vice versa, the sovereignty objections of member states, and the problem of interagency coordination. Part V concludes with some observations about the prospects for shifting to a culture of prevention in light of the obstacles discussed.

II. CAUSES OF CONFLICT

While there is an extensive literature on the causes of intrastate conflict, what follows is a brief discussion of how the root causes of conflicts frequently lay deep within society and are thus not susceptible to superficial state-level engagement.¹² Most of the research on the causes of conflict separates the analysis into underlying causes (or structural factors, or permissive conditions) and triggering factors (or proximate causes). This bifurcation implies a two-track approach to prevention.¹³

The proximate causes of conflict are many. They may include such things as rapid changes in the economy, demographic shifts, meddling by neighbors or superpowers, political changes, and the elite manipulation of group identities. More relevant here, however, are the underlying permissive conditions that might be addressed early in the conflict cycle through preventive initiatives. Michael Brown posits four types of underlying causes: structural factors (weak states, intrastate security concerns, and ethnic geography), political factors (discriminatory political institutions, exclusionary national ideologies, intergroup politics, and elite politics), economic/social factors (economic problems, discriminatory economic systems, and modernization), and cultural/percep-

12. For a more in-depth discussion of the root causes of conflict, see generally Brown, *supra* note 10, at 12-23; Frances Stewart, *Horizontal Inequalities as a Source of Conflict*, in FROM REACTION TO CONFLICT PREVENTION: OPPORTUNITIES FOR THE UN SYSTEM 105 (Fen Osler Hampson & David M. Malone eds., 2002); PAUL COLLIER & ANKE HOEFFLER, GREED AND GRIEVANCE IN CIVIL WAR (World Bank, Working Paper No. 2355, 2000), <http://www.econ.worldbank.org/docs/1109.pdf> (noting, among other reasons, the capture of resources, grievances, and the pursuit of a cause as the reasons for conflict).

13. See *supra* note 10, discussing this two-track approach.

tual factors (patterns of cultural discrimination and problematic group histories).¹⁴

Notably, scholars rarely point to group identities as a cause of conflict. Rather, it is the elite manipulation of such identities that is found to be a trigger factor.¹⁵ As for permissive conditions, Frances Stewart has demonstrated how horizontal inequalities, rather than cultural differences between groups, fuel conflict. She defines horizontal inequalities as the “inequality in political, economic, and/or social conditions among culturally and/or geographically distinct groups.”¹⁶ Thus, if conflict is a product of such distributional disparities between groups, development programs should focus on the equitable allocation of assistance between groups. Moreover, Stewart also asserts that any poverty alleviation program, to the extent that it can contribute to or reduce horizontal inequalities, has a responsibility to take conflict prevention into account.¹⁷

The Rwandan experience demonstrates the interplay between the proximate and structural causes of conflict. Between the peace accords of fall 1993 and the genocide of spring 1994, an acute shortage of arable land allowed radio announcers to breed fear in the Hutu population of losing its already scarce land to Tutsi invaders. Moreover, endemic poverty led Hutus to see genocide as an opportunity for the economic exploitation of Tutsis.¹⁸ The Organization of African Unity (OAU), in its retrospective study of the Rwandan genocide, concluded that the root cause was “the deliberate choice of successive elites to deepen the cleavages between Rwanda’s

14. Brown, *supra* note 10, at 14 tbl. 2.

15. Brown writes that “ethnic conflict is often provoked by elites in times of political and economic trouble in order to fend off domestic challengers.” *Id.* at 18. Similarly, commentators note that “[m]uch contemporary conflict stems from *within* states . . . driven by local elites—often those in government—maneuvering to corner as large a share of the inadequate national complement of power and wealth as possible, further impoverishing the poor and marginalized sectors of society and destroying avenues for nonviolent change.” Fen Osler Hampson et al., *Introduction: Making Conflict Prevention a Priority*, in FROM REACTION TO CONFLICT PREVENTION: OPPORTUNITIES FOR THE UN SYSTEM, *supra* note 12, at 1, 2.

16. Stewart, *supra* note 12, at 106.

17. *Id.* at 105.

18. See BRUCE D. JONES, PEACEMAKING IN RWANDA: THE DYNAMICS OF FAILURE 40 (2001).

two main ethnic groups, to dehumanize the group out of power, and to legitimate the use of violence against that group. In the process, a culture of impunity gradually became entrenched."¹⁹

Bruce Jones has noted that, in the context of such "bloody manipulation of social categories," problems such as poverty, land scarcity, overpopulation, and economic decline become "fuel for history's fires."²⁰

Using this discussion of the relationship between root and proximate causes as a starting point, the case studies that follow demonstrate that any effort at prevention must address the internal political and social dynamics within society. This may include such things as dealing with distributional issues between different identity groups, access to dispute settlement mechanisms and peaceful forms of redress, reshaping incentive mechanisms so that individuals and groups have a stake in preventing conflict, changing perceptions of fairness, and countering inflammatory rhetoric aimed at inciting group rivalry.

III. REORIENTING OLD POLITICAL TOOLS OF PREVENTION TO STRUCTURAL PROBLEMS

A. *Preventive Diplomacy*

The core tool of conflict prevention at the United Nations remains preventive diplomacy in the form of fact-finding missions and the Secretary-General's good offices.²¹ Such preventive efforts are premised on the idea that strong third-party intervenors can bring diplomatic pressures and economic incentives to bear on the parties to a conflict. In the years since the Cold War, U.N. fact-finding missions in situations of internal conflict have proliferated.²² Chapter VI of the U.N. Char-

19. THE INT'L PANEL OF EMINENT PERSONALITIES TO INVESTIGATE THE 1994 GENOCIDE IN RWANDA AND THE SURROUNDING EVENTS, ORG. OF AFRICAN UNITY, RWANDA: THE PREVENTABLE GENOCIDE, at vii (2000) [hereinafter IPEP REPORT].

20. See JONES, *supra* note 18, at 45.

21. See Sucharipa-Behrmann & Franck, *supra* note 7, at 488-89 (explaining the concept of "good offices").

22. Chantal de Jonge Oudraat notes that "[t]heir mandates have ranged from general assessments of conflict situations (e.g., Tajikistan and Uzbekistan), to investigations of reports of ethnic cleansing (e.g., Georgia) and ge-

ter requires such missions to obtain the consent of the parties concerned. In an internal situation, however, this will frequently only require the willingness of one party to the conflict, namely the government. While this arguably lowers the barrier to preventive diplomacy, it also denies the possibility of such action where the government refuses consent, even if opposition parties would welcome U.N. involvement.

Frequently, effective preventive diplomacy requires discretion, secrecy, and informality.²³ Despite a trend towards transparency at the United Nations, the recognition of this fact has led certain members of the Security Council to advocate giving the Secretary-General greater freedom to pursue such diplomacy through private and informal channels.²⁴

nocide (e.g., Rwanda).” See Chantal de Jonge Oudraat, *The United Nations and Internal Conflict*, in *THE INTERNATIONAL DIMENSIONS OF INTERNAL CONFLICT*, *supra* note 4, at 489, 502.

23. One of the most effective tools of preventive diplomacy has been the OSCE’s High Commissioner on National Minorities. The High Commissioner is an independent and neutral eminent individual who is charged with a mandate to “confidentially investigate problems relating to national minorities before they reach crisis proportions.” Erika B. Schlager, *The Impact of the Council of Europe, the UN and the OSCE on Respect for Minority Rights*, in *MINORITIES AND TOLERANCE: CENTRAL AND EASTERN EUROPE & THE NIS* 73, 77 (2001), <http://wwics.si.edu/ees/special/2001/minori.htm>. This organ’s success has resulted—at least in part—from its arm’s-length relationship with its parent organization, its focus on informal mediation, and an effort to keep stakes as low as possible. See Fen Osler Hampson, *Preventive Diplomacy at the United Nations and Beyond*, in *FROM REACTION TO CONFLICT PREVENTION: OPPORTUNITIES FOR THE UN SYSTEM*, *supra* note 12, at 139, 147. Nonetheless, the High Commissioner suffers from the similar statist obstacles as U.N. efforts:

[T]he OSCE’s approach depends on the continuing support of the parties to the conflict, particularly that of the host government. This support is likely to be sorely tested when OSCE efforts move from relatively painless measures for promoting dialogue to the resolution of substantive questions. The OSCE’s dependence on continuing support makes it especially vulnerable to the charge that it favors the position of the government, and results in reliance on its ability to pull compliance.

Paul Martin, *Regional Efforts at Preventive Measures: Four Case Studies on the Development of Conflict-Prevention Capabilities*, 30 N.Y.U. J. INT’L L. & POL. 881, 903 (1998) (citations omitted).

24. For the remarks of France and the United Kingdom, see *Role of the Security Council in the Prevention of Armed Conflicts*, U.N. SCOR, 4072d mtg. at 7-9, 12-13, U.N. Doc. S/PV.4072 (prov. ed. 1999) [hereinafter *1999 SC Debates*].

Nonetheless, preventive diplomacy may be ineffective or too narrowly construed for the types of internal conflict confronting the U.N. system today.²⁵ First of all, parties may be unwilling to engage in mediation at the early stages of conflict if they believe that more viable options for addressing or suppressing grievances remain, including militarization.²⁶ It may also be difficult for external actors to agree on the appropriate goals. This is due to the fact that third-party intervenors, even if neutral, are rarely impartial or unbiased.²⁷ Most important, however, is that preventive diplomacy rarely addresses structural causes of conflict. To be useful, Fen Osler Hampson states that such efforts must be part of “a coordinated systemwide approach in the United Nations that brings the resources of independent programmatic bodies like the World Bank and UNDP into [preventive diplomacy] initiatives.”²⁸

B. *Preventive Deployment: Macedonia*

In 1992, the United Nations deployed a division of the U.N. Protection Force for the Former Yugoslavia (UNPROFOR) on Macedonia's borders with Albania and the Federal Republic of Yugoslavia. While its official mandate was to monitor and report “any developments . . . which could under-

25. See generally Hampson, *supra* note 23.

26. See Stephen John Stedman, *Negotiation and Mediation in Internal Conflict*, in THE INTERNATIONAL DIMENSIONS OF INTERNAL CONFLICT, *supra* note 4, at 341, 341-42; see also Hampson, *supra* note 23, at 145 (“[N]egotiated solutions will seem less attractive because parties, having not yet experienced the full costs and limits of what can typically be achieved on the battlefield, may consider violence in support of unilateral goals to be a viable alternative to compromise and politically based solutions.”).

27. Stedman writes, “In the three most important candidates for state collapse in Africa—Kenya, Nigeria, and Zaire—preventive diplomacy has met with little success . . . [because their leaders] have friends among Western states, who benefit from trade with these regimes.” Stedman, *supra* note 4, at 260.

28. Hampson, *supra* note 23, at 153. Jentleson has proposed reconceptualizing preventive diplomacy into three different activities: (1) war diplomacy, (2) normal diplomacy, which would be part of operational prevention, and (3) developmentalist diplomacy, which would “address long-term societal and international problems which, if allowed to worsen, have the potential to lead to violent conflict.” *Id.* at 141 (citing Bruce W. Jentleson, *Preventive Diplomacy and Ethnic Conflict: Possible, Difficult, Necessary*, in THE INTERNATIONAL SPREAD OF ETHNIC CONFLICT: FEAR, DIFFUSION, AND ESCALATION 293, 294-95 (David A. Lake & Donald Rothchild eds., 1998)).

mine confidence and stability in the country or threaten its territory,"²⁹ its presence aimed to deter threats and prevent clashes with "external elements."³⁰ Thus, justifying its presence by reference to *interstate* tensions, Macedonia became the testing ground for the United Nations' first preventive deployment. Earlier that year, Boutros Boutros-Ghali envisioned such deployments in *Agenda for Peace*.

The time has come to plan for circumstances warranting preventive deployment, which could take place in a variety of instances and ways. For example, in conditions of national crisis there could be preventive deployment at the request of the Government or all parties concerned, or with their consent; in interstate disputes such deployment could take place when two countries feel that a United Nations presence on both sides of their border can discourage hostilities; furthermore, preventive deployment could take place when a country feels threatened and requests the deployment of an appropriate United Nations presence along its side of the border alone.³¹

29. *Report of the Secretary-General on the United Nations Preventive Deployment Force Pursuant to Security Council Resolution 1058 (1996)*, U.N. SCOR, ¶ 4, U.N. Doc. S/1996/961 (1996) [hereinafter *November 1996 UNPREDEP Report*].

30. *Id.* The mandate raises interesting sovereignty issues. UNPREDEP was deployed under Chapter VIII of the U.N. Charter and thus required the consent of the parties. See S.C. Res. 795, U.N. SCOR, at 37, U.N. Doc. S/INF/48 (1992); U.N. CHARTER art. 53, para. 1. In fact, the United Nations only had the consent of the government of Macedonia even though the envisioned conflict would have concerned Serbia and Albania as well. See *November 1996 UNPREDEP Report*, *supra* note 29, ¶¶ 3, 25. In envisioning preventive deployments, Boutros Boutros-Ghali's *Agenda for Peace* implicitly recognized these sovereignty-related difficulties but failed to confront them head-on: "In cases where one nation fears a cross-border attack, if the Security Council concludes that a United Nations presence on one side of the border, with the consent only of the requesting country, would serve to deter conflict, I recommend that preventive deployment take place." *An Agenda for Peace—Preventive Diplomacy, Peacemaking and Peace-Keeping: Report of the Secretary-General Pursuant to the Statement Adopted by the Summit Meeting of the Security Council on 31 January 1992*, U.N. GAOR/SCOR, 47th Sess., Preliminary List Item 10, ¶ 32, U.N. Docs. A/47/277-S/24111 (1992) [hereinafter *Agenda for Peace*].

31. *Agenda for Peace*, *supra* note 30, ¶ 28.

With Macedonia's hostile and unstable neighbors, it was the last of these three situations into which UNPROFOR, later to be renamed UNPREDEP,³² was deployed.

UNPREDEP fortunately enjoyed the support of both the Macedonian government and the opposition parties. Lacking such support, it might not have had access to and knowledge of those local processes that provided the key to effective prevention. This raises questions as to whether *intrastate* preventive deployment is at variance with sovereignty concerns. In traditional interstate relations, a non-Chapter VII intervention requires the consent of both parties to the conflict. In a domestic context, however, this rule seems not to apply; an intervention may occur at the request of the government alone. In practice, this may only be true if the government is in actual control of the territory it wishes to defend. Thus, this is a key argument in favor of prevention: A government that invites a preventive deployment before an insurgency gains significant ground can avoid the consent requirements of the U.N. Charter. However, preserving the status quo may not always serve the long-term stability needs of a conflict-prone country where either legitimate grievances, or the perception thereof, already exist.

In 1996, after the 1995 Dayton Accords reduced the threat of a Serbian war spilling over into Macedonia, the United Nations prepared to reduce UNPREDEP's strength. However, tension arose again, this time on the Albanian border. Writing to request a suspension of the proposed reduction, the Macedonian Foreign Minister argued that external threats to stability remained.³³ By this time, the Secretary-General had repeatedly informed the Security Council that the situation in Macedonia had fundamentally changed. In place of an imminent external threat, internal tensions between ethnic Albanian and Macedonian Slav communities now presented a

32. See S.C. Res. 983, U.N. SCOR, 3512th mtg., ¶ 2, U.N. Doc. S/RES/983 (1995).

33. See *Letter Dated 7 March 1997 from the Permanent Representative of the Former Yugoslav Republic of Macedonia to the United Nations, Addressed to the Secretary-General*, U.N. SCOR, Annex, U.N. Doc. S/1997/205 (pointing to armed bands from Albania trespassing into Macedonia, political unrest in the Federal Yugoslav Republic (FYR), the situation in Kosovo, an undemarcated border with the FYR, and Macedonia's own inability to defend itself).

more immediate—as well as long-term—danger.³⁴ Acknowledging the Foreign Minister's external justifications, but also moved by such increasing internal tensions, the Security Council obliged.³⁵ Thus, by November 1996, UNPREDEP reported that it was devoting “considerable attention to strengthening dialogue between the political forces and . . . [monitoring] inter-ethnic relations.”³⁶

While the violence of 2001 shows that ethnic tensions remain, the 1992–99 deployment was a relative success. This was largely due to UNPREDEP's ability to adjust continually to Macedonia's political dynamics. As early as 1994 the Secretary-General wrote, “[UNPREDEP's] presence appears to have contributed to stability and has certainly raised the political price of any future external aggression against [Macedonia]. However, . . . the more likely sources of violence and instability are internal and thus beyond the mandate of the Force.”³⁷

Since UNPREDEP had both military and civilian components, the United Nations was able to navigate around the limits of the official military mandate by adapting the more flexible civilian component to internal political dynamics. The Security Council encouraged the Special Representative of the Secretary-General (SRSG) to use his “good offices” in address-

34. The ethnic Albanian community constituted approximately one-third of Macedonia's population, yet was treated as second-class citizens. In 1995, Tetovo experienced unrest after the Macedonian government declared the newly opened Albanian-language university there illegal. Protests continued sporadically in 1996 over this issue and the jailing of ethnic Albanian politicians. The Constitutional Court's banning of the Albanian flag prompted further protests in 1997. By 1998, there were mass rallies in the capital, Skopje, in support of ethnic Albanians across the border in Serbia.

U.N. politics led to the replacement of UNPREDEP with a NATO force in 1999. In the aftermath of Kosovo, NATO has been criticized by Macedonian Slavs who contend that the rebel movement in Macedonia was created by former members of the Kosovo Liberation Army (KLA), but NATO is unwilling to admit this, for it would signal an admission of failure on the part of NATO. See 11 UN & CONFLICT MONITOR 29 (2001). Additionally, the U.N. administration of Kosovo has prevented Macedonian KLA volunteers from settling in the Kosovo they had fought to liberate. Their forced return to Macedonia has thus increased ethnic Albanian frustration. See *id.* at 28.

35. See S.C. Res. 1105, U.N. SCOR, ¶ 1, U.N. Doc. S/RES/1105 (1997).

36. *November 1996 UNPREDEP Report*, *supra* note 29, ¶ 22.

37. *Report of the Secretary-General Pursuant to Resolution 871 (1993)*, U.N. SCOR, U.N. Doc. S/1994/300, ¶ 42 (1994) [hereinafter *March 1994 UNPROFOR Report*].

ing internal tensions in Macedonia.³⁸ The Secretary-General reported:

The civilian component of the mission, acting under the broadened political mandate thus granted to my Special Representative, has assisted in bringing together various segments of the population in an effort to promote mutual understanding between communities, monitor human rights and ease political and inter-ethnic tensions within the country.³⁹

To this end, civil-affairs officers in UNPREDEP advised the government, monitored elections, conducted fact-finding missions, and aided the targeting of humanitarian assistance.⁴⁰

The civilian component also involved a wide range of humanitarian activity. UNPREDEP's stated priorities included "good governance and the rule of law, strengthening of national capacity and infrastructure, institution-building and human resources development in the governmental and civil sectors."⁴¹ Its goal was to build local capacity so that Macedonians themselves could "serve as agents of conflict prevention."⁴² The Skopje office of the United Nations High Commissioner for Human Rights (UNHCHR) provided support for local human rights nongovernmental organizations (NGOs).⁴³ UNICEF assisted with educational reforms.⁴⁴ The IMF and World Bank administered a structural adjustment program with Macedonia.⁴⁵ Agencies also conducted police

38. S.C. Res. 908, U.N. SCOR, 3356th mtg., ¶ 12, U.N. Doc. S/RES/908 (1994).

39. *November 1996 UNPREDEP Report*, *supra* note 29, ¶ 7.

40. *See* CARNEGIE REPORT, *supra* note 10, at 64.

41. *Report of the Secretary-General on the United Nations Preventive Deployment Force Pursuant to Security Council Resolution 1186 (1998)*, U.N. SCOR, ¶ 8, U.N. Doc. S/1999/161 (1999) [hereinafter *February 1999 UNPREDEP Report*].

42. *Id.* These programs were funded from extra-budgetary resources mobilized by the SRSG. *See id.*

43. *See November 1996 UNPREDEP Report*, *supra* note 29, ¶ 10.

44. *See id.* ¶ 11. Other agencies involved on the ground included the United Nations Conference on Trade and Development (UNCTAD), the United Nations High Commissioner for Refugees (UNHCR), and the World Health Organization (WHO). *See id.* ¶¶ 10, 12, 15.

45. *See Report of the Secretary-General on the United Nations Preventive Deployment Force*, U.N. SCOR, ¶¶ 9, 15-16, U.N. Doc S/1997/365 (1997); *February 1999 UNPREDEP Report*, *supra* note 41, ¶ 18.

training on civil liberties, human rights, and economic and financial crime.⁴⁶

International development assistance to Macedonia worked in tandem with UNPREDEP. As the poorest republic of the former Yugoslavia, economic decline in the 1990s led to cuts in education that, given the conditions obtaining between ethnic groups in Macedonia, raised the potential for the emergence of horizontal inequalities.⁴⁷ When combined with regional political instability, U.N. sanctions against its northern neighbor, an embargo by its neighbor to the south, and mass economic fraud next door to the west, Macedonia's economic situation presented a case of underlying instability and discontent that could easily be manipulated into grievances for political ends. Thus, a two-pronged approach was called for, whereby economic development could reduce underlying tensions and political development could redirect those tensions into acceptable political outlets, avoiding the resort to violence.

The United Nations Development Program (UNDP) completed a Country Cooperation Framework (CCF) in 1997 by which UNDP, using a national execution modality, would support the government's implementation of four priorities: social transfer policies; education;⁴⁸ targeted local-level private-sector development and economic-management activities; and the environment. The Secretary-General reported that, on the ground, UNDP was "actively involved, in consultation with UNPREDEP, . . . [preparing] intersectoral projects in preventive peace-building."⁴⁹ Despite these efforts, UNDP's CCF makes almost no mention of interethnic tensions.⁵⁰ Moreover, funding for the UNDP program comes from its traditional mode;

46. See *February 1999 UNPREDEP Report*, *supra* note 41, ¶ 17.

47. See *First Country Cooperation Framework for the Former Yugoslav Republic of Macedonia (1997-1999)*, Executive Board of the U.N. Development Programme and of the U.N. Population Fund, 3d Sess., Prov. Agenda Item 6, ¶¶ 3-6, U.N. Doc. DP/CCF/MCD/1 (1997).

48. The goal was to prepare the country "for the challenges of democratic pluralism and competition from the market-driven global economy" by ensuring a "system more relevant to present day social and economic needs and multilingual reality." *Id.* ¶ 21. This is the only allusion in the CCF to the possibility that interethnic tensions need to be addressed.

49. *November 1996 UNPREDEP Report*, *supra* note 29, ¶ 13.

50. See *supra* note 48.

the absence of any Track 1.1.3 funding—which is reserved for countries in “special situations”—demonstrates that UNDP did not approach Macedonia as conflict prone. As with its projects elsewhere, UNDP operates at the level of the central government. The CCF does not address how the agency would deliver its assistance to all communities equally or build bridges between the communities.

Throughout UNPREDEP’s deployment, both the justification for its presence and its official mandate remained couched in terms of an external threat. In 1999, arguing for the extension of UNPREDEP’s mandate, the Macedonian Foreign Minister still voiced his concerns exclusively in such terms: concern of spillover from Kosovo, instability and increasing tensions on the Albanian border, and the lack of progress demarcating the Yugoslav border.⁵¹ Nonetheless, UNPREDEP primarily focused on the internal dynamics of Macedonian political society, while its military component remained stationed in the border areas providing a deterrent but largely unable to respond to any domestic conflict should it have arisen.

In addition to its deterrent, capacity-building, and confidence-building functions, UNPREDEP also served the key function of providing early warning for the Security Council.⁵² The civilian component tracked social, political, and economic trends in the country, while the military arm reported on potential threats. Such an integrated approach to early warning may well be responsible for UNPREDEP’s ability to navigate around its mandate and address internal concerns.

Why, given such intense international involvement in Macedonia, did ethnic-based conflict break out in 2001? While many trigger factors can be pointed to, how had years of international engagement failed to address adequately the underlying causes?⁵³ While internal tensions in Macedonia were

51. See *Letter Dated 29 January 1999 from the Minister for Foreign Affairs of the Former Yugoslav Republic of Macedonia, Addressed to the Secretary-General*, U.N. SCOR, Annex, U.N. Doc. S/1999/108 (1999); see also *February 1999 UNPREDEP Report*, *supra* note 41, ¶ 32.

52. See *March 1994 UNPROFOR Report*, *supra* note 37, ¶ 37.

53. It is possible to argue that NATO’s focus on the situation in Kosovo led it to neglect the regional impact of its support for the Kosovar population. Refugee flows from Kosovo into Macedonia have also been accused of igniting tensions in the latter. At a more structural level, it is possible that

acknowledged, there was never a serious effort to address two key ethnic Albanian grievances: second-class citizenship and a discriminatory constitutional framework. Early efforts to encourage constitutional reform when interethnic tensions were first recognized—before “Slav” became equivalent with “Macedonian”—might have significantly reduced tensions underlying the recent conflict. Greater and more directed development assistance that ensured aid would reach the neediest communities irrespective of ethnicity could have alleviated underlying resentment caused by the depressed economy’s magnification of horizontal inequalities.⁵⁴ In addition, while UNPREDEP was successful at recognizing that the real threat was internal, it did not question the persistent view that tensions were between Albanians and Slavs, rather than recognizing it also as a dispute amongst Albanians themselves.⁵⁵ Engaging with internal political dynamics requires skepticism when presented with locally constructed categories into which they can fit local actors. Thus, while UNPREDEP’s success lay in the flexible mandate of its civilian component, which allowed it to address internal tensions when these emerged as a threat to stability, it did not succeed in addressing the underlying grievances that gave rise to tensions in the first place. The remainder of this Note discusses how international actors can hope to do this and focuses on the obstacles they will encounter along the way.

IV. OBSTACLES TO CREATING A CULTURE OF PREVENTION

In the shift over the past decade from operational to structural prevention, many have focused on the potentially

the replacement of UNPREDEP with a European preventive deployment that lacked the same flexible civilian component provoked a breakdown in coordination and, thus, inadequate attention to the internal political dynamics of Macedonia. Inadequate early attempts to address illicit arms trafficking by ethnic Albanians in Macedonia were a clear permissive factor in the militarization of already existing tensions.

54. “Finding recruits for a new ragtag army, bent on making trouble in Macedonia, could be all too easy. . . . Macedonia’s Albanian community has an unemployment rate of more than 60%, compared with the national average of about half that.” *Oh No, Not War in Macedonia As Well*, ECONOMIST, Mar. 10, 2001, at 47.

55. See Jonathan Steele, *Comment & Analysis: Nowhere Near the Brink: Ignore the Hysteria, Macedonia Is Not About to Spark a Balkan Conflagration*, THE GUARDIAN, Mar. 19, 2001, LEXIS, News Library, Guardian (London) File.

constructive role played by development actors such as UNDP, the World Bank, and bilateral donors. By virtue of their presence in a host country long before tensions become violent, these outsiders can provide early warning, act to reduce social, economic, and political inequality, and reinforce local capacity for the peaceful settlement of disputes.

In the past, multilateral development assistance has been divorced from politics, while bilateral development assistance was viewed as a product of Cold War political orientations. With the end of the Cold War, development assistance is increasingly recognized as inherently political, specifically with respect to the distribution of power within a host country.⁵⁶ To this end, the United Nations now sees the need to exploit a link between development and the overtly political task of conflict prevention. The Security Council recently encouraged “the consideration of conflict prevention in development assistance strategies.”⁵⁷

But the mere recognition of development’s import is insufficient. By itself, development risks causing more problems than it hopes to solve. The social changes accompanying rapid economic development often produce inequality, instability, and political tension. Traditional social structures are undermined, while political reform lags behind economic and social change.⁵⁸

To avoid exacerbating local tensions—as well as to prevent the violent resolution of such tensions—development assistance should engage local actors and be evenhanded.⁵⁹ However, governments may resist any efforts that are per-

56. “The political impact of relief must be recognised explicitly. Development and relief assistance can confer power to local organizations Aid agencies may thus find themselves accused of taking sides (feeding the enemy), and indirectly contribute to prolonging the crisis.” DEVELOPMENT ASSISTANCE COMMITTEE, ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, DAC GUIDELINES ON CONFLICT, PEACE AND DEVELOPMENT CO-OPERATION, ¶ 102 (1997) [hereinafter DAC GUIDELINES].

57. *Statement by the President of the Security Council*, at 4, U.N. Doc. S/PRST/2000/25 (2000).

58. See Brown, *supra* note 10, at 20 (citing SAMUEL P. HUNTINGTON, POLITICAL ORDER IN CHANGING SOCIETIES (1968)). To this end, many midcentury modernization programs are now seen as the “taproots of instability and internal conflict.” *Id.*

59. “Even-handedness is achieved when the sum of external assistance is provided in such a manner that none of the parties to conflict is able to

ceived as attempts to circumvent official channels and to support opposition groups. Thus, the reorientation of development raises a number of obstacles. The following case studies explore three types of obstacles: the mismatch between the political mandate of conflict prevention and the apolitical operational modalities of development actors, sovereignty concerns, and problems relating to coordination among the wide variety of agencies operating in any one location.

A. *Apolitical Mandates of Development Agencies*

Although some poor countries never descend into conflict, many view all development assistance as preventive. While such an assertion may be overly broad, *local and decentralized* development plays a key role in conflict prevention. This is true in the context of postconflict peace building⁶⁰ as well as in preconflict situations, where meaningful early warning combined with the requisite political will can lead to successful preventive development. One of the problems presented by using development to further the goal of conflict prevention, however, is that development agencies frequently have operational modalities and institutional interests that may, in their view, conflict with and outweigh the need to bring the political ramifications of their work to the fore.⁶¹

accrue politico-military advantage.” DAC GUIDELINES, *supra* note 56, ¶ 84. For a description of preventive development measures, see *id.* ¶ 22.

60. See *infra* Part IV(C)(2) on the Guinea-Bissau Peace-Building Support Office.

61. One possible solution is to delink the coordination and implementation aspects of such development programs. In October 1992, Angola fell back into war after eighteen months of peace, taking the international humanitarian community by surprise. See DAC GUIDELINES, *supra* note 56, at 26 box 5. In March 1993, the government asked the United Nations for humanitarian help. *Id.* Prior to providing such relief, donors and NGOs established a mechanism to coordinate assistance under the U.N. Department of Humanitarian Affairs: the Unidade de Coordenacao para Assistencia Humanitaria (UCAH). *Id.* While UCAH’s mandate was to coordinate the relief effort, it explicitly lacked any mandate for implementation. As such, it was both “[p]olitically neutral and operationally independent from the UN Verification Mission” in Angola, as well as from many of its implementing partners. *Id.* It was thereby able to negotiate with both the government and UNITA, the rebel force, on its own terms. *Id.* The fact that UCAH was able to negotiate with UNITA, despite U.N. Security Council sanctions against UNITA, signifies the advantages of this framework.

In January 2001, the UNDP Executive Committee issued Decision 2001/1, which, while reaffirming “the core mandate of the [UNDP] in promoting sustainable human development . . . at the request of the Government concerned,” recognized “that crisis prevention . . . should be [an integral part] of sustainable human development strategies and also recognize[d] that the [UNDP] has some relevant operational experience in crisis and post-conflict situations.”⁶² In theory, this could represent a significant shift for UNDP, which only in 1995 was still emphasizing that “national development priorities shall be the primary determinant of UNDP-supported programmes, which must remain country-driven.”⁶³ However, unlike U.N. political agencies, which must remain neutral or at least impartial, development agencies must partner with local actors. Thus, given UNDP’s inevitable need to work in tandem with its host government, insurmountable challenges may arise in its ability to address the root causes of nascent conflicts, especially when the government itself is implicated.

1. *World Bank: Postconflict Reconstruction*

The World Bank was created in the aftermath of World War II to assist countries in the transition to peacetime. Despite this apparently political pedigree, most of the Bank’s activities are explicitly apolitical in nature; its Articles of Agreement forbid it from taking politics into account in its lending decisions.⁶⁴ This prohibition is based on the principles of equality of states and nonintervention in domestic affairs, en-

62. *Decisions Adopted by the Executive Board During 2001*, Executive Board of the U.N. Development Programme and of the U.N. Population Fund, 1st Sess., Prov. Agenda Item 1, at 3, U.N. Doc. DP/2002/2 (2002).

63. *Decisions Adopted by the Executive Board During 1994*, Executive Board of the U.N. Development Programme and of the U.N. Population Fund, 1st Sess., Prov. Agenda Item 1, at 13, U.N. Doc. DP/1995/1 (1995).

64. The Bank and its officers shall not interfere in the political affairs of any member; nor shall they be influenced in their decisions by the political character of the member or members concerned. Only economic considerations shall be relevant to their decisions, and these considerations shall be weighed impartially in order to achieve the purposes stated in Article I.

INT’L BANK FOR RECONSTRUCTION AND DEV. [IBRD], ARTICLES OF AGREEMENT (as amended Feb. 16, 1989), art. IV, § 10, <http://www.worldbank.org/html/extdr/arttoc.htm>.

shrined in the U.N. Charter⁶⁵ and, according to Ibrahim Shihata, the Bank's former General Counsel, "high in the minds of the original drafters of the Articles who envisaged universal membership in the institution."⁶⁶

Governance is a central focus of the Bank's loan conditionality. For the Bank, governance involves the "accountability of leaders to their peoples, the transparency of transactions, the proper administration of public funds and the overhauling of procurement procedures."⁶⁷ This focus, despite clear political overtones, is justified by the Bank purely on economic grounds.⁶⁸ Because of this, however, Shihata asserts that the Bank limits its governance activities to those "required for a positive investment climate and for the efficient use of resources."⁶⁹ Explicitly political activities such as political reform and democratization are thus still prohibited.⁷⁰ The political exception in the Bank's Articles was meant to insulate lending decisions from political intervention during the Cold War.⁷¹ Thus, because the Bank's primary political considerations are now the internal tensions of borrowing members, the political exception seems less relevant, if not outdated.⁷²

65. U.N. CHARTER art. 2, paras. 1, 7.

66. Ibrahim F.I. Shihata, *The World Bank and "Governance" Issues in Its Borrowing Members*, in *THE WORLD BANK IN A CHANGING WORLD* 53, 66-67 (Franziska Tschofen & Antonio R. Parra eds., 1991).

67. *Id.* at 55-56 (citing WORLD BANK, *SUB-SAHARAN AFRICA—FROM CRISIS TO SUSTAINABLE GROWTH: A LONG TERM PERSPECTIVE STUDY* (1989)). Since the introduction of structural adjustment lending in 1980, the Bank has increasingly engaged institutions internal to a country's economy. *See id.* at 58-59. Along with this came loan conditionality, whereby disbursement was tied to the structure of the public sector. In the 1990s, this macroeconomic approach evolved into "detailed reforms affecting the . . . administration itself . . . aimed towards reducing the [government's] . . . control over the economy." *Id.* at 59.

68. "[I]nternal or external political events may have significant direct economic effects which . . . may properly be taken into consideration in the Bank's decisions." *Id.* at 75.

69. *Id.* at 93.

70. *See id.* at 95.

71. "[M]ember states agreed to obligate themselves to insulate these financial institutions from political considerations in order to protect them, and their members, from the vagaries of politics in their varied and broad memberships." *Id.* at 72.

72. An article arguing that the Bank should incorporate human rights considerations into its project plans notes that "the historical justification for the political prohibitions in Article IV, Section 10 of the IBRD's Articles of

A look at the Bank's governance activities, however, quickly reveals the unavoidable nature of domestic political dynamics. Rule-of-law initiatives require a deep understanding of a country's socioeconomic situation.⁷³ Many of the Bank's governance activities require a review of "the degree and quality of the state's intervention in running the economy."⁷⁴ While perhaps technocratic in nature, such endeavors inevitably reach political questions about where power should be directed and for whose benefit. Moreover, to the extent the Bank is concerned—as Shihata claims it is—with the "equitable distribution of income . . . as compared to mere growth," it involves itself in some of the most political choices that are vested in the decision-making power of sovereign governments.⁷⁵

Thus, despite its protestations of remaining apolitical, the Bank's governance activities seem well suited to addressing many of those issues in conflict-prone societies that, if left to fester, may foster violence. In the early 1990s, Ibrahim Shihata noted:

The degree of political instability . . . could be such as to affect the development prospects of the country including its prospective creditworthiness [C]ivil strife in such territories cannot be deemed irrelevant to the Bank's work simply because [it is] of a political nature. Bank lending in such circumstances may run counter to the financial prudence required by the Bank's Articles (Article III, Section 4(v)) Indeed, the Bank has long recognized that it "cannot

Agreement is no longer relevant. The Cold War is over and the Bretton Woods architects could not have anticipated the mainstreaming of human rights discourse." Genoveva Hernández Uriz, *To Lend or Not to Lend: Oil, Human Rights, and the World Bank's Internal Contradictions*, 14 HARV. HUM. RTS. J. 197, 225-26 (2001). Similarly, the current post-Cold War civil war epidemic could neither have been anticipated by the Bank's founders nor be denied to have broad-reaching implications for "international peace and security."

73. See Shihata, *supra* note 66, at 89.

74. *Id.* at 87 (emphasis removed).

75. *Id.* "We must also support member governments' attempts to ameliorate the conditions that may lead to conflict, through distributive policies and the participation of excluded groups in development." James D. Wolfensohn, *Foreword* to WORLD BANK, POST-CONFLICT RECONSTRUCTION: THE ROLE OF THE WORLD BANK, at v, vi (1998).

ignore conditions of obvious internal political instability or uncertainty which may directly affect the economic prospects of a borrower." . . . It is important to recall, however, that in such situations the Bank would still be taking into account relevant economic considerations; political events would represent only the historical origins or the causes which gave rise to such considerations.⁷⁶

Despite such a roundabout rationale, the Bank has thus opened up a path for engaging in preventive development.⁷⁷ Shihata's statement might be read to imply that the Bank's political considerations will simply lead to its disengagement from conflict-prone states. Such an approach would provide some benefits, for it would avoid exacerbating local tensions through an infusion of capital to one party. More recently, the President of the Bank has stated that the Bank "must take steps to ensure that the activities it supports 'do no harm' and avoid aggravating existing inequities in fragile situations."⁷⁸ Taken literally, this might be a pro-status quo attitude. Furthermore, by refraining from action in order to "do no harm," the Bank may ignore grievances that risk inflaming a situation.

Nonetheless, it is preferable to address explicitly the political issues so as to prevent further conflict. Indeed, in the postconflict context, the Bank has acknowledged the undesirability of the status quo approach:

Conflict . . . transforms societies, and a return to the past may not be possible or desirable. Often, the in-

76. Shihata, *supra* note 66, at 75-76 (citations omitted).

77. Note, however, that the Bank typically loans only to governments and only operates within a country at the request of that government. See generally IBRD, *supra* note 64. In situations of no clear authority—as in cases of state collapse or failure—the Bank takes a flexible approach, noting that credits may be given to entities other than governments, such as agencies, subnational groups, NGOs, or regional organizations. Where more than one regime asserts power, the Bank's policy is that it

does not make political choices but is guided by the actual situation (that is, who is in effective control) and the general recognition of the international community The increasing problem of 'stateless societies' or societies where there is no functioning state for long periods of time raises [questions not yet solved].

WORLD BANK, POST-CONFLICT RECONSTRUCTION: THE ROLE OF THE WORLD BANK 30 (1998).

78. Wolfensohn, *supra* note 75, at vi.

equities and fragility of the economies and weak governance structures of such societies have played a significant role in creating the conditions for conflict. In such cases what is needed is the reconstruction of the *enabling conditions* for a functioning peacetime society in the economy and society and in the framework of governance and rule of law.⁷⁹

Thus, the Bank's postconflict-reconstruction "integrated package" endeavors to jumpstart the economy; reestablish governance; repair physical infrastructure; rebuild social infrastructure; target assistance to those affected by war through demobilization and reintegration, community revitalization, and support for vulnerable groups; promote landmine action; and normalize financial borrowing arrangements.⁸⁰

The Bank can work to prevent conflict in a number of ways. One method is conditionality, defined as "the forging of links between responsible, nonviolent behavior and the promise of greater reward through growing integration into the community of market democracies."⁸¹ As such, conditionality can pressure loan recipients to adopt good governance practices and—for bilateral donors—political reforms as part of funded development programs. In both Kenya and Nigeria, bilateral assistance was made conditional on political reforms following suppression of prodemocracy movements in each country.⁸²

Nonetheless, conditionality has been heavily criticized as a preventive measure. It is seen as an overly intrusive dictation of domestic policy choices that are within the province of the sovereign government.⁸³ Conditionality may also be insensitive to and incompatible with the political structure of many developing countries.⁸⁴ Moreover, Stewart accuses the Bank of taking "no account of horizontal equity in [its] policy pre-

79. WORLD BANK, *supra* note 77, at 14 box 1.

80. *Id.* at 4-5.

81. CARNEGIE REPORT, *supra* note 10, at 57.

82. See *infra* Part IV(A)(2) and (B)(2) on Nigeria and Kenya respectively.

83. See Sucharipa-Behrmann & Franck, *supra* note 7, at 511-12.

84. "Economic conditionality cut at the heart of the patrimonial state, . . . divest[ing African leaders] of the resources necessary to maintain the support of their clients." Stedman, *supra* note 4, at 243.

scriptions.”⁸⁵ This more nuanced, politically informed approach to distributional equity may be precluded by the political prohibition in the Bank’s Articles.

The Bank also gathers information on the political situations of its borrowing members, including the underlying social and cultural factors.⁸⁶ While deemed essential to evaluating the economic prospects for a country, this can also provide early warning of potential conflict situations, which could then be shared with other international actors capable of operational prevention. To this end, the World Bank was recently added to the U.N. Framework for Coordination Mechanism.⁸⁷ Nonetheless, the Bank’s ability to collect information is limited to its state-level contacts; it explicitly avoids creating the impression of interfering with internal political affairs by avoiding unchecked contacts with opposition parties.⁸⁸ This limitation—which the Bank believes is required by its own Articles—risks creating a distorted image of a country’s internal dynamics.

The Bank also addresses local tensions through decentralization initiatives.⁸⁹ Its asserted rationale behind such endeavors is twofold. First, “weaknesses in government implementing capacity, combined with a dearth of statistics and other organized sources of knowledge, may tend to favor decentralized development initiatives.”⁹⁰ Second, it is believed that participatory community-based programs not only help build capacity but also create a stake in development.⁹¹

85. “Aid allocation within a country depends on efficiency considerations, and sometimes vertical equity, but not horizontal equity. Pursuing horizontal equity may sometimes conflict with efficiency or even with vertical equity. These are trade-offs that may have to be accepted.” Stewart, *supra* note 12, at 129.

86. See Shihata, *supra* note 66, at 81.

87. See the EISAS case study, *infra* Part IV(B)(1). The World Bank also participates in the Interagency Standing Committee at the United Nations, and the Conflict Prevention and Postconflict Reconstruction Network.

88. See Shihata, *supra* note 66, at 81.

89. One such initiative is explored below with respect to Nigeria. See *infra* Part IV(A)(2).

90. WORLD BANK, *supra* note 77, at 25.

91. See *id.* “[T]he Community Development and Reintegration Project in Rwanda demonstrates that [such activity] takes place most effectively through . . . decentralization and community participation in the identification of measures to assist returnees and other vulnerable groups.” Patricia

Decentralization aims to improve the legitimacy of local government by encouraging participation in planning decisions. In doing so, the OECD Development Assistance Committee notes that decentralization also “improve[s] the responsiveness of the state, and thereby reduce[s] tensions which may lead to violent conflicts.”⁹² Decentralization initiatives are exactly the type of efforts that begin to move beyond the traditional state-based framework of the development industry. As such, they should be encouraged and focused on the need to reduce horizontal inequalities.

While the Bank explicitly adopts a political role only in postconflict countries, it is involved in preconflict situations as well. Here, the Bank limits itself to “doing no harm,” rather than explicit prevention.⁹³ Nonetheless, in addition to governance, the Bank describes three activities it undertakes in the preconflict context that clearly relate to engaging local political dynamics. Social assessments of the sources of conflict and tension—which focus on distribution, inclusion, and disparities between groups—are incorporated into development planning.⁹⁴ Civil society engagement is prioritized under the theory that such social organizations can play a key intermediary role.⁹⁵ Finally, the Bank attempts to make a “frank exploration of the costs of both random and organized violence.”⁹⁶

2. Nigeria

Significant increases in development aid to Nigeria following the country’s transition to civilian rule have not prevented violence. This raises questions about how the international community can ensure that underlying social tensions are peacefully resolved in the context of democratic transitions.

Cleves et al., *Addressing Conflict: Emerging Policy at the World Bank*, in FROM REACTION TO CONFLICT PREVENTION: OPPORTUNITIES FOR THE UN SYSTEM, *supra* note 12, at 321, 329.

92. DAC GUIDELINES, *supra* note 56, at 39 box 8.

93. “Given the complexity of conflict, it may be unrealistic to expect development agencies to prevent conflicts from occurring, but it is important to integrate a sensitivity to conflict into the vision of development Steps should be taken to ensure that interventions by development agencies do not aggravate existing inequities.” WORLD BANK, *supra* note 77, at 3.

94. *Id.* at 19 box 2.

95. *Id.*

96. *Id.*

Since gaining independence in 1960, Nigeria has experienced intermittent periods of nascent democracy amidst long periods of military rule. The international response to the violence that accompanied the reinstatement of military rule in 1993 was ambiguous.⁹⁷ African governments remained silent, while the West merely suspended nonhumanitarian aid.⁹⁸ As popular resentment increased, a new military government came to power under Sani Abacha. Dominated by massive corruption, this government completely discarded cooperation with the World Bank and IMF. In 1995, Nigeria evoked international condemnation after Abacha's government executed nine prodemocracy activists.⁹⁹

Despite fears of a large Nigerian conflict arising out of either military divisiveness or civil violence, Abacha's 1998 death led to political liberalization.¹⁰⁰ Economic development and renewed foreign relations have brought optimism. Despite this apparent progress, over ten thousand people have

97. Optimism in 1993, brought about by then President Babaginda's willingness to allow elections, was subsequently dashed when he annulled those elections. The victor was not an elite northern Muslim businessman preferred by Babaginda. The annulment led to popular protests and violence, heaviest in the Yoruba states, home to the election's winner. "The perception of disenfranchisement by a northern Muslim elite—for the third time since independence—incited deep resentments" Peter M. Lewis, *Nigeria: The Challenge of Preventative Action*, in CASES AND STRATEGIES FOR PREVENTATIVE ACTION 99 (Barnett R. Rubin ed., 1998). Faced with protests and renewed violence, military rule was reinstated as the economy declined, hardship increased, and the international community marginalized the country.

98. Under military rule, Nigeria's significant clout as a major oil exporter made Western powers wary of imposing stringent sanctions for human rights violations. See *id.* at 107-08.

99. See Howard W. French, *Deadly Logic in Nigeria*, N.Y. TIMES, Nov. 12, 1995, at 18. The Commonwealth suspended Nigeria's membership and the United States considered an oil embargo. Many have accused Washington of "using rhetorical condemnations and symbolic gestures to mask a policy of oil-business-as-usual and expanded security cooperation with the regime." Michael Fleshman, *The International Community and the Crises in the Oil Producing Communities—A Perspective on the U.S. Role*, in BOILING POINT: A CDHR PUBLICATION ON THE CRISES IN THE OIL PRODUCING COMMUNITIES IN NIGERIA 179, 182 (Wumi Raji et al. eds., 2000).

100. See Lewis, *supra* note 97, at 102; see also Bob Herbert, Editorial, *The Fantasy Coup*, N.Y. TIMES, Aug. 14, 1995, at A15 ("The situation in Nigeria has deteriorated to such a degree that some form of violent upheaval seems all but inevitable, perhaps even civil war. Calls are growing for increased international pressure . . .").

been killed in conflicts rooted in ethnic, religious, and regional tensions since the 1999 transition to civilian rule. The introduction of Shariah, Islamic law, in many northern states has led not only to violence, but also to geographical and ideological polarization. This may create fertile ground for the emergence of more broadly based conflicts. In other regions, long-standing ethnic tensions—suppressed for decades by the military government—have reemerged. The government's failure to devolve economic and political power to local governments, particularly in the impoverished, yet oil-rich, Niger Delta, has refueled separatist desires and led to the sabotage of foreign oil installations.¹⁰¹ Largely ignored by the international media and dismissed by local politicians, this violence may represent the seeds of conflict that could threaten the fragile democratic state.

In 1997 a scholar proposed the following best-case scenario:

If the military were to definitively exit power and allow a relatively transparent electoral process, then the change of regime could help to assuage tensions while enabling democracy to emerge in the future The prospect of civilianization before democratization, accompanied by a partial liberalization of the political arena, provides a clear (though flawed) path out of the present impasse.¹⁰²

While this is, in fact, essentially what has happened, the post-1999 violence raises serious concerns about how conflict prevention can be incorporated into political transitions.¹⁰³

101. In 1998, these groups succeeded in reducing the annual oil output of Nigeria by one third. "The revolt, deadlier, more widespread and better organized than the isolated protests of previous years, led many in Nigeria to talk of a coming civil war." Norimitsu Onishi, *Deep in the Republic of Chevron*, N.Y. TIMES, July 4, 1999 (Magazine), at 26.

102. Lewis, *supra* note 97, at 105.

103. Many assert that the post-1999 violence results from vacuums created by the military's exit from politics. The day after President Obasanjo's inauguration, violence swept the impoverished, yet oil-rich Niger Delta. See Norimitsu Onishi, *New Leaders Face a Violent and Splintered Nigeria*, N.Y. TIMES, June 10, 1999, at A14 [hereinafter *New Leaders Face a Violent and Splintered Nigeria*]. There is also doubt as to whether President Obasanjo can control the military. See Norimitsu Onishi, *Nigeria Army Said to Massacre Hundreds of Civilians*, N.Y. TIMES, Oct. 30, 2001, at A3.

Many of the dynamics and tensions that have characterized Nigerian politics since independence have yet to disappear. There is reason to wonder whether, like its predecessors, the current democratic government will soon face a coup.¹⁰⁴ Or, perhaps worse, whether, with the prolongation of the current state of illiberal democratic politics based on ethnic, religious, regional, and personal ties, the current low-level violence will lead to more broadly based civil conflict.

Despite the increasing economic interdependence of ethnic groups, ethnic politics have become increasingly polarized.¹⁰⁵ The government response has been to create a seemingly ever-increasing number of states.¹⁰⁶ Rather than

104. Indeed, much of the recent violence and manipulation of existing social tensions is attributed to the maneuvering of local politicians in the run-up to the 2002 elections. See Dan Isaacs, *Dozens Killed in Nigerian Clashes*, BBC NEWS, Jan. 13, 2002, <http://news.bbc.co.uk/2/hi/africa/1758737.stm>.

105. Southerners feel alienated by the center's political domination and the north's numerical superiority, while northern elites are dissatisfied, having lost their grip on power in 1999. An apparent northern monopolization of power competes with latent southern sentiments for partition. Moreover, fundamentalist Islamic groups use discontent to fuel their opposition to secular rule. The introduction of Shariah in northern states—as well as the federal government's uncertain response to this development—has also increased tensions:

“Some people are using Shariah to create problems for the Obasanjo government,” said Yahaya Mahmood, the lawyer for a Muslim organization in the north, “either Muslims who have lost relevance in the north or Christians who are calling for sovereignty in the south.” Muslim leaders have politicized the Shariah . . . while Christian leaders have used it to inspire fear . . . and [to] stoke separatist sentiments. Nigeria's desperate poverty . . . provided the ammunition.

Norimitsu Onishi, *Gulf Grows over the Use of Islamic Law in Nigeria*, N.Y. TIMES, Aug. 23, 2000, at A10.

106. Beginning with three regions after independence, there are now thirty-six states. This policy has been criticized as false federalism; the central government continues to control the dispersal of funds, and there is minimal local autonomy. Nigeria's postindependence three-region structure was changed into a federal structure after civil war in the 1960s. “[T]he regions were disbanded and replaced with states, but they became smaller and weaker and were all brought under the control of a military junta that was operating with emergency powers . . . to prosecute a civil war.” Julius O. Ihonvbere, *A Recipe for Perpetual Crises: The Nigerian State and the Niger Delta Question*, in *BOILING POINT: A CDHR PUBLICATION ON THE CRISES IN THE OIL PRODUCING COMMUNITIES IN NIGERIA*, *supra* note 99, at 73, 83. Today, there are calls for “a true political restructuring to return the country to true fed-

pacifying groups, however, this federalism—reinforced by the oil economy whereby the central government provides the majority of local government funding—has increased intercommunity tension. In such a situation, the proliferation of local governmental bodies increases the fighting over dispersal of funds. The 1999 constitution has thus been criticized for failing adequately to decentralize control and address the nationality question.¹⁰⁷ Attempts to redress disparities through government-administered development programs may increase ethnic tension as groups compete for funds.¹⁰⁸

Nigeria's political parties are dominated by personal and economic—as well as religious and ethnic—ties.¹⁰⁹ The political elite is a product of Britain's choice to transfer postcolonial power to a British-educated elite structure rather than to tribal leaders or other more legitimate power holders.¹¹⁰ A lack of obligation to one's constituency,¹¹¹ combined with a tribal loy-

eralism with constitutionally guaranteed autonomy and control to the various regions/states." *Id.* at 94.

107. Between 1993 and 1997, federal revenue was over 77% of state revenues and over 92% of Local Government Authority revenues. As a percentage of total public sector expenditure, federal government spending amounted to 68% to 75%, and state and local government expenditures amounted to 25% to 32%. WORLD BANK, NIGERIA—COMMUNITY AND LOCAL GOVERNMENT DEVELOPMENT PROJECT, Report No. PID 10650, ¶ 1 (2001), <http://www.worldbank.org> [hereinafter WORLD BANK CLGDP].

108. See *Political Forces*, ECONOMIST.COM, Jan. 30, 2003, at <http://www.economist.com/countries/Nigeria/profile.cfm?folder=profile%2DPolitical%20Forces> (on file with author).

109. See *id.* The parties, formed quickly by politicians in 1998 so as to secure positions in the new democratic government, are "ideologically indistinguishable." *Id.* Minority parties put forth little opposition to the government's policies. *Id.*

110. Local control was left in the hands of traditional leaders, while the national government was ceded to these elites. UNDP, *National Programme on Governance for Sustainable Human Development: Summary of Programme* (2000), <http://www.undp.org.ng/ProgSummary.htm> (on file with author) [hereinafter *UNDP Nigeria SHD Summary*]. While such efforts to engage with local political dynamics may be well-intentioned, they risk replicating past patterns of disjuncture between national and local governments, as well as promoting reliance on personalities instead of policies.

111. Fractious and compliant, politicians in Nigeria prefer to receive inducements from the regime than link up with civil society or their constituencies. Lewis, *supra* note 97, at 102.

alty that justifies public theft,¹¹² creates an ethnicity-based political structure where politicians seek public funds and favors along tribal lines. This has been exacerbated by the arrival of democratic politics, which creates incentives to play up ethnic, regional, and religious tensions.

Thus, there seems to be a breakdown in the peaceful resolution, through the political mechanisms of Nigeria's government, of local-level ethnic, religious, and regional conflicts. If Nigerians feel that the government is not their own, or is incapable of representing their interests, violent means may be used to resolve conflicts. At the same time, politicians fuel local tensions for personal gain. Thus, the rope of Nigeria's nascent democratic institutions is burning at both ends. To help end current violence and prevent an outbreak of larger civil conflict, the international community must go beyond state-level contacts and engage local groups on a deeper level than it has hitherto done.

Having suspended aid in 1995,¹¹³ the international community has reengaged Nigeria following the transition to civilian rule.¹¹⁴ Active development programs exist in areas such as nutrition, education, microcredit, and poverty reduction.¹¹⁵

112. "Tribal loyalty . . . explains why so many Nigerians have shamelessly plundered the state . . . [M]any Nigerians regarded the state itself as an alien transplant." *Fissiparous Folk*, *ECONOMIST*, Jan. 15, 2000, at 14, 15.

113. In its 1997 CCF, UNDP noted, "The total external assistance anticipated from the donor community . . . was about \$600 million. However[,] . . . inflows of resources did not materialize because of the general attitude of the donor community towards Nigeria's democratization process." *Country Cooperation Frameworks and Related Matters, First Country Cooperation Framework for Nigeria (1997-2001)*, Executive Board of the U.N. Development Programme and of the U.N. Population Fund, 3d Sess., Prov. Agenda Item 6, ¶ 23, U.N. Doc. DP/CCF/NIR/1 (1997) [hereinafter *Nigeria CCF*].

114. Community-based peace-building initiatives operate in many places, sometimes successfully. See *Nigeria: The Roots of Violence*, *ECONOMIST*, Sept. 15, 2001, at 42. While Nigeria is still a fragile nascent democracy, many Nigerians remain confident that the country is not about to break up now, having already endured forty years. See *Fissiparous Folk*, *supra* note 112, at 15. An August 27, 2000, New York Times report states that aid to Nigeria "has jumped from \$7 million a year to more than \$200 million since Mr. Obasanjo was elected in February 1999." Blaine Harden, *Into Africa: The U.S. Keeps Looking for a Few Good Men*, *N.Y. TIMES*, Aug. 27, 2000, § 4 (Week in Review), at 1.

115. Donors involved in major projects in Nigeria as of November 17, 2000: World Bank, UNICEF, E.U., Ford Foundation, DIFD, and UNDP. See

The new initiatives focus on decentralization and community ownership to a much greater degree than in the past. The World Bank notes that past government-initiated projects have failed because they were

poorly targeted, sectoral in nature and . . . imposed from above with little . . . involvement of the communities they are ostensibly attempting to help Communities seldom identify with programs that are designed and provided by the government. In many cases, community participation is not solicited in planning and implementation, which leads to misdirected funds, lack of maintenance and low sustainability [M]any communities tend to view government initiatives with a sense of distrust and do not “own” such programs.¹¹⁶

New aid initiatives, particularly the Bank’s Community and Local Government Development Project (CLGDP), have incorporated innovative elements to strengthen local capacity and ownership of infrastructure projects.¹¹⁷ The CLGDP proposal’s reliance on prior Bank experience with decentralization in Bolivia is promising, for it hints at the possibility of using development projects to build bridges between communities.¹¹⁸ A focus on such grassroots intercommunity efforts might directly deal with the tensions that lay at the heart of recent violence.¹¹⁹

WORLD BANK, PROJECT APPRAISAL DOCUMENT ON A PROPOSED CREDIT IN THE AMOUNT OF SDR47 MILLION TO THE FEDERAL GOVERNMENT OF NIGERIA FOR A COMMUNITY BASED POVERTY REDUCTION PROJECT, Report No. 21396-UNI, at 7-8 (2000).

116. WORLD BANK, NIGERIA-COMMUNITY DEVELOPMENT, Report No. PID8969, ¶¶ 1, 8 (2000), <http://www.worldbank.org>.

117. The goal of the CLGDP is “[t]o establish a viable, sustainable and transparent institutional mechanism for transferring investment resources to local governments and communities, in order to enable them to finance their own development priorities.” WORLD BANK CLGDP, *supra* note 107, ¶ 2.

118. “[The] project now envisages a greater role for free [Local Government Authority] and Community Associations. These will in fact identify investments, monitor compliance with Bank and national technical and financial requirements, and—in some cases—provide technical assistance to remote communities with weaker capacity” *Id.* ¶ 8.

119. Building bridges in this manner could, however, serve to unite dispersed ethnicities, thus building up solidarity.

Despite these promising signs, the World Bank still does not explicitly acknowledge how local capacity-building necessarily invokes political tensions inherent in Nigeria's center-heavy federal system.¹²⁰ The Bank seems more concerned with avoiding political interference than with confronting the problems that changing political relations between levels of government, as well as between communities, pose to its initiatives.¹²¹

UNDP was unable to engage Abacha's regime due to a lack of donor support. Nonetheless, UNDP developed a country cooperation framework that sought "to strengthen the capacity of national institutions to underpin the Government's transition to democratic rule and good governance."¹²² Such statements show UNDP's naive optimism and its inability to question Abacha's professed willingness to transition to democracy, which was actually in serious doubt at the time.¹²³ Nonetheless, many initiatives created by UNDP in 1997 are now being implemented with renewed donor support. These include a focus on decentralization,¹²⁴ a six-zone national framework to replace a reliance on the federal state structure,¹²⁵ and regular donor coordination meetings.¹²⁶

In addition to national-level engagement, UNDP now also directly targets communities. Community "ownership" is en-

120. Though failing to address such political dynamics, the Bank recognizes the difficulty of implementing community-based projects in this federal system: "The relationship between states and local governments is also determined by a given state's autonomy from the federal government, as well as the federal guidelines concerning the eligible uses of federal funds." WORLD BANK CLGDP, *supra* note 107, ¶ 1.

121. The Bank points to a "need to ensure effective implementation arrangements that minimize political interference and overcome bureaucratic delays over decisions for contract awards and payment authorizations." *Id.* ¶ 8.

122. *Nigeria CCF*, *supra* note 113, ¶ 31.

123. Vague statements, such as "Activities will focus on the Government's efforts to reinforce the links between good policies, leadership and institutions," demonstrate the difficulty in engaging the internal political dynamics that will necessarily dictate how such a program could actually be implemented. *Id.* ¶ 31; *see infra* Part IV(B)(2) on Kenya.

124. UNDP decentralized the implementation process. Unlike the World Bank, however, these initiatives did not devolve planning and control over the projects. *See Nigeria CCF*, *supra* note 113, ¶¶ 19, 45, 47, 48.

125. *Id.* ¶ 21.

126. *Id.* ¶ 52.

couraged by requiring 10% contributions. Such “stake-building” will be key, not only for UNDP’s stated rationale of ensuring the sustainability of the development projects themselves, but also in giving communities a stake in the peaceful progression of development.

A recent UNDP initiative envisages the agency “cultivating partnership with major stakeholders, especially the military, private sector, civil society and the media.”¹²⁷ The project aims to help civil-society organizations and political parties “legally function as representatives of society and become countervailing intermediaries.”¹²⁸ Such civil-society capacity-building is essential, for its goal is to engage local-level politics, move beyond state-level relations, and foster institutions that might serve intermediary functions for the peaceful resolution of disputes. Unlike the 1997 CCF, it also aims to develop participatory methods whereby stakeholders partake in not only implementation but also planning. Nonetheless, like the World Bank, UNDP does not confront the political aspects of its project. For example, it proposes to help the media become a partner in development but does not address the media’s watchdog role or the political ramifications of supporting a free press.¹²⁹

The various conflicts across Nigeria have yet to coalesce into viable political movements. This creates a window of opportunity for the international community to become more engaged in Nigeria, directing aid and political support accordingly. Prevention demands the creation of incentives to be inclusive across group lines, redirecting energies towards mutually beneficial development. Foot-dragging may be risky; indigenous groups in the Niger Delta are increasingly voicing their political demands through force, and the controversy over Islamic Law has caused migrations that threaten to divide the country geographically along religious lines.¹³⁰ In combi-

127. UNDP, *National Programme on Governance for Sustainable Human Development: Programme Framework—Executive Summary* (2000), <http://www.undp.org> (on file with author).

128. *UNDP Nigeria SHD Summary*, *supra* note 110.

129. See the case study on Guinea-Bissau, *infra* Part IV(C)(2), for an example of how a confused approach to promoting press freedom can be detrimental.

130. “Muslims have been moving into the Shariah states and Christians moving out.” Onishi, *supra* note 105.

nation with an inclusive approach to development, devolving control over resources to the local level could help reduce underlying grievances.

One commentator has written that, “[i]n the absence of sustained, violent conflict, the volatile divisions at the heart of the transition crisis have often been discounted by foreign observers.”¹³¹ This should be a clear warning to anybody familiar with the Rwandan genocide. There, too, low-level ethnic conflict had been ongoing for a number of years, a recent democratic transition had multiplied the political factions in the country, and the international community was hesitantly committed. But, unlike Rwanda, where political will was minimal, a conflict in Nigeria threatens significant Western interests. The international community should not react timidly for fear of upsetting oil supplies but should recognize that opportunities exist now to build long-term stability, reduce the current levels of ethnic strife, and forestall potential conflict.

B. *Sovereignty Concerns*

Despite the proliferation of nonstate actors, the nation-state retains its monopoly on coercive force and remains the quintessential actor in the international system. To this end, multilateral international actors such as the United Nations are confined to state-level engagement, intervening only with governmental consent.¹³² Many young and weak states vigorously defend their rights to sovereignty and territorial integrity.¹³³ It is frequently in these new nations, however, that the state and society linkages are the weakest and horizontal inequalities are most dramatic. In other words, those states that are most protective of their own sovereignty are frequently those who would most benefit from early prevention. While China may not fit into this category, its sovereignty-based argument against extending U.N. conflict-prevention capability is typical:

131. Lewis, *supra* note 97, at 106.

132. See the case study on the World Bank, *supra* Part IV(A)(1), for a discussion of the legal limitations on the Bank's engagement with domestic political entities.

133. See U.N. GAOR, 54th Sess., 4th plen. mtg. at 14, U.N. Doc. A/54/PV.4 (1999) (Abdelaziz Bouteflika (Algeria) defending sovereignty against Annan's claim that countries should not be able to hide behind it and asserting that sovereignty is the *only* defense of weak states against strong states).

[A]ll preventive measures should be taken only under the prerequisite of respect for the political independence, sovereignty and territorial integrity of all countries and the will of the Government and people of the country concerned. The principle of non-interference in internal affairs is the primary principle guiding United Nations actions in conflict prevention. Preventive measures can be taken only upon the request or with the consent and cooperation of the country concerned.¹³⁴

Preventive measures will inevitably raise sovereignty concerns; as Franck and Sucharipa-Behrmann have commented, "Sovereignty implies that the international system refrain from interfering with states' interests unless and until an international conflict has arisen."¹³⁵

Yet sovereignty may be invoked in support of preventive action as well. The Secretary-General's report on conflict prevention argues, "Governments that . . . call on the United Nations or other international actors for preventive assistance as early as needed, provide the best protection for their citizens against unwelcome outside interference. In this way, preventive action . . . [can strengthen] the national sovereignty of Member States."¹³⁶

This approach—which posits the status quo as its political goal¹³⁷—appears to be an attractive way to convince governments to permit early preventive measures, for it acknowledges their sovereignty and territorial integrity. Such an argument, while emblematic of how the United Nations is trying to surmount member states' sovereignty objections to its conflict prevention initiatives, may not convince governments that (1) are unwilling to admit they are experiencing potentially uncontrollable tension,¹³⁸ (2) want to avoid the internationalization of their situation, or (3) have a political or economic in-

134. 1999 *SC Debates*, *supra* note 24, at 14.

135. Sucharipa-Behrmann & Franck, *supra* note 7 at 493-94 (citing U.N. CHARTER art. 2, para. 7).

136. *Prevention of Armed Conflict*, *supra* note 1, at 3.

137. By "status quo," I mean a country's current regime, its political structure, and its territorial integrity.

138. See *supra* Part III(B) on Macedonia. Despite the relative success of U.N. activities in addressing internal tensions, official Macedonian statements never acknowledged the internal nature of the state's problems. For a

terest in actually promoting the tensions.¹³⁹ Thus, this tactical approach of encouraging the status quo offers preferential treatment to regimes in power and ignores the roots of discontent within society.¹⁴⁰ Moreover, it prevents international actors from directly communicating with and addressing the concerns of opposition groups who have no sovereignty to be strengthened. Often prevention may require adjusting domestic political mechanisms to make them more representative or distributive. An approach to prevention that places the status quo as the ultimate goal may thus be counterproductive in the long term.¹⁴¹

As an obstacle to effective prevention, sovereignty appears both as a theoretical objection to “intelligence gathering” at the international bureaucratic level and as a practical barrier to effective engagement by forcing interaction through potentially biased government channels.¹⁴² The following two case studies illustrate how this state-level discourse inhibits preventive action.

1. *Bureaucratic Obstacles: Early Warning and the EISAS Proposal*

The primary dilemma of conflict prevention is that success is measured in the negative. Political will must be sum-

brief discussion of the situation, see *supra* notes 33-36 and accompanying text.

139. See *infra* Part IV(B)(2) on Kenya.

140. See *supra* Part IV(A)(2) on Nigeria, where current international engagement risks giving the government the upper hand vis-à-vis communities in the Niger Delta.

141. Such a status quo-based argument about the potential pitfalls of preventive diplomacy is made in Stephen John Stedman, *Alchemy for a New World Order*, FOREIGN AFF., May-June 1995, at 14.

142. Sovereignty poses obstacles to other tools of prevention as well. For example, the Secretary-General recently suggested that, “under Article 96, the Council could request an advisory opinion [from the International Court of Justice] Could the Council not make greater use of the Court’s capacity to move conflicts from potential battlefields to peaceful arbitration rooms?” Press Release, *Conflict Prevention Must Be “Cornerstone of Collective Security in 21st Century,” Secretary-General Tells Members, as Council Discusses Armed Conflict*, U.N. Doc. SC/6892 (2000) [hereinafter U.N. Press Release]. Even such a benign recommendation, however, falls victim to sovereignty, for the court is allowed only to hear disputes between states and thus has an institutional interest in not offending states or their conceptions of sovereignty.

moned for situations that do not pose immediate threats.¹⁴³ Moreover, successful preventions rarely garner the media attention that successful conflict resolution does. Political will at the Security Council tends to react to situations rather than preempt them; political will is a reactive phenomenon that is frequently activated by intense media coverage. With hard evidence, however, political will may be persuaded into early response. Meaningful conflict prevention thus requires the identification of potential conflicts. Indeed, while the key *obstacle* to effective prevention may be summoning the necessary political will for early action, the key *prerequisite* is an early warning.¹⁴⁴ In other words, while political will is necessary to make conflict prevention *effective*, early warning is an essential prerequisite to make the concept of conflict prevention *meaningful*. Member states, however, object on sovereignty grounds to politically oriented data collection by U.N. agencies without explicit political mandates. This inhibits the coordination of early warning and the translation of this data into accurate and useful analysis. This obstacle is exemplified by a recent proposal to create an all-inclusive U.N. early warning system in the Secretariat's Executive Committee on Peace and Security (ECPS).

a. The Basics of Early Warning

An effective early warning system requires (1) collection of information, (2) analysis of information, (3) transformation of analysis into policy recommendations, and (4) delivery of these recommendations to those with authority to take preventive action. The first of these tasks is not problematic; if anything, too much information exists. Rather, the problem is an inability to process it and generate meaningful policy. The following simplistic argument may be made in favor of an all-inclusive U.N. early warning: Since all agencies collect information, then the creation of a more efficient mechanism for processing and coordinating information could make U.N.

143. Franck and Sucharipa-Behrmann compare the difficulty of conflict prevention to Sherlock Holmes's attempt to pacify "the dog that didn't bark." Sucharipa-Behrmann & Franck, *supra* note 7, at 497.

144. See DAC GUIDELINES, *supra* note 56, ¶ 32 ("[I]f an early warning mechanism is to be useful, it must help contribute to creating the political will . . .").

early warning meaningful.¹⁴⁵ Unfortunately, the solution is far more elusive. First, the Secretariat lacks an intelligence capacity, the creation of which has been strongly resisted by member states.¹⁴⁶ This relates to a second problem, namely, states' resistance to U.N. reporting on their internal affairs.¹⁴⁷ Thirdly, agency field representatives fear that such reporting may compromise relationships with their hosts.¹⁴⁸ Thus, an agency's data-collection mandate is confined to its specific function. This limited mandate—when combined with each agency's institutional interest in not compromising its operational capacity and the host government's desire to keep agency mandates narrow—leads to a failure to develop meaningful analysis of the information produced. Thus, the failure of U.N. early warning should be seen, not as a failure to coordinate its agencies adequately, but rather as a rational response to the politically mandated division of labor among international actors who are each confined by the system to specified mandates and relationships with states.

b. Early Warning Trends in the 1990s

In his 1992 *Agenda For Peace*, Boutros Boutros-Ghali commented that the information gathered by existing early warning systems¹⁴⁹ needs to “be synthesized with political indicators to assess whether a threat to peace exists and to analyse what action might be taken.”¹⁵⁰ He proposed that the Security Council invite the “Economic and Social Council [ECOSOC] to provide reports, in accordance with Article 65 of the Charter, on those economic and social developments that may, un-

145. The coordination problems of establishing an early warning system are explored further in the section on Rwanda, *infra* Part IV(C)(1).

146. Given the failure to develop U.N. intelligence gathering, the organization is “compelled to rely on newspaper accounts, occasional reports from U.N. field personnel, and intelligence briefings by Big Powers, whose accounts are not always either complete or completely disinterested.” Sucharipa-Behrmann & Franck, *supra* note 7, at 532-33.

147. See James S. Sutterlin, *Early Warning and Conflict Prevention: The Role of the United Nations*, in EARLY WARNING AND CONFLICT PREVENTION: LIMITATIONS AND POSSIBILITIES 121, 123 (Klaas van Walraven ed., 1998).

148. See *id.*; see *infra* Part IV(B)(2) on Kenya.

149. These focus on “environmental threats, the risk of nuclear accident, natural disasters, mass movements of populations, the threat of famine and the spread of disease.” *Agenda for Peace*, *supra* note 30, ¶ 26.

150. *Id.*

less mitigated, threaten international peace and security.”¹⁵¹ While the nonoccurrence of this proposal resulted from many things, the competing mandates of ECOSOC and the Security Council was a crucial obstacle. Unlike other major U.N. bodies, ECOSOC’s mandate does not include “the maintenance of international peace and security.” If ECOSOC were to feed the Security Council early-warning-type reports, member states might be less willing to cooperate with it. As a result, the impetus towards early warning at the United Nations has largely fallen upon the Secretariat.¹⁵² While such a development acknowledges the political nature of early warning, it risks excluding those agencies not associated with the Secretariat who might have invaluable contributions to make, namely, those with apolitical mandates who interact with society below the level of the state. The United Nations’ shift to conflict prevention requires a reorientation toward those dynamics *within* states that provide early warning of threats to the peace.¹⁵³

c. The Brahimi Report’s EISAS Proposal

In 2000, the Brahimi Report proposed an ECPS Information and Strategic Analysis Secretariat (EISAS) to “create and maintain integrated databases on peace and security issues, distribute that knowledge efficiently within the United Nations system, generate policy analyses, formulate long-term strategies for ECPS and bring budding crises to the attention of the ECPS leadership.”¹⁵⁴

151. *Id.* This recommendation continues to be suggested to the Security Council. See U.N. Press Release, *supra* note 142.

152. See Hampson et al., *supra* note 15, at 4.

153. Many argue that civil society and the private sector could provide information and analysis that would be useful for early warning. See DAC GUIDELINES, *supra* note 56, ¶ 6. Regardless of the desirability of such a possibility, the United Nations and its agencies have a crucial role to play in light of both their neutrality and their link to the political forum of the Security Council. It is crucial that the United Nations take on this role rather than leaving it to civil society or the private sector, both of which may experience a conflict of interest.

154. *Brahimi Report*, *supra* note 4, at xi. This proposal emerged from the peacekeeping experience in Rwanda, after which the Lessons Learned Unit reported that the United Nations’ “traditional aversion to the collection and use of intelligence information has not served it well.” LESSONS LEARNED UNIT, DEP’T OF PEACEKEEPING OPERATIONS, COMPREHENSIVE REPORT ON LESSONS LEARNED FROM UNITED NATIONS ASSISTANCE MISSION FOR RWANDA

EISAS was intended to “eventually supersede the Framework for Coordination mechanism.”¹⁵⁵ The consolidation of EISAS under the ECPS, rather than responding to and working with all the executive committees, represents the politicization of the Secretariat’s early warning capacity. While essentially a political organ, the report suggests that “[c]lose affiliates of EISAS should include . . . the Emergency Response Division of UNDP; . . . the Information Analysis Unit of OCHA (which supports Relief Web); . . . OHCHR and UNHCR; . . .

(UNAMIR) (Oct. 1993–Apr. 1996) 4, <http://www.un.org/Depts/dpko/lessons/UNAMIR.pdf> [hereinafter U.N. RWANDA LESSONS LEARNED REPORT].

155. *Brahimi Report*, *supra* note 4, ¶ 74. The U.N. Framework for Coordination Mechanism, created in 1995 to coordinate the reporting and analysis of potential conflict situations among the humanitarian, peacekeeping, and political sectors of the Secretariat, has developed into an organ for early warning and preventive action. See *Framework for UN Agency Coordination Process for Countries in Crisis*, U.N. Department of Political Affairs, Internal Reference No. Ppu/gda/FCNote080200 (2000). Participants include the Department for Political Affairs, the Office for the Coordination of Humanitarian Affairs, the Department of Peacekeeping Operations (DPKO), the U.N. Development Programme (UNDP), the Office of the High Commissioner for Human Rights, the U.N. Children’s Fund (UNICEF), the U.N. High Commissioner for Refugees (UNHCR), the World Food Program, the Food and Agricultural Organization, the World Health Organization (WHO), and the World Bank. *Id.* Senior managers from each organization participate in monthly meetings where, based on information received from field officers, countries may be nominated for review. Anonymous Interview, in New York, New York (Nov. 5, 2001). This bureaucratic process may lead to a recommendation to bring the matter to the attention of an Executive Committee with suggestions for an appropriate range of preventive measures.

Despite official willingness by agency administrators to have their staff participate, the practice of the Framework Mechanism brings to light significant political obstacles to coordination. *Id.* U.N. headquarters lacks a coherent process for sorting through information to identify potential problems. *Id.* While the Framework Team has discretion to select countries as conflict-prone, field staff may not be aware of such decisions. *Id.* If host governments become aware of this process before agency staff, agency programs may be suspected of engaging in espionage, thus endangering key political lines of communication that had been established with the regime or other actors. *Id.* This is, however, a reasonable response by the host government, which expects that development and humanitarian agencies are operating with an apolitical mandate. The problem is compounded by a local lack of understanding of the Framework Mechanism and a lack of trust in the United Nations’ professed desire to prevent conflict by inserting itself into local politics through development and humanitarian activities. *Id.*

and the Monitoring, Database and Information Branch of DDA.”¹⁵⁶

Many of these organizations have mandates that are either expressly apolitical (e.g., UNDP) or of clearly restricted political nature (e.g., OHCHR); their apolitical nature allows them latitude to work in host countries. Thus, it is not surprising that EISAS has met with considerable resistance from many member states.

While some donor governments strongly supported the EISAS proposal,¹⁵⁷ the strength of opposition from other member states led to its nonimplementation. These states foresee EISAS as a CIA-type intelligence agency that would disregard the states’ sovereign right to monitor their own internal affairs. Notably, Peru believed that some of the proposed preventive measures, including the EISAS, “might leave open the possibility of the violation of some core principles of the Charter, such as non-interference in the internal affairs of States and the principle of non-intervention.”¹⁵⁸ Brazil noted that “the Secretariat should not be transformed into an intelligence-gathering institution.”¹⁵⁹ Liechtenstein struck a balance in the debate, saying that, while it was sensitive to the sover-

156. *Brahimi Report*, *supra* note 4, ¶ 71.

157. Norway commented that it “would be an important early warning tool that would strengthen the Organization’s conflict prevention capability and assist the Security Council with respect to mandates for future operations.” U.N. GAOR 4th Comm., 55th Sess., 20th mtg. ¶ 42, U.N. Doc. A/C.4/55/SR.20 (2001).

158. *Id.* ¶ 77. The report’s broad vision of the causes of conflict, according to Peru, would require preventive measures, “not only [in] situations of an economic and social nature, but also [in] those with greater political content such as the anti-democratic activities of a Government, the overall distribution of power and human rights violations [Such an] interpretation [has] led necessarily to ethnocentric and arbitrary judgments.” *Id.* ¶ 78. Peru understood that conflict prevention must be “based on the participation of the State concerned and its full consent, and should be carried out in support of State actions to establish the proper means for shaping a rule of law that was extensive, generous, suited to domestic realities and included processes involving the entire population.” *Id.* ¶ 79.

159. U.N. GAOR 4th Comm., 55th Sess., 21st mtg. ¶ 75, U.N. Doc. A/C.4/55/SR.21 (2001). Similarly, Haiti raised the concern that “the fears of some Member States would prove justified, in particular the smallest and most vulnerable, that they might fall victim to unilateral coercive measures . . . in the name of humanitarian assistance.” U.N. GAOR 4th Comm., 55th Sess., 22d mtg. ¶ 87, U.N. Doc. A/C.4/55/SR.22 (2001).

eighty concerns of small states, “conflict prevention . . . did not constitute such an infringement.”¹⁶⁰

The Secretary-General, responding to these concerns, stated, “The information and analysis functions of [EISAS] should not, in any way, be confused with the creation of an ‘intelligence-gathering capacity’ in the Secretariat. The secretariat would serve as the vehicle to better use information that already exists”¹⁶¹

Despite such assurances, strong opposition forced the Secretary-General to put forth a scaled-down alternative proposal.¹⁶² This more modest unit would (1) halve the size of the proposed EISAS, (2) not absorb many of the monitoring functions of the Department of Information, and (3) be delinked from the Peace-Building Unit. The proposed mandate focuses on postconflict situations, notably excluding preconflict early warning. It lacks the explicit references to the “formulation of conflict prevention . . . strategies” and “achieving a better understanding of the root causes of particular conflicts” mentioned in the original proposal.¹⁶³ Rather than placing the new unit directly under the Secretariat, it is to be “an autonomous new unit . . . which receives its guidance from ECPS.”¹⁶⁴ It is still unclear whether this new version of EISAS will be im-

160. U.N. Doc. A/C.4/55/SR.21, *supra* note 159, ¶ 65. Liechtenstein continued:

The concept of conflict prevention reflected a doctrinal shift, which was not at all limited to the area of armed conflict. [Liechtenstein] saw a vast potential in the United Nations system in the area of conflict prevention and, in that context, referred to its initiative for addressing conflicts based on self-determination claims. Given the proliferation of internal armed conflicts in recent years, it was of crucial importance for the United Nations to address such issues in an open-minded and constructive manner.

Id.

161. *Report of the Secretary-General on the Implementation of the Report of the Panel on United Nations Peace Operations*, U.N. GAOR, 55th Sess., Agenda Item 86, ¶ 45, U.N. Doc. A/55/502 (2000) [hereinafter *Brahimi Implementation Report I*].

162. *See Report of the Secretary-General on the Implementation of the Recommendations of the Special Committee on Peacekeeping Operations and the Panel on United Nations Peace Operations*, U.N. GAOR, 55th Sess., Agenda Item 86, ¶¶ 301-307, U.N. Doc. A/55/977 (2001) [hereinafter *Brahimi Implementation Report II*].

163. *Brahimi Implementation Report I*, *supra* note 161, ¶ 43.

164. *Brahimi Implementation Report II*, *supra* note 162, ¶ 306.

plemented, but if it is, it will certainly serve a significantly different purpose than the original proposal, particularly by not attending to preconflict situations. There is no longer any ambiguity as to whether it will surreptitiously gather “intelligence,” for it will operate only in situations in postconflict environments.¹⁶⁵

2. *Operational Obstacles: Kenya*

UNDP formally recognizes that issues of governance, social justice, human rights, and human security form part of its mandate. However, it fails to confront the inherent tension between these goals and its practice of partnering with host governments. UNDP's experience in Kenya shows that, when such tensions come to the fore, operational concerns win out over the need to address issues that lay at the root of preventing a descent into conflict. Thus, the inability to account for a country's political dynamics may not only make a particular development program ineffective but also risk exacerbating local tensions.

Since 1978, Kenya has been ruled by President Moi's KANU party. In 1991, his suppression of a democracy movement led donors to suspend aid. The Moi government quickly caved in to donor demands for a multiparty democratic system. To maintain power in the new political framework, Moi's supporters began a calculated campaign against opposition-associated ethnicities. Ethnic “warriors” attacked farms and burned houses in the provinces dominated by the “upcountry” ethnicities that Moi wished to suppress. Since 1991, approximately 2,000 individuals have been killed; as of 2002, at least 400,000 remained displaced.¹⁶⁶

165. By limiting itself only to *postconflict* situations, the new EISAS proposal takes on the U.N. system's prejudice for the status quo absent violent conflict. A recent work on conflict prevention notes that, given the failure of EISAS, “it remains to be seen whether the obstacles to analysis simply mask a more fundamental problem: a lack of combined will on the part of member states to support the United Nations' potential to act preventively and systematically.” Chandra Lekha Sriram & Karin Wermester, *Preventive Action at the United Nations: From Promise to Practice?*, in FROM REACTION TO CONFLICT PREVENTION: OPPORTUNITIES FOR THE UN SYSTEM, *supra* note 12, at 381, 394.

166. See Stephen Brown, *Quiet Diplomacy and Recurring “Ethnic Clashes” in Kenya*, in FROM PROMISE TO PRACTICE: STRENGTHENING UN CAPACITIES FOR THE PREVENTION OF VIOLENT CONFLICT 69, 69, 76 (Chandra Lekha Sriram &

With declining violence after Moi's 1992 reelection, international aid returned to Kenya. UNDP announced a \$20 million joint "Programme for Displaced Persons" with the Kenyan government, aimed at "the reintegration of displaced populations into local communities, *prevention of renewed tensions* and promotion of the process of reconciliation."¹⁶⁷ The initial proposal, according to Human Rights Watch (HRW), was "sound and well-conceived."¹⁶⁸ Nonetheless, the reintegration program was undermined by both active obstruction and inaction by the government.¹⁶⁹ Despite limited successes, mistrust and insecurity dominated the project. HRW notes, "[T]he government took no action to work with UNDP to seek long-term solutions for redress and prevention."¹⁷⁰

UNDP's failure to secure Moi's written commitment on issues such as security maintenance, free access to IDPs, human rights and physical-security guarantees, and the free passage of aid "allowed the Kenyan government to continue to evade its responsibilities, while at the same time it was able to use the threat of ending access to silence UNDP."¹⁷¹ As a result, UNDP worked ever more closely with the government, essentially rewarding it by downplaying human rights violations. Since government support of ethnic violence made it the likely instigator of any potential conflict, UNDP's compromised posi-

Karin Wermester eds., 2003). The ethnic conflict served a number of purposes for the government. It supported Moi's self-fulfilling contention that multipartyism would lead to violence. It also intimidated and punished the opposition, while disenfranchising hundreds of thousands who, having been displaced, were unable to register to vote. Finally, it provided land that could be distributed to supporters. *Id.* at 74-75.

167. HUMAN RIGHTS WATCH, FAILING THE INTERNALLY DISPLACED: THE UNDP DISPLACED PERSONS PROGRAM IN KENYA 6 (1997), available at <http://www.hrw.org/reports/1997/kenya2> [hereinafter HRW KENYA] (emphasis added) (citing UNDP, *Programme for Displaced Persons and Communities Affected by the Ethnic Violence* (Feb. 1994)).

168. *Id.* Short-term relief was to be combined with medium-term development initiatives (rehabilitation of destroyed institutions, reconciliation seminars, employment training, regularization of land tenure) and long-term protection and security. *Id.* at 47.

169. The government tried neither to reverse the damage caused by the clashes nor to return internally displaced persons (IDPs) to their land and livelihoods. Instead, it made accusations against its critics, while allowing the perpetrators to continue with impunity. *See id.* at 52.

170. *Id.* at 7.

171. *Id.* at 8.

tion prohibited it from fulfilling its professed goal of “prevention of renewed tensions.” Indeed, it may be argued that UNDP complicity emboldened the government and its allies.

The UNDP project ended in November 1995, shortly after Kenyan police raided a UNDP camp and removed 2,000 IDPs. Although UNDP finally spoke out against the government, their position was already compromised to the point that donor and NGO backing could not be mobilized in support of the program or its new moral condemnation of the government. A UNDP official described the incident as a “temporary hiccup” in the program, but the agency itself was blamed.¹⁷²

So long as it must partner with governments, UNDP’s recent expansion of its mandate to include conflict prevention¹⁷³ may prove difficult to implement. A recent commentary notes:

The UNDP was fatally handicapped by its close relationship with the government, which was implementing the project. This is a structural problem with the UNDP’s assistance programs: its work is predicated on partnership with host governments. Other donors, especially bilateral ones, sometimes encounter similar dilemmas when political decisions based on broader considerations prevent the true problem from being addressed.¹⁷⁴

HRW accuses UNDP of failing to address the political situation in Kenya, opting for the easy route of providing relief assistance while postponing any consideration of long-term approaches.¹⁷⁵ Upon UNDP’s response to HRW accusations, the HRW report included the following defense by UNDP of its tendency to avoid public denunciations of the government: “[Q]uiet representations [to the government] would be more effective and would allow UNDP to secure various operational goals.”¹⁷⁶

Instead of trying to bring about accountability for the perpetrators of violence, HRW claims that UNDP portrayed “the

172. *Id.* at 11.

173. *See Decisions Adopted by the Executive Board During 2001, supra* note 62, at 3.

174. Brown, *supra* note 166, at 86.

175. *See generally* HRW KENYA, *supra* note 167.

176. *Id.* at 8.

problem as one without victims and aggressors, but only communities that needed to be reconciled.”¹⁷⁷ While noble, such an attitude ignores the political causes of the ethnic violence. According to HRW, “[t]he narrow perspective adopted by UNDP resulted in a program that ignored issues responsible for the humanitarian crisis in Kenya which were key to finding lasting solutions.”¹⁷⁸ Indeed, effective conflict prevention depends on the ability of international actors to engage at sub-state levels. So long as UNDP avoided such engagement, it could only provide relief aid and risk losing its gains in that area to the whims of local political dynamics.

Given UNDP’s constraints, it may be argued that, while Moi’s manipulation of UNDP’s situation was unfortunate, a UNDP withdrawal might have left the humanitarian situation considerably worse.¹⁷⁹ UNDP responded to the HRW 1997 report by saying:

At no time did . . . UNDP imply that it had the capacity or mandate to become the primary advocate against human rights violations in Kenya. Much of the criticism . . . [is] misinformed commentary on UNDP’s “failure” to be the international human rights monitor, arbitrator and advocate in Kenya during the crisis. This indicates HRW’s misunderstanding of UNDP’s role and its limitations to engaging in “sovereign” issues for which it has no mandate.¹⁸⁰

Written only five years ago, one must ask whether this attitude remains prevalent at UNDP. If so, conflicts will endure

177. *Id.* at 9. Interestingly, the phrase “no victor, no vanquished” was used in Nigeria after the Biafran civil war of the 1960s to orchestrate national reconciliation. See Norimitsu Onishi, *Deep Political and Religious Rifts Disrupt the Harmony of Nigerian Towns*, N.Y. TIMES, Mar. 26, 2000, at 22. In that situation, unlike UNDP’s posture in Kenya, there was a deliberate effort to transform the national attitude into accepting this view. See *id.* It began by acknowledging the political necessities of reconciliation, whereas UNDP’s statement here treats the “no victor, no vanquished” situation as a *fait accompli*. See HRW KENYA, *supra* note 167, at 9.

178. HRW KENYA, *supra* note 167, at 8.

179. For the applicability of the Brahimi Report’s logic to structural prevention, see *supra* note 4.

180. HRW KENYA, *supra* note 167, app. at 141 (quoting UNDP, *UNDP Response to Human Rights Watch Report*).

between development actors and the new mandates for prevention that they have been given.

The question that remains is whether this is a problem with UNDP's mandate per se, with the lack of political will on the part of U.N. agencies to embroil themselves in complex situations like Kenya's, or a real obstacle to the idea of conflict prevention in situations where the government is a complicit or active participant in the creation of tensions. This question is not merely theoretical; there are still 400,000-500,000 IDPs in Kenya, and there has been a recent rise in violence. Brown writes, "Many observers are worried that growing violence in 2000-01 is but a 'dress rehearsal' for future violence, particularly around the [2002] general elections."¹⁸¹

Though today's problems concern bilateral donors rather than the United Nations, the key obstacle is still the government. To be effective, international actors must (1) find alternative channels so that the sole line of communication in Kenya is not with the problematic regime; (2) using those channels, decentralize aid so as to support civil society and community-based efforts, particularly those that reduce horizontal inequalities; (3) in reintegrating IDPs, be sensitive to the need to alleviate any burden they may pose to the society accepting them; and (4) support land and constitutional reform with a sensitivity to the ramifications of any distribution of land or power. Integral to this last task is to make sure that it proceeds neither so fast as to cause social dislocation nor so slow that the government becomes accused of dragging its

181. Brown, *supra* note 166, at 19. Since 1995, donors have increasingly linked aid to the success of the constitutional-reform process. *See id.* at 91. Where UNDP's failure rested on its inability to confront the political obstacles to a long-term strategy, donors today focus on political reform without attending to the yet-to-disappear issues that lay at the root of violence during the last political liberalization effort in 1991. One commentator notes:

[Donors] dread above all a collapse of the political and economic system that could lead to a situation far worse than the status quo. They worry that this scenario, rather than an escalation of the "ethnic clashes," could spark a civil war—though exactly how this would happen is never articulated. For that reason, they are quick to seek an accommodation with the Moi government . . . Their collective leverage is very extensive, but stronger resolve than in the past would be required for donors to maintain sanctions as long as necessary.

Id.

heels, as well as to ensure that there are immediate “dividends” from the reform process that give the population a stake in the reform process. Current development activities in Nigeria are beginning to take into account lessons such as these.¹⁸²

3. *Whither Sovereignty?*

The following section outlines some ambitious ways conflict prevention can overcome the barriers posed by sovereignty concerns. Many have suggested that the end of the Cold War has brought an end to traditional notions of sovereignty.¹⁸³ Sovereignty carries not only rights, but duties as well. With the increasing legitimacy of the international human rights discourse, a country’s respect for the human rights of its citizens—including ethnic minorities—is coming to be viewed as a component of sovereignty.¹⁸⁴ Although this suggestion is controversial due to its neocolonial nature,¹⁸⁵ its increasing popularity bodes well for the less controversial suggestion that sovereignty might carry a duty not to generate threats to (international) peace and security.¹⁸⁶ Such a con-

182. *See supra*, Part IV(A)(2).

183. The representative of the United Kingdom stated:

We will restore the United Nations to its rightful role in international peace and security only if we adapt to a world in which the sovereign State has already, as a matter of objective reality, been redefined by globalization, a world in which there is a new recognition that the State is the servant of the people, not the other way round.

1999 *SC Debates*, *supra* note 24, at 13.

184. The European Union conditions recognition on human rights norms. *See* European Community: Declaration on Yugoslavia and on the Guidelines on the Recognition of New States, Dec. 16, 1991, 31 I.L.M. 1485, 1487.

185. *See generally* Antony Anghie, *Finding the Peripheries: Sovereignty and Colonialism in Nineteenth-Century International Law*, 40 HARV. INT’L L.J. 1 (1999) (arguing that this suggestion mimics earlier colonial practices whereby non-European countries, to become members of the “Family of Nations,” had to give up the very things that constitute the benefits of sovereignty).

186. At least one commentator, however, has pointed to a link between these two sorts of obligations:

[S]tates that are the scene of minority or ethnic conflicts tend to have one important point in common that can[,] with some degree of certainty[,] be seen as one, if not the main, root-cause of many conflicts: in the period leading to the conflict, they quite clearly had not been complying with what would now be recognized as

ception coincides with Chayes and Chayes's notion that sovereignty today, rather than being freedom from external interference, is the "freedom to engage in international relations as members of international regimes. A state's sovereignty thus becomes contingent upon its ongoing web of international ties and obligations."¹⁸⁷ Such redefinitions of sovereignty, however, must be seen as purely theoretical in the context of U.N. conflict prevention so long as the system continues to operate as a client for its member states. As one critic of the Chayes' "new sovereignty" remarks, "Statehood is a prerequisite to participation [at the United Nations], not a consequence of it Every international dispute is ultimately about sovereignty, and every state has the right to determine for itself where it will draw the lines that define that sovereignty."¹⁸⁸

A more practical approach—taken by the Secretary-General in his recent report on conflict prevention—tries to convince governments that the threats to sovereignty posed by structural prevention are less dangerous than the possibility of violence. Moreover, the tools of prevention are typically less invasive than those of conflict management and intervention. In contrast to its tendency to favor the status quo, this approach also must convince a country to give up a sovereignty that has yet to be threatened. Franck and Sucharipa-Behrmann suggest:

Whether the benefits to be derived from [preventive] measures will outweigh states' concerns about the considerable loss of sovereignty will depend on how

international minority rights standards, as enumerated by the UN Declaration.

William Smirnov, *Strategies for Deflecting Ethnic Hatred: The Russia-Chechnya Case*, in *MINORITIES AND TOLERANCE: CENTRAL AND EASTERN EUROPE & THE NIS*, *supra* note 23, at 103, 104 (quoting Fernand de Varennes, *Minority Rights and the Prevention of Ethnic Conflicts* 5 [Dr. Varennes is the director of the Asia-Pacific Centre for Human Rights and the Prevention of Ethnic Conflict in Perth, Australia]).

187. Harold Hongju Koh, 91 *AM. J. INT'L L.* 389, 390 (1997) (reviewing ABRAM CHAYES & ANTONIA HANDLER CHAYES, *THE NEW SOVEREIGNTY: COMPLIANCE WITH INTERNATIONAL REGULATORY AGREEMENTS* (1995)) (emphasis removed).

188. Steven M. Schneebaum, 29 *GEO. WASH. J. INT'L L. & ECON.* 619, 639-40 (1995) (reviewing ABRAM CHAYES & ANTONIA HANDLER CHAYES, *THE NEW SOVEREIGNTY: COMPLIANCE WITH INTERNATIONAL REGULATORY AGREEMENTS* (1995)).

effectively the new preventive measures are deployed. That, in turn, will determine whether states accept as reasonable the price to their sovereignty for the benefits obtained.¹⁸⁹

Such an evaluation depends, however, on twenty-twenty foresight of the threat of conflict—a rare faculty indeed.

Another suggestion presents a tradeoff between sovereignty and the institutional legitimacy of the international system:

Failures to stop internal conflict can do great damage to regional and international organizations, such as the [OAU, OSCE, and the United Nations], whose stated purpose is the promotion of peace and security. Casual defiance of international law and international norms of behavior will undercut principles that the international community would like to maintain and perhaps even extend.¹⁹⁰

Under this theory, rather than being the supreme rule of the international system, sovereignty is presented as just one among many; international actors would take preventive action to preserve the legitimacy of these countervailing norms when the threat to them outweighs the threat to any particular state's sovereignty.

Broader interpretations of the legal provisions of international agreements would allow internal tensions to be addressed in the context of legitimate concerns of international actors, such as "peace and security" or the creation of "favorable investment climates." In the same way that the World Bank's Articles were drafted in light of now irrelevant Cold War considerations, the U.N. Charter provisions on conflict prevention were geared primarily to conflicts between States. However, as the Netherlands delegation has recognized, "[T]he majority of present-day conflicts on the Security Council's agenda were of an internal, domestic nature, while still threatening international peace and security. Such con-

189. Sucharipa-Behrmann & Franck, *supra* note 7, at 537.

190. Brown, *supra* note 10, at 8-9.

flicts would, therefore, require the Council to subscribe to a more flexible interpretation of the Charter.”¹⁹¹

In addition to these more theoretical approaches, it might also be possible to reframe the United Nations’ consent requirements, giving subnational entities the right to approach U.N. political bodies and grant consent for fact-finding missions. Another alternative would be to make activities such as early warning as neutral as possible through the standardization of monitoring and recommendations, so that no country feels singled out.¹⁹²

C. *Coordination*

In the context of conflict prevention, a failure to coordinate adequately between field-level U.N. agencies, U.N. Headquarters, and other international actors presents two distinct obstacles. First is the failure to make early warning. In Rwanda, this was neither a failure to gather the necessary information nor a failure to analyze that information properly. Rather, it was a failure to coordinate adequately so that essential information could reach those with the power to take action. The second obstacle relates to a failure to coordinate

191. U.N. Press Release, *supra* note 142. Similarly, the French representative noted:

It is perfectly possible in the Council to debate, under [Articles 34 and 39] of the Charter, a situation within a State. However, one must not confuse debate with having recourse to force, which comes under other provisions that are precise and limiting. The Council can take up an issue and take preventive measures without necessarily envisaging the use of force.

1999 *SC Debates*, *supra* note 24, at 8.

192. This would also have the benefit of preventing the “self-fulfilling prophecy” dilemma of early warning:

[S]tates opposing early warning argue that the mere fact that the United Nations is concerned about a situation could be misinterpreted by parties to the conflict. Adverse interpretation may create a “self-fulfilling prophecy,” whereby a “false alarm” sounded by an early warning system could actually encourage conflict rather than contribute to conflict prevention [A] signal that the United Nations is concerned with a situation may indicate that the international community does not trust the sovereign government to maintain order in its own territory and might even be perceived as lending legitimacy to the opposition.

Sara Rakita, Note, *Early Warning as a Tool of Conflict Prevention*, 30 *NYU J. INT’L L. & POL.* 539, 555-56 (1998) (citations omitted).

adequately the wide variety of activities being pursued in a conflict-prone country at any one time. In addition to the potential for a massive waste of resources, inadequately coordinated activities risk working at cross-purposes and exacerbating local tensions.

1. *Rwanda: Failure in the Face of Crisis*

Eight years after the genocide, the legacy of Rwanda still dominates discussions of conflict prevention. The horror is not simply at the unimaginable acts of rape, torture, and murder that occurred there.¹⁹³ Even more troubling is the international community's failure to respond to clear signs of imminent conflict. The Carnegie Commission stated that "the chief legacy of Rwanda is the knowledge that mass violence rarely happens without warning and that the absence of external constraints allows genocide to occur."¹⁹⁴

Shame over Rwanda has brought institutional soul-searching on the part of the United Nations,¹⁹⁵ the OAU,¹⁹⁶ and other international actors, as well as a renewed interest in conflict prevention. While it was widely believed at the time that nothing could have prevented the situation, it is now recognized that small but significant actions could have dramatically reduced the violence of 1994.¹⁹⁷ Working at cross-purposes with the increasingly polarized local political community, the

193. In fourteen genocidal weeks, approximately one million people were killed and four million people—over half of the country's population—fled their homes. JONES, *supra* note 18, at 1.

194. CARNEGIE REPORT, *supra* note 10, at 4.

195. See generally U.N. RWANDA LESSONS LEARNED REPORT, *supra* note 154.

196. See generally IPEP REPORT, *supra* note 19.

197. "A small number of major actors could directly have prevented, halted, or reduced the slaughter." *Id.* at xvi. Many point to the value a 5,000-troop Chapter VII force could have had. See CARNEGIE REPORT, *supra* note 10, at 6; see also Scott R. Feil, *Could 5,000 Peacekeepers Have Saved 500,000 Rwandans?: Early Intervention Reconsidered*, ISD REP., Apr. 1997, <http://sfswww.georgetown.edu/sfs/programs/isd/files/rwanda.htm>. Others, noting the dramatic role that extremist propaganda played in recruiting civilians to the genocidal cause, assert that "jamming Hutu broadcasts and replacing them with messages of peace and reconciliation would have [been] significant." Jamie F. Metzl, *Information Intervention: When Switching Channels Isn't Enough*, FOREIGN AFF., Nov.–Dec. 1997, at 15, 16; see also U.N. RWANDA LESSONS LEARNED REPORT, *supra* note 154, at 13 (lesson 27). Others have argued that a different outcome might have resulted from a more nuanced approach to early peacemaking efforts. See JONES, *supra* note 18, at 160-63.

international community was unprepared for the impending violence, despite clear warnings.¹⁹⁸ The United Nations has noted that its uninformed reconnaissance team was “not . . . prepared for the intricacies of the political situation in the country, a factor that contributed to a naive optimism about the entire operation.”¹⁹⁹ The U.N. Assistance Mission in Rwanda (UNAMIR) had both the ability and the warning to investigate threats, but its mandate prevented it from doing so.²⁰⁰ Moreover, since its main channels of communication were to the problematic regime itself, the international community had little access to the political actors and dynamics that might have provided greater opportunities for preventive action.²⁰¹

A lack of coordination among international actors was partly to blame.²⁰² The United Nations has noted that the presence of multiple agencies and conflicting mandates “undermined the authority of the SRSG, especially after the Rwandese discovered that it was the specialized agencies, not the peacekeeping operation, that had the resources to assist

198. The Rwandan genocide occurred eight months after the signing of the Arusha Peace Agreement, which ended Rwanda's 1990–93 civil war. U.N. and international involvement prior to the official peace talks focused on bringing all parties to the table, including smaller opposition parties within Habyarimana's government. See IPEP REPORT, *supra* note 19, at xii. This complicated the Arusha accords, laying the groundwork for the increasing influence of Hutu extremists. New players with radical views drowned out the more moderate Hutu voices within the government. Although, at the time, these efforts seemed to be quite successful, Bruce Jones argues that this “actually planted the seed of later difficulties.” JONES, *supra* note 18, at 66. Thus, uninformed diplomacy actually negatively impacted the situation in Rwanda, despite the best intentions of those who facilitated the Arusha process.

199. U.N. RWANDA LESSONS LEARNED REPORT, *supra* note 154, at 5.

200. UNAMIR asked to investigate for weapons caches after the January 11 cable, but DPKO said that the matter should be raised with local parties and that no weapons searches should be undertaken. JONES, *supra* note 18, at 116.

201. See *id.* The French government has been accused of failing to use its leverage to raise human rights concerns with Habyarimana. Instead, France's unconditional public support for the regime “constituted a major disincentive for the radicals to make concessions or to think in terms of compromise.” IPEP REPORT, *supra* note 19, at xiii.

202. There was “an entire range of third-party interventions that collectively failed to provide a coherent strategy for responding to extremist opposition.” JONES, *supra* note 18, at 46-47.

them.²⁰³ International actors also failed to engage Rwandan civil society.²⁰⁴ The OAU IPEP report has drawn attention to the role that religious leaders might have played in condemning ethnic hatred and human rights violations. Their failure to do so, it is argued, contributed to the population's complicity.²⁰⁵ A greater focus on the mediating role of local actors might also have played a significant role in deescalating tension.²⁰⁶

The failure of the international community in Rwanda was not a failure of inadequate warning.²⁰⁷ Despite ample signs foreshadowing conflict, the failure to translate these signs into effective preventive action does not lie simply with the lack of political will. The inability to convey an understanding of local dynamics to key international actors prevented an effective policy response to the impending crisis.²⁰⁸ While most of the early warning signs came from human rights and humanitarian conditions on the ground, the humanita-

203. U.N. RWANDA LESSONS LEARNED REPORT, *supra* note 154, at 7. The recommendation that the "SRSG should be recognized institutionally as the head of the UN family in the mission area" has now been implemented in the U.N. Peace-Building Support Offices. See Guinea-Bissau case study, *infra* Part IV(C)(2).

204. Having watched CNN's coverage of Somalia when Western peacekeepers came in the line of fire, local extremists were able to grasp the dynamics of international politics better than the international community was able to understand local Rwandan dynamics. JONES, *supra* note 18, at 120.

205. See IPEP REPORT, *supra* note 19, at xiii.

206. The United Nations acknowledges this:

Several experts have argued the best route to peace-building and national reconciliation in Rwanda is to support local non-governmental society and the leadership of civil society. The international community should work with, and through, these local networks at the community level to address the numerous problems the country is facing.

U.N. RWANDA LESSONS LEARNED REPORT, *supra* note 154, at 18-19.

207. Practically the entire international community in Rwanda was aware of the "death lists, accelerating massacres, and threats to opposition politicians." IPEP REPORT, *supra* note 19, at xii; see also CARNEGIE REPORT, *supra* note 10, at 37; JONES, *supra* note 18, at 115; Philip Gourevitch, *The Genocide Fax: The United Nations Was Warned About Rwanda. Did Anyone Care?*, NEW YORKER, May 11, 1998, at 42.

208. The international actors in Rwanda "did not possess a cultural or political analysis of Rwanda that would allow them to put those pieces together." JONES, *supra* note 18, at 116.

rian community was not linked to any key political actors at the international level. This lack of coordination became a key flaw.²⁰⁹ As a result, UNAMIR's mandate failed to reflect any of the local knowledge gathered by international humanitarian actors on the ground.

In addition to the oft-noted need for political will by the Security Council, the experience in Rwanda points to how international efforts at conflict management must take into account both the operation of local political dynamics and the international community's own effect on such dynamics. A lack of coordination between international actors in Rwanda contributed to both a failure to recognize early warning signs and an opportunity for local actors to circumvent the politically mandated SRSG. A recent International Peace Academy study notes:

Conflict prevention requires far greater attention . . . to effective engagement with political systems at the *domestic* level. Until . . . a more concerted effort [is made] to engage in the domestic processes where foreign policy is set, it is unlikely that there will be a major change in the current conditions of fracture and competition that hamper effective peacemaking.²¹⁰

2. *U.N. Peace-Building Support Office in Guinea-Bissau*

To the United Nations' three traditional peace and security activities (preventive diplomacy, peacemaking, and peacekeeping), the 1992 *Agenda for Peace* added postconflict peace building,²¹¹ defined as "action to identify and support structures which will tend to strengthen and solidify peace in

209. "Humanitarian indicators can serve as an important barometer of political trends and must be given appropriate attention at the political level." U.N. RWANDA LESSONS LEARNED REPORT, *supra* note 154, at 14 (lesson 31).

210. JONES, *supra* note 18, at 176. In light of Rwanda, the international community should avoid encouraging premature democratization, encourage community-based mediation, plan for opposition, establish methods to deal with both spoilers and losers, and establish a strategy of coordination with a unifier on board from the beginning. *Id.* at 164-72. Notably, there is now an attempt to realize many of these recommendations in the use of PBSOs. See *infra* Part IV(C)(2).

211. See *Agenda for Peace*, *supra* note 30, ¶ 5.

order to avoid a relapse into conflict.”²¹² Practically, peace building is “a holistic process involving broad-based inter-agency cooperation across a wide range of issues.”²¹³

As prevention at the postconflict stage, peace building is integral to the shift to a culture of prevention.²¹⁴ Immediately following a peace accord, many of the tensions that precipitated conflict remain while the newly forged linkages between state and society are weak and vulnerable.²¹⁵ The OECD Development Assistance Committee argues that peace building’s importance derives from the nature of intrastate conflict itself, namely, the difficulty distinguishing “where violence ends and the conditions for genuine peace are established.”²¹⁶

212. *Id.* ¶ 21.

213. *Report of the Secretary-General on the Work of the Organization*, U.N. GAOR, 54th Sess., Supp. No. 1, ¶ 101, U.N. Doc. A/54/1 (1999). Since the mid-1990s, the United Nations has been involved with peace building in a number of postconflict situations, including Liberia, El Salvador, Haiti, Tajikistan, the Central African Republic, and Guinea-Bissau. Peace building is related to nation building, which the United Nations has been involved with in Cambodia, East Timor, Kosovo, and now Afghanistan. See Jacob Kreilkamp, *U.N. Post-Conflict Reconstruction*, 35 N.Y.U. J. INT’L L. & POL. 619 (2003).

214. The Secretary-General has commented, “[A]ll our work in post-conflict peace-building is, in fact, prevention This can be the hardest form of prevention, since conflict invariably leaves behind it a legacy of unavenged wrongs, unassuaged grievances and unachieved ambitions.” U.N. SCOR, 54th Sess., 4072d mtg. at 76, U.N. Doc. S/PV.4174 (1999). A recent volume on prevention lists lessons that peace building holds for prevention in general:

the importance of civilian police; the need for demobilization, demilitarization, and reintegration of combatants and, more and more, civilians immediately after the signing of a peace agreement; the organizational and coordination problems that contribute to the pernicious gap between the downscaling of emergency relief and the beginning of longer-term development projects; and the difficulty of creating transparent and accountable political institutions and processes at all levels

Sriram & Wermester, *supra* note 165, at 388.

215. See Donald Rothchild, *Democratic Change, Insurgent Action, and the Changing Patterns of International Peace-Building*, in *THE DEMOCRATIC CHALLENGE IN AFRICA* 32, 36 (Carter Center Working Paper Series 1994), <http://www.cartercenter.org/documents/1220.pdf>.

216. DAC GUIDELINES, *supra* note 56, ¶ 38. An undue focus on the post-conflict context, however, risks ignoring the barriers to conflict prevention posed by a state-oriented international system; in the peacebuilding context,

A key peacebuilding tool is the recently created Peace-Building Support Office (PBSO).²¹⁷ Established under DPA through a Security Council mandate and functioning as the primary U.N. field presence in a postconflict situation, PBSOs manage relations between U.N. agencies, donors, and other actors, orchestrating a wide variety of activities.²¹⁸ Directed by SRSGs, they also strategically guide the peace process.

Prior to the creation of PBSOs, in-country U.N. activities were coordinated by the UNDP country office head in her capacity as the U.N. Resident Coordinator. This convenient framework allowed the wide variety of in-country U.N. activities to be brought together with a view towards long-term development. Yet it also had shortcomings, namely, that the apolitical role of UNDP and its close cooperation with the government might hamper an effort to address root causes. The PBSO mechanism reverses this dynamic: The Resident Coordinator becomes the deputy to the SRSG.²¹⁹ Placing the Resident Coordinator System under the direct political control of DPA thus alters the traditional modality for development assistance.

For those political actors, the PBSO also presents a large mandate expansion. By putting DPA in charge of structural prevention, it explicitly acknowledges the political aspects of development. Whereas UNDP and other development-oriented agencies have always viewed their role as preventive, the PBSO model requires political actors to incorporate structural prevention into their operations as well. Problems will arise, however, if DPA, or any of the agencies with whom its purpose is to coordinate, is unwilling or otherwise unable to acknowl-

an existing peace accord likely operates as consent for international actors to engage at the local level.

217. At the time of this writing, there are currently four such offices: Liberia, Central African Republic, Tajikistan, and Guinea-Bissau. *See Report of the Secretary-General on the Work of the Organization*, U.N. GAOR, 56th Sess., Supp. No. 1, ¶¶ 62-64, 88-90, U.N. Doc. A/56/1 (2001).

218. Such activities may include cease-fire and peace agreement verification; provision of good offices; advisory and public information activities; the fostering of human rights; social investment; decentralization of state activities; rural development; fiscal reform; legal reform; and public security and military reform. *See id.*

219. *See Report of the Secretary-General Pursuant to Security Council Resolution 1216 (1998) Relative to the Situation in Guinea-Bissau*, U.N. SCOR, ¶ 25, U.N. Doc. S/1999/294 (1999) [hereinafter *March 1999 Guinea-Bissau Report*].

edge this political mandate. In that event, PBSOs may prove counterproductive.²²⁰ While peace building is a welcome development in U.N. thinking on conflict prevention, the evidence so far suggests that it may be extremely difficult to conduct politically sensitive development activities.

a. UNOGBIS and Its Mandate

The Guinea-Bissau PBSO is illustrative. In November 1998, the Abuja Peace Agreement ended the first stage of Guinea-Bissau's two-year civil war.²²¹ A Government of National Unity was installed in February 1999, which, under the Abuja accords, was to guide Guinea-Bissau until elections.²²² However, violence continued until May, when the self-declared Military Junta took control and installed Malam Bacar Sanha as interim president. In June 1999, the U.N. Peace-Building Support Office in Guinea-Bissau (UNOGBIS) opened. Initially, the mandate focused on consolidating peace and enabling elections. Headed by an SRSG and assisted by political affairs officers, an electoral officer, a military advisor, and support staff, the mandate was

- (a) To help create an enabling environment for restoring, maintaining and consolidating peace, democracy and the rule of law and for the organization of free and transparent elections . . . ;
- (b) To actively support national efforts, including those of civil society, towards national reconciliation, tolerance and peaceful management of differences, particularly during the transitional period . . . ;
- (c) To encourage . . . relations between Guinea-Bissau, its neighbors and its international partners . . . ;
- (d) To seek . . . a programme of voluntary arms collection, disposal, and destruction . . . ;

220. Anonymous Interview, in New York, New York (Nov. 5, 2001).

221. See *Agreement Between the Government of Guinea-Bissau and the Self-Proclaimed Military Junta*, Annex, U.N. Doc. S/1998/1028 (1998). Under this agreement, the parties agreed (1) to reaffirm the cease-fire, (2) to permit the withdrawal of all foreign troops, (3) to allow an ECOMOG interposition force, (4) to put in place a government of national unity, and (5) to hold by the end of March 1999 elections observed by the international community. *Id.*

222. See *March 1999 Guinea-Bissau Report*, *supra* note 219, ¶¶ 6-7, 9 (reporting the establishment of a transitional government in Guinea-Bissau).

(e) To provide the political framework and leadership for harmonizing and integrating the activities of the United Nations system in the country²²³

In the relatively calm month preceding elections, UNOGBIS organized a national reconciliation conference attended by three hundred participants from the government, the military, and civil-society organizations. The elections in November and January were won by the new President Yala with 72% of the vote. A section was then added to UNOGBIS's mandate in light of the democratic transition: "(f) In close cooperation with the United Nations system, including the Bretton Woods institutions, to facilitate the mobilization of international *political* support and resources for the rehabilitation, reconstruction and *development* priorities of Guinea-Bissau."²²⁴

This pivotal change—not only for UNOGBIS, but also for the PBSO concept itself—explicitly required political engagement in development. Over the coming months, UNOGBIS would attempt to address all aspects of postconflict Guinea-Bissau society while struggling with this new requirement. Numerous obstacles would emerge with which UNOGBIS would be unprepared to deal.

Soon after the election, Yala became impatient with opposition politics. His dismissal of five opposition members of his cabinet led to the near collapse of the government. While the United Nations praised the positive resolution of this potential crisis, it failed to acknowledge publicly how Yala's unilateral behavior had instigated the situation. Instead, the United Nations aligned itself with Yala, who represented to the United Nations an example of its own success in quickly transitioning a war-torn society into a democratic state. This nearsighted-

223. *Report of the Secretary-General Pursuant to Security Council Resolution 1233 (1999) Relative to the Situation in Guinea-Bissau*, U.N. SCOR, ¶ 21, U.N. Doc. S/1999/741 (1999). This is not, in fact, the originally proposed mandate, but the one that went into effect when UNOGBIS finally became operational. Changed political circumstances on the ground required changing the original mandate. See generally *Letter Dated 26 February 1999 from the Secretary-General, Addressed to the President of the Security Council*, U.N. SCOR, U.N. Doc. S/1999/232 (1999) (original mandate).

224. *Letter Dated 3 March 2000 from the Secretary-General, Addressed to the President of the Security Council*, U.N. SCOR, at 2, U.N. Doc. S/2000/201 (2000) (emphasis added).

ness—which only now, at the time of this writing, is beginning to change—has perhaps made UNOGBIS blind to, or at least afraid of, political dynamics that were operating right beneath its “institutional” nose.

One of UNOGBIS’s priorities has been the reform of the judiciary in partnership with USAID and UNDP.²²⁵ It seems, however, that this institution-building effort has been too successful. Different branches of government have developed such vested interests in their own power—as opposed to those in their political parties or constituencies—that they are unwilling to grapple with democratic compromise. In September 2001, the Secretary-General wrote that the “[g]overnment’s increasing instability in the face of an emerging institutional crisis [results] from differences among various institutions, representing different branches of power, over their constitutional responsibilities.”²²⁶

Subsequently, President Yala dismissed three Supreme Court justices after the court found Yala’s decree expelling a Muslim group to be unconstitutional. These developments nearly brought about a head-on collision between Yala and the National Assembly, which held a vote of no confidence in the president. There was also fear that the army might take advantage of this unstable political situation.²²⁷

225. This was instigated by successive presidents’ arresting a number of opposition politicians, leaving them imprisoned in squalid conditions. See *Report of the Secretary-General on Developments in Guinea-Bissau and the Activities of the United Nations Peace-Building Support Office in that Country*, U.N. SCOR, ¶¶ 23-24, U.N. Doc. S/2001/622 (2001) [hereinafter *June 2001 Guinea-Bissau Report*].

226. *Report of the Secretary-General on Developments in Guinea-Bissau and the Activities of the United Nations Peace-Building Support Office in that Country*, U.N. SCOR, ¶ 5, U.N. Doc. S/2001/915 (2001) [hereinafter *September 2001 Guinea-Bissau Report*].

227. Guinean historian Leopoldo Amado . . . characterised the situation as “a pre-war state, not a post-war state” in an interview with RDP/Africa. According to Amado’s analysis, the ice is broken regarding unconstitutional means, meaning that the opposition now very well might unite with the military to get rid of Yala. Amado foresees an interregnum of military rule in short future due to Yala’s “lack of common sense as Chief of State.”

Guinea-Bissau Towards Political Collapse, AFROL.COM, Oct. 26, 2001, at http://www.afrol.com/News2001/gub008_polit_crisis.htm.

UNOGBIS has also warily encouraged freedom of speech.²²⁸ Yet such support has at times led to unrestrained political reporting, threatening the very institutions it was meant to promote. While encouraging popular political involvement, press freedom has increased divisiveness between different elements of the government. With neither a culture of compromise nor adequate private channels through which to orchestrate such compromise, politicians lash out at the media.²²⁹ Journalists were repeatedly arrested and detained in 2001. Amnesty International, one of the few NGOs closely following Guinea-Bissau, has criticized strongly the restrictions on press freedoms.²³⁰ Yet the United Nations, recognizing that press freedom is not an unmitigated good, has advanced a more moderate view: “[T]he media’s frequent use of the newly acquired freedom of expression in an unrestrained manner . . . [has] contributed to an acrimonious political atmosphere. On their part, the government functionaries have

228. During the elections, UNOGBIS organized a Forum for Open, Fair and Transparent Elections, which culminated in a televised final roundtable discussion. A Seminar to Promote the Participation of Women in Political Life was held with the help of UNDP and the U.N. Population Fund (UNFPA). See *Report of the Secretary-General on Developments in Guinea-Bissau and on the Activities of the United Nations Peace-Building Support Office in That Country*, U.N. SCOR, ¶ 17, U.N. Doc. S/1999/1276 (1999) [hereinafter *December 1999 Guinea-Bissau Report*]. Afterward, “[i]n a move not only to further energize the media sector but also to encourage a free exchange of views in the society, UNOGBIS . . . [facilitated] a radio and television project [to] provide a forum for the free discussion of issues of national interest.” *Report of the Secretary-General on Developments in Guinea-Bissau and on the Activities of the United Nations Peace-Building Support Office in That Country*, U.N. SCOR, ¶ 17, U.N. Doc. S/2000/632 (2000) [hereinafter *June 2000 Guinea-Bissau Report*]. For the June 2001 municipal elections, UNOGBIS organized a seminar “to increase the awareness of Guinea-Bissau’s media of their important role in promoting the consolidation of a democratic culture.” *Report of the Secretary-General on Developments in Guinea-Bissau and the Activities of the United Nations Peace-Building Support Office in That Country*, U.N. SCOR, ¶ 10, U.N. Doc. S/2001/237 (2001).

229. See AMNESTY INT’L, *Guinea-Bissau: Sustained Attack Against Freedom of Expression*, June 27, 2001, at <http://web.amnesty.org/library/Index/EN-GAFR300092001?open&of=ENG-GNB> (AI Index: AFR 30009/2001). In March 2001, following media debates about the November 2000 failed coup, the Vice Procurator-General recommended that journalists practice “self-censorship.” *Id.* Subsequently, a military official “threatened to bomb the radio in the event of any future conflict.” *Id.*

230. See *id.*

often overreacted to even valid critical comments from the media, sharpening political differences.”²³¹

While UNOGBIS has supported democratic institutions, it has not brought about a culture of democracy. Such a culture must be incubated and grow out of local dynamics. The international community can provide support; it can also engage local-level political actors and members of civil society. In addition, the introduction of a new political system needs to be coupled with tangible economic and social gains, thus creating popular support for, and a stake in, the new system.²³²

b. Current Sources of Instability and the Shortcomings of UNOGBIS

UNOGBIS’s task has been inordinately complex. Given enormous constraints and obstacles—in the form of coordination, competing mandates of different agencies and organizations, lack of resources, political foot dragging on promises (especially by the military), and economic decline—UNOGBIS has performed exceedingly well. Nonetheless, the situation in Guinea-Bissau indicates a downward trend. The government faces a liquidity crisis; it is unable to pay salaries and maintain infrastructure, even as public sector employees agitate for raises. Unemployed youth are entering the illegal arms and drug trades. The National Assembly is implicated in a \$17 million embezzlement scandal, eroding its credibility.

The Secretary-General recently drew attention to the need for prevention:

Early engagement is crucial to reversing conditions of instability in Guinea-Bissau. With the assistance of UNOGBIS . . . windows of opportunity remain open, but such windows may vanish . . . [T]he present precarious political situation, if left unattended, may ignite a new round of open conflict. It is imperative that effective measures to relaunch the economy be taken²³³

231. *September 2001 Guinea-Bissau Report*, *supra* note 226, ¶ 9.

232. In Guinea-Bissau, persistent economic and social shortcomings have “prevented the few democratic advances . . . from taking root.” *Id.* ¶ 31.

233. *Id.* ¶ 34.

One wonders, however, whether the United Nations' focus on reestablishing income-generating activities and private sector development—usually long-term initiatives for development that require nuanced redistribution schemes—is really the most appropriate short-term measure. Is this structural prevention taken too far? Traditional political and military solutions may still be the most effective means when crisis is imminent. But they also must be considered with sensitivity to the need for long-term prevention. As such, attention needs to be given to local political dynamics and the linkages between state and society. By engaging primarily with the executive, UNOGBIS has significantly inhibited its chances for success.

c. UNOGBIS Support for Yala

According to the U.N. Secretary-General, UNOGBIS has focused on “ways and means of assisting . . . Yala to stabilize the political situation.”²³⁴ While engaging Yala may be a politically expedient way to engage Guinea-Bissau, it may also prove to be at the expense of the rest of the country. With the successful completion of elections in January 2000, the Secretary-General and UNOGBIS rallied behind the newly elected Yala, willingly contrasting him with the Military Junta who, from the United Nations' point of view, could not exit politics fast enough.²³⁵ While U.N. concerns over the Junta's political posture may have been justified, they were not tempered by an acknowledgement of the continuing need for security or Yala's own shortcomings. Nor did the United Nations acknowledge minority support for the military within the government. In June 2000, the Secretary-General wrote that the military's decision “not to challenge the President's decree replacing the Chief of Naval Staff [has] been seen as further strengthening the authority of the constitutional order.”²³⁶ Yet Yala has used

234. *Id.* ¶ 32.

235. Yala has essentially focused on consolidating the authority of the newly established democratic institutions in the face of continued interference from the military establishment The continued high profile of the former military junta on the political scene and the lack of a constitution anchored in democratic principles constitute particularly difficult challenges for the Government.

June 2000 Guinea-Bissau Report, supra note 228, ¶ 4.

236. *Id.* ¶ 5.

decrees—not the most democratic of tools—to dismiss judicial officials who displease him. One wonders whether the United Nations' early support of Yala emboldened him to take these later unilateral actions. An African news website commented:

Yala, although disputed within Guinea-Bissau, thus again gets the almost total confidence of the international society, which is primarily seeking a force of stability in the polarised country. Trends by President Yala to not consider opposition points of view, even rule against parliamentary majority, thus rather are seen demonstrating the President's strength and thus as a positive sign.²³⁷

The United Nations justifies its support of Yala saying that, “[i]f international support is to be effective on the ground, it needs to have, at all times, an effective and credible national partner leading the way.”²³⁸ The United Nations hopes for political and economic stability through national reconciliation do not, however, seem to coincide with Yala's goals for the presidency.²³⁹

Thus, while UNOGBIS has increased stability in Guinea-Bissau, it has been unable to entrench a sense of peace or a culture of democracy. The United Nations' uncritical backing of President Yala, even as he lost popular support, demonstrated a lack of flexibility in negotiating the internal dynamics of the democratic transition. Rather than engaging a range of domestic actors and institutions, the United Nations accepted the more expedient modality of personality-based politics as an adequate proxy for the local political scene. UNOGBIS also failed to recognize the institutional dynamics created by imposing rule of law and democracy on a country unfamiliar with democracy's informal mechanisms. Moreover, a confused approach to promoting freedom of speech undermined peace building. Finally, there was insufficient attention paid to—as well as insufficient resources committed to—demobilization and restructuring the military. An effective approach to Guinea-Bissau will need to take into account all these factors, as well as address other sources of instability such as the subre-

237. *Guinea-Bissau Reconstruction Difficult*, AFROL.COM, June 25, 2001, at http://www.afrol.com/News2001/gub007_un_reconstruct.htm.

238. *June 2001 Guinea-Bissau Report*, *supra* note 225, ¶ 29.

239. *Guinea-Bissau Towards Political Collapse*, *supra* note 227.

gional violence resulting from conflict in Senegalese Casamance and the presence of IDPs from that conflict; the circulation of small arms; an increase in banditry; and persistent economic instability. Donors must be coordinated so as to provide useful incentives in this phase of the democratic transition.²⁴⁰

Coordination can only help to the extent these agencies are able to adjust their operations to new political and developmental mandates. While there may be hope for this in a postconflict context such as that of Guinea-Bissau—where such intermingled mandates are explicitly provided for—preconflict preventive development faces more significant obstacles as actors reorient their mandates toward the political goals of conflict prevention.

V. CONCLUSIONS

In the dual shift from managing interstate conflict to preventing civil conflict, existing tools have been invoked for new purposes and given new mandates. Political agencies find themselves engaged in structural prevention, while development agencies take on political tasks. This Note has addressed some of the obstacles that arise in effecting this shift and argued that, so long as international actors are unprepared to engage political dynamics below the state level, conflict prevention will remain an elusive goal.

With sensitive engagement of local political dynamics, it may be possible to reorient the traditional tools of prevention towards the structural causes of conflict. Indeed, the failure to do so may actually kindle or exacerbate conflict. Nonetheless, even a well-executed operational approach that reaches sub-state actors may be insufficient, by itself, to prevent violence. Structural prevention, which uses the tools of development to address such root causes as horizontal inequality, is called for.

240. Leading up to the election, the Secretary-General wrote that there is an “expectation that the successful [elections] . . . will lead to the disbursement of the funds pledged for Guinea-Bissau’s reconstruction efforts.” *December 1999 Guinea-Bissau Report*, *supra* note 228, ¶ 39. However, donors must not treat the successful electoral process as the end of the transition. Phased conditionality, based on continued progress and entrenchment of democracy, may be a more useful tool.

Sovereignty concerns present obstacles at both the headquarters and field levels. The failure of EISAS points to the enduring state-based framework in which the United Nations must operate. The requirement of sovereign consent is more appropriate to managing interstate conflict than preventing civil conflict. This was apparent in Kenya, where UNDP's partnering with the government arguably made the agency complicit in government-supported violence.

Coordination and sovereignty make meaningful early warning difficult to achieve.²⁴¹ Without early warning as a prerequisite, political will remains a reactive phenomenon. Moreover, early warning requires coordination both among players in the field and between the field and headquarters. The oft-mentioned failure to summon the requisite political will in Rwanda partly resulted from this failure at coordination. Ways must be found to surmount such obstacles so that the information gathered by development and other apolitical actors may be made useful.

The PBSO is a laudable initiative aimed at achieving comprehensive coordination on the ground. It is also a step forward in that it requires the intermingling of political and development mandates. Nonetheless, the UNOGBIS experience suggests that even such all-encompassing efforts can be ineffective if they fail to engage local political dynamics. More is needed than formal technical assistance and engagement with national-level political personalities. Moreover, the Rwanda, Kenya, and Guinea-Bissau case studies illustrate how international actors must account for their own potential to affect negatively situations on the ground.

The reorientation of UNDP and other development actors towards conflict prevention presents significant difficulties, for these actors depend on government cooperation. While Kenya demonstrates the risks of engaging in a conflict-prone situation without altering one's modalities of engagement, the current Nigerian experience demonstrates that

241. The needs for political will and resource mobilization are perhaps the most frequently mentioned obstacles to effective prevention. See, e.g., U.N. RWANDA LESSONS LEARNED REPORT, *supra* note 154. This Note's failure to address them directly does not imply their insignificance. Rather, they present operational obstacles, while the focus here is on the conceptual obstacles to creating a culture of prevention and commandeering the "new" U.N. tools in pursuit of such an effort.

there are positive steps to be taken to reconcile this dilemma when governments can recognize the value of decentralization and community based initiatives. The World Bank's attempts to reconcile conflict prevention with its own institutional restrictions on political considerations suggest ways for other international actors to reinterpret their own guiding norms to include the new forms of engagement called for by conflict prevention.

All efforts at conflict prevention—from developing United Nations-level early warning to field-level community development projects—face obstacles that relate to the difficulty of international actors in understanding and engaging with internal political dynamics. Whether such shortcomings result from the United Nations' legal preoccupation with state sovereignty, from the operational modalities of development actors, or from a simple lack of understanding (resulting from an unwillingness to understand, an opaqueness of local processes to external observers, clear misrepresentation on the part of local actors, or a lack of resources), they all derive from the international system's own limitations as a community of states. The new U.N. drive towards preventing internal conflict will have to come to terms with these obstacles or else risk being ineffectual, or worse, detrimental.

