



Journal of the International Relations and Affairs Group (JIRAG)
Volume 1, Issue 1
November 2011



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**Transnational Corporations in Developing Countries: Doing Business, Social
Responsibility and Risk Analysis**

Georgi Ivanov

Transnational Corporations in Developing Countries: Doing Business, Social Responsibility and Risk Analysis

Introduction

The role of international business in failed states is difficult to define, because there is no structured regulatory environment to define the bounds for their activities. The *raison d'être* of transnational corporations (TNC) is to turn a profit from what they do and invest it towards expanding their presence on international markets – we must keep this in mind as a starting point towards defining what TNCs are supposed to do in failed states. State-building is a process which TNCs can influence in some ways, but ultimately cannot direct. So, I have chosen three primary spheres of influence for them: education and ethics, physical infrastructure and encouraging sustainable development. First, to be able to conduct business in today's globalized world, even the unskilled worker needs basic literacy and training programs can be implemented by a TNC to educate a potential workforce; the spill effect may catalyze access to education for the wider society. Physical infrastructure simply refers to the facilities the TNC would need to operate in a failed state: access to electricity, roads, manufacturing plants and access to raw materials; foreign direct investment brings such development, and many less-developed countries (LDCs) see it as a lucrative source of both income and prosperity. Finally, sustainable development has been a topic of importance since the 1980s in the bid to reduce the ecological footprint of human activities on the planet's ecosystems. This trend is bound to intensify in the 21st century, but with the lack of human and physical capital LDC governments are confronted with in regards to promoting sustainable technologies and practices, TNCs stand in a good position to benefit both their business in the long run and be the agents of implementing environmentally-friendly solutions in developing countries. One fundamental argument against the role of TNCs is that they cannot be the agents of democratic regime change or democratic values; effective democratic government and the emergence of a civil society are the prerogative of the public sector.

Definitions

We must not be misled by the notion that the obligation of international business is to promote democracy in a failed state. It promotes measures beneficial to conducting business, regardless of the kind of political system that may take root in the country. However, it can be argued that some of the pro-business measures can be proto-democratic in nature. To set the parameters of the discussion, I will define several terms. Education refers to basic alpha-numeric literacy and job-specific training by the company in question in order to develop the human capital needed to run the local branch of its business. Physical infrastructure represents the facilities the company needs; production plants, electricity, transportation, oil or gas pipelines, administrative and maintenance facilities. Sustainable development is embodied in policies and practices that minimize the use of materials and equipment detrimental to the surrounding natural environment, such as toxic emissions, non-recyclable products or untreated waste; while LDCs are not expected to have the resources or infrastructure to invest in and use environmentally-friendly technologies, TNCs can facilitate that development through private investment.

Why are TNCs important?

TNCs bring economic development to an LDC, but along with that, they have the potential to carry offset effects towards wider social development. Jobs, the transfer of technological and human know-how and added revenue for the central government through taxation are all benefits of foreign direct investment (FDI). By developing a strategic investment policy, a central government has the potential to attract selective investment that would complement a country's relative strengths in the global marketplace. That way, it can also maximize the amount of funds invested, knowledge and technology transferred and the overall qualification of the work force. At the same time, TNCs can help shape formal and informal institutions to affect a business culture that respects both market principles and individual political rights.

Ethics and Education

The first argument will be the most difficult to understand, both for its centrality and ambiguousness. It is about a fundament of values that define how a business operates and the challenge to bridge these values with those of the host society through an acceptable compromise. Typically, companies have a code of ethics to set bounds for the nature and extent of their business operations, from an internal code of conduct for employees to promoting certain values when investing in another country (Kaptein, 2004, p. 13). On the other hand, a society has both formal and informal institutions that shape the character of the local business. It is a complex balance between the strength of state institutions to enforce their mandates, their permeability through unofficial institutions (corruption, oral arrangements), and the adaptation of the TNC in the particular milieu. For the purposes of this paper, the TNC will be treated as an agent that promotes liberally-oriented political and economic systems.

Two subsections are relevant to this argument. The first one concerns business ethics and the other education.

Business ethics exist to constrain a company from acting destructively for the sake of profit. It includes principles, such as transparency and accountability, social responsibility, the code of conduct of employees in professional, respectful and inclusive ways, codifying other ways of conflict resolution, following local laws and being sensitive and responsive to the peculiarities of investing in a new country (Mitschow, 2002, p. 239). Business ethics are embodied in nearly every modern TNC, but they continue to be a source of tension, focusing on debates such as corporate freedom, enforceability, or the extent of government regulation. Despite these challenges, the main question focuses on a TNC applying its code of ethics to the country where it will operate. Labour relations form the first tier. It is a vast area on its own, but the main tenets concern fair wages, working hours and conditions, healthcare coverage and job security. It is in such a setting that a company must have a robust capacity

for negotiating with labour unions, if they exist in an LDC; conversely, if no labour organizations are present in the host country, a TNC must turn to the formal government in power for legislation that regulates labour relations, and use them as the basis for forming professional relationships with new employees (Organization, 2011). In addition, it is likely that labour codes in developing countries are insufficient to cover the extent of issues that a labour code in a developed country may have; in such a case, the TNC has to address the deficiencies by combining the law with its own internal employee standards, alongside those of the International Labour Organization.

A persistent problem in the global economy remains in the face of child labour, job insecurity, dangerous working conditions, employee care and even slave labour in some areas. These issues are acute in developing countries (Observer). While from a business point of view they are cost-effective and profitable, from the ethical perspective, they are inhumane. The business ethic codes of most international companies deal with these problems, but more needs to be done to address them adequately on a global scale.

The second major theme in this argument is education. It is no secret in this day and age that an effective and flexible education system is essential if a state is to be successful in a global economy. It has to be able to prepare cadres for priority sectors, ensure that each new worker is fully literate and equipped with the skills to work and succeed. However, LDCs routinely suffer from having whole segments of their populations unable to read and write on a basic level (PISA, 2009). When a TNC has to deal with a failed state, a weak government or a regime whose priorities do not specifically lie with social policies, it has to take it upon itself to train the personnel that it will need. With the advance of technology and communications, even low-skill jobs require a degree of literacy. It is likely that a company operating in an LDC will come up against the problem of an inadequate state education system, and it is thus in its interest to establish its own private institutions that teach basic literacy along with job-related skills; in other words, a trades school.

The move to improve education can extend beyond the narrow focus of filling staffing requirements. Foreign direct investment is based on careful analysis with a long-term focus on a company's presence in a particular region. It is prudent, therefore, to invest as much as possible in the education of children in an LDC. There are a number of mechanisms available to make that a fact. One is for the company to fund projects out of its own coffers in less developed and more impoverished regions across the country. Another is to work in conjunction with the state in developing more robust joint-venture projects, such as secondary schools, colleges, and preparing teachers and professors to preserve and advance knowledge in the country. In other words, the TNC has the potential to influence the development of sound education policy and infrastructure through building both facilities and assisting in the training of faculty on a selective basis. Thus, creative thinking that combines both company-led initiatives to improve education, alongside assisting state efforts in the same direction is not only a good social development, but also a sensible business decision, because it is more likely to ensure the long-term viability of the TNC's core investment in the country.

Physical Infrastructure

The second section of this paper is concerned with the backbone of a real economy: the physical infrastructure. It includes transportation, energy, urban areas and communication. A challenge to TNCs in developing countries is that infrastructure exists on a very selective basis, it is in an overall poor condition and there is inadequate investment on the side of the state in both maintenance and expansion. An accompanying issue is found in systemic corruption and filibustering of projects for the profit of a select few in the high echelons of government. The outcome is that the lack of a developed, multimodal infrastructure causes the company to incur more costs in the short and medium term. In such a case, the investment programme of a TNC must include the development of critical infrastructure to facilitate its activities (Pflug, 1999). In a setting where the status quo is inadequate in all respects, the TNC will choose a locale that has the best concentration of

transportation, communication and energy infrastructure: such areas include large cities and coastal areas. Once that decision is made, the board of directors must analyze what is needed and implement measures to put it in place. However, these expenses must be balanced so as to not become prohibitively high and jeopardize the entire investment.

Access to developed and maintained infrastructure is known to enhance economic development, because more efficient communications reduce the overall cost of doing business. The question then once again focuses on the long-term viability of an investment in an LDC. More specifically, if a TNC invests in infrastructure development for its needs in a developing state, will the revenue generated by the local operation return the comparatively higher start-up cost? Roads, rail, electricity and access to water are the most salient challenges to developing countries from the infrastructure perspective. They are the reason that the choice of locations for the TNC to set up operations will be very limited.

As mentioned before, the governments of developing states invest inadequately in all areas where states should have a recognizable presence. Once again, corruption and mismanagement are a tell-tale mark of inadequate governments in LDCs. The second question facing TNCs after determining where they should invest towards infrastructure development is how to do so most effectively (Kirkpatric, 2006). There are several ways of doing this, ranging from individual initiatives to partnerships with the government and/or other private entities. States go about building infrastructure by investing money directly from the state treasury into a project; or as more commonly it is done, by calling a public tender where several companies compete by submitting proposals and the most cost-effective one wins the project. It is likely that a TNC will not be specialized in infrastructure development, and it may organize its own contract for a sub-contractor to construct the needed links. Another way is to participate alongside the government in introducing hybrid bids; the TNC contributes financially and organizationally to organizing the tender in exchange for tax breaks or policy preferences, for instance (Kirkpatric, 2006). While this is one of the best options for a cash-strapped government, it does help the TNC establish a

more prominent presence on the local market and help its long term goals in the region. Through cooperation, a TNC can also influence the use of transparent and accountable practices in all of the stages of the realization of the project in its role as a stakeholder. The motivation is precisely that a business has a better credibility and reputation not only through the results it achieves, but also in displaying open and accountable methods of operation. While the reality does not always conform to that expectation and corruption remains an indelible part of government-business relations everywhere around the world, minimizing it through a best practices approach is beneficial for all sides.

To conclude this section, we can say that the development of physical infrastructure in terms of transportation, communication, energy and utilities is crucial for the successful foreign investment. The reality in much of the developing world is that infrastructure is underdeveloped, sporadic and/or ill-maintained. There are a number of options for a company to deal with the high costs of making its business more efficient in the long run. The formulations are many, but the essence of the argument is that it is possible for a TNC to invest its own resources in the development of infrastructure for its own needs, or if a project will reap more benefits by helping the wider population, then partnerships with the government and other private entities is a more likely scenario. Standards of accountability and transparency also must be implemented to prevent the mismanagement of the project and minimize the costs associated with it. As the point was also made in the previous section – infrastructure development must be made a part of the long term vision a TNC has for its investment in a developing country.

Sustainable development

Much ink has been spilled on the need to develop environmentally-sensitive solutions to the development needs of LDCs. Environmental degradation in both the developed and developing countries, brought on by destructive manufacturing processes, ineffective waste management and over-exploitation of resources has awoken us to the fact that in the 21st

century, the long-term costs of a deteriorating ecological balance far outweigh any short-term benefits we might accrue.

Keeping in concert with the low-level capacity of developing countries to come up with solutions to problems and muster the needed resources to implement them, TNCs again can have an influential role in regards to encouraging sustainable development. By comparison, the effective implementation of environmentally-friendly solutions requires a very robust technological and research base as that found in industrialized countries. Keeping that in mind, the challenges before TNCs is to develop and implement sustainable solutions while being as cost-effective as possible in the process. New technologies are more expensive to introduce than conventional ones and a lot of time can elapse before they become mainstream.

Without an extensive industrial and communication infrastructure, introducing sustainable development in a developing country is a long-term project. It has to be done on the micro level before systematic approaches can be taken. TNCs can take the lead by making their own operations carbon-neutral through more effective manufacturing processes and investing in renewable energy sources to supply their bases (Shrivastava, 1995, p. 951). As part of their social responsibility commitments, they can also finance isolated renewable energy projects to build both an infrastructure and the human capital to expand it in larger and larger steps; such investments include solar and wind power projects to meet the energy needs of separated villages, for instance.

On the national level, firms specializing in renewable energy production or developing carbon-neutral industrial solutions can both act as investors and advisers to the government on creating a regulatory environment that will create the rules according to which sustainable development will take place and put in place measures that will familiarize the constituent public with these commitments. That is, TNCs specialized in sustainable development can have a positive impact on not only creating the required, physical

infrastructure but also create state capacity to manage and guide capital-intensive industries, such as heavy manufacturing or mining, towards more sustainable ways of operation.

Waste management is the final part of this section. Waste can be problematic in heavily populated urban areas, as well as in rural areas used as a dumping ground for waste. In cities, it can bring disease and potentially death, if the problem becomes chronic enough. The costs it creates have an impact on city services such as traffic management, health problems and ensuring air quality. In the 21st century, the global trend is that more and more people are moving to live in cities, creating mega-cities that cannot handle the influx of more people without the proper expansion of infrastructure and services. TNCs specializing in waste management thus have the unique opportunity to work in challenging environments, and as mentioned above, participate in sustainable development through the more effective management of waste through recycling and composting, for instance, or using methane produced from waste in electricity generation (Zerbock, 2003). Another prominent issue is the management of landfills, receiving everything from household waste to spent toxic electronic components from the developed countries (Zerbock, 2003). The risks for impoverished communities, living around landfills of this character range from fatal health problems to the inability to raise themselves out of poverty due to a poisoned land and water supply. TNCs are in a position, then, to spearhead possible solutions to these problems: waste is only one major part of sustainable development.

To conclude this section, sustainable development can be wholly within the jurisdiction of TNCs in the context of developing countries. With lacking state capacity in most LDCs to create the required research and technological bases for encouraging sustainable development, TNCs are well-positioned to bring this process on the micro level in four main ways: making their own productive capacities more efficient, investing in renewable energy projects in various pockets of the host country, assisting in the development of state policies towards sustainable development and finally, developing effective waste management systems.

Discussion

It must be recognized that when a corporation chooses to work in an LDC state, which has a partially functioning, or a failed government, it takes on a significant number of risks that must be taken into account. Realistically, substate ethnic or religious tensions may threaten to destabilize peace in the country: Somalia and Sudan are only two such instances. Authoritarian regimes are specifically vulnerable, because of their reliance on charismatic legitimacy to stay relevant. While they control politically unified states, the death of a recognizable leader can spark a succession struggle that can cause fractures along ethnic lines: such examples include Yemen and Libya, for instance. The consequent crisis can have an unpredictable outcome in the way of political stability, as it might devolve into an armed conflict to determine the leader of a new regime, or could be solved amicably and a new leader either elected or appointed.

Another significant risk for a company investing in a failed or failing state is the predictability of the economic environment of the country in question. However weak a government is, it retains some capacity for taxation, investment and setting monetary and fiscal policy. The level of prices and inflation is also important, because it would determine what a company has to pay to access materials and set up operations in the country. It is important to note that a failed state can include a highly centralized, authoritarian government that is implementing an inept economic policy – an example of that is Robert Mugabe's regime in Zimbabwe (Meldrum, 2011). Without some predictability to the economic policies of government, and ones that sensible monetary and fiscal decisions, foreign investment is a chimera; companies evaluate the acceptable economic risks they can take before making the decision to put their money somewhere.

A third consideration must deal with the tune of international politics. For instance, a regime pursuing policies that may destabilize regional peace, superpower interests, or the internal human security of its constituents, is typically subjected under international sanctions

– those are primarily of an economic character. Today, examples of countries that are subject to various economic sanctions are Iran, North Korea and China to some degree. Iran is a good example, because its oil industry is a mainstay of the country's economy and under the sanctions imposed for the development of its nuclear programme, Western energy companies, be they concentrated in the oil or nuclear sectors, cannot invest in Iran; some banking institutions are also under this restriction (Reuters, 2010). Thus, it is arguable that international politics of this character are detrimental to the operations of multinational corporations; effectively, the deterrent is that the costs of not obeying sanctions are greater than that of simply not investing until the political environment allows it. However, it can also be argued that the spillover effects of investing in a lucrative foreign market, such as a greater regional profile for the company, long-term networking opportunities and even access to better technologies and procedures are lost when the regime turns to international partners that are not party to upholding sanctions.

Overall, the purpose of this section is to provide a brief overview of the kinds of risks a company will face when it chooses to invest in an LDC with a failing or failed government. The challenges from the above survey show the diversity companies can face. Fundamentally, it is a question of whether peace can be preserved in the host country so as to prevent the rise of conflict between different substate groups, with the consequence of national or regional deterioration of peace. Another important risk to consider is the economic predictability of the host country: is the leadership able to conduct monetary and fiscal policy that intends to provide a sustainable environment for the long term? As pointed out above, Zimbabwe is an example of a failed state with high centralization, but inept economic policies. Finally, companies must keep in mind the political constraints of their activities in the LDCs. If the international community has levied sanctions on a developing state for any reason, the company itself may suffer adverse effects from engaging in business with that state.

Conclusion

The question posited in this paper was what role transnational corporations can have in the development of LDCs. The answer is complex, because their role can be both destructive and constructive. In the ways that it can be constructive, I have identified three key areas: sustainable development, physical infrastructure and ethnics and education. Sustainable development refers to the development of a carbon-neutral economy through renewable energy sources and effective manufacturing processes; in the context of an LDC, where infrastructure and conditions do not exist, TNCs can promote SD through streamlining their own operations, assisting states in developing regulatory frameworks in the area, financing isolated renewable energy projects and developing effective waste management systems. The second area concerns the development of physical infrastructure, such as utilities, roads and communication; the option TNCs have to take the lead are developing infrastructure for their own use at first and later on, partnering up with the state and other private entities to facilitate the growth of critical infrastructure in transparent and accountable ways. Finally, ethics and education refer to the humanistic principles guiding the business of the corporation and the obligation of the company to educate not only a potential workforce, but to participate in implementing a basic education system for children in the country; working alongside the state, it also has the potential to develop institutions of higher learning, along with teaches and professors to staff said institutions. Ultimately, TNCs can be a force of good in a developing country while they profit, through careful engagement with the people and the local government in a way that end up benefiting everyone.

Some thoughts for consideration: this paper did not discuss democratization and human rights at any length. Ethics and education can address some of these issues, but the guarantee of individual rights and democracy promotion are beyond the scope of this paper; yet, these two things can be crucial to development, as they are the tools to check unwarranted government power, political instability in the country and encouraging a political culture of government that is receptive to its people. Thus, alongside TNCs, we must

consider the fundamental role of the state in creating the environment, which facilitates the operation of a TNC – but that is a topic for another paper.

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Islam and Democracy
Cherif Sidalicherif, PhD

Abstract

This paper is to analyze the different approaches to Islam, democracy, and terrorism. For quite sometime, religious scholars, politicians, and peoples' disagreements about Islam and democracy in the Muslim world have been at the center of many discussions and debates and at times even conflicts, generating some perceptions that Islam is the root cause of instability, not only in Muslim countries, but the world at large. The idea behind this paper is to ultimately demonstrate which, if any, of these presented views stands strong in relation to the actual situation of Islam, democratic governance, and terrorism, not only in Muslim countries, but across the globe as well. Furthermore, the paper details a path that will help transform the perceptions of both sides. Both those supporting Islam and democracy and those who oppose Islam and democracy as incompatible and claim that Islam promotes violence will progress their views to understand Islam and its true message. Finally, we will include ideas to promote good governance and lead to a substantially better understanding of Islam and the common good. This short paper will also show that Islam and democracy are intertwined and that the real reason for lack of democratic governance in Arab/Muslim nations is primarily leadership failure as has been the case for decades. Events that are taking place in Arab countries are proof that Islam is not the issue facing democracy, but rather leaders' monopoly of power and oppression that have led to uprisings demanding change.

Introduction

The discussion about Islam and democracy has been at the center of many conflicts. People supporting the compatibility of Islam and democracy persist that democracy cannot live without Islam. They believe that the Qur'an's teachings and the Shari'a are the foundations upon which democracy is built. They argue that for almost fifteen centuries Islam has taught people how to respect and protect others may they be Muslim or non-Muslim and to justly follow the rules of Islamic law to promote and achieve positive social change. Others believe that Islam and democracy cannot co-exist because according to them democracy cannot flourish and prosper under Islam.

In this paper we will explore alternatives to bring together these conflicting views about Islam and democracy and to deal with this complex subject based on research instead of treating it with personal emotions and pre-existing biases.

The Mission of Islam

The role of Islam according to scholars is to first, teach mankind that sovereignty is to God alone and second, to transmit His commands to mankind to be carried out on Earth. As it is clearly mentioned in the Qur'an, "Behold, thy Lord said to the angels: 'I will create a vicegerent on earth.'" (Qur'an, 2:30) meaning that Allah has made men responsible on earth to carry out His commands and live in conformity with His instructions (Al-Qaradaoui, 2005). Similarly, the teachings of the prophet are no different from those revealed in the Qur'an. The prophet's Sunnah (way of life) was entirely based on the Qur'an and the commands of Allah, therefore, being Caliphs of the prophet reflect our responsibility towards both Allah and His messenger according to scholars like Al-Qaradaoui. Likewise, Sayed Abu A'ala Mawdudi (2003) states,

"The Will of God, which is obligatory upon man to follow, is the one which God Himself has revealed for man's guidance. The Will of God is not to be determined by man himself. God has Himself enunciated it clearly and there is no ambiguity about it. There, if a person or society is honest and steadfast in its contract with Allah, it must scrupulously fashion its entire life in accordance with the Book of God and the Sunnah (practical example) of the Prophet (peace be upon him)."

The challenge, however, is that people define sovereignty differently and therefore, tend to reject the principles of Islamic sovereignty. Islam's mission is clear and that is to believe in God alone and live by His commands. At the same time, Islam gives people the opportunity to make free decisions in regards to religion and each person's way of life. The Qur'an states, "Let there be no compulsion in religion. Truth has been made clear from error. Whoever rejects false worship and believes in God has grasped the most trustworthy handhold that never breaks. And God hears and knows all things." Qur'an (2:256)

Islam derives its name from 'Salam' which in Arabic means peace and based on this definition, Islam has never been and will never be a religion that promotes violence and

teaches people oppression and tyranny. Additionally and according to people with deep knowledge about Islam, Islam didn't come only to require total submission of Muslims to Allah the creator and to teach Muslims about peace, it also came to spread other commandments defining a way of life dealing with such issues as personal hygiene, diet, interpersonal relations, clothing, business ethics, responsibilities towards parents, spouses and children, marriage, divorce, inheritance, civil and criminal law, fighting in defense of Islam, relations with non-Muslims and much more.

Consequently, judging Islam from this angle, one cannot put Islam on trial for violent events and misrepresentations taking part in our world. The misconception, according to many scholars, about Islam is a lack of understanding of the true mission of this religion. Here again, it is important to emphasize that for centuries Islam has been taught from a very narrow perspective focusing mainly on religious issues and neglecting other social issues that presently have become a great challenge. The challenge arises because not enough research and information have been put forth to prepare for these religious, social, political, cultural, and economic challenges. Democracy in Islam is the dignity, social equality, justice, and freedom of the human being during his/her lifetime. This democracy as known to people is the gift of Allah to all people. No one and no religion including Islam can change this fact.

Dr. Mohamed Yatimi (2006), a Moroccan researcher and professor of Islamic studies, notes that democracy is not a stranger to Islam; what is needed is to develop this democracy and make it fit the present times. He further believes that western democracy is a man made democracy and that is different than democracy in Islam. (Isdarat publications, 2006)

Islam's Incompatibility with Western Democracy

Consider the new Iraqi constitution which says that, "Islam is the basic source of legislation." (Iraq Constitution, 2008) At the same time this legislation guarantees the rights of the country's non-Muslim and non-Arab citizens. One notices that no government in any Muslim country would ever entertain the idea of adopting western democracy entirely for obvious reasons. Sovereignty is to Allah alone and not to the people; The Qur'an and Shari'a

are the sources of law and the guiding factors in every Muslim's life as Abdu-Karim Soroush mentioned in some of his interviews in the USA and Iran, "Although Islam means submission, there is no contradiction between Islam and the freedoms inherent in democracy. "Islam and democracy are not compatible, their association is inevitable. In a Muslim society, one without the other is not perfect." (1994-1995)

As reported by Gregory Gause III (2005), Director of Middle East Studies at the University of Vermont, states that, "Bush during his 2006 inaugural speech said democracy will reduce the terrorism threat." Seattle Times (Monday, January 16, 2006) p. A8. Some political scientists including Gause, however, disagree with this statement by asking the following question, "Is it true that the more democratic a country becomes, the less likely it is to produce terrorists and terrorist groups?" His argument against the claim that democracy reduces terrorism is that, "unfortunately, the answer appears to be no. Although what is known about terrorism is admittedly incomplete, the data available do not show a strong relationship between democracy and an absence of or a reduction in terrorism." (Gause, 2005)

Is it true that the more democratic a country becomes, the less likely it is to produce terrorists and terrorist groups? In other words, is the security rationale for promoting democracy in the Arab world based on a sound premise? Unfortunately, the answer appears to be no. Although what is known about terrorism is admittedly incomplete, the data available do not show a strong relationship between democracy and an absence of or a reduction in terrorism. Is it true that the more democratic a country becomes, the less likely it is to produce terrorists and terrorist groups? In other words, is the security rationale for promoting democracy in the Arab world based on a sound premise? Unfortunately, the answer appears to be no. Although what is known about terrorism is admittedly incomplete, the data available do not show a strong relationship between democracy and an absence of or a reduction in terrorism. The idea of spreading western democracy throughout Muslim countries it is believed by many can only generate more extremism and hate for the west. This conflict of ideologies has already started planting seeds of political and religious

controversy between Muslim and non-Muslim nations. It has given fundamentalist views and extremist ideas a base upon which actions of violence and terrorism have grown.

Governments in Muslim countries, no matter how much they might support a western democracy, know it can never materialize in their societies as Shlomo Ben Ami (2009) suggested, “For if these same Arab rulers have not always been eager to back America’s policies in the region, that has been because public opinion in their countries – the famous ‘Arab street’ – was strongly opposed to them.” (2009)

For if these same Arab rulers have not always been eager to back America’s policies in the region, that has been because public opinion in their countries – the famous ‘Arab street’ – was strongly opposed to them. Many Muslim people would however agree that there is no harm in adopting certain aspects of democracy the west enjoys such as; freedom of speech, fair elections, diversification of political parties and consensus among people. Many in the west believe that Muslim nations hate what western democracy stands for as President Bush asked the question shortly after 9/11/2001, “Why do they hate us?” This perception should not be generalized. It is true that there are groups that may feel that way, however, the majority of people are indifferent to western democracy as long as it does not interfere with their Muslim societies. Examples that can better illustrate this difference are numerous: the family code, marriage, divorce, combination of Shari’a and State, what is socially permissible and much more.

The process of defining democracy according to one’s society, in this case Muslim society, is what makes it difficult and even impossible to consider a western democratic system. Dr. Mahathir (2006), Malaysian Prime Minister, stated in regards to western democracy and its effect on Muslim countries, “We really don’t understand how it works, especially liberal democracy, and it will do us more damage than whatever system we practice in our countries. It is not the system that matters. It is good governance by good people that we need.” (Gulf News, 2006)

Those who oppose the importation of western democracy to Muslim countries such as Iqbal Siddiqui (2000) believe that, “The confusion being caused by the importing of

‘democracy’ into Muslim political discourse, and the damage this trend is doing to Muslim political thought and the Islamic movement, is immense and is likely to prove as great a problem in the future as the more tangible effects of the centuries of western political domination and exploitation of the Muslim world.” (Crescent International, 2000)

This clash of civilizations, as some authors call it, is not to blame for the conflicts that exist between nations. Outside pressure exercised on governments to change their regimes is igniting deep fires. Samuel Huntington (1993) believes that civilizations’ clash due to religious, political, and social differences are more than the economic factors, he states, “It is my hypothesis that the fundamental source of conflict in this new world will not be primarily ideological or primarily economic. The great divisions among the humankind and the dominating source of conflict will be cultural.” (Huntington 1993). There is much truth to this claim, the overall dominating factor of the clash is the unwanted persuasion and strong influence to make people do what opposes their beliefs and teachings. America is fighting terrorism not only because terrorists attacked the US, but also to prevent terrorists from trying to change America’s way of life and undermine American democracy. Likewise, Muslim nations throughout the world reject the idea that the west can just come in and dictate to them how they should democratize their societies without consideration of their religious and cultural convictions. In Iraq, for example, most people are convinced that the US should leave and let the three Iraqi parties, Shia, Sunnis and Kurds decide among themselves what is good for their country. As Michael Kelly (2010) explained in an article titled ‘Democracy for Iraq’, how power is distributed in a complex society such as Iraq, Power distribution runs along ethnic/religious lines so that the president, the prime minister and the speaker are never of the same ethnic/religious sector. The current distribution places a Sunni Kurd as president, a Shiite Arab as prime minister, and a Sunni Arab as speaker.”

Due to cultural differences, religious complexities and values in Iraq some called for a Muslim coalition to be involved instead of a western coalition and that is to avoid conflicts and contradictions. Muslim countries including Iraq share the same basic governing system, and the Shari’a is the core foundation in any Muslim country. This was affirmed by Powers

(2005) when he wrote, “In Islam there is no difference between the secular and the sacred. The law is suffused with religion.” Additionally, those who called for the involvement of a Muslim coalition did so because there is a common ground of understanding with common religious, cultural, and historical ties among Muslim nations. The Iraqi Constitution’s basis is the Qur’an, Shari’a, and the Iraq cultural history.

Islam’s Good Governance and Modernity

Centuries of great, undeniable Islamic civilizations bear witness to the fact that good governance and modernity are no strangers to Muslim nations. At times where other nations were fighting for survival, Muslims nations were making waves in fields such as science, mathematics, medicine, poetry, and so forth. As recently as 2003, the famous (Sharee Al-Shuara’a) (the street of poets) in Baghdad, Iraq was known for attracting poets and writers from Muslim nations to exchange poetry, have scholarly debates, and philosophical discussions.

Modernity and democracy seem to be inseparable since nations cannot be democratic unless they are modern first. When looking at countries that have achieved a responsive democracy, one can easily deduct that when people are driven by knowledge and awareness, they tend to work harder for positive social change. Once again Dr. Mahathir (2006) explains it well by noting that, “Indeed our religion gives us all the necessary guidance. If we are today lagging behind, distained and oppressed by others it is because we have forsaken the true teachings of our religion and returned to our pre-Islamic ways; feuding with each other, closing our mind to modern knowledge, ignoring reality, deceiving ourselves that we are better than others when we are not.” (Gulf News, 2006)

Islam is not against modernity neither is it against democracy. According to research conducted by the No Political Islam organization (2003), it is the regimes in Muslims country that have fought modernity and equality. The organization reported that of the OIC’s (Organization of Islamic Conference) fifty-six member countries, ninety three percent are either not free or partially free as far as political rights and civil liberties are concerned.

Furthermore, the organization notes that economic performance and education are also suffering considerable deterioration in most of these countries when compared with civilized countries. At a time when more than 1.3 billion people living in the OIC states have a combined GDP of less than \$1.5 trillion, the United States of America has 290 million people and a GDP of \$10.4 trillion, France is at \$1.54 trillion, Germany is \$2 trillion, the UK GDP at \$1.52 trillion and Italy's GDP is \$1.4 trillion.

In education, of the 1.3 billion people of OIC, more than 800 million continue to be illiterate. On the other hand, of the 290 million Americans, 227 are Nobel Laureates. Also of the 1.3 billion Muslims, fewer than 300,000 qualify as scientists whereas America has 1.1 million scientists and Japan has 700,000 scientists. Fifty-six of the OIC member states have ten universities each with a total of 600 hundred universities for the 1.3 billion people. (No Political Islam, 2003)

Democracy starts by solving these problems and Islam gives every human being the right to a decent lifestyle. Islam requires everybody to seek knowledge according to Islamic teachings and use the knowledge for the greater good because without knowledge there is no modernity. The theory that Islam is against modernity and therefore democracy as many are arguing is unsupported and logically unfounded according to Muslim experts as such Dr. Quaradaoui (2003). The surprising numbers reported by the organization reflect not the Islamic approach to civilization and the improvement of social welfare, but that poor leadership has made the majority of Muslims around the world suffer from poverty and unfair treatment. The lack of democracy at this point is not due to Islam, it is due to inadequate Muslim leadership as many Muslim countries and Muslim scholars are finally admitting. According to Al Maktoub Foundation the problem that is impeding Arab Muslim nations from promoting democratic governance is,

“Stringent legislative and institutional restrictions in numerous Arab countries prevent the expansion of the public sphere and the consolidation of opportunities for the political participation of the citizenry in choosing their representatives in elected representative bodies on a sound democratic basis. The restrictions imposed on public

freedoms, alongside a rise in levels of poverty, and poor income distribution, in some Arab countries, have led to an increase in marginalization of the poor and further distanced them from obtaining their basic rights to housing, education, and employment, contributing to the further decline of social freedoms.” (Arab Knowledge Report, 2009)

To Democratize or Not to Democratize

Michael Rivero (n.d) states, “Once a government resorts to terror against its own population to get what it wants, it must keep using terror against its own population to get what it wants. A government that terrorizes its own people can never stop. If such a government ever lets the fear subside and rational thought return to the populace, that government is finished.” This quote describes perfectly the state of power in the Arab/Muslim world. The new era has created a cartel of Arab/Muslim dictators who have a common objective regarding how to maintain power and suppress people. However, this objective can be eliminated if the masses become a better-informed public who can lead a leader, not the other way around. Well informed citizens have the unique opportunity to hold any official, no matter what his rank, accountable for his/her actions and they can decide his/her political faith without repression or intimidation. The latest events in some Arab countries are a clear indication of peoples’ power to change.

There are examples of countries that have turned hope into reality. Brazil is a great model that has showed its determination for positive social change. Brazilians came to realize that it was time to move toward progressive governance. As reported by the World Affairs, the new president, Fernando Henrique Cardoso, won with a landslide victory against his opponent Luiz Inacio Lula da Silva in 1994 elections (World Affairs, V VIII, Issue 2, 2002). In his campaign speech Cardoso said, “Today, Brazil is not a country that is underdeveloped. It is a country that is unjust.” The vision of Cardoso for a better Brazil

would not have been possible had the people not learned first what needed to be changed and how to change it. Brazil is mentioned as an example here because Brazil much like some Arab/Muslim countries had been ruled by a military, bureaucratic, authoritarian regime since 1964.

Islam, Democracy, and Worldwide Instability

The question that is weighing heavily on people's mind is as follows. If Islam is a religion of peace and requires people to be treated fairly and equally regardless of their race, ethnicity, religion, cultural background, and social status, how can Islam support violence and promote hatred among nations? A more appropriate question according to scholars in general and Muslim scholars in particular would be, "isn't leadership in Muslim/Arab countries the cause of insurgencies and continued instability?"

In countries like Iraq, Pakistan, the Middle East and North Africa, Islam is a way of life. People in these countries and regions don't see Islam as a challenge to their existence and development. Contrarily, they strongly believe that Islam is the only way for them to prosper. The problems encountered in all Arab/Muslim countries are not due to religion, democratic governance proponents are noting the wide variety of social and political problems are the result of oppression and the use of power to lead. The formation of radical groups and individuals with extreme views of the world has besieged Islam according to scholars such as Abu-Bakr Karolia (2002) who states in regard to democracy and justice in the Muslim world, "The issues of social justice and brotherhood are murdered in the echelons of corruption and dictatorships." Nurdeen (2002).

The level of unemployment among young people in Arab/Muslim countries highlights the deficiencies of governing systems in Arab countries, which has led to peoples' discontent through the Arab world. Saudia Arabia as an example is a country where national corporations prefer employing foreigners rather than locals. According to Eric Rouleau (2002), "two-thirds of the workforce in Saudi Arabia is foreign." The reason behind this preference of foreign workforce is the failure of the country's leaders to allow students to

learn and excel in professional disciplines such as engineering, architecture, management, and computer science. This closed-mindedness has contributed largely to an unemployment rate of 30 to 40 percent among the Saudi population. From the perspective of a learning process versus character in leadership, the route Saudi officials opted to follow is based on personal beliefs and convictions rather than learning and evolving. Many Saudi officials adhere strongly to old traditions and cultures and refuse to accept any new realities. How else could the Saudi kingdom not have learned a few things from their established relations with the West since after World War II?

Democracy and Social Accountability

It is apparent from this brief analysis that democracy in Muslim nations is first and foremost a problem of human inefficiency and lack of effectiveness and not a deficiency in Islam as a rule of law. Islam according to Muslim scholars requires every Muslim to learn and improve, to seek ways to accommodate peoples' needs, and to challenge obstacles along the way for a better life, all within a well prescribed and defined set of Islamic guidelines known to every Muslim as Dr. Mahathir (2006) reported. "It is impossible to reform a social system without reforming people's mindsets first and equipping them properly for such an important task." Islam's mission is well defined; it cannot be altered or changed to contradict its teachings. The crisis facing democracy in Arab/Muslim countries is a lack of proper knowledge about Islam. Although Muslims are informed on many international issues, they lack information in their own backyard. Hence, better education in all fields including Islamic teachings is a prerequisite if short and long term reforms are to take place in Muslims societies. Economic prosperity and development are subject to building an educated work force without which democracy will never see the light of the day. As stated by Khan (2002) Chair of the Department of Political Science and Director of International Studies at Adrian College in Michigan, "Muslims need to reform their understanding of their faith" (p.64).

Summary

As suggested by the Muslim scholars represented in this paper, only by returning to the source can Muslim nations truly embrace change. Islamic democracy in accordance with the Qur'an and Shari'a lies at the heart of Islam. Prominent Muslim scholars such as Al-Qaradaoui; however, argued that Islam is not an obstacle to good governance; the real problem is leadership. According to many of these scholars, history witnesses how much humiliation and oppression Muslim nations have endured for the sake of freedom and justice, first being colonized for decades by foreign regimes and liberated only to be colonized again by their own regimes. In a special report published (2002) on Islam and democracy, Kubba noted:

The key to understanding the root cause of the democracy predicament in Muslim countries does not lie in the text or in the tradition of Islam but in the context of modernity, politics, and culture. The rather arbitrary use of the term Islamic to describe states, regions, and even people adds to the confusion and blurs the real issues. Although a solution may require addressing Islam and its interpretations, the basic issue is not about Islam but about Muslims. It is not about religion but about modernity. Islam is only one element in the history and culture of the fifty-five Muslim nations in more than eight distinct regions. Their cultures are influenced to widely varying degrees by the traditions and values of Islam. They are as diverse as the cultures of predominantly Christian nations from Latin America to the Philippines. (Laith Kubba, 2002)

According to Muslim scholars such as Al-Qaradaoui, Islam is a way of life for Muslims within the Islamic world. Al-Qaradaoui further argued that Islamic democracy requires Muslims to interact fairly, respectfully, and honestly towards Muslims and non-Muslims (Al-Qaradaoui, 2005). The laws of Islamic democracy and the public interests are intertwined in theory and application as stated by Muslim researchers and scholars in America today such as Masmoudi (2000) who states that, "Democracy is a principal that was

taught and practiced by Prophet Mohamed and his companion.” As far as the parameters of the Muslim world are concerned, Islamic rules, regulations, and policies are in place to look after the community’s well-being and not simply that of the individual. Islamic scholars such as Masmoudi (2000) believe that the teachings of the Qur’an and Shari’a contain an accurate map describing how governments should carry out their obligations towards their peoples in order to join the ranks of democratic and equal opportunity societies . American Muslim scholars have stated that the will of the people, although well defined in Islam as the will of Allah, first gives people the authority to decide on what is good and bad for them. Khan (2006) An American Muslim scholar states that the Islamic Shari’a “provides the flexibility to develop new laws through *Fatwas* to meet the needs of the Muslim population. Jurisprudence in Islam serves a clear purpose as stated by scholars such as Khan. It not only dictates to people how they should live, but also provides for the ability to draw new laws according to peoples’ needs, change of times, and an ever evolving world, all within prescribed limits.”(Khan, 2006).

Islam was never in the way of democratic governance as long as understanding and implementing democracy is based on Islamic teachings. The misunderstanding of what constitutes cultures and traditions as in the case of Iraq, for example, and Muslim nations to a larger extent and also misunderstanding the meaning of an Islamic democracy will further endanger relationships between the west and Muslim nations leading to creation of more extremism and instability in the world. Muslims look at democracy from a very specific lens that fits perfectly their knowledge about how their societies should function no matter how much they learn from the west. Lack of democracy and its consequences on breeding terrorism internationally including in Arab/Muslim countries is largely the work of Arab/Muslim leaders’ thirst for power and might. As Jacques Rousseau said, “Humans feel no limits to their desires and passions; self-interest dominates; and one human exploits another.” In the same context, Emile Durkheim stated, “A society cannot be held together by self-interest and legal contracts alone. There must be a moral component or an underlying

system of collective values and beliefs guiding people's interaction in the pursuit of goals or interests.”

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**The Global Impact of Islamic Finance in Asia:
Identity, Innovation, Institutions
Mercy A. Kuo**

The Global Impact of Islamic Finance in Asia:

Identity, Innovation, Institutions

Mercy A. Kuo

This article examines the core components underpinning the global impact of Islamic finance in Asia. As a global phenomenon emerging from vibrant local financial practices and capital markets in the Middle East and Southeast Asia, the industry is rapidly making inroads into new markets spanning Northeast Asia, Central Asia, Europe, the Mediterranean, Africa, Latin America, and North America. This study focuses on the specific role of Asia's Islamic finance industry in fashioning Islamic identity, generating financial innovation, and building strategic alliances through financial institutions and geographic centers. In the aftermath of the global economic contractions of 2008 and amid the current unfolding sovereign debt crisis in the eurozone, the Islamic finance industry is responding to growing consumer demands for alternative financial products that resonate with their religious or ethical beliefs and can yield a healthy return on investment. Although the industry is still in its nascent stages, compared to conventional banking and financial products, institutions and corporate governance, its expansion is making a salient impact on global financial norms and practices. As the industry's developments are being integrated into international financial institutions, it behooves policymakers and business leaders to examine the rising role of Islamic finance in the global financial system and assess long-term regulatory and policy implications.

As the global economic center of gravity shifts toward Asia, Asian financial players and products are increasingly reshaping market norms and practices by harnessing the power of choice—providing attractive and alternative avenues for investors and consumers. In this context, the global impact of Islamic finance is most salient in the growing inter-linkages between Asia and the Gulf Cooperation Council (GCC)¹ as sources of liquidity and magnets

of growth. With Islamic finance spreading throughout Asia, Europe, the Mediterranean, and Australasia, Asia and the GCC function as the main pistons of the global Islamic finance engine. As a bellwether of industry trends, Malaysia's position and performance as an industry leader provides indicators of the industry's strategic direction.

This article assesses the role of Asia's Islamic finance industry in fashioning Islamic identity, generating innovative products, and building strategic alliances through financial institutions and geographic centers of economic power in the Middle East and Europe. With global Islamic finance assets projected to reach \$1.6 trillion by 2012², the industry is a force of liquidity and investment in global markets across multiple sectors—real estate, construction, financial services, transportation, oil and gas, power and utilities, consumer goods, and telecommunications. Although the Islamic finance industry holds only one percent of the global financial system, the global Muslim population represents 7.6 percent of nominal gross domestic product.³ The trajectory of the Islamic finance industry's 15-20 percent average annual growth over the past decade and projected annual growth of 20-40 percent over the next five years has prompted petrodollar investors from the GCC to aggressively pursue investment opportunities in Asia.⁴ Concurrently, Asian investors are seeking long-term capital investments in the Middle East.

¹ Gulf Cooperative Council is an economic and political policy-coordinating forum for six member states: Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates (UAE).

² *Reuters*, Oliver Wyman Brief, <http://www.reuters.com/article/rbssFinancialServicesAndRealEstateNews/idUSL894329020090408> (April 8, 2009).

³ Islamic Finance Special Report, *Financial Times*, May 13, 2010.

⁴ David Oakley, "Middle East looks to Asia for grand investments," *Financial Times*, January, 24 2008.

The article is divided into four sections. The first section identifies the major financial players—petrodollar investors and Asian banks—driving the growth of the Islamic finance industry. In diversifying the flow of capital assets and liquidity toward Asia, petrodollar investors have forged inter-linkages between Asia and the Middle East, specifically in the sukuk (Islamic bond) ⁵ market. The growth of the Islamic finance industry in Malaysia, a global leader, and in Singapore, a financial leader with regional aspirations, along with developments in Indonesia, China, Japan, South Korea, India, and Central Asia are the focus of second section. The third section outlines developments in the sukuk market as the intersection of industry inter-linkages. The concluding section assesses the key policy implications of industry’s global impact.

I. The Global Scope of Islamic Finance

Beginning in the 1970s to the present, the global development of the Islamic finance industry has undergone a series of fits and starts and was still considered an infant industry at the turn of the 21st century. The ascent of oil prices and petrodollar-driven investments accelerated the industry’s expansion in the early 2000s—a trend that was sustained concomitantly with robust economic growth in emerging markets and abundance of liquidity in global capital markets. The terrorist attacks of September 11, 2001 and US Congress

⁵ Sukuk is defined as a bond compliant with Islamic Shariah law. Sukuk represent ownership of an asset or its usufruct. In contrast to a conventional bond as an interest bearing security, sukuk are basically investment certificates consisting of ownership claims in a pool of assets (www.financeinislam.com). In an Islamic finance transaction, the financier takes an element of risk, that of ownership of an asset and consequent non-payment by the client of the assets sale price. The claim embodied in sukuk is not simply a claim to cash flow but an ownership claim (www.sukuk.me).

legislation of the Patriot Act not only jolted the international community into re-assessing perceptions and relations between Muslim communities across the globe with the West, but also set in motion a salient re-orientation of Muslim commercial and investment activities toward Asia.

From Dubai to Brunei, Malaysia to Morocco, Muslims account for approximately 23 percent of the world's population, roughly 1.6 billion. As a global phenomenon, the growth of Islamic finance reflects an increasing demand for Shariah-compliant products ranging from retail banking and mortgages to insurance and securities in regions with high concentrations of Muslim communities. As of 2009, the total number of Islamic banks, investment and financing institutions reached 436 with 180 Islamic banks operating in over 39 countries and 91 conventional banks opening Islamic windows across the globe.⁶

According to Figure 1, the Islamic finance industry is flourishing in Muslim-majority regions—represented by different shades of the color green—most prominently in the Middle East and Southeast Asia, and is gaining a foothold in countries with a high concentration of Muslim-minority communities throughout Europe, the Mediterranean region, Africa and South Asia. The expansion of Islamic capital markets has been fueled by shifts in international capital markets.

⁶ *Zawya Arab News*, “Bursa Malaysia and Bahrain Financial Exchange in collaboration talks,” <http://www.zawya.com> (accessed January 24, 2010).

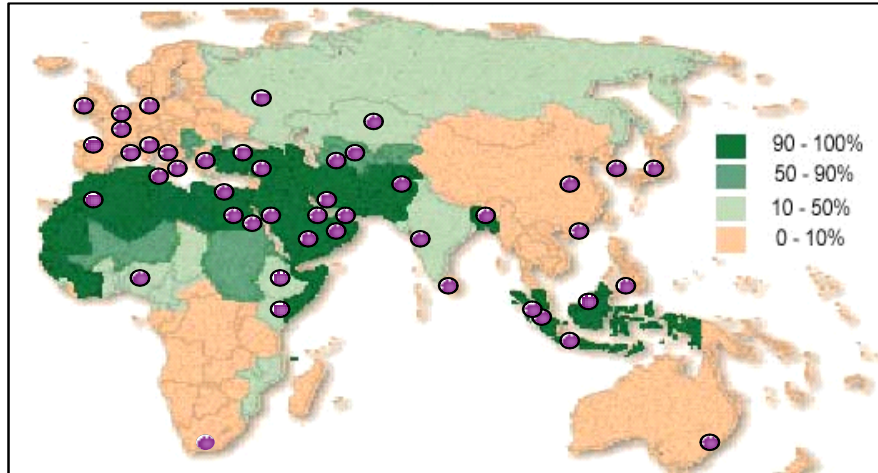


Figure 1: Islamic Finance in Asia, Euro-Med, and the Middle East (Source: ASIA ANALYTICA LLC)

Over the past decade, a confluence of forces in capital markets has been gradually transforming the global financial system, resulting in diversification of capital concentration from the United States and Europe to Asia and other emerging markets, such as the Middle East and North Africa (MENA), also known in aggregate as MENASIA (Middle East, North Africa, Asia).⁷ These forces have found agency through four groups of power brokers—petrodollars investors, Asian central banks, hedge funds, and private equity—whose aggregate assets nearly tripled in 2000, collectively reaching \$8.4 trillion at

⁷ Zawya/Ernst and Young, “Collaborative Sukuk Report: An Agenda setting study for the growth and development of the global Sukuk industry,” <http://www.zawya.com/sukuk/report/> (accessed December 2009).

the end of 2006.⁸ According to a McKinsey Global Institute (MGI) study, “Petrodollar investors and Asian central banks are not only huge investors in financial markets but also new sources of liquidity for global capital markets.”⁹ Of the four major power brokers, petrodollar investors hold the largest share of assets ranging between \$3.4-3.8 billion in foreign financial assets.¹⁰

Mainly concentrated in the GCC countries, petrodollar investors have emerged in six categories¹¹: 1) Central banks, 2) Sovereign wealth funds, 3) Government investment corporations, 4) High net worth individuals, 5) Government-controlled companies, such as the acquisition of GE’s plastics unit by Saudi Basic Industries and Dubai’s DP World’s purchase of British Ferry conglomerate P&O; and 6) Private companies, such as Kuwait’s Mobile Telecommunications Company, National Bank of Kuwait, and Egypt’s Orascom Group. GCC petrodollar investors view Asia’s economic liberalization, favorable regulatory environment, and highly-experienced pool of financial expertise as appealing features for robust return on investment. Asian governments and financial institutions recognize the importance of tapping into the enormous potential of Islamic capital markets and are taking a long-term perspective by investing in the development of products and services to attract Middle East capital investments.

⁸ McKinsey Global Institute, “The New Power Brokers: How Oil, Asia, Hedge Funds, and Private Equity are Shaping Global Capital Markets—1. The New Power Brokers” (accessed October 2007).

⁹ McKinsey Global Institute, “The New Power Brokers.”

¹⁰ Diane Farrell and Susan Lund, “The new role of oil wealth in the world economy,” McKinsey Quarterly, (accessed January 2008).

¹¹ McKinsey Global Institute, “The New Power Brokers.”

With assets valued at \$68.4 billion, Malaysia already has the world's third biggest Islamic banking market after Iran and Saudi Arabia, and investors from Saudi Arabia, United Arab Emirates, Bahrain, and Qatar are now channeling funds to developing countries such as China, India, and Indonesia.¹² As a key indicator of inter-linkages between Asia and the Middle East, First Eastern Investment Group, a leading Chinese financial group, is in talks with Abu Dhabi-based investors to launch a \$250 million investment fund in Dubai, focusing on business services in shipping and oil.¹³ Infrastructure projects such as ports, power plants or roads and bridges are mushrooming in the GCC as they deal with rapidly growing populations and their ambitions to link Europe and East Asia economically.¹⁴ The strategic landscape in which the global Islamic finance industry is developing can be characterized by a growing trend toward diversification on the part of petrodollar investors in seeking viable investment opportunities throughout Asia and identifying countries where conditions—established regulatory framework, deep financial expertise, socio-political domestic stability, vibrant local demand, and efficient institutional processes—are conducive to building and expanding operations.

II. Islamic Identity and Finance in Southeast Asia

¹² *The Malaysian Insider*, "Malaysia Leads in Islamic Finance," <http://www.themalaysianinsider.com/index.php/features/21940-malaysia-leads-in-islamic-finance> (accessed April 11, 2009).

¹³ Sundeep Tucker and Simeon Kerr, "First Eastern set to launch Dubai fund," *Financial Times*, January 25, 2010.

¹⁴ *AMEinfo*, "The next step for funding GCC infrastructure projects," <http://www.ameinfo.com/219326.html> (accessed December 21, 2009).

Southeast Asia's ethnic, linguistic, religious, and social diversity have given a Southeast Asian identity to the region's Islamic finance industry. Of the world's total Muslim population of 1.6 billion, 250 million are concentrated in Southeast Asia. Islam reached Southeast Asia through Muslim traders from India and West Asia between the 12th and 13th centuries. The Sufis had a particularly strong influence in the expansion of Islam across Southeast Asia. With a mystic quality and tolerance for coexistence with earlier animist, Hindu, and Buddhist beliefs and rituals, Sufism provided Southeast Asians with a practical way to localize Islam in their indigenous context, which laid the foundation for the rise of Muslim centers of learning and interaction across the archipelago.¹⁵ Among Sunni Islam's four schools of Islamic jurisprudence (fiqh)—Hanafi, Maliki, Hanbali, and Shafi'i—the Shafi'i school is most prevalent in Southeast Asia and is the official school of law (madhab) of the governments of Malaysia and Brunei Darussalam. The Indonesian government adheres to Shafi'i madhab for Indonesia's Compilation of Shariah (Islamic law). Imam Shafi'i developed a systematic methodology in interpreting Islamic law, yet sought to strike a balance between tradition and pragmatism.

In modern-day Southeast Asia, divergent interpretations and applications of Islam in each country reflect an amalgam of Shafi'i Islam with indigenous cultural norms, values, and practices, which over the centuries has spawned a tolerant, pluralistic form of Islam throughout most parts of Southeast Asia. This pragmatic, yet deep-rooted practice of Islam is an integral element in the fabric of Southeast Asia political culture. In Malaysia political

¹⁵ "The Spread of Islam to Southeast Asia," <http://history-world.org/islam7.htm>.

Islam is ubiquitous in national governance. Under the leadership of Mohammad Mahatir, Malaysia's prime minister from 1983-2003, Islamic scholars (ulama) and Islamic jurists (fuqaha) were charged with providing practical and innovative interpretations (ijtihad) of Islamic law with a view of advancing Malaysia's national economic development. "The Malaysian brand of Islam does not fit typical Western perceptions and stereotypes...It is fused with other influences (nationalism, capitalism, 'Asian values') producing a unique ideology of development. Rather than being an obstacle to change, religion was to be an engine of growth and modernization and a tool to promote financial innovation."¹⁶

This top-down, centralized nature of leadership serves as a pivotal driving force behind the rapid growth of the Islamic finance industry in the region. The governments of Malaysia and Singapore are formulating and implementing coherent, multi-sectoral, and local-global strategies in framing regulations and standards that facilitate a marketplace sustainable to the industry's expansion. Malaysia is an industry leader in Islamic finance innovation and expertise, and Singapore is aggressively expanding its capabilities as a first-choice Islamic finance services provider.

Malaysia: Regional Leader with Global Impact

The roots of Malaysia's Islamic finance industry were established with the founding of the Muslim Pilgrims Saving Corporation in 1963 to help Malays save for performing the

¹⁶ Ibrahim Warde, *Islamic Finance in the Global Economy*, (Edinburgh University Press: Edinburgh, 2006), 195.

haj, the annual pilgrimage of Muslims to Mecca. With its evolution into the Pilgrims Management and Fund Board, or popularly known as Tabung Haji, Malaysia's Islamic finance industry is the product of the country's diverse history and culture as well as the Malaysian government's systematic integration of Islamic finance into the national economic development plan that was formally implemented as the National Economic Policy in the early 1970s and in a subsequent related series of national growth plans. In 2001 Bank Negara Malaysia—Malaysia's central bank—announced Malaysia's Financial Sector Master Plan, which essentially provided a roadmap for restructuring Malaysia's financial system. As a key component of the Financial Sector Master Plan, Islamic finance and takaful (insurance) were identified as primary sectors for development.¹⁷ In 2002 Malaysia's Securities Commission launched the Capital Markets Master Plan to establish regulatory standards, framework, and environment conducive to market competitiveness and efficiency.¹⁸ Malaysia's pioneering initiatives in the field—such as issuing the world's first global sovereign sukuk in 2002 and the landmark issuance of the exchangeable sukuk in 2006 by Khazanah Nasional, the Malaysian sovereign wealth management group and the inaugural ringgit denominated sukuk issue by the International Finance Corporation—have positioned Malaysia as an increasingly sought-after provider of industry expertise.

¹⁷ Bank Negara Malaysia, Malaysia's Financial Sector Master Plan, http://www.bnm.gov.my/view.php?dbIndex=0&website_id=1&id=16 (accessed December 2009).

¹⁸ Malaysia Securities Commission, Capital Markets Master Plan, <http://www.sc.com.my/eng/html/cmp/cmpmainpage.html> (accessed December 2009).

Malaysia's Islamic finance field currently has 17 Islamic banks, 14 wholly-owned foreign banks, commercial and Islamic, and eight takaful operators. Islamic banking accounts for 18.8 percent of Malaysia's total bank assets.¹⁹ Maybank is the country's largest Islamic banking service provider with \$6.4 billion in Shariah-compliant assets, followed by Bank Islam Malaysia, the second largest bank in the region. Other Malaysian banks include Hong Leong Islamic Bank, HSBC Malaysia, EON Bank, Affin Bank, Alliance Bank, OCBC Malaysia, Southern Bank, SME Bank, Standard Chartered Bank Malaysia, CIMB Group, and Kuwait Finance House Malaysia.²⁰ Malaysia accounts for 61.4 percent of outstanding global sukuk bonds in volume of assets, and 76 percent of the new sukuk issuance by value; it has the world's largest Islamic unit trust industry, with 134 trust funds with a net asset of more than \$5 billion, and more than 86 percent of securities listed on Bursa Malaysia are Shariah-compliant—at the end of 2007, this represented a market capitalization of \$213 billion, 64 percent of total market capitalization.²¹

As a strategic step to attract major Persian Gulf financial players to establish operations in Malaysia, Kuala Lumpur in 2007 issued new licenses to select leading Islamic financial institutions, such as the Kuwait Finance House, the Saudi-backed Al Rajhi Bank and the Asian Finance Bank Berhad—to supported by shareholders representing Qatar Islamic Bank, RUSD Investment Bank of Saudi Arabia and the Global Investment House of

¹⁹ *Bernama*, "Islamic Finance to Play Important Role in 2010," http://www.bernama.com/bernama/v5/newsindex.php?id_465432 (accessed December 31, 2009).

²⁰ *Bernama*, "Maybank is Region's Largest Islamic Banking Player," <http://www.bernama.com/finance/news.php?id=240078> (accessed April 10, 2009).

²¹ "Malaysia Leads in Islamic Finance," *The Malaysian Insider*.

Kuwait. Malaysia's impact on virtually all segments of the Islamic finance industry—product innovation, education and training, regulatory and legal expertise—is the result of the Malaysian government's leadership in branding Malaysia as an authoritative industry player and placing it strategically at the nexus of capital flows between the GCC and Asia.²²

The Malaysian government's efforts toward further market liberalization to create an environment attractive to foreign investment in the Malaysian bank market and to position Malaysia as a center for origination, distribution, and trading of sukuk have included a 10-year tax exemption (up to 2016) for local players to set up Islamic business units and for foreign Islamic banks and international takaful businesses, a tax exemption up to 2016 on the management fees received by fund managers for managing Islamic funds, and withholding tax exemptions on profits received from sukuk issued in country.²³ Profits or income received by non-residents for investments in ringgit and non-ringgit Islamic securities issued in Malaysia are exempted from withholding tax; moreover, the government has granted tax neutrality measures to accommodate the sukuk issuance.²⁴

In January 2011 Malaysia's central bank—Bank Negara Malaysia (BNM)—introduced the Shariah Governance Framework (SGF) for all Malaysia's Islamic

²² *Zawya*, "Bank Negara Governor Dr Zeti Akhtar Aziz to address the inaugural London Sukuk Summit," <http://www.zawya.com/printstory.cfm> (accessed 14 May 2007).

²³ *The Malaysian Insider*, "Malaysia Leads in Islamic Finance."

²⁴ Zeti Akhtar Aziz, Bank Negara Malaysia, Conference Speech, "Enhancing Interlinkages and Opportunities—The Role of Islamic Finance," NBR Project Report: "Islamic Finance in Southeast Asia: Local Practice, Global Impact" October 18, 2007.

financial institutions to comply with by this summer. BNM's promulgation of the SGF elevates the role of Shariah scholars in Islamic financial regulations and oversight. "Malaysia's Shariah Governance Framework could become a blueprint for other countries to follow," according to Muhammed Elgari, a Saudi Arabia-based Shariah advisor who sits on several Shariah committees.²⁵ In its operational execution, SGF could serve as a litmus test for how Shariah committees and shareholders manage corporate performance and adherence to Shariah principles in maximizing their financial institution's bottom line. "In conducting Islamic business, Islamic financial institutions cannot compromise between shareholder value and Shariah-compliance," according to Badlisyah Abdul Ghani, Executive Director/Chief Executive Officer, CIMB Islamic Bank Berhad. This fundamental duality—to what degree Shariah facilitates or dictates financial governance—characterizes diverse developments of Islamic finance institutions across Asia.

Singapore: Global Financial Player with Regional Aspirations

As a globally-recognized financial center, Singapore has staked a niche position in the Islamic finance industry. The Monetary Authority of Singapore (MAS) is pursuing a deliberate strategy in fostering a regulatory environment favorable to expanding the scope of Singapore's wealth, investment, and asset management expertise into the Islamic financial services sector. In response to the demand for Islamic finance tools in project financing, trade financing, capital raising, and investments in Shariah-compliant equity stocks and real estate products, MAS has made established regulatory measures allowing banks in Singapore

²⁵ "Prominent Saudi scholar warns on agenda against Shariah advisories," Mushtak Parker, *ARAB NEWS*, January 16, 2011, www.arabnews.com/economy/islamicfinance/article236465.ece?

to offer financing according to the *murabaha* concept.²⁶ Moreover, in 2005 MAS decided to waive the imposition of double stamp duties in Islamic transactions involving real estate and accorded the same concessionary tax treatment on income from Islamic bonds that are afforded to conventional banks.²⁷

The launch of the Financial Times Stock Exchange (FTSE)-Singapore Stock Exchange (SGX) Asia Shariah 100 Index Series in February of 2006 and the establishment of Islamic Bank of Asia in May of 2007 represented two critical steps in advancing Singapore's plans of entering the Islamic finance arena. The FTSE-SGX Asia Shariah Index marked the first index of the series and was designed to represent the performance of *Shariah*-compliant companies in Japan, Singapore, Taiwan, Korea, and Hong Kong.²⁸ The Islamic Bank of Asia, a subsidiary of the Development Bank of Singapore Limited (DBS), has DBS as the major stakeholder along with 22 other investors from prominent families of the GCC countries. In 2009 the MAS launched its first S\$200 million sukuk issuance (al-ijarah structured) to provide *Shariah*-compliant regulatory assets, marking Singapore as one of the few non-Muslim countries to enter the sukuk market.²⁹ DBS Chief Executive Jackson Tai said in a statement, "Singapore is becoming a convenient stopover for GCC investors and

²⁶ A sales contract made between the bank and the customer for the sale of goods at a price which includes a profit margin agreed to by both parties. As a financing technique it involves the purchase of goods by the bank as requested by the customer. Repayment is conducted by installments within a specified period.

²⁷ Mr. Ng Nam Sin, Executive Director, Monetary Authority of Singapore at the IQPC Islamic Finance Summit, "Opening Remarks, Singapore 2006," http://www.mas.gov.sg/news_room/statements/2006/Opening_Remarks (accessed December 2009).

²⁸ FTSE SGX Shariah Index Series, http://ftse.com/Indices/FTSE_SGX_Shariah_Index_Series/index.jsp.

²⁹ Angelo Venardos, Conference Paper, "Reviewing Singapore's bid to Position itself as a Regional Islamic Finance Hub," Berkeley Law Islamic Finance Symposium, February 28, 2009.

capital flows bound for Asia. Against this backdrop, the Islamic Bank of Asia is strategically well positioned not only at the financial crossroads of Asia, but also in Singapore, an Asian capital markets center renowned for its effective regulatory and corporate governance framework."³⁰

Singapore's stable investment climate and strong governance system also appeal to high net worth individuals Muslim and non-Muslim—including Chinese and Indians—who are seeking alternative investment areas in Asia.³¹ The demand for Islamic financial services is expected to rise exponentially with the Muslim population forecast to grow to 1.6 billion within the next 10 years and the increase in the wealth of high net worth individuals in the Middle East, which is expected to reach \$1.8 trillion by 2010.³² Singapore is leveraging the capabilities of its multi-ethnic society, solid financial infrastructure, and geographic location as an entry point for GCC capital flows into Asia. In addition, the private sector is playing a vital role in spurring the domestic growth of Islamic finance products. According to Heng Swee Keng, the managing director of MAS, the growth of Islamic finance in Singapore

“will be mostly driven by the private sector...the key is for the industry to assess where it can add value. Some possibilities would include wholesale financial services and asset management, where players here have deep expertise...We see interest not just in Islamic finance, but also in establishing better capital flow into Asia, within Asia and between Asia and the Middle East...what we seek to do is build on this trend so that it would benefit all sides in this process.”³³

³⁰ DBS Press Release, <http://www.islamicbankasia.com/news/2007/Pages/pr070507.aspx>, (accessed May 7, 2007).

³¹ Interviews with various Islamic bank officials in Singapore, (December 2007 and February 2011).

³² Ie finance Blog, http://gbe-i-finance.blogspot.com/2007_10_01_archive.html.

As a niche player in the Islamic Finance industry, Singapore's value added is to complement and augment Malaysia's efforts in making Southeast Asia a regional Islamic finance hub.³⁴

The Rest of the Pack — Indonesia, China, Japan, South Korea, India, and Central Asia

Indonesia: Sleeping Giant

With the world's largest Muslim population, approximately 200 million, Indonesia is a relative latecomer in the Islamic finance industry. Wracked with political instability, weak governance, and rampant corruption, reforms to Indonesia's banking and finance system have been slow in coming. More importantly, Indonesia, like Saudi Arabia and Morocco, have harbored reservations about establishing institutions of Islamic finance, concerned that designating one part of the financial sector as "Islamic" might discredit financial institutions that operated according to conventional, interest-charging principles. Even as early as the 1930s there was vibrant debate among the Nadhlatul Ulama (NU), Indonesia's largest association of Islamic scholars, and fuqaha, well-educated jurists, about the Quran's prohibition of riba, interest. Beginning in the early 1990s Bank Indonesia for pragmatic reasons has gradually been taking steps toward establishing legal foundations for Islamic finance and banking operations.

³³ *Islamic Finance Asia*, "Singapore Gets Serious: Interview with Monetary Authority of Singapore Managing Director Heng See Keat," http://www.islamicfinanceasia.com/4_sg.php (accessed February 2009).

³⁴ Venardos, "Reviewing Singapore's bid."

China: Tapping Muslim Money

According to reliable western data, the Muslim population in China ranges from 22 to 150 million with the most probable data estimates at approximately 20 million. China's Muslim minorities are classified according to ten ethno-linguistic groups, with the Uyghur at 11 million in the western province of Xinjiang and the Hui at 9.8 million in the northwestern Ningxia Hui Autonomous Region representing the two largest groupings. China has taken preliminary steps to evaluate the potential of a domestic Islamic finance market targeting the Hui community. In late 2008 the Ningxia Hui Autonomous Region's People's Government initiated consultations with the Ningxia Branch of China Banking Regulatory Commission (CBRC) to explore the feasibility of providing Islamic finance services in the region. Based on the findings of the feasibility study, the CBRC and Ningxia Hui Autonomous Region's party committee support setting up either a special Islamic finance service department within the Bank of Ningxia or Islamic finance service windows. According to the Bank of Ningxia Chairwoman Lu Siping, the bank currently has 34 branches and an exemplary risk control system; the bank employs 200 Hui nationality workers, 13 percent of the total staff.³⁵ Although local government officials aspire to position Yinchuan, Ningxia's capital, as China's domestic Islamic financial center, a solid foundation of financial regulatory infrastructure, tax policy, legal frameworks, and product management are prerequisites for full-scale service.³⁶

³⁵ Cheng Zhiyun, "Ningxia to Spearhead Islamic Finance in China," *Economic Observer News*, http://www.eeo.com.cn/ens/finance_investment/2009/07/02/142459.shtml (accessed July 2, 2009).

³⁶ *The Star Online*, "Islamic finance poised for big leap in China,"

Developing Islamic finance in China requires understanding the country's diverse ethno-religious dynamics, business priorities of bank regulators, and complex socio-political landscape. According to Daud Vicary Abdullah, global financial leader at Deloitte, tasked with setting up China's first Islamic bank, "There is no point in playing the Muslim card with the regulators. You have to emphasize that Islamic finance is good for business...The Chinese regulators themselves are looking for advice and help, but at the end of the day, they will make up their own mind. They will listen, but they are not going to be told how to run their own country."³⁷

Japan: Maintaining Momentum

The Japanese government and corporations began to lay the foundation for developing Islamic finance and banking capabilities in 2006. The Japan Bank for International Cooperation (JBIC), a quasi-government organization, spearheaded efforts to educate the financial and government institutions on Islamic finance through seminars, study groups and exchanges with Middle Eastern counterparts, such as the Central Bank of Bahrain. To position itself as a strategic player, JBIC enlisted four Shariah scholars as advisors, signed a memorandum of understanding with Bank Negara Malaysia in 2007, and announced plans to issue a sukuk in 2008. Since 2006 Bank of Tokyo-Mitsubishi UFJ,

<http://biz.thestar.com.my/services/printerfriendly.asp?file=/2009/10/3/business/4835368.a> (accessed October 3, 2009).

³⁷ *Islamic Finance Asia, China & Hong Kong Supplement*, "Enter the Dragon," http://www.islamicfinanceasia.com/14_sup-hk.php (accessed June 2010); interview with author in Kuala Lumpur, Malaysia, February 2011.

Japan's largest bank, has cooperated with Malaysia's CIMB Group to provide Islamic financial investment banking services, such as issues Islamic bonds to Japanese companies in Malaysia.³⁸

Japan's Islamic finance developments saw a flurry of activity in 2007 and 2008: Sumitomo Mitsui Banking Corporation opened a branch in the Dubai International Financial Centre to tap investment opportunities in the Gulf; Toyota announced plans to issue an Islamic bond of \$306 million to raise funds for the auto leasing and loans business in Malaysia; Aeon Credit was the first Japanese corporate to issue a dual-issue sukuk of \$45.3 million in Malaysia; Daiwa Asset Management launched the Singapore Stock Exchange's first Shariah-compliant exchange traded fund (ETF), known as the Daiwa FTSE Shariah Japan 100; and Kuwait's Boubyan Bank partnering with Atlas Partners Japan and Hypo Real Estate Capital Japan used a special purpose vehicle (SPV) to complete Japan's first property deal using Islamic financing to purchase three office buildings in Tokyo for \$41.4 million.³⁹ Despite initial progress with Japanese banking regulations allowing subsidiaries of Japanese banks to engage in Islamic financial transactions, growth of Islamic finance in Japan's domestic market has partially tapered in 2009 as a result of lagging legislation on tax policies. Legal ambiguity under Japanese law on whether a sukuk is a bond or trust

³⁸ Shu-Ching Jean Chen, "Japan Developing Yen for Islamic Finance," *Forbes* Online, http://www.forbes.com/2007/11/20/japan-sharia-deal-markets-econ-cx_jc_1120markets1.html (accessed November 20, 2007).

³⁹ *Gulf News*, "Japan's interest in Islamic finance grows," <http://gulfnews.com/business/banking> (accessed June 17, 2008).

beneficiary rights and conventional regulatory frameworks are still hampering efforts to launch yen-denominated Islamic finance products.⁴⁰

South Korea: Laying Legislative Groundwork

With the a view toward diversifying and expanding funding sources by issuing a sovereign sukuk, the South Korean National Assembly's Strategy and Finance Committee in 2009 began efforts to create a regulatory environment conducive to developing Islamic finance products.⁴¹ The South Korean government has initiated legislation to amend corporate taxation policies on double stamp duty, value added tax (VAT) and capital gains, to facilitate the introduction of Islamic finance vehicles. The Korea Exchange Inc., the nation's stock exchange, is considering an Islamic equity index to aid companies tapping Shariah-compliant finance.⁴² South Korean companies such as GS Caltex, Korean Air, Hyundai, Samsung, Woori Financial Group and Korea Investment & Securities Co. Ltd, recognize the long-term potential of tapping into Islamic liquidity and support Seoul's efforts in passing legislation in 2010 to allow these companies to raise funds from the sukuk market.⁴³

India: Exploring Alternatives

⁴⁰ *Arab News*, "Islamic finance fails to pick up steam in Japan," <http://www.arabnews.com/services> (accessed July 13, 2009).

⁴¹ Mushtak Parker, "Regulatory hurdles for facilitation of Islamic financial products in South Korea," *Zawya Arab News*, <http://www.zawya.com/Story.cfm/sidZAWYA20100104031229> (accessed January 4, 2010).

⁴² *Joong Ang Daily*, "Korea looks to Islamic investments," <http://joongangdaily.joins.com/article/print.asp> (accessed November 20, 2009).

⁴³ Lee Sun-Young, "Islamic bond plan suffers setback," *The Korea Herald*, <http://www.koreaherald.co.kr> (accessed December 25, 2009).

Though the Reserve Bank of India has yet to grant banking licenses for Islamic banking, it has allowed the emergence of Shariah-based non-banking finance companies (NBFCs). As an alternative financial vehicle, NBFCs are allowed to invest in Shariah-compliant private equity funds, venture funds, real estate projects and asset-backed leasing companies.⁴⁴ The Tata Group debuted its first Islamic equity fund in November 2010 shortly after launching the Tata Indian Shariah Equity Fund (TISEF) in October 2010.

Russia/Central Asia: Forging New Markets

With a Muslim population of 120 million, Russia and the Commonwealth of Independent States—Kazakhstan, Turkmenistan, Azerbaijan, Uzbekistan, and Kyrgyzstan—are emerging as attractive Islamic finance markets with Russia as the world's 8th largest oil producer and Kazakhstan generating \$24 billion in annual revenue from oil exports.⁴⁵ Saudi Arabia's Islamic Development Bank is taking deliberate steps in developing the region's retail, investment, insurance, project finance, and capital markets. Efforts are underway to establish a viable sukuk market. VTB Capital, a subsidiary of Vneshtorgbank (VTB Bank), the Russian foreign trade bank, is exploring ways to facilitate sukuk in the Russian market, while VTB itself and Gazprombank are looking at Islamic retail finance products originating outside of Russia.⁴⁶ Russia currently has one bank—Badr Forte

⁴⁴ "Islamic 'finance': Between faith and the law," *The Economic Times*, September 15, 2010, (accessed March 15, 2011).

⁴⁵ *AMEinfo.com*, "Islamic finance urged to make inroads into CIS countries," <http://www.ameinfo.com/234472.html> (accessed June 6, 2010).

⁴⁶ *Arab News*, "Islamic finance flourishes in CIS," <http://arabnews.com/economy/islamicfinance/article56957> (accessed May 23, 2010).

Bank—that offers Islamic finance services to Muslim clients in Russia. The International Bank of Azerbaijan (IBA), the country’s largest bank, is developing Islamic finance service and product capabilities and is the leading proponent of forming the Islamic Banking and Finance Council (IBFC) as a regional professional entity.⁴⁷ The pace of developments will pivot the ability of governments and the business sector in the region to set up the regulatory frameworks and appropriate tax policies to ensure long-term sustainability and operational viability.

III. Sukuk Market — Intersection of Inter-linkages

The current global economic crisis has magnified the deep vulnerabilities and fragility of over-leveraged corporations and countries and has underscored the impact of corporate and sovereign debt default as a threat to global financial stability and security. As governments and international financial institutions seek ways to bolster capital reserves and secure alternative sources of liquidity, the sukuk market is becoming a magnet for liquidity-seekers, comprised mainly of corporate, sovereign, and quasi-sovereign entities. Figure 2 shows the market share and value of sukuk activity among these three entities and highlight the trend of diminishing corporate issuance and surge of sovereign and quasi-sovereign sukuk issuances.

⁴⁷ *Arab News*, “Lack of legislation hinders Islamic finance march in Russia,” http://arabnews.com/economy/islamic_finance/article59407 (accessed May 31, 2010).

Figure 2: Global Sukuk Issues by Entity and Value (Source: Zawya Sukuk Monitor 2009)

The shift from attenuated corporate issuance to increased sovereign issue can be attributed to heightened risk aversion and greater receptivity toward governments' stable and conservative risk profiles amid current fluctuating market conditions. The prevalence of sukuk issues primarily originating from Malaysia and the GCC confirms growing inter-linkages between both regions in deepening and expanding the sukuk market. According to the Zawya Collaborative Sukuk Report, Southeast Asia leads in new issues with total issuances of \$6.25 billion, representing 84 percent of total global sukuk issuance in 2009; the GCC claimed 16 percent of 2009 issues with a total value of \$1.15 billion. Malaysia maintains its predominance in the sukuk market with 60 percent of total issues. The fact that the August 2009 issuance of the Petronas Global Ijarah Sukuk at \$1.5 billion was oversubscribed and that a significant number of Asian investors were drawn to the \$850 million Islamic Development Bank sukuk are strong indicators that the demand for soundly-structured, innovative sukuk will likely intensify.⁴⁸ The infusion of capital from petrodollar investors into Asia has contributed to the accelerated growth of Southeast Asia's Islamic finance industry over the past two decades. As of 2006 the total Islamic finance market was worth \$500 billion, of which \$70 billion were sukuk; Standard and Poor's estimates that by 2010 the sukuk market will grow to \$170 billion and the overall Islamic financing market to \$4 trillion.⁴⁹

IV. Key Policy Implications

⁴⁸ Zawya Collaborative Sukuk Report 2009, 18.

⁴⁹ McKinsey Global Institute, "New Power Brokers."

The fallout from the 2008 global economic crisis and the current specter of sovereign default risk looming over the eurozone have not only underscored the need to reform the global financial system, but also magnified the corrosive effect of unwieldy debt on the public's and market's sense of security and stability. With sovereign debt as the new threat to political stability, policymakers in the United States, Europe, Asia, and the Middle East share common challenges of managing debt, re-invigorating domestic employment and economic growth, and providing domestic infrastructure and incentives for national and multinational companies to compete globally. Although government and business leaders recognize the need to restore stability and health to the global financial system, coordinated international efforts to harmonize international regulatory standards with risk-mitigating measures and greater supervisory accountability will face impediments from governments focused more on reining in domestic deficits and preserving political capital than on delivering sustainable global solutions. This confluence of these international and domestic economic vectors has three key implications for the Islamic finance industry's impact on the global financial system.

- **The Islamic finance industry will continue to benefit from growing commercial and political inter-linkages between Asia and the Middle East.** With China, South Korea, and other Asian countries aggressively pursuing infrastructure, energy, green technology, healthcare, and small and medium enterprise development projects with the GCC states,

Islamic finance products, services, and expertise will likely face growing demand and competition.

- **Financing infrastructure expansion efforts is intensifying the competition for Muslim capital particularly in the Islamic bond (sukuk) market but will pose greater regulatory challenges.** As governments seek ways to legislate tax policy and revamp national legal regulations to accommodate Islamic law in financial practices, the challenge of enforcing shariah-compliant contracts within existing national legal frameworks and in the absence of an international body of law regulating Islamic finance will test the degree to which Islamic law can be integrated into and enforced within the international financial system.
- **The expanding influence of Islamic law on global economic norms and practices could reshape the geopolitical landscape.** Providers of liquidity—Asian and GCC central banks, financial institutions and petrodollar investors—are playing a more decisive role as levers of political currency in domestic economic policy and initiating steps toward establishing more formal representation in international bodies. Leading voices in the Islamic finance industry have called for creation of the “G3+3”—Indonesia, Saudi Arabia, Turkey, Malaysia, the World Islamic Economic Forum and the Islamic Development Bank—as a counterpart to the G20, International Monetary Fund and the World Bank.⁵⁰ Currently, the Islamic finance industry is represented in “Sub-Group

⁵⁰ *Business Times Malaysia*, “Create G3+3 to help develop Islamic finance further,” <http://www.emerginvest.com/source/business-times-malaysia> (accessed May 20, 2010); Goh De No, “Global Islamic finance players face challenges,” *The Brunei Times* in *Asia News Network*, <http://asianewsnet.net/home/news.php?id=12094> (accessed May 24, 2010).

4”—an entity focused on reforming international financial structures—within the G20.⁵¹ While Southeast Asian industry thinkers have initiated discussions of a Global Zakat Fund, GCC industry leaders have proposed the establishment of an Islamic Sovereign Wealth Fund—a fund of funds—to function as a global Islamic pension fund and to incubate and build Islamic asset classes and modalities of investment vehicles; approximately 16 of the 57 Muslim countries (members of the Organization of Islamic Conference) have sovereign wealth funds.⁵² These various efforts to globalize Islamic finance through cross-border vehicles underscores the industry’s recognition of the need to increase its decision-making role and international strategic positioning as the global financial order undergoes dramatic transformation.

Malaysia’s Central Bank Governor Zeti Akhtar Aziz has consistently affirmed Malaysia’s intention to build “strategic alliances by enhancing the international dimension of Islamic finance through linkages not only with international financial centers, but also with those in the emerging countries of the Middle East, Africa, Central Asia and even Latin America.”⁵³ As Islamic finance grows, Asia’s industry leaders—Malaysia and Singapore—are taking steps to enhance their strategic position in the global market arena. Emerging players—Indonesia, Japan, China, India and other Asian countries—recognize the

⁵¹ *Middle East News FOREX*, “Islamic Finance Pushes for Role in G-20 Agenda,”

<http://www.middleeastforex.com/news/print.php?newid=283916> (accessed March 30, 2010).

⁵² General Council for Islamic Banks and Financial Institutions, “Needed now: Islamic SWFs,”

<http://www.cibafi.org/newscenter/english> (accessed May 20, 2010).

⁵³ “Islamic Finance to Play Important Role in 2010” (December 31, 2009), *Bernama*, <http://www.bernama.com/bernama/v5/newsindex.php?id=465432>.

industry's tremendous market potential, but each is pursuing practices and policies according to national interests and priorities.

How effectively the industry is able to capitalize on growing demand for Shariah-compliant products over the long term in the face of global financial turbulence will hinge on its ability to mitigate potential defaults, manage shariah risk arising from regulatory fragmentation within the industry, provide greater transparency and accountability, and strengthen regulatory frameworks across the industry writ large in accordance with international prudential standards. Training experts and practitioners who possess a broad understanding of how the Islamic legal system, Western common law, and international function integrally in the global economic system remains a high priority for the industry's long-term sustainability.

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Multilateral Cooperation: Water as a Tool Not as a Goal

Rosario Sanchez and Ron A. Kaiser

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ABSTRACT

International paradigms, as realism and neoliberalism have historically defined the principles of international cooperation considering non-state actors as either negligent or influential. Hydro-politics, considers a new regime in which water can be considered by state and non-state actors as a new strategy to improve international cooperation. However, international law principles and the international water law framework seem to be working contradictory to the logics and schemes necessary for hydro-politics to become a successful platform for multilateral cooperation. Water as a strategy can offer many more possibilities of success over international relations than any other persuasive strategy, and its sustainability is a guarantee of its persistence.

Introduction

Water is considered a strategic resource. It is also considered a commodity, and it is starting to be considered a human right. Its importance is gaining political, economical and social space all over the world. Scarcity is threatening countries and their relationships with riparian states over trans-boundary watercourses. However, to protect, preserve and efficiently allocate water, it requires much more than water knowledge. In fact, it requires much more than water, itself. When it comes to sensitive resources, the best way to deal with them is to divert from the subject. This can be particularly true with water resources. “Water is not only an essential biological need and an increasingly valuable economic good; it is also the most politicized natural resource”.⁵⁴ Time and space are key factors that affect negotiations and decision making processes over increasingly scarce, economically prized and environmentally degraded shared watercourses. As time elapses, a party may get more desperate for a resolution, may change its demands and even change its goals.⁵⁵ This scenario turns water into a source of conflict, a resource, or a weapon.⁵⁶

International negotiations do not tend to lead to simple negotiations. Not for international relations paradigms, nor for international law. New tendencies are being developed and military security does not solely or consistently dominate the international agenda. “While hydro-politics has always been a topic of concern among states, it has only recently received

⁵⁴ Elhance, Arun P. “Hydropolitics: Ground for Despair, Reasons for Hope”, *International Negotiation* 5: 209, 2000.

⁵⁵ Dinar, Shlomi. “Negotiations and International Relations: A frameworks for hydropolitics”, *International Negotiation* 5: 390, 2000

⁵⁶ Wolf, Aaron. Interview by Amy Otchet. Sabre-rattling among thirsty nations. *The UNESCO Curier*, October 2001. p. 18.

attention in the international relations literature”⁵⁷. It is been said that water wars will precede oil wars, but unlike oil, water is not replaceable. Conflict and instability among nations is not necessarily caused by a water conflict among the nations involved; water conflict cannot be regarded as the ultimate variable for the cause of conflict (but rather is due to domestic and regional causes), because water is a dependent variable.⁵⁸ Nevertheless, there are strong arguments that support the threatening condition to national and international security that scarcity can bring to a trans-boundary watershed.

The international system has been traditionally analyzed under the logics of realism theories in which states are the most important actors of the international system and the most important subjects of international law. However, new regimes of environmental governance such as the European Union, international organizations and NGOs acting on a global scale, are challenging the leader paradigm of the international system as we know it. These offer new options for the way states act and react under different circumstances and the way in which new actors offer new options for modern international relations. The end of the Cold War is the period that literature chooses to define its threshold for new international regimes, hydro-politics and security issues.

This paper will attempt to address how traditional paradigms of international relations ruled by the realism theory are been challenged by new forces and tendencies that offer possible new schemes of negotiation among nations and parties. It is clear that only time can prove that this emergent possibility can be strong enough to prevail. Consequently, international water law insists to be *legally but not logically* based on international law principles. It has been developed under the same realistic tendencies that recognize only the power relations of States contradictory to the logic in which international watercourses developed and should be analyzed. Finally, it is worthy to mention ideas related to new approaches on how water negotiations can be more useful, productive and less threatening to security if water is to considered more as a tool than as a goal by itself.

I. Hydro-politics and International Relations

The field of international relations and hydro-politics have just recently been analyzed. Hydro-politics should be considered part of the security field to the extent that freshwater issues affect large-scale violence, war and peace⁵⁹. Because of the growing potential for conflicts and the need for negotiated water-shared agreements, the subject of hydro-politics, defined as the systematic study of the nature and conduct of conflict and cooperation between states over trans-boundary watercourses, is demanding urgent and increasing attention from the international community⁶⁰. Paradoxically, international relations paradigms tend to

⁵⁷ Dinar, Op. Cit, p. 375.

⁵⁸ Ibidem, p. 378.

⁵⁹ Ibidem, p. 377.

discourage the efforts for cooperation, negotiation and common interests over trans-boundary watercourses. The realistic approach based on the anarchic nature of the system, the lack of central government and concern for survival causes states to provide for their own security, such that force, or the threat of it, will continue to be a possible outcome of any international interaction⁶¹.

However, there are some signs pointing to the fact that realism theories are losing ground when hydro-politics get in the way. More flexible approaches such as neo-realism and neo-liberal paradigms are offering a more hopeful scenario for international cooperation gaining importance to international institutions and non-state actors. Free trade and liberal theories open alternatives for new boundaries, actors and interests. Nevertheless, these apparent new theoretical spaces tend to be challenged by a *reloaded* realism in which hegemonic states use their strength to create a set of political and economic structures that enhance the stability of the system. This theory argues that cooperation occurs with the pressure from the hegemonic power towards the concerned parties. “Cooperation, defined as mutual adjustment of national policies to one another, also depends on the perpetuation of hegemony”⁶². This theory implies that even institutions and non-state actors serve as instruments of hegemonic States. Therefore, their relative power is only defined by the distribution of power among states.

Another interesting approach is the systems theory. This theory argues that states act similarly according to their position in the international system and by their desire to survive. This approach supports the idea that the particular nature of states and their domestic politics do not affect international politics. This particular view underestimates the power of domestic politics and assumes the belief of Unitarian states. This clearly limits the approach to systemic variables, reducing the importance of nationalistic fervors, bureaucratic politics and political elites, not to mention the importance of ethno-national communities and their influence on the international area. Therefore, what enhances the lack of cooperation vis-à-vis, water, is the extent to which a protracted or political conflict exists between the parties, either external or domestic. The outcome of international negotiation will tend to represent the preferences of the more powerful actors in the international system⁶³. This means that tendencies are being forced to recognize new domestic and international non-state actors, but they are struggling to define the extent of their power or influence over states’ interests.

Currently, we are facing a systematic process in which paradigms are being challenged, new paths are being developed and future trends depend not only on the power relations between states, but more importantly, between interests defined not precisely by states boundaries, but

⁶⁰ Elhance, Op. Cit, p. 202.

⁶¹ Dinar, Op.Cit, p. 381.

⁶² Keohane, R.O. *After Hegemony: Cooperation and Discord in the World Political Economy*. Princeton, New Jersey, 1984:33.

⁶³ Dinar, Op.Cit, p. 386, 387.

by emergent boundaries that do not respect geography, legal and rhetoric principles. New geographies are being traced by a more local, regional and international group of interests and sectors that found a source for modern cooperation approaches on shared river basins. “Regional cooperation dictates that a sector must compete with other sector in all the countries in the river basin. As complex as this may seem, it is the only approach for sustainability”⁶⁴.

Generally, these major approaches ignore the implications of hydro-politics and the negotiation process between the parties, which may change the sources of power and may change the dynamics of the outcomes they predict⁶⁵, and hopefully, the way international relations are being played over trans-boundary watercourses.

1. International Water Law Vs Transboundary Watercourses

In the case of global water scarcity, it is becoming increasingly clear that some cherished goals of the international community, such as sustainable development, environmental well-being, human security, quality of life and basic human rights, cannot be achieved until bilateral and multilateral agreements can be negotiated. These agreements also need to be developed to manage water resources of international river basins. Unfortunately, more than 300 treaties have been signed by the states related to shared water resources. In addition, more than 3,000 treaties have provisions related to water, “the much-needed cooperative and integrated development and management of the water resources of international basins is still extremely rare”⁶⁶; and in most international river basins in the arid and semi-arid world regions there are as yet no binding water sharing agreements.⁶⁷ In general, most international river basins are not governed by any comprehensive agreements on the use and allocation of the basin’s river. “This fact should tell us that there is nothing obvious about the benefits of cooperation nor simple in reaching agreements. Rather, whether convenience or ignorance, unilateralism has prevailed”⁶⁸.

International water law, on the other hand, has its own legal and practical problems. The hydrological interdependencies among riparian states grows with time. The demand and competition for the shared water grows and compels the riparian to interact with each other regularly. Logically, these occurrences would require a wide international legal regime with clear and basic-standard principles applicable to both specific and general circumstances of

⁶⁴ Waterbury, John. “Between unilateralism and comprehensive accords: Modest steps toward cooperation in International River Basins”, *Water Resources Development*, Vol.13, No. 3, 1997:279.

⁶⁵ *Ibidem*, p. 388.

⁶⁶ World Bank 1993,98, in Elhance, *Op.Cit*, p. 202

⁶⁷ Elhance, *Op. Cit*, p. 206; Ohlsson, Leif. *Hydropolitics, Conflicts over Water as a Development Constraint*. University Press LTD, 1995, p. 24,25.

⁶⁸ Waterbury, *Op. Cit*, p. 1.

each riparian case. Instead, what we have is an impractical framework guided by some ambiguous principles⁶⁹ to which just rhetorically states agree to recognize. Not to mention the unlike possibility to enforce any of this principles, because there is *no clear issue to enforce*. “Nowadays, international law is been challenged not only by constant global peace threats, especially those related to trans-boundary issues, but by its own legal and legitimate sources and principles to prevent them”⁷⁰. On the one hand, this condition affects the profile of our legal international sources, and on the other, reflects the weakness of the institutions and regimes to offer reliable and viable legal options to enforce those criteria⁷¹.

Moreover, the principle of territorial sovereignty over international rivers has never been a generally recognized principle of international law⁷² because watercourses can’t be drawn according to geography, but according to drainage basin. “This leaves the subject under doubts and makes states nervous about their watercourses limits, jurisdiction and decision-making”⁷³. This may be the reason why there still is not much state interest s to compromise on trans-boundary water issues: sovereignty is still the priority. This proves that principles of anarchy and constant power relations among states can be argued by the realism theory which keeps ruling the international ground. The negotiation of water-sharing agreements, issues of sovereignty and acceptable trade-offs have so far prevented the newly emergent states from reaching and implementing any comprehensive agreement⁷⁴. However, there may be other reasons aside from sovereignty that also impede international cooperation. There could be new spaces and practices that can be useful in trying new approaches for cooperation that will be discussed later in detail.

II. New actors...new subjects...new paths?

When considering conflict, cooperation and negotiation among states, especially related to water issues, the role of third parties, whether they be states, international organizations, non-governmental organizations or individuals is crucial. Realism, neo-realism and to some extent neo-liberal theories rarely consider the actors mentioned above seriously. The centrality of the state to international affairs and ignoring non-state processes renders their

⁶⁹ Equitable and reasonable utilization and participation.; Obligation not to cause significant harm. Articles 5 and 7 of the United Nations Convention on the Law of the Non-Navigational Uses of International Watercourses. Adopted by the General Assembly on 21 May 1997. Resolution 51/229.

⁷⁰ Sánchez, Rosario. “Legal International Framework on Groundwater Allocation: pending issues”, 2006: 1.

⁷¹ Nanni, M; Foster, S. Groundwater resources: shaping legislation in harmony with real issues and sound concepts. *Water Policy*. Vol. 7, p. 543-550.

⁷² Shmueli, D; Shamir, U. Application of international law of water quality to recent Middle East water agreements. *Water Policy* Vol. 3(5), p. 408-409.

⁷³ Sánchez, Op.Cit, p. 9.

⁷⁴ Elhance, Op. Cit, p. 207.

transnational extension invisible. In doing so, they limit the success or failure of international dealings to a small number of variables that may distort or ignore reality.⁷⁵

However, the phenomenon of globalization births new tendencies and new theoretical considerations. These considerations may have some answers to the *reality* of the new international system and the place that non-state actors might have on power relations. The concept of sustainable development originated principally on the decades of 80's and 90's and arose as NGO's began to partner with international actors to form novel networks. These networks aimed to challenge the power of national governments and together with the neoliberal trend of seeking greater efficiency of states as a declared goal of development, international capital created a demand for local NGO's to step forward to receive productive conservation funds.⁷⁶

Some consider the concept globalization comes with an increase amount of international actors to support sustainable management of natural resources, others argue that "nations are forced to choose between two master rules: globalization or environmental stewardship"⁷⁷. They have to ensure that trade and investment rules are not overruled in any way by environmental standards and policies. Both views, although they are contradictory on the purposes and legitimate goals of arising non-state actors, do not argue on their recognition of their real existence or even on their relative or absolute power or state power.

There are studies that practically reduce the role of national states, mainly in developing countries, to that of a spectator. There is a devolution of responsibility to NGO's which is tied to the restructuring of the economy along neoliberal models of state-society relations. This undermines the authority of the state to determine policy.⁷⁸ Ironically, this argument along with the fact that these studies take place under the logic of developing countries, (there is no clear study in which non-states actors have more power than that of a developed state), bring us back to the argument of Keohane and his theory of hegemonic power. Powerful states may be using non state actors to control its power equilibrium among other states. It must be said that the world is big enough, for actors' possibilities to reach unexpected results and trends. "Emergence of cooperation among parties is possible when the compliance problem and mistrust, a function of anarchy in international relations, is mitigated with the assistance of institutions, which generate information, lower transactions costs, increase transparency and reduce uncertainty"⁷⁹. International cooperation to

⁷⁵ Dinar, Op.Cit, p. 395.

⁷⁶ Brown, J. Edited by Zimmerer, K. "Globalization & New Geographies of Conservation". The University of Chicago Press, 2006: 94.

⁷⁷ Barker. D. "Business as Usual. A Decade after the first Earth Summit, there is little to celebrate". Tikkun, Vol. 17, No. 4, 2002.

⁷⁸ Sundberg, J; Edited by Zimmerer, K. Op.Cit, p. 262.

⁷⁹ Dinar, Op.Cit, p. 382.

accomplish specific purposes can take many forms. Cooperative arrangements among many states can be developed in different forums and on either a regional or a global scale, involving different mixtures of states and, increasingly, non-state actors as well.⁸⁰

Since trans-boundary water issues touch not only state interests, but also more local and regional interests, non-states actors are arising at every level and in every economic, social, legal and political aspect. The dependable condition of water as core of multi-interest objectives complicates cooperation not necessarily for security or scarcity issues, but for more procedural and structural reasons. Changes on new international arrangements should only be contemplated after overarching goals are clearly defined and specific tasks identified – that is, form follows function.⁸¹

The international system poses a challenge. New structures are being developed whereas legal regimes keep delaying their updating and reliability, strangling with the success of international cooperation. Even neo-liberalism seems incapable of explaining the power that non state actors can have among state power relations. They adjust their theory to an increasingly rapid process of global change and interactions among states and international organizations, nongovernmental organizations, multinational companies, ethnic communities, pressure groups and institutions. New approaches such as regionalization, *micrologics*⁸² and *environmental governance*⁸³ are catching researchers' attention in explaining the way water resources and trans-boundary river basins are being held. "Rather than each nation-state going alone in the global economy, as might be preferred within a neoliberal model, the idea is to reconfigure a trans-boundary economic region, one that will then be capable of competing more effectively within hostile global markets".⁸⁴ The competition is no longer focused among states, but among a *hostile global market* full of varying powers of influence and goals which may or may not represent other states' interests. *A hostile global market* may be confronted with more success if it is faced with a multi-non-state actor strategy and perspective.

⁸⁰ Thacher, P. "Multilateral cooperation and global change", *Journal of International Affairs*, 2001: 434.

⁸¹ *Ibidem*, p. 435.

⁸² Micrologics is a resource users most useful perspective, both as individuals and small groups, to understand the immediate or "on the ground" interface of global conservation efforts with water use activities, specially, agricultural. Zimmerer, K. *Op. Cit.* 327.

⁸³ The concept of global environmental governance is virtually a synonym for international environmental cooperation; for the network of international environmental organizations and conventions and the spaces between them. Vogler, J. *The European contribution to environmental governance. International Affairs*, 2005, 81, 4, p. 835.

⁸⁴ Sneddon, C. Edited by Zimmerman, K. *Op. Cit.* p. 204.

The European Union, for example, is an actor in its own right. It exhibits volition and in its distinguishable form, its 25 member states are capable of taking action at the international level. However, there is no simple correlation between competence and the extent to which the EU may appear as a single actor, “for the latter also depends upon the recognition of outsiders and their willingness to treat the EU as a single entity”⁸⁵.

This new reality requires new principles, new strategies and new legal frameworks, both substantive and procedural. Moreover, timing and efficiency must be key factors to consider the applicability of these new regimes, and to include new subjects of international law as non-state actors will be a new, untraced paradigm.

Water as an element for conflict or as an element for peace

1. War as an option?

Nowadays, negotiation over natural resources and, more precisely, over water lead necessarily to negotiations regarding national security concerns. Therefore, water cannot be considered an independent source of cooperation or conflict, but rather as a multi-dependent resource. This characteristic offers multiple forms of cooperation and multiple options to negotiate other than water. Whereas realism and neorealism theories typically treat international negotiation in terms of power resources, and neoliberalism would stress shared power interests in explaining the origins of international cooperation, these major schools ignore the implications of hydro-politics and the negotiation process. Water, which makes the parties involved mutually dependent on one another, not only in terms of the resource but also in terms of reaching a beneficial agreement, makes the power relationship very complex.⁸⁶ “Even in an asymmetrical (in absolute brute power capabilities) relationship, ‘veto’ symmetry exists among the parties”⁸⁷.

The intensity of the conflict over fresh water, according to some studies, is determined by several factors:

1. The degree of scarcity, mismanagement and/or misallocation of water in various regions;
2. The fact that water respects no political boundaries and is often shared among two or more states making them interdependent to one another;
3. The geographic and historical criteria of water ownership;
4. The protracted conflict underlying the conflict;
5. The amount of alternative sources or options in a negotiated agreement and the desperation of the parties to the agreement; and
6. The relative power of the parties.⁸⁸

⁸⁵ Vogler, Op.Cit, p. 838.

⁸⁶ Dinar, Op. Cit, pp. 388, 389.

⁸⁷ Zartman 2000 (in Dinar, Op. Cit, p. 389)

The unequal distribution or scarcity of water does not necessarily lead to conflict among states. The above conditions “may make water a dependent variable in relation to a nations’ security, depending on what variables or conditions are apparent in a specific conflict on an specific time. “Water not only does not respect political boundaries, but also does not discriminate among strong and weak parties”⁸⁹.

This interdependency also causes conflict to get to a point of no return in which war seems to be the only option left. While the employment of military force may become an option to counter unwanted actions by other nations over water, it is often counterproductive in light of the characteristics of water, and moreover, of a trans-boundary watershed⁹⁰. The only recorded incident of an outright war over water was 4,500 years ago between two Mesopotamian city-states over the Tigris/Euphrates close to southern Iraq. Since then, there are exacerbating relations at the international scale, but there are also hostile states (India and Pakistan or the Israelis and Palestinians) resolving water conflicts even while disputes rage over other issues.⁹¹

“Strategically, water wars don’t make sense. You cannot increase your water resources by going to war with a neighbor unless you are willing to capture the entire watershed, depopulate it and not expect a tremendous retaliation”⁹². From a long-term perspective, a lack of hydro-political cooperation in any international basin proves to be a “lose-lose” game for all parties “Interestingly, many of the reasons for hope regarding hydrological cooperation spring from the very same factors that can impede cooperation under certain circumstances”⁹³. While the scarcity of water in different regions and the interdependency condition provide for the roots of interstate conflict over shared watercourses, herein also lie the roots for cooperation.⁹⁴

What we may be facing is more a ‘strategy-deficit fear’ than potentially real wars over water. The reasons for conflict are not necessarily water issues, but deficiencies in political-negotiation approaches and trans-boundary strategies to address shared watercourses’ conflicts. This understandable fear can be related to several factors such as lack of reliable and shared data that raise suspicions, technological means that impede development of joint planning techniques and management expertise.⁹⁵ It is just recently that even “poor countries

⁸⁸ Gleick 1998,4 (in Dinar, Op. Cit, p. 379)

⁸⁹ Dinar, Op. Cit, p. 379.

⁹⁰ Ibidem, p. 380

⁹¹ Wolf, Op. Cit, p. 18

⁹² Ibidem.

⁹³ Elhance, Op. Cit, p. 214

⁹⁴ Dinar, Op. Cit, p. 386

⁹⁵ Ibidem, p. 212

are coming to see the underdeveloped multiple-use potential of their water resources as a valuable, and perhaps the only economic asset that they have to sell to their neighbors or to attract foreign investment”⁹⁶. However, there remains much to be done from a scientific and technical expertise to offer policy-makers a more reliable framework in which they can trust, and more importantly, in which they can learn to use and share with neighbors. What needs to be equitably allocated and reasonably used, is the data and not the water.

This possibility brings up the neoliberal thesis which argues that the principal obstacle to cooperation is not necessarily relative gain or power, but cheating. Mutual collaboration may be the ultimate goal, yet the potential for cheating acts as a deterrent.⁹⁷ This scenario opens new paths and spaces for non-state actors, such as international institutions, to serve as mediators and to set international rules to rectify the problem of cheating.

The tendency is a general move from unilateralism to bilateralism to multilateralism in hydro-politics. States recognize the nature of the trans-boundary water resources they share and where it usually takes many years to negotiate water agreements and the long-term sustainability of such agreements cannot be guaranteed, states find it very difficult to ignore or abrogate them. “The rewards of hydro-political cooperation are often such that even states that are hostile to each other in other issue areas sometimes have explicit or implicit understandings for sharing and managing their common water resources”⁹⁸. An example of this is the cooperation between Israel and Jordan which coexisted with and survived a state of war between them until 1994. In some cases, water provides one of the few paths for dialogue in otherwise heated bilateral conflicts. In politically unsettled regions, water is an essential part of regional development negotiations, which serve as de facto conflict-prevention strategies.⁹⁹

2. Water Strategy Negotiations vs Negotiations over Water

What learned so far is that, in the process of negotiation, we can find spaces, paths, alternatives and sustainable solutions for shared water resources planning and management. The negotiation process over trans-boundary watercourses is not necessarily related to traditional tendencies in which states behaves among others under a realistic or liberalistic perspective. Rather under a hydro-strategy in which the logic of a watershed guides the logic of the negotiation process. First of all, the technical expertise that this type of negotiation needs requires the establishment of pre-negotiations in which different state and non-state actors can work on harmonization of technical and structural standards and exchange

⁹⁶ Ibidem, p. 211, 218.

⁹⁷ Dinar, Op. Cit, p. 383.

⁹⁸ Ibidem, p, 220.

⁹⁹ Wolf, Aaron T., Annika Kramer, Alexander Carius, and Geoffrey D. Dabelko. *Managing Water Conflict and Cooperation . In State of the World 2005: Redefining Global Security*. The WorldWatch Institute. Washington, D.C. 2005.

information. Since pre-negotiations do not necessarily commit the parties to a binding agreement, it permits the parties to reduce uncertainty and level of strategy-deficit fear. In addition, manages complexity at lower levels of risk than a formal commitment to a strategy of negotiation.¹⁰⁰ “New technologies and practices for more efficient water management can help reduce tensions in international basins”¹⁰¹.

Secondly, this clear recognition of interdependence under a hydro-political reality may impel or force states to seek peaceful ways of conducting hydro-politics with their neighbors. Besides, the international community can also use powerful economic leverages to persuade reluctant states to cooperate. Many states that share international basins are currently heavily in debt with international donors and lenders and are likely to remain so for the foreseeable future.¹⁰²

Likewise, in order to recognize the legitimate importance and *decision-making* influence of non-state actors over international river basins, the legal international framework needs to recognize the subjectivity of these new actors and impose limits and rights in that regard. Third parties that intervene on international watercourse negotiations are key factors to persuade states to overcome their reluctance and begin to see cooperation as a win-win game.¹⁰³

Third, outcomes should be determined less by the power position of the parties and more by tactical schemata where outcomes depend not only on absolute capabilities but on the interaction among the parties, bargaining skills and, on the way such resources are organized and utilized.¹⁰⁴ Traditionally, absolute power can be determined by two considerations. One would be the percentage (quantity), quality and even uses of water that a state possess over its geographical boundaries; the other is the state’s power related to its economy and its political and military condition on the international arena. The difference between those considerations is that power over trans-boundary water resources cannot be absolute because it depends on the neighbors’ recognition to consider a state more or less powerful over its shared waters. This reality considers varying attitudes that are powerful that less powerful states can adopt to overcome relative power relations over trans-boundary watercourses. They can be summarized as follows:

Assumption: War is not reliable for any State (for the reasons previously mentioned)

State A: Economic, political and military powerful

State B: Economic, political and military weak

State A and State B share an international watercourse

¹⁰⁰ Dinar, Op.Cit, p. 391.

¹⁰¹ Elhance, Op. Cit, p. 217.

¹⁰² Ibidem,

¹⁰³ Ibidem, 221.

¹⁰⁴ Dinar, Op.Cit, p. 388.

Scenario 1

State A depends on State B for a specific amount, quality or benefit of water.

Even though State B can be considered, by realism, a weak state, hydro-politics offer opportunity for gaining power of negotiation over State A and offers new alternatives to bargain. At the same time, State A is “obligated” to consider State’s B conditions and requirements such as technological improvement and expertise and even economical support in different aspects aside from water.

State B is in a much better position to negotiate over water, but in a much worse position to negotiate economic, political and military options. State B bargains water for the most favorable economic conditions. This condition can only be sustainable if State B secures the level of reliability of its water resources that can be obtained with State A economical participation.

Scenario 2

State B depends on State A for a specific amount, quality or benefit of water.

State A, being a powerful state, cannot be forced or pressured by any favorable condition of State B to comply with its requirements, but rather its unfavorable conditions can be used to pressure State A. The alternatives that State B can use are those related indirectly with economy, political, social and national security issues and directly to water issues such as: soil contamination, policy regulations, groundwater pumping, misuse, generally, all those conditions that affect and threaten the shared waters.

On the other hand, State B can offer unique conditions as a downstream state. Treatment and even reuse to assure watershed sustainability can be points in favor of State B in the sense that the state is more favorable with conditions such as state A will eventually need state B’s cooperation to preserve and protect their shared watershed.

Scenario 3

State A and B cannot negotiate because of other conflicts among them which impede water negotiations.

If State B and A, because of their historical conflicts, cannot negotiate directly because negotiations get contaminated by other problems, a third party, either State C or a non-state actor can act as mediators to enhance cooperation and integrate a problem-solving approach in which water can serve as a tool to bring parties together.

This scenario has applied to the Middle East region in which international organizations, institutions, and even third party states help build institutional capacity to overcome parallel problems among conflicting parties.

It would be worthless to mention every case in which different actors negotiate depending on their varying assets, strategic position, historical differences, geopolitics, economic and social conditions. The circumstances can change as the interests and national priorities also change. It is certain that for our time, water management and reliability is on the international agenda's first priority. The *forms* and strategies of negotiation will define at the end, the levels of scarcity, reliability and sustainability of a trans-boundary basin.

Conclusions

This paper raises several important points to be considered when analyzing international relations over trans-boundary watercourses and practices of negotiation in a world in which traditional paradigms are being challenged by new schemes of international governance. Realism and neo-realism have been the strongest paradigms that rule the logic of the international system. According to these paradigms, cooperation and collaboration does not take place unless the outcome allots more power to the states. Neoliberalism offers a more optimistic perspective of states' behavior towards each other, offering new spaces of possible negotiations and the possibility to include international organizations towards cooperation among parties. This may or may not be related to distribution of power among states. "While the British government's aspirations to 'global leadership' in environmental and climate change policy are 'based on willingness to take action at home', they can be realized only through a European Union of 25 members states"¹⁰⁵.

Hydro-politics, in the other hand, can't deal with power seeking because the *power of water is already shared*, at least from a geographical point of view. What is left to agree and negotiate over is management, planning and conservation. With this perspective in mind, logical and enforceable international law principles can offer a new spectrum of negotiation and overcome water resources sensitivity. Politically speaking, the principle of equitable "allocation" can infer that there are waters that have not been allocated, which at some extent can be true in the case of ground waters. This fact is more related to the lacking of information.. Hydro-politics then goes beyond states and their boundaries and applies to the multi-dependency condition of water. These conditions can include a potential variety of factors than can be used at any time, space and need by any particular party or parties in the same watershed.

¹⁰⁵ Vogler, Op. Cit, p. 835.

Understanding hydro-politics helps parties (states and non-state actors) to reduce fear of strategy deficit and invests on information techniques, monitoring and institutional capacity, therefore, the potential of war over water resources is diminished.

It is clear that principles of international law need to be reconfigured under a more *unrealistic* view, in which international water law can offer a legal and legitimate space for the development of trans-boundary water resource regimes under new paradigms of international relations. . Non-state-actors' international regimes, trans-boundary-watershed regimes, from a unitary system point of view tend to deal with information and channels of communication among users. This will need to be considered in today's negotiations in order for international institutions to overcome the threat of worldwide water scarcity and stress. "The experience of the last ten years of global environmental negotiations suggests that a new and different approach to international cooperation is required if we are to move beyond the current impasse and operationalize sustainable development"¹⁰⁶.

Water as a strategy can offer many more possibilities of success over international relations than any other persuasive strategy we have known. Water will preserve peace and its sustainability will guarantee its persistence.

¹⁰⁶ Sanwal, Mukul. "Trends in Global Environmental Governance: The Emergence of a Mutual Supportiveness Approach to Achieve Sustainable Development". *Global Environmental Politics* 4:4, November 2004.

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Elián Gonzalez: The Messiah of Fidel Castro

Dr. Abdelilah Bouasria

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Introduction

The heated and controversial clash over Elián Gonzalez was more than an issue of custody and family rights; it became more than a conflict between political foes across the Straight of Florida. Hidden behind the press conferences and legal proceedings was a view of politics and history seldom noticed when reporting on Cuban-American affairs. A significant number of Cubans in the US and in Cuba believe that politics and history are shaped by supernatural forces, and those forces reveal themselves ever so often.

Enter five year old Elián Gonzalez, who was found on Thanksgiving Day 1999, holding on to an inner tube and floating in the ocean for what must have been several hours after his mother and others had drowned. Most people immediately thought that this was an amazing survival story, but in Little Havana it was an obvious miracle.²⁰

To Cuban Americans, the fact that the boy was found on Thanksgiving Day was just an added symbolic element; although the day had no real meaning for Cubans in the island, since it is more properly an American celebration. Two persons who had gone fishing that day rescued Elián. One of them, fame-seeking Donato Dalrymple, a Pentecostal missionary, had never gone fishing before. The mass media and the Miami Cubans referred to him, however, as a fisherman, which, as would be seen, had the appropriate Biblical connotation and seemed more appealing than his real job as a house cleaner. In his first statement to the

media, Dalrymple said: ‘I’ve traveled around the world as a missionary, but I have never felt like this. What a gift to find this kid today. I would like to see his face again.’²¹

Throughout December 1999, no references to miracles or the intervention of supernatural forces had yet been made. The realm of myth and the sacred had not yet entered the Elián Gonzalez story. There were, however, numerous questions as to how a small child could survive in the water for over 48 hours without dehydration, hypothermia or even drowning. No one at the time seemed interested in finding more earthly and practical answers.

The Right-Wing Move

The Cuban American National Foundation (CANF), the Brothers to the Rescue organization, and the Cuban Democracy Movement, however, among numerous other right-wing Cuban-American organizations, had joined forces to offer their resources to the Cuban-American family that held Elián Gonzalez.²² On November 27, within 48 hours of Elián’s rescue from the sea, his father requested that the US government return his son to him in Cuba, but all the right-wing Cuban-American organizations, together with the boy’s Miami family, spoke in opposition to the father’s request. Why such interest on the part of the right-wing organizations? They wanted to trigger a reaction from the Cuban government during an election year in the US. In other words, the whole Elián affair, with all the costs and conflicts, had been manufactured in the vain hope of pushing the Cuban government to overreact, and unleash another Mariel crisis.

On January 5, 2000, the Immigration and Naturalization Service (INS) decided that Elián should be returned to Cuba.²³ This decision appeared to deflate the crisis, but that was not the case. First, the lawyers provided by the CANF initiated numerous legal actions. The next day Elián participated in the Three Kings Parade in Little Havana, and although there was still no implied sacredness, it was at that point that the story telling and myth making began in earnest in South Florida.²⁴ Within hours, a number of Cuban-owned radio stations in Miami began broadcasting in their call-in shows that Elián was a ‘miracle child’ and a ‘messenger from God.’ On January 9, 2000, Donato Dalrymple, the so-called fisherman, told the *Miami Herald*, ‘I know it was the hand of God, but I feel that I gave birth to him from the ocean.’ From that moment on, the story of dolphins looking after Elián surfaced. Although Dalrymple does not speak Spanish, he was reported as saying that Elián, who did not speak English then, informed him that dolphins accompanied him when he was alone and afraid in the water. He told the Associated Press, ‘I would like to believe that God used the dolphins as an instrument to keep him safe in that water.’ Dalrymple also considered himself, as rescuer, part of that divine intervention. He claims that such a personal role has been prophesized to him. As days went on the dolphins’ story was further embellished.²⁵

The Religious Make-over

On January 11, 2000, *El Nuevo Herald*, the Miami Spanish language newspaper published a fairly long opinion piece by José Mármol entitled ‘The Future of Elián.’ The article publicized what already was circulating among the Cuban community in Miami. He

wrote that Moses' -mother, in order to save her son from the Pharaoh, placed him on a raft on the Nile. The child was rescued and then changed the history of Egypt. In this rendition, Elián was Moses, and Fidel Castro the Pharaoh. The enslaved people of Israel, with Moses leading, finally would see the Promised Land of Israel, and so too would the Cuban exiles. 'Moses lived to lead his people out of slavery in Egypt to the Promised Land of Israel, an exodus that lasted 40 years, about the same as our exile from Cuba.' Mármol went on to add that Elián was 'also a symbol and even more, many attribute to him that he is a messenger with a miraculous mission who will return freedom to the suffering people of Cuba.' Signs of miracles began to appear. The image of the Virgin Mary was found at the bank where Elián's aunt, Marysleyis, worked. Other images and signs began to appear everywhere. In the crowds in front of the Gonzalez house in Miami, one sign read '3 Kings, 3 Children: Moses, Jesus, Elián.' The sidewalk in front of where he lived was lined with candles at night. Keeping Elián in the US was no longer a family matter. It was a clash between the forces of good and the forces of evil and between Miami and Havana.

CANF v Castro.²⁶

Javier del Pino, reporter for the Madrid paper *El País*, was the first to report (January 23, 2000) that the right-wing Cuban-American organizations had begun to foster and promote the legend that Elián Gonzalez was a 'miracle child.' The Miami relatives played the game as well. Marisleyis Gonzalez, the surrogate mother, (after Elián was taken by the INS she became the 'spiritual mother'), told *The Times* of London, 'People need to believe in

miracles. This kid was in the middle of the ocean, his feet hanging over an inner tube and he had no fish bites, no scratches, nothing. How can that be? The other two survivors had busters, holes in their legs and were sunburned. Elián had nothing. It was like God sent the fishermen to get him.²⁷

In the Cuban exile millenarian message, promoted by the media in Miami, if God intervenes and saves a child, then the child has a purpose. The child is to be the messenger, the Messiah of Cuban national redemption. Elián was transformed into the anti-Fidel. By the end of January, the then six year old had become ‘el milagro’ (the miracle), the child Moses, the messenger, the child-prophet, and the angel. Jean Marbella wrote in the Baltimore Sun, ‘Whenever Elián goes in public, people try to touch him or otherwise bask in his aura.’²⁷ Indeed, the crowd around the Miami house included people who were mystical believers as much as anti-communists. People flocked to the house where Elián stayed because he was believed to have magical curing powers. Sick children were held in the hope that the ‘miracle child’ would touch the sick. The old and the infirm shouted to him, asking Elián to come near the fence in order to touch them. Some even claimed that his powers were so great that they won money in the Florida lottery.²⁹

Murals and T-shirts depicted the six-year-old as divine. And few resisted the opportunity to be close to the miracle kid: Roman Catholic priests, Protestant and Evangelical Christian ministers and preachers proclaimed the sacred quality of Elián. A powerful propaganda machine went to work to foster the child redeemer image. Miami exile poet, José Manuel Carballo, wrote poems about Elián, duly read over AM radio. Over

200,000 postcards were sold in Miami portraying Elián with Dolphins and God (or the Virgin of El Cobre). The postcards read, 'God Given Freedom' and have the address of the White House on the back. Thousands of Elián posters and T-shirts have been sold as well. Artists did likewise: Alexis Blanco did several paintings of Elián, dolphins and God looking from above. He notes: "I . . . think it has been a miracle from God that this boy was rescued alive and that dolphins like Elián himself says, helped the situation. Elián, for me, is like a messenger that announces the end of the communist dictatorship."³⁰

Political Opportunism

Politicians flocked to have their photo opportunities with the child as well. A Miami politician gave Elián a puppy with the name 'Delfín' (dolphin) which, oddly enough, is the name of his great uncle Delfin Gonzalez (and brother of Elián's father, Lazaro). Cuban-American congresspersons, Iliana Ros and Lincoln Diaz Balart, along with Robert Torricelli and many others, posed with the divine kid. A Republican congressman from New Jersey apparently learned to speak Spanish in the mere presence of the child who then told him that he did not want to go back to Cuba. Violent former CIA operatives even had unique transformations. Full-time anti-Castro activist and president of Brothers to the Rescue, José Basulto, who had worked as a CIA asset in Cuba and throughout Latin America, told a *New Republic* reporter that the dolphins had protected Elián because he was an 'angel.' How he learned to discern such things was not revealed. Obviously, Miami image shapers understood that in Hollywood and in American television, angels were 'in.'³¹

In less than a month, Elián Gonzalez was rapidly transformed from a regular child to someone saved by divine intervention and later into an angel himself. This transmogrification happened only after the INS declared that the child should be with his father in Cuba. References to God, Moses, dolphins, puppies and angels could find resonance within the American public.³² And for the right-wing spin masters, it became necessary to ‘explain’ to the public why the Cuban government insisted on demanding the return of the child. Obviously, neither common sense, international law, nor the fact that the right-wing Cuban Americans had put them in a no win position, seemed to dawn on them. Thus, the esoteric interpretation was projected onto Fidel Castro and his government.

The Santería Connection

On January 31, 2000, WFOR-TV a CBS affiliate reported that some people in Miami believed that Fidel Castro had taken a personal interest in the Elián case because of his beliefs in Santería. By that time Ninoska Perez, the spokeswoman for the CANF, in her daily radio program ‘Ninoska a la Una,’ on WQBA-AM (11401) reported on a letter that she received ‘anonymously.’ According to the letter, which she read over the airwaves, Fidel Castro needed to have Elián because of his Santería beliefs. According to the undisclosed source, Fidel Castro had to literally sacrifice the child. Ernesto Pichardo, a leading Santería practitioner and advocate who won a Supreme Court ruling in 1993 on the use of animal sacrifices, rejected the letter and noted that Santería did not practice human sacrifice.

Pichardo considered the whole situation bogus. Yet, Ninoska had a second program on the same subject.³³

On February 1, 2000, the story of Elián, Fidel Castro and Santería crossed into the US mainstream media. The Associated Press circulated a story from Coral Gables, Florida, that said, ‘One unconfirmed story circulating through Miami’s Cuban community has Cuban President Fidel Castro consulting a Babalawo, meaning ‘father or master of the mysticism’ in the Yoruba tongue and a priest in the Afro-Cuban religion of Santería, which melds elements of Catholicism and ‘West African spiritualism and sometimes calls for animal sacrifices. The Santero told Castro his future depends on Elián, and if the child stays in Florida, Castro’s regime will fall. If Elián returns to Cuba,’ the story went, ‘Castro will remain in power forever.’ In the same show Perez gave credence to the interpretation and noted that ‘Castro will fall if Elián Gonzalez is not returned.’³⁴

The actual story from Cuba was slightly different. Victor Betancourt, a Babalawo from Centro Habana, and president of the Ifli Iranlowo Society in the island, claimed that Elián had escaped and defeated death and anyone who had close access to the child could overcome illness and death.³⁵ The Santería priest never claimed that he had Fidel Castro as one of his clients. Moreover, he stressed that regardless of what happened to the child, the effects would be positive for Cuba. Somehow those details did not cross the Strait of Florida. Apparently messages from Orishas in Cuba are also not interpreted the same way in South Florida. In Miami, the message was clear. It had been spelled out to the Spanish-speaking public. This was no longer the mystical interpretation of a Pentecostal preacher or a

few old Catholic believers. Radio and television programs soon followed. On February 15, Ninoska Perez again appeared on television, along with two Santería priests, Roberto Oriozco and Luis Naveira. Both claimed that Elián was, in fact, the human representation or messenger of Elegguá. Ernesto Pichardo, the other Santero who had disagreed with Ninoska, challenged the whole thing, but the CANF received assistance from other quarters. A week later, the London-based Cuban novelist, Guillermo Cabrera Infante, gave the story even further credence by asserting in the Madrid newspaper *El País* (February 22, 2000) that for many ‘Catholic believers’ in Miami, ‘Elián is the re-incarnation . . . of Elegguá.’ He went on to stress that Fidel Castro was a devoted believer of Santería. Thus, a highly recognized international figure added his voice to the Elián affair.³⁶

Who is Elegguá? In the Ifa religion of Nigeria, known as Santería in Cuba, Elegguá is a spirit force (called Orishas) who knows the past, the present and the future. If one ‘loses’ one’s Elegguá, then one has no future. Elegguá can manifest himself in one of 21 different guises; but he is always a trickster. According to believers, wherever Elegguá-child goes, confusion follows. Elegguá is the messenger and spirit force that ‘opens doors’ and announces new paths. This, however, was not the first time that Elegguá had been brought up by conservative Cubans in Miami. At the time that Mikhail Gorbachev visited Cuba on April 3, 1989, it was claimed that Fidel Castro had no choice but to follow the route of glasnost and perestroika because the Soviet leader had the ‘kiss of Elegguá’ on his forehead. But somehow, the Cuban revolutionary went his own way. When a few months later the Cuban

government charged two identical twins who were high officials in the Cuban government with drug trafficking and executed one of them, the story surfaced that Fidel Castro's days were numbered because one cannot separate ibeyes (identical twins). Of course, such interpretations depart from meanings and symbols understandable to a significant portion of the American public, and as long as the messages remained in Spanish, there was not much to worry about.

Political-Ideological Manipulation

What had been crude political-ideological manipulation by the CANF acquired a dangerous political dimension; it could be construed as irrational and nonsensical if it spilled over into the US mainstream; and it did. When the CANF decided to lobby Congress to grant Elián US citizenship, it took to Washington a delegation of luminaries. Among those who went was Juan Carlos Formell, a Cuban-American singer nominated for a Grammy. Formell testified before the US Senate Judiciary Committee, where he was expected to state his opposition to returning Elián to Cuba.

Finally, there is the most important aspect of this case—one that has been overlooked completely. It explains why the determination of Elián's future is the most important event in contemporary Cuban history—because it will affect Cuban history in the future. The soul of the Cuban people is represented and personified by its patron saints—Our Lady of Charity and her sister, Our Lady of Regla. Both are manifestations of the Virgin Mary, with the former ruling over fresh water and the latter ruling the sea. More folk legend than religious

doctrine, their influence has survived the destruction of established religion in Cuba. All those saved at sea are viewed by the Cuban people as specially blessed—and are referred to as “Yemaya Diordde”—a title that comes from our African heritage. This image, of the Holy Mother, suspended over the sea with a child in her arms is the central icon of the Cuban identity. There is no one in Cuba who does not share a deep reverence for this. Fidel Castro’s hysterical insistence on the return of this child is based on his knowledge of this icon, and his cruelly subtle ability of how to manipulate the Cuban people. It is a tremendous irony that Castro is admired by many as a figure of what is thought of as progressive, when in reality he runs his country with the use of witchcraft and superstition. If you, as rational people, find this idea hard to accept, I refer you to the Book of Matthew, chapter 2, verses 1 through 8, when Herod tells the three kings to bring the child to him after they have found him. As rational people, members of this committee might find this absurd, hut it is not absurd to the Cuban people.³⁷

Having control over Elián became more than a matter of custody; it was a struggle over who will rule Cuba. In Little Havana, Elián was considered to be the very source of power in Cuba, hence, the legal struggle, the mobilizations, and the unacknowledged, barely-seen-by-the-American-public esoteric attempt to remove Fidel Castro by means of Santería. The struggle for power in Cuba was simplified into the snatching of a child from his father. The exiled Cuban writer, Jesús Díaz, who now resides in Spain, notes that a people that depend on heroes, martyrs and miracles, is easily manipulated.³⁸ It is clear that the right-wing

leadership in Miami, in attributing mystical and sacred qualities to Elián for its own practical and instrumental reasons, was able to mobilize a population that usually is very supportive of preserving the family unit at all costs. It was one thing to discuss the issue of Elián as a regular child without a mother and a father waiting for him in Cuba; it was something else to send the ‘future liberator of Cuba’ to a ‘Cuban hell.’ Or worse yet, to be the instrument that would preserve Fidel Castro in power.

The Miracle Child

Elián as divine messenger resonates within a small but powerful sector of the Cuban-American community. In the eyes of such Cubans, history is shaped by non-human forces that intervene in day to day life, and who constantly provide us with ‘signs’ as to what those forces want or compel us to do. It could be an Orishas, a dolphin or the Virgin Mary appearing to Lázaro González on an oval mirror in his bedroom, or on a commercial bank’s ATM machine. But what is particularly revealing is that some Miami Cubans, including right-wing ones that play such an important part in shaping US policy toward Cuba, should have such a millenarian perspective on the future of Elián. And further that that perspective should become so intertwined with the future of Cuba. The miracle child message was acceptable because these Cubans have no real hope that their political agenda can be attained. They have waited for the demise of the revolution or at least the death of Fidel Castro. They have tried every tough measure possible, from exile invasion to the Helms-Burton Bill, but

nothing has worked. The return of Elián to his father, and his eventual departure for Cuba, just marks another exile failure.

On April 22, 2000, the Miami Jesuit priest, Florentino Azcoitia, in his *Radio Mambí* program (WAQI-AM 710), ‘Family Encounter’ (Encuentro de Familia), read from the Book of Isaiah. He noted that on the ‘land of the shadow of death’ a child of light would come. He declared that child to be little Elián, who, although he spoke little, had opened ‘camino’s’ (paths). Here the Catholic priest borrowed the images of Santería and declared, ‘A child was born to us that God wanted him to be what Jesus Christ was for the entire world. This child’s name is Elián.’ Within hours the house where Elián had stayed in Little Havana became a shrine and a sanctuary. At the front, by the lawn and on the fence, pilgrims left flowers, letters with messages, little dolls, crucifixes and many other objects. On April 24, Victor Betancourt, the most important Babalawo in Cuba, told Radio Havana Cuba that all Santería priests in the island had done the appropriate magical and religious offerings to have Elián with them. Miami, apparently, had failed to sway the other world to its side.³⁹

The Metaphysical Turn

The presentation of the Elián affair in metaphysical terms began when the US government decided to return the child to his father. Following the lead of the CANF, the Spanish language Miami media transformed a normal child into a divine figure. The survival of Elián at sea became the ‘first miracle,’ the ‘second miracle’ was to be staying in the US. But as the US government insisted but failed to act, the Miami family made the metaphysical

interpretation its own as well. So it became ever more difficult to give the child back. There were too many political and economic pressures as well. The rights of a father to his son got lost in the process. Besides, the US government seemed reluctant to act. The Cuban-American power structure saw itself as having an unusual and unique relation with the US; it was invincible. After all, anything that they had wanted from the US government was always given, including military intervention in the island. Now, for the first time in 41 years, the federal government denied the right wing the right to have a child from Castro's Cuba. Reynaldo Cue has noted that this caused a 'political and ideological trauma in a community that saw itself as all-powerful. As the crisis and rift with the US government and with the national media deepened, the metaphysical framework became even more important.'

Indeed, the search for a metaphysical explanation and solution happens in moments of profound crisis, when nothing else seems to work. It is in such a context that charismatic figures emerge. The millenarian expectation for a divine redeemer only reveals the political irrelevancy of the Miami right-wing Cubans. Elián was expected to accomplish what the US government, the US embargo, nor the CANF has been able to attain. Such is the irrational thinking of the most powerful lobby shaping US policy on Cuba: the militant, right wing, Miami-based CANF tried to transform a human tragedy into a seemingly supernatural sign to indicate that Fidel Castro no longer had the blessing of the orishas. It all relates to the magic of religion, whether Christianity, Santería, or other. And whenever a public figure's charismatic appeal is buttressed by religious legitimacy, whether in the case of Elián or Fidel,

the result is an emotional outpouring of support that has been known to defy rational discourse.

To accomplish exceptional deeds and conquer insurmountable challenges reinforces a prior conviction that the charismatic leader continues to have divine favor. In the case of Fidel Castro, his regime had extraordinary successes, among them: his security forces have dismantled over 400 assassination attempts against his life; under his leadership a handful of men seized power and have retained it for over 41 years; a very small country and very close to the US challenged and did away with American hegemony over the island; the revolutionaries allied with the USSR at the height of the cold war, provoked and even survived a major nuclear war confrontation; they unleashed the most radical and utopian social experiment in the western hemisphere; the country took on an activist role in foreign policy, and despite its small size, sent soldiers to Africa, the Middle East and Vietnam. But perhaps the most extraordinary of all Fidel's accomplishments, has been that Cuba managed to survive the demise of the Soviet bloc while everyone expected that the Revolution's 'final hour' had arrived. Instead, the revolutionaries stayed in power and opened the ranks of the Communist Party to religious believers. In a sense, then, Castro's 'mission' has been proven.

Endnotes:

19. The most detailed chronology of the events was written by Dr Carlos Alzugaray, professor at the Institute Superior de Relaciones Internacionales (Havana), 'Cronología del Caso Elián González (version corregida el 13—12—1999 a las 7:30 a m)', *Cuba-L Direct* (Albuquerque, New Mexico), December 13, 1999.
20. Jean Marbella, 'A Pawn in a Political Battle,' *Baltimore Sun*, January 3, 2000.
21. '5-year-old Found on Inner Tube 2 other Cuban Rafters Survive,' *Miami Herald*, November 25, 1999.
22. 'Miami's Passionate, Self-defeating Fight for Elián González,' *New Republic*, January 19, 2000.
23. State Department Briefing, Immigration and Naturalization Service Press Conference with INS Commissioner Doris Meissner, January 5, 2000.
24. 'Paralizada Miami,' *Diario las Americas* (Miami), January 7, 2000.
25. 'Divine Cuban Boy,' *Associated Press*, January 31, 2000.
26. José Mármol, 'El futuro de Elián,' *Nuevo Herald (Miami)*, January 11, 2000.
27. Javier del Pino, 'El milagro,' *El Pals* (Madrid), January 23, 2000.
28. Jean Marbella, 'A Pawn in a Political Battle,' *Baltimore Sun*, January 3, 2000.
29. 'Players Bet the House: Elián Digits Win Lottery,' *The Miami Herald*, November 4, 2000.
30. 'Elián es venerado por algunos exiliados cubanos de Miami,' *Associated Press*, January 29, 2000.
31. 'Divine Cuban Boy,' *Associated Press*, January 31, 2000.
32. Ann Louise Bardach, 'Cuba, the Cast of Characters ins Family Melodrama,' *Los Angeles Times*, January 30, 2000.
33. Jacob Bernstein, 'Their Eyes Were Watching Elegguá,' *Miami New Times*, April 20, 2000.
34. One version of the story can be found at: <http://webhome.globalserve.net/ernesto/polemica/santos.htm>
35. Roberto Céspedes, 'The Mystical Power of Eliari,' *New York Times On The Web*, April 4, 2000.
36. Guillermo Cabrera Infante, 'Santeros Link Castro's Future to Elián,' *Miami Herald*, April 17, 2000. This is the translation of the Spanish version that appeared in *El Pals* (Madrid).
37. Prepared Testimony of Juan Carlos Formell, Before the Senate Judiciary Committee, Washington, DC, March 1, 2000.
38. Jesús Díaz, 'Cuba rota,' *El Pals* (Madrid), January 31, 2000.
39. 'News on Cuba and Latin America,' *Radio Havana Cuba*, April 24, 2000.