

Liberia's Governance and Economic Management Assistance Programme – A New Model of Shared Sovereignty?

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Abstract

Relying on the example of the Governance and Economic Management Assistance Programme for Liberia (GEMAP) this article analyses whether and under which conditions a shared sovereignty arrangement can serve as a veritable tool of international involvement to create a sustainable (socio)economic development in a state emerging from conflict. The article outlines milestones and obstacles of the Liberian peace process and economic transformation after the signing of the Accra Peace Agreement in 2003. Focusing on (socio)economic and fiscal problems as a threat to the peace process the article analyses the GEMAP Agreement of 2005 which was negotiated between the National Transitional Government of Liberia (NTGL) and international donor organisations. The paper argues that GEMAP is an example of a far-reaching shared sovereignty arrangement that could serve as a (role)model for future co-operations between external donors and post-conflict countries. Furthermore, the article concludes that the continued endorsement of the Accra Peace Agreement and GEMAP by the United Nations Security Council can be considered as a supporting legitimisation of the shared sovereignty arrangement. The conclusion and outlook reflect GEMAP's potential role as a playbook for future shared sovereignty arrangements and the continuing need to carefully balance national sovereignty and international involvement in post-conflict situations.

I. Introduction

After a decade of conflict the warring parties in Liberia signed the Accra Peace Agreement in 2003.¹ The Accra Agreement, an illustrative example of an internationalised comprehensive peace agreement,² entailed *inter alia* a

¹ Peace Agreement between the Government of Liberia, the Liberians United for Reconciliation and Democracy, the Movement for Democracy in Liberia and the Political Parties, Accra/Ghana 18.8.2003, U.N.-Doc. S/2003/850, 29.8.2003 [Accra Agreement].

² C. Bell, Peace Agreements, Their Nature and Legal Status, AJIL 2 (2006), 373 et seq.; C. Bell, On the Law of Peace, Peace Agreements and the Lex Pacificatoria, 2008, 5 et seq.; C. Daase, Friedensabkommen zwischen staatlichen und nicht-staatlichen Parteien, Chimären zwischen Recht und Politik, in: J. Bäuml et al. (eds.), Akteure in Krieg und Frieden, 2009, 141 et seq.; C. Daase, The Redistribution of Resources in Internationalised Intra-State Peace Processes by Comprehensive Peace Agreements and Security Council Resolutions, GoJIL 3 (2011), 23 et seq.; the author follows the definition of the UN Peacemaker database, which states: "Comprehensive Agreements address the substance of the underlying issues of a dispute. Their conclusion is often marked by a handshake, signifying that a historic moment has ended a long-standing conflict. Comprehensive Agreements seek common ground between

body of provisions that regulated the good economic governance of resources and outlined Liberia's (socio)economic development during the transformation period. The implementation process of the agreement, like the overall peace process, was shaped by an intensive involvement of various international donor organisations.³ Facing continuous widespread corruption and financial mismanagement of public affairs, the *Governance and Economic Management Assistance Programme* (GEMAP) for Liberia was created in 2005.⁴ The GEMAP outlined a far-reaching co-operative arrangement between Liberia and international donor organisations to create a stable (socio)economic transformation of the post-conflict state.⁵ The way in which the international donor organisations interfered in the framework of GEMAP with national institutions constituted a new form of international involvement. It was criticised as a *robust approach to economic governance*⁶ and some authors even called GEMAP a *robust economic intervention*,⁷ established and implemented under coercion and economic pressure

the interests and needs of the parties to the conflict; they resolve the substantive issues in dispute and provide the necessary arrangements for implementing the agreement.”, <http://peacemaker.unlb.org>.

³ See below II. 1.; II. 2.

⁴ Governance and Economic Management Assistance Programme, Monrovia/Liberia 9.9.2005, <http://www.worldbank.org/> [GEMAP Agreement].

⁵ GEMAP Agreement (note 4), 1 et seq.; between 1990 and 2003, Liberia suffered through a civil war that decimated its people and institutions. The intra-state conflict was accompanied by the informalisation of the Liberian economy. In place of a national formal economy in the western liberal democratic sense, with an emphasis on industrial production and state-regulation, a new type of informal economy was established in which illegal exploitation of resources, illegal trade with resources and external flows, especially humanitarian assistance and remittances from abroad, were integrated into a local and regional economy based on asset transfer and extra-legal trading. The key to the control and termination of violence was inter alia the reconstruction of legitimate structures and procedures. Legitimacy in the given context can be understood as a consent and support for political institutions regulating the economic sector, as well as the notion that these institutions acquire their authority on the basis of operating within an agreed set of rules. After peace was restored, and as the country began its long process of recovery, the transitional government, the bilateral donors and multilateral lenders became alarmed by the corruption in governmental institutions, particularly the loss of revenues and exploding illegal procurements. In 2005/2006 GEMAP became the core of efforts to address these issues. GEMAP was created to assist the government of Liberia to create and institutionalise effective financial and asset management policies and procedures, contain corruption, and improve overall economic governance, see *M. Kaldor*, *New and Old Wars: Organized Violence in a Global Era*, 2nd ed. 2006, 109 et seq.; *S. R. Lyons*, *GEMAP: The New Anti-Corruption Plan for Liberia*, American Society of International Law Insights, 15.12.2005, www.asil.org; GEMAP-Overview, <http://gemap-liberia.org/>.

⁶ GEMAP Agreement (note 4), preamble, 1 et seq.

⁷ *R. Dawn/L. Bailey*, *Liberia's Governance and Economic Management Assistance Programme (GEMAP)*, A joint review by the Department of Peacekeeping Operations' Peacekeeping Best Practices Section and the World Bank's Fragile States Group, 5/2006, 5 et seq.,

of international donor organisations with the support and strong endorsement of the United Nations (UN) Security Council (SC), acting under Chapter VII.⁸

On the one hand, this criticism illustrates the very thin line on which international donor organisations and co-operations have to balance their involvement in the economic transformation during the peace process in a fragile state with its domestic and international sovereignty, especially with its formal and effective ownership of these processes of change.

On the other hand, GEMAP could be discussed as a model of a shared sovereignty arrangement between international donor organisations and Liberia to address economic governance as a crucial peacebuilding challenge. At the example of GEMAP this article will critically reflect whether and under which conditions a shared sovereignty arrangement could serve as a veritable tool of international involvement to create a sustainable (socio)economic development in a state emerging from conflict. It is assumed that shared sovereignty arrangements which follow the example of GEMAP could serve as an alternative to other instruments, such as interim administrations or trusteeships, which always carry with them the label of an extensive external intervention or accusation of colonialism.

II. The Liberian Peace Process and the Establishment of the Governance and Economic Management Assistance Programme (GEMAP)

What was the political and legal framework for the international donor involvement in Liberia? This section will provide an overview of the economic development and good economic governance as outlined by the Accra Agreement. Accordingly, the focus will shift to the GEMAP Agreement. As both the negotiation and implementation of the Accra Agreement and

20 et seq., <http://www.peacekeepingbestpractices.unlb.org>; see *J. Ford/K. Tienhaara*, Too Little, Too Late? International Oversight of Contract Negotiations in Post-conflict Liberia, *Int'l Peacekeeping* 17 (2010), 361 et seq.; *Comment*: This article cannot and will not cover discussions on (economic) Humanitarian Interventions or a general discussion of an (Economic) Responsibility to Protect or Right to Development, as this would go beyond the focus, which will be, as presented above, the function of shared-sovereignty arrangements and the involvement of the SC in this context.

⁸ Examples are inter alia: U.N.-Doc. S/RES/1532, 12.3.2004; U.N.-Doc. S/RES/1549, 17.6.2004; U.N.-Doc. S/RES/1607, 21.6.2005; U.N.-Doc. S/RES/1626, 9.9.2005; U.N.-Doc. S/RES/1647, 20.12.2005; U.N.-Doc. S/RES/1689, 20.6.2006; U.N.-Doc. S/RES/1731, 20.12.2006.

the GEMAP Agreement were accompanied by a strong involvement of the SC, relevant SC resolutions will be also considered.

1. Economic Development and Good Economic Governance as Outlined by the Accra Agreement

Following the signing of the Accra Peace Agreement between the Government of Liberia, the Liberians United for Reconciliation and Democracy (LURD), the Movement for Democracy in Liberia (MODEL) and other political parties in August 2003,⁹ the NTGL took office in October 2003¹⁰ until the first post-conflict elections were held in 2005/2006.¹¹

The Agreement explicitly addressed the role of economic development and good economic governance, setting out strong allocation mechanisms.¹² It furthermore emphasised the importance of the social and economic transformation for the peace process in Liberia as well as for the stability of the whole Mano River Union and the entire sub-region.¹³

It also provided for the establishment of a Governance Reform Commission (GRC), which was supposed to function as a vehicle for the promotion

⁹ In accordance with Art. I, *political parties* “[...] means Political Parties registered under the laws of the Republic of Liberia”, Accra Agreement, Art. I; the Accra Agreement was signed amongst others by the Government of the Republic of Liberia, LURD, MODEL and the Special Representative of the UN as well as representatives of the African Union (AU), Economic Community Of West African States (ECOWAS), the European Union (EU), Co-Chair for the International Contact Group on Liberia (ICGL) and the Ghanaian Co-Chair for the International Contact Group on Liberia, Art. I Accra Agreement (note 1).

¹⁰ The Accra Agreement envisioned that immediately upon the installation of the NTGL, all ministers, heads of autonomous agencies, heads of public corporations and state-owned enterprises would resign. The NTGL consisted of three branches, namely the National Transitional Legislative Assembly (NTLA), the Executive and the Judiciary, Arts XX, XXI, XXII, XXIII Accra Agreement (note 1).

¹¹ The first post-conflict presidential elections took place in a relatively secure environment in October and November 2005. Mrs. *Ellen Johnson-Sirleaf*, who won the run-off election on 8.11.2005, was inaugurated as President of Liberia on 16.1.2006.

¹² See Preamble, Arts XVI, XVII, XXIX, XXXIII, XXXV, XXXVI Accra Agreement (note 1); *Comment*: The comprehensive peace agreement included additional provisions on a ceasefire, Arts II-III Accra Agreement (note 1); the invitation of an international stabilization force, specifically a UN Mission, Art. IV Accra Agreement (note 1), and moreover called for the suspension of the Liberian constitution to allow for exceptional measures taken by the NTGL in order to cope with the post-conflict situation until the first elections, Art. XXXV Accra Agreement (note 1).

¹³ Preamble Accra Agreement (note 1).

of the principles of good economic governance.¹⁴ The Accra Agreement additionally entailed the establishment of a Contract and Monopolies Commission (CMC), mandated to monitor whether all public financial and budgetary commitments entered into by the NTGL were transparent, non-monopolistic and in accordance with the laws of Liberia and internationally accepted norms and standards of commercial practice.¹⁵ The agreement further called upon the UN, the Economic Community of West African States (ECOWAS), the African Union (AU), the International Monetary Fund (IMF), the World Bank, the African Development Bank and other international donor organisations to assign *international experts* for the purpose of *providing technical support and assistance* to the NTGL and the implementation of the Accra Agreement.¹⁶ In summary, the Accra Agreement constituted a comprehensive and highly regulative regime governing the (socio) economic development and reconstruction as well as the management of state contracts and the treatment of state funds with a strong involvement of international donor organisations.

¹⁴ The outlined mandate of the GRC was to review the existing Program for the Promotion of Good Governance in Liberia, especially the development of the public sector management reforms through assessment as well as reforms. Furthermore, the GRC was established to monitor and ensure transparency and accountability in governance of all government institutions and activities and to ensure a national and regional balance in appointments, see Art. XVI Accra Agreement (note 1).

¹⁵ The reports of the CMC were to be published, Art. XVII Accra Agreement (note 1).

¹⁶ “The Parties call on the United Nations, the ECOWAS, the AU, the International Monetary Fund, the World Bank, African Development Bank and other international institutions in a position to do so, to assign trained personnel and international experts for the purpose of providing technical support and assistance to the NTGL, especially for the functioning of its ministries and parastatals.”, Art. XXVI para. 7 Accra Agreement (note 1).

The parties also called on ECOWAS, in collaboration with the UN, AU, the EU and ICGL to set up the Implementation Monitoring Committee (IMC) to ensure the effective and faithful implementation of the agreement. The parties also agreed on the need for ECOWAS, in collaboration with the UN, the AU and the International Community, to organise periodic donor conferences for resource mobilisation for post-conflict rehabilitation and reconstruction in Liberia, see Art. XXIX para. 2 and para. 4 Accra Agreement (note 1); critical concerning the implementation: *J. Ford/K. Tienhaara*, Too Little, Too Late?, International Oversight of Contract Negotiations in Post-Conflict Liberia, Centre for International Governance and Justice, Regulatory Institutions Network, Australian National University 2009, Issues Paper 12.11.2009, <http://cijj.anu.edu.au>.

2. The Security Council and the Implementation of the Accra Agreement

To facilitate the implementation of the Accra Agreement, the contracting parties invited an international stabilisation force to support the peace process in its initial phase.¹⁷ With resolution 1509, the SC established the UN Mission in Liberia (UNMIL) acting under Chapter VII.¹⁸ The SC reaffirmed its support for the Accra Agreement and furthermore called upon the international community to consider assisting Liberia in its future economic development to achieve long-term stability and to improve the welfare of the Liberian people. However, the SC held that the main responsibility for implementing the obligations under the agreement was with the parties.¹⁹

Following the establishment of UNMIL, security within Liberia gradually improved. The NTGL also showed a strong commitment to the economic and social goals set out in the agreement, *inter alia* by establishing the Results Focused Transitional Framework (RFTF).²⁰ These initial steps of the NTGL received a positive response from the SC and international donor organisations.²¹ With resolution 1521 the SC, again acting under

¹⁷ “In view of the recent appointment of the UN Secretary-General’s Special Representative in Liberia, the Parties call for the urgent establishment of a consolidated United Nations Mission in Liberia that will have the resources to facilitate the implementation and coordination of the Political, Social, Economic and Security assistance to be extended under this Agreement”, Art. XXIX para. 1 Accra Agreement (note 1).

¹⁸ U.N.-Doc. S/RES/1509, 19.9.2003.

¹⁹ U.N.-Doc. S/RES/1509, 19.9.2003, paras. 3 et seq.

²⁰ Third progress report of the Secretary-General on the United Nations Mission in Liberia, U.N.-Doc. S/2004/430, 26.5.2004; African Forum and Network on Debt and Development, A Critical Assessment of Aid Management and Donor Harmonisation in Liberia, A Case Study, (without date), 9 et seq., www.afrodad.org; R. Dawn/L. Bailey (note 7), 16 et seq.; “Liberia’s Results-Focused Transition Framework identifies the full range of essential actions needed to safeguard the transition, including political and security actions, and for each priority outcome in a sector/cluster it identifies the critical results required in each time period. [...] The socio-economic situation in Liberia is still characterized by deprivation and a critical lack of the state to provide social protection, gainful employment and essential social services. The international community must continue to support targeted interventions for immediate and longer-term assistance for the sake of the Liberian people. However, the Transitional Government must commit to good governance, practices and expanding the absorptive capacity of the country to receive necessary financial aid support.”, An Operational Note on Transitional Results Matrices Using Results-Based Frameworks in Fragile States, United Nations Development Group, World Bank, 1/2005, 4, <http://www.worldbank.org/>.

²¹ U.N.-Doc. S/RES/1521, 22.12.2003; U.N.-Doc. S/RES/1549, 17.6.2004; Second Progress Report of the Secretary-General on the United Nations Mission in Liberia, U.N.-Doc. S/2004/229, 22.3.2004; R. Dawn/L. Bailey (note 7), 7.

Chapter VII, continued to endorse the Accra Agreement.²² At the same time it expressed its concerns about the corruption within state-institutions as well as the continued illegal exploitation of natural resources, such as diamonds and timber, and the illicit trade of these resources as a major source for the continuation of conflicts in the entire West African region.²³ The SC conjoined its following Chapter VII measures and sanctions directly to the fulfilment of obligations deriving from the Accra Agreement.²⁴

Notwithstanding the willingness of the NTGL to co-operate with the international donor organisations to implement the Accra Agreement and to secure the (socio)economic development, the *de facto* economic management did not improve, largely due to the shattered condition of Liberian state-institutions after a decade of intrastate power-struggle and the lack of efficient and effective internal co-operation within the NTGL.²⁵ In June 2005 the SC expressed its concerns about the limited progress made by the NTGL towards establishing transparent financial management systems.²⁶

The NTGL proved unable to stop economic and fiscal mismanagement and the widespread corruption.²⁷ Accordingly, the NTGL failed to establish effective post-conflict governance in the initial and crucial transformation period.²⁸ Following the lead of the SC, the international donor organisa-

²² U.N.-Doc. S/RES/1521, 22.12.2003, Part B, para. 2 (a)-(c).

²³ The SC also continuously emphasised the importance of controlling the diamond and timber exploitation by the NTGL and encouraged Liberia to join the *Kimberley Process* to establish transparent accounting and auditing mechanisms, U.N.-Doc. S/RES/1521, 22.12.2003, paras. 7 et seq.

²⁴ The SC “Expresses its readiness to terminate the measures imposed by paragraphs 2 (a) and (b) and 4 (a) above when the Council determines that the ceasefire in Liberia is being fully respected and maintained, disarmament, demobilization, reintegration, repatriation and restructuring of the security sector have been completed, the provisions of the Comprehensive Peace Agreement are being fully implemented, and significant progress has been made in establishing and maintaining stability in Liberia and the subregion [...]”, U.N.-Doc. S/RES/1521, 22.12.2003, Part B, para. 5.

²⁵ U.N.-Doc. S/RES/1521, 22.12.2003; U.N.-Doc. S/RES/1532, 12.3.2004; U.N.-Doc. S/RES/1549, 17.6.2004; U.N.-Doc. S/RES/1579, 21.12.2004; U.N.-Doc. S/RES/1607, 21.6.2005; *R. Dawn/L. Bailey* (note 7), 10.

²⁶ U.N.-Doc. S/RES/1607, 21.6.2005.

²⁷ The history of political power in Liberia is filled with examples of corruption, lack of financial transparency, and government theft of the country’s financial resources. This environment of corruption and theft was not in serious dispute and affected all aspects of society in Liberia. Although Liberia is a country rich of resources, the population lacked many basic services, including electricity and water, see also Seventh Progress Report of the Secretary-General on the United Nations Mission in Liberia, see U.N.-Doc. S/2005/391, 16.6.2005.

²⁸ The NTGL demonstrated promising performance on economic governance during its first months in office. In November 2003 the NTGL issued Executive Order No. 2, designating the Ministry of Finance as the central revenue authority, with all revenue to be deposited in the Central Bank. The NTGL also supported the previous request by the IMF to allow

tions expressed concerns regarding the effectiveness of the socio(economic) transformation process and ultimately the stability of the post-conflict situation and overall peace process.²⁹ Based on these findings, the SC endorsed the establishment of an economic governance action plan for Liberia to ensure prompt implementation of the Accra Agreement and to expedite the lifting of sanctions imposed by resolution 1521.³⁰ Acting under Chapter VII, the SC invited the NTGL to consider the possibility of commissioning independent external advice to increase investor confidence and to attract additional donor support.³¹

3. The Mandate of GEMAP

GEMAP was created as a direct response to these concerns.³² The key concepts of GEMAP were generated among international donor organisa-

audits of the Central Bank of Liberia, as well as key state owned revenue-generating enterprises such as the National Port Authority, Roberts International Airport, Bureau of Maritime Affairs, Liberia Petroleum Refining Company and the Forestry Development Authority. These steps were impressive signs considering the manifold challenges the NTGL faced, and some hoped that continued reforms would allow Liberia to progress to an IMF Staff Monitored Programme in 2005. Nevertheless, by early 2005, it became increasingly clear that such optimism was unfounded. While considerable progress had been made on the security and humanitarian fronts, the economic situation was stagnant or even regressive, for more donor report references see *M. Chessen/R. Krech*, Post-War Reconstruction in Liberia: The Governance and Economic Management Assistance Program (GEMAP), (without date), 5, www.mattlesnake.com/Gemap%20paper_files/Peace_Corr_Mar%2022%5B1%5D.pdf.

²⁹ U.N.-Doc. S/RES/1607, 21.6.2005; Sixth progress report of the Secretary-General on the United Nations Mission in Liberia, U.N.-Doc. S/2005/177, 17.3.2005; Seventh Progress Report of the Secretary-General on the United Nations Mission in Liberia, U.N.-Doc. S/2005/391, 16.6.2005; Eighth Progress Report of the Secretary-General on the United Nations Mission in Liberia, U.N.-Doc. S/2005/560, 1.9.2005; Ninth Progress Report of the Secretary-General on the United Nations Mission in Liberia, U.N.-Doc. S/2005/764, 7.12.2005; *R. Dawn/L. Bailey* (note 7), 8 et seq.

³⁰ U.N.-Doc. S/RES/1607, 21.6.2005.

³¹ U.N.-Doc. S/RES/1607, 21.6.2005.

³² In an interview, a Liberian financial expert who also worked for GEMAP, Professor *Tarpeh*, said that GEMAP was crafted after the ICGL and its development partners rated Liberia as a failed state. According to Professor *Tarpeh*, the international community borrowed a formula known as the radical intrusion into economic management drafted by the African Development Bank in 1992 to put Liberia's economy in order. He stated: "[...] the country went to Accra to try to instil certain semblance of peace here. I will tell you this much. In the realms of the international community [and] when a country is classified as a 'failed state' it is considered a property of the international community and so Liberia was considered as a property and responsibility of the international community," see *The Analyst*, Liberia: Gemap Has Succeeded, 30.9.2009, <http://allafrica.com/>.

tions, and guided by the development-assistance experiences in other, mainly African, countries. They were also based on a shared diagnosis of Liberia's problems and an analysis of the options for action by the international donor organisations.³³ Like the Accra Agreement, GEMAP was negotiated under the auspices of ECOWAS. The agreement was concluded between Liberia and the International Contact Group on Liberia (ICGL).³⁴ It established a comprehensive co-operation framework designed to improve financial and fiscal administration, transparency and accountability and it also went hand in hand with the implementation of the Accra Agreement.³⁵ The international partners and the Liberian governmental institutions sought to ensure that the government and its institutions would manage the funds effectively and transparently and would spend the collected budget on rebuilding the country's infrastructure through projects for roads as well as schools, the improvement of the health care system, electricity supply, and other public goods and services.³⁶

The main tool of GEMAP was the appointment of *international experts* who were positioned directly in the financial offices of several key governmental institutions.³⁷ These international experts were supposed to work within their respective institutions and in co-operation with the Liberian leadership to establish the economic standards set out in the GEMAP Agreement.³⁸ To achieve these standards, the international experts were equipped with a co-signature authority that actually gave them a veto-power.³⁹ As far as transparency in granting concessions, contracts, and licences for the exploitation of natural resources were concerned, Liberia followed its commitments in accordance with the GEMAP Agreement, and

³³ See: Sixth Progress Report of the Secretary-General on the United Nations Mission in Liberia, U.N.-Doc. S/2005/177, 17.3.2005; Seventh Progress Report of the Secretary-General on the United Nations Mission in Liberia, U.N.-Doc. S/2005/391, 16.6.2005; Eighth Progress Report of the Secretary-General on the United Nations Mission in Liberia, U.N.-Doc. S/2005/560, 01.9.2005; Ninth Progress Report of the Secretary-General on the United Nations Mission in Liberia, U.N.-Doc. S/2005/764, 7.12.2005; *R. Dawn/L. Bailey* (note 7), 5.

³⁴ The ICGL was composed of representatives of the UN, ECOWAS, the AU, the World Bank (WB), the United States of America (USA), Ghana, Nigeria, the United Kingdom (UK), Germany, Spain and Sweden. The GEMAP Agreement was finally signed by the Minister of Planning and Economic Affairs of the NTGL, the Minister of Justice and the Chairman of the NTGL and by two Co-Chairmen of the ICGL, GEMAP Agreement (note 4), 1.

³⁵ GEMAP Agreement (note 4), 2.

³⁶ See GEMAP Agreement (note 4).

³⁷ GEMAP Agreement (note 4), 2; the hiring procedures were left to internal mechanisms of the financing donor organisations, an often criticised procedure.

³⁸ GEMAP Agreement (note 4), 1 et seq.

³⁹ GEMAP Agreement (note 4), 1 et seq.

joined the Extractive Industries Transparency Initiative (EITI)⁴⁰ and the Kimberley Process.⁴¹

It must be pointed out that GEMAP did not lead to the establishment of a specific centralised funding mechanism, but rather the donors divided amongst themselves the responsibility for funding specific GEMAP tasks and fields. The donors understood their activities primarily in funding the various proposed international co-signature experts in different state-institutions as outlined in the GEMAP Agreement. They also indicated that the funding of GEMAP would be covered by the reallocation of existing resources and would not initially require or open new funding streams.⁴² The implementation of the GEMAP Agreement was to be reviewed annually and was to terminate after 36 months unless Liberia's debt status did not improve.⁴³

The GEMAP comprised the following six fields of donor activities: (1) financial management and accountability,⁴⁴ (2) improving budgeting and expenditure management,⁴⁵ (3) procurement and concession practices,⁴⁶ (4) establishing effective processes to control corruption, (5) capacity develop-

⁴⁰ For more information about the *Extractive Industries Transparency Initiative* (EITI) see <http://eiti.org/>.

⁴¹ For more information about the *Kimberly Process* see www.kimberleyprocess.com; GEMAP Agreement (note 4), 3 et seq.; The UN Security Council had also demanded that Liberia joins the *Kimberly Process* and the Extractive Industries Transparency Initiative, see inter alia U.N.-Doc. S/RES/1607, 21.6.2005.

⁴² R. Dawn/L. Bailey (note 7), 17 et seq.

⁴³ GEMAP Agreement (note 4), 6; R. Dawn/L. Bailey (note 7), 15.

⁴⁴ Under the heading *Financial Management and Accountability*, GEMAP aimed for protecting revenue flows from key revenue generating agencies and institutions as well as revenues stemming from taxes, custom duties and import levies through oversight over fiscal management practices and the establishment of escrow accounts for revenues generated by state-owned enterprises. The activities in this field included the above mentioned appointment of international experts with binding co-signature authority and the coordination of management contracts for state-owned enterprises, GEMAP Agreement (note 4), 2 et seq.

⁴⁵ *Improving Budgeting and Expenditure Management* sought to reinforce expenditure management through capacity building and increased coordination between different government agencies as well as changing business processes. Again, the appointment of international experts with binding co-signature authority formed part of the implementation of this programme-component, GEMAP Agreement (note 4), 3.

⁴⁶ *Procurement and Concession Practices* focused on changes in transparency requirements. A new procurement law was to strengthen transparency in procurement procedures. Moreover, the introduction of a basic e-procurement system accompanied by adequate coverage in the media was designed to achieve a system that requires mandatory listing, open competitive bidding and publication of results of public tenders, GEMAP Agreement (note 4), 3 et seq.; critically J. Ford/K. Tienhaara (note 7), 365 et seq.

ment and (6) support of key institutions.⁴⁷ The focus will be on the fourth field of GEMAP-activity, establishing effective processes to control corruption. In contrast to the other fields of GEMAP-activities it did not envision international experts with a co-signature authority. Early discussions between the ICGL and the other negotiating parties regarded judicial enforcement as a central element of a robust plan of action to address Liberia's governance problems and thought in terms of having judges from the sub-region to serve in Liberian courts.⁴⁸ This proposal encountered much criticism and continuous resistance by the NTGL, which was concerned that these plans would constitute a threat to Liberia's sovereignty.⁴⁹ Finally, the deployment of external judges or the involvement of external experts with co-signature authority in the judiciary was not included in the GEMAP Agreement. The final GEMAP Agreement entailed only an *advisory* role for international legal experts and not a co-signature authority in this field. It furthermore pointed out the necessity of establishing an independent, non-political, and effective Anti-Corruption Commission in accordance with internationally recognised guidelines,⁵⁰ including full prosecutorial powers. Nevertheless, the agreement provided relatively little detail on the concrete composition, function, authority and funding of the Anti-Corruption Commission.⁵¹ An independent prosecutor was to be appointed subject to a transparent vetting process.⁵² In addition, the agreement envisioned technical support from organisations on the sub-regional level to assist in the investigation of serious fraud, corruption and economic crimes.⁵³ The agreement asked for international legal experts' *support* and *advice* for the Liberian judiciary in the dispensation of justice, particularly in cases of corruption, in order to support the efforts of the government to revive the Liberian justice system.⁵⁴

The implementation of the standards and goals set out by the GEMAP Agreement was supervised by the Economic Governance Steering Commit-

⁴⁷ *Capacity Building and Key Institutions*. In this area, which includes central and local capacity building, the appointment of international experts with binding co-signature authority was again a key tool for the implementation of GEMAP-Standards and goals as well as a contract for an External Audit Agent for technical assistance to the Ministry of Finance and the Governance Reform Commission, GEMAP Agreement (note 4), 4 et seq.

⁴⁸ R. Dawn/L. Bailey (note 7), 10 et seq.

⁴⁹ R. Dawn/L. Bailey (note 7), 10 et seq.

⁵⁰ GEMAP Agreement (note 4), Annex II, 13.

⁵¹ GEMAP Agreement (note 4), Annex II, 13.

⁵² GEMAP Agreement (note 4), Annex II, 13.

⁵³ GEMAP Agreement (note 4), 4 et seq.

⁵⁴ GEMAP Agreement (note 4), Annex II, 13.

tee (EGSC); a form of self-enforcement mechanism.⁵⁵ The EGSC's main function was to monitor the implementation of the GEMAP Agreement⁵⁶ to ensure control, accountability, and transparency in the functioning elements of the GEMAP, such as the management of contracts; the EGSC was also intended to arbitrate all potential disagreements over financial decisions made in the Central Bank, ministries and agencies in the government, state owned enterprises, and to make its conclusions and recommendations in a transparent and public manner.⁵⁷ The elected head of state, as the chair, held the final authority to decide state matters in cases where arbitration within the EGSC did not succeed.⁵⁸ Next to securing the implementation of the GEMAP Agreement, the EGSC had to ensure that this process was synchronised with parallel capacity-building efforts to ensure an orderly exit of the international donor organisations from responsibilities and duties.⁵⁹

In sum, the GEMAP Agreement regulated, referring to key-points of the Accra Agreement, the redistribution of key resources for the reconstruction of the Liberian economy to the benefit of the Liberian people and the overall peace process by establishing an effective economic control and governance of Liberian state institutions by international donor organisations. It went beyond technical and fiscal co-operation and penetrated sensitive areas of domestic sovereignty.⁶⁰ This raises doubts whether Liberia in fact still had full sovereign ownership of its economic development and governance,

⁵⁵ The members of the EGSC were the head-of-state of Liberia, other government-officials, the heads of the missions and representations of the AU, the EU, ECOWAS, the International Monetary Fund (IMF), the UN, the USA, the WB, Ghana and Nigeria. The role and function of the EGSC was described in more detail in Annex III of the GEMAP Agreement, which noted that the EGSC was guiding and monitoring the implementation of the agreement and was chaired by the Liberian head of state, with an international representative as deputy chair. Furthermore, a representative of civil society was included in the EGSC. Other representatives of the Liberian civil society could have been invited as observers. The EGSC was supposed to meet fortnightly and its observations and decisions were to be made publicly available, GEMAP Agreement (note 4), 5, Annex III, 16.

⁵⁶ The International Crisis Group stated that GEMAP had to be subject to the strictest oversight, as international experts are not unfailingly trustworthy. The EGSC was a stronger monitoring mechanism for GEMAP than the failed Chad-Cameroon Pipeline project had. This monitoring mechanism was seen as a lesson learned measure and key-factor for the successful implementation of GEMAP, see International Crisis Group, *Liberia: Staying Focused*, 13.1.2006; *S. D. Krasner, Sharing Sovereignty: New Institutions for Collapsed and Failing States*, *International Security* 2 (2004), 111 et seq.

⁵⁷ GEMAP Agreement (note 4), Annex III, 16.

⁵⁸ GEMAP Agreement (note 4), Annex III, 16.

⁵⁹ GEMAP Agreement (note 4), Annex III, 16.

⁶⁰ An expert stated: "It should be Governance Economic Management [and Assistance] Program because when you put it that way, then it side-sweeps the issue of sovereignty. And that's how GEMAP was put in place.", quoted from *The Analyst* (note 32).

as outlined by the Accra and GEMAP Agreements, and consequently the peace process. It also seems that, next to the EGSC, the SC became a *de facto* external key-oversight-mechanism by its endorsement of GEMAP and its decision to remain regularly updated on the implementation of the GEMAP Agreement as part of the UN Secretariat's regular reporting on the situation in Liberia.⁶¹

4. The Security Council and GEMAP

The SC took note of the discussions regarding an economic governance action plan for Liberia designed to ensure prompt implementation of the Accra Agreement and to expedite the lifting of measures imposed by resolution 1521.⁶² The dominant role, which was played by the SC during the negotiation and implementation process of GEMAP became later especially visible in resolution 1607. With resolution 1607, the SC explicitly encouraged international donor organisations to become active and more involved in the economic transformation process.⁶³ The SC also expressed its concerns that the NTGL had taken no action to implement its obligations under 1532⁶⁴ and called upon the government to take such actions immediately, particularly through adopting the necessary domestic legislation, with technical support provided by other states and international donor organisations.⁶⁵

The establishment of GEMAP was endorsed by resolution 1626, which welcomed the agreement as a means to implement the Accra Agreement and to expedite the lifting of sanctions on Liberia.⁶⁶ The SC also requested the UN Secretary-General to include information on the progress of the

⁶¹ "4. Looks forward to the implementation of GEMAP by the NTGL and succeeding governments of Liberia in collaboration with their international partners, and requests the Secretary-General to include information on the progress of this implementation in his regular reports on UNMIL [...]", U.N.-Doc. S/RES/1626, 19.9.2005.

⁶² U.N.-Doc. S/RES/1607, 21.6.2005; S. R. Lyons (note 5).

⁶³ U.N.-Doc. S/RES/1607, 21.6.2005, para. 13.

⁶⁴ U.N.-Doc. S/RES/1532, 12.3.2004, para. 1.

⁶⁵ U.N.-Doc. S/RES/1607, 21.6.2005, para. 8.

⁶⁶ "Welcoming the signing by the National Transitional Government of Liberia (NTGL) and the International Contact Group of Liberia of the Governance and Economic Management Assistance Program (GEMAP) which is designed to ensure prompt implementation of the Comprehensive Peace Agreement and to expedite the lifting of measures imposed by resolution 1521 (2003) [...]", U.N.-Doc. S/RES/1626, 19.9.2005, preamble.

implementation of GEMAP in his regular reports on UNMIL⁶⁷ and later expressed its satisfaction with Liberia's progress in establishing transparent exploitation and financial mechanisms. As a result of this satisfactory review, the SC lifted its economic sanctions on Liberia step by step.⁶⁸

III. GEMAP as a New Form of Shared Sovereignty or Robust Economic Interference?

This leads directly to the discussion of how far international donor organisations were involved in the economic transformation of state institutions and whether Liberia entered into this arrangement voluntarily. Moreover, which implication did the support and endorsement of the SC have, especially when it comes to its sanctions acting under Chapter VII?

1. GEMAP as a New Form of Shared Sovereignty

GEMAP could be considered as a shared sovereignty arrangement between Liberia and international donor organisations, in which Liberia (at that time the NTGL) expressed its consent with the programme and therefore waived any arising sovereignty concerns and legitimised the foreign involvement. It could also be argued that the agreement still left essential administrative state functions with Liberia, as it was first and foremost of a technical nature, allowing external advisors to provide functional governance assistance and support limited to specified fields, especially by using their co-signature authority. To analyse the form, functions and limits of such a legal-political arrangement, this article will refer to elements of *Krasner's* concept of shared sovereignty. Although this is a political science approach to sovereignty, it allows to analyse GEMAP as a legalistic and political co-operation framework and as a particular form of interference by international donor organisations into the sovereign domains of Liberia. It offers different notions of sovereignty and criteria for legitimate shared sov-

⁶⁷ The SC furthermore states that it "Looks forward to the implementation of GEMAP by the NTGL and succeeding governments of Liberia in collaboration with their international partners, and requests the Secretary-General to include information on the progress of this implementation in his regular reports [...]", see U.N.-Doc S/RES/1626, 19.9.2005, para. 4 (operative part).

⁶⁸ U.N.-Doc. S/RES/1689, 20.6.2006; and also indirectly U.N.-Doc. S/RES/1731, 29.9.2006.

ereignty arrangements in weak states or states emerging from conflict. Taken as a basis to analyse GEMAP it allows to balance the external donor involvement and Liberia's sovereignty and to combine it with a following legal analysis.

Krasner uses the term sovereignty in different ways, referring to domestic political structures and control, to the exclusion of external authority, and to practices associated with international recognition.⁶⁹ He then categorises these three uses of sovereignty into *domestic sovereignty*, *Westphalian sovereignty* and *international legal sovereignty*.⁷⁰ *Domestic sovereignty* involves the nature of domestic authority structures and the ability of any such structure to exercise effective control over both trans-border flows and exclusively domestic activities. Nevertheless, in the context of the implementation of a peace agreement and negotiated power-sharing arrangements between state and non-state parties assigned authority does not necessarily guarantee *de facto* effective control. *International legal sovereignty* describes the status of a political and territorial entity in the current international system.⁷¹ To guarantee the stability of the international political and legal system, the *international sovereignty* of such an entity, even when it becomes a so-called weak or failed state, will rarely be challenged, and external donor involvement will usually seek to strengthen or re-establish it.⁷² *Westphalian sovereignty* is based on two pillars: *territoriality* and *autonomy*. States exist in specific territories. The basic rule of Westphalian sovereignty is the prohibition of *intervention* in the internal and autonomous affairs of other territorial entities.⁷³ All three notions of sovereignty are connected to the prohibition of intervention, which found its most important expression in Art. 2 IV and VII of the UN Charter.⁷⁴ Sovereignty and non-intervention in the internal matters of a state are so intertwined that sovereignty is easily viewed as the power of the state to regulate its domestic and international affairs without foreign interference.⁷⁵ This raises the question what consti-

⁶⁹ S. D. Krasner, Rethinking the Sovereign State Model, Rev. Int'l Stud. 1 (2001), 19 et seq.

⁷⁰ Krasner is going back to *Hobbes* and *Bodin*, see S. D. Krasner, Pervasive Not Perverse, Semi-Sovereigns as the Global Norm, Cornell Int'l L. J. 3 (1997), 653; S. D. Krasner (note 69), 17 et. seq.

⁷¹ S. D. Krasner (note 70), 655 et seq.

⁷² S. D. Krasner (note 70), 655 et seq.; S. D. Krasner, Sharing Sovereignty: New Institutions for Collapsed and Failing States, International Security 2 (2004), 86 et seq.

⁷³ S. D. Krasner (note 70), 656 et seq.; S. D. Krasner (note 69), 17 et seq.

⁷⁴ Charter of the United Nations, 24.10.1945, U.N.T.S. Vol. 1, XVI, Art. 2 IV, VII [UN Charter]; similar E. Duruïbgo, Pioneering Models for International Project Finance and Criminal Adjudication through Shared Sovereignty, in: J. Levitt (ed.), Africa, Mapping New Boundaries in International Law, 2008, 206.

⁷⁵ E. Duruïbgo (note 74), 206 et seq.

tutes an exception, which would allow to derogate from this prohibition? Is the involvement of international donor organisations in the (socio)economic transformation and good economic governance of post-conflict societies – such as GEMAP – a legitimate exception? *Krasner* assumes that no possible regulatory element of sovereignty as control, effectiveness, authority, non-intervention, recognition and territoriality has ever gone without challenge, especially not in the context of post-conflict countries.⁷⁶ He even claims that in some situations the limitation or even violation of sovereignty and non-intervention could have a functional and stabilising effect.⁷⁷ Was GEMAP an economic donor intervention leading to a functional and stabilising limitation of Liberia's sovereignty? *Krasner* points out that functionality and stability are connected with the question of whether a shared-sovereignty arrangement has been negotiated and implemented voluntarily by a sovereign state.⁷⁸ *Coercive* practices rarely provide long-term stable and functional solutions. External actors can coercively maintain stability in a particular situation for some period of time; however, the costs may outweigh the benefits of this coerced involvement.⁷⁹ *Coercion* and *force* seem to be critical components of intervention, especially in a situation in which states or international donor organisations interfere in matters of another state such as its political, economic and social systems.⁸⁰ Though, the nature of force is arguable. During the negotiation of the GEMAP Agreement, international donors threatened the NTGL with withdrawing aid or discontinuing exports. This is generally not considered to constitute a forcible act and therefore not an intervention.⁸¹ Nevertheless, so-called weaker states argue for a broader definition of what constitutes intervention or for adopting a more flexible understanding of what constitutes coercion and force.⁸² They take the concept of sovereignty as a defence mechanism against aggression and external interference in their domestic affairs.⁸³ When using a

⁷⁶ *S. D. Krasner* (note 69), 21 et seq.

⁷⁷ *S. D. Krasner* (note 70), 651 et seq.; *S. D. Krasner* (note 69), 23 et seq.

⁷⁸ The GEMAP Agreement is a legalistic framework but not an international treaty between Liberia and international organisations or states. This is why the author will not refer explicitly to the Vienna Convention on the Law of Treaties, 23.5.1969, U.N.T.S. Vol. 1155, 331; or the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, 21.3.1986, U.N.-Doc. A/CONF.129/15; see also *S. D. Krasner* (note 69), 18 et seq.

⁷⁹ *S. D. Krasner* (note 70), 652.

⁸⁰ *S. D. Krasner* (note 70), 657.

⁸¹ *S. D. Krasner* (note 70), 657.

⁸² *S. D. Krasner* (note 72), 96 et seq.

⁸³ This is reflected inter alia in regional legal frameworks as Art. 15, Charter of the Organization of American States, 30.4.1948, U.N.T.S. Vol. 119, 47; "No State may use or encour-

more expansive conceptualisation of intervention, coercion and force the sovereignty of a target state could already be violated when an external actor, a state or an international organisation, intrudes in different fields of domestic authority. Economic pressure and conditionality criteria of the IMF could serve as examples for such an intrusion, as they involve requirements that fundamentally alter domestic policies and institutional arrangements.⁸⁴

Furthermore, treating the three notions of sovereignty that were introduced above as a sovereignty-package, it will inevitably be violated by a far-reaching international involvement in post-conflict situations, especially when the involvement of the SC and its support of the involvement of international donor organisations goes beyond addressing a situation that constitutes an immediate threat to peace and security and which in fact frames the future economic and institutional system of the state.⁸⁵

As the example of Liberia illustrates, states in a post-conflict situation can sometimes have little control over policies or behaviour within or across their borders. Their domestic institutional structures are often fragile at best, sometimes comprised of no more than the head-of-state surrounded by a small circle of political and economic elites. Taxes are not collected, roads are not maintained, schools do not operate, and civil servants are not paid.⁸⁶ Nevertheless, Liberia maintained its formal *international legal sovereignty* and its formal *Westphalian sovereignty* was not compromised. As such, Liberia could enter any contractual arrangement it desired and it could choose to compromise its sovereignty, including making its domestic

age the use of coercive measures of an economic or political character in order to force the sovereign will of another State and obtain from it advantages of any kind”, Art. 16 Charter of the Organization of American States; or the Constitutive Act of the African Union, 11.7.2000, U.N.T.S. Vol. 2158, 33 et seq., Art. 4; for examples of Liberian experiences with positive and negative attempts of international involvement/intervention into domestic structures, see *N. Jähr*, Corruption and Reconstruction in Liberia, *Dissent*, <http://www.dissentmagazine.org>, for a broader and more general overview *S. D. Krasner* (note 70), 658.

⁸⁴ International donors could also condition the release of funds on the acceptance by the recipient state to use the service and expertise of external experts, as the GEMAP example demonstrates. Furthermore, if political pressure grows in donor countries over the misuse of foreign aid by a certain country, donor countries and donor organisations may insist on shared sovereignty arrangements before giving aid, see *E. Duruibgo* (note 74), 224 et seq.; *S. D. Krasner* (note 70), 658; *S. D. Krasner* (note 69), 18.

⁸⁵ *S. D. Krasner* (note 70), 659.

⁸⁶ International Crisis Group, Liberia: Staying Focused (note 56), International Crisis Group, Liberia: Resurrecting the Justice System, Africa Report Number 107, 6.4.2006; *M. Kaldor* (note 5); *S. D. Krasner* (note 70), 659.

behaviour and structures an object of temporary international scrutiny, especially in the context of sovereign and organisational lending.⁸⁷

A negotiated shared sovereignty arrangement between domestic and external actors to oversee and govern a few specific issues can be institutionalised through a treaty, accord, compact or some form of contractual arrangement. Ideally, the arrangement is of a clear temporary nature with its termination connected to the fulfilment of clearly specified conditions.⁸⁸ The type of shared sovereignty that is discussed at the example of GEMAP is one in which a state shares sovereign powers within its territory on specific issues with external institutions/organisations based on what Lyons tried to catch with the term *legalistic framework agreement*.⁸⁹ GEMAP was based on an agreement between the NTGL and the ICGL signed by the Minister of Planning and Economic Affairs, the Minister of Justice and the Chairman of the NTGL and the two Co-Chairman for the ICGL.⁹⁰ The various donor organisations, however, were not signing parties to the agreement, lessening the likelihood of forming an international treaty.⁹¹ It seems questionable whether the GEMAP Agreement was a legally-binding multilateral treaty between Liberia and the ICGL, as signing parties, and the international donor organisations. As it seems, GEMAP was neither an international treaty creating clear binding international legal obligation for the parties nor a purely political pledge. GEMAP could be seen as an innovative legal plan or, as it was called, a legalistic framework,⁹² a foreign aid and development agreement to ensure that the resources, the revenues generated by the resources, and the money donated to the country reached the population in need and contributed to the post-conflict development of Liberia.⁹³

⁸⁷ S. D. Krasner (note 70), 662; S. D. Krasner (note 69), 26, 29.

⁸⁸ Krasner states: "Shared sovereignty entities are created by a voluntary agreement between recognized political authorities and an external actor such as another state or a regional or international organisation. Such arrangements can be limited to specific issue areas like monetary policy or oil revenues. The legitimacy of shared-sovereignty institutions would depend at first on their voluntary negotiation by internationally recognized political authorities. Shared sovereignty is not something to be imposed [...]. Over the long term, shared sovereignty institutions would have to be self-enforcing; that is, neither the national nor the foreign signatory would have an incentive to defect from the arrangement. And this, in turn, would depend on the arrangement's effectiveness.", S. D. Krasner, *Building Democracy after Conflict, The Case For Shared Sovereignty*, *Journal of Democracy* 1 (2005), 70.

⁸⁹ Lyons first called it a "legalistic framework", S. R. Lyons (note 5); E. Duruïbgo (note 74), 208.

⁹⁰ GEMAP Agreement (note 4), 2.

⁹¹ S. R. Lyons (note 5).

⁹² S. R. Lyons (note 5).

⁹³ S. R. Lyons (note 5).

Additionally, the concepts behind GEMAP, especially the deployment of external experts with co-signature authority, originated long before its establishment. The Accra Agreement already called for the establishment of commissions to ensure transparency and accountability in all Liberian government institutions and in all financial and budgetary commitments entered into by the NTGL.⁹⁴ The Agreement also called for support by international experts and technical assistance.⁹⁵ The initial suggestion and draft of GEMAP envisioned placing foreign experts in key ministries, specifically the positioning of foreign judges in Liberian courts and the mandate or endorsement of the programme via a SC resolution. The NTGL rejected this draft. Some donor organisations also seemed uneasy with this far-reaching interference into Liberian institutions.⁹⁶ *Liberia's sovereignty* became a main focus during the negotiation process.⁹⁷ ECOWAS and sub-regional actors expressed their concerns that the co-signature authority of international experts established by donor organisations within an international framework-programme could become the new general international donor practice in the region, opening a gate for the establishment of *de facto* veto powers of international donor organisations within African states' executives, an alleviated but nevertheless strong involvement in the judiciary or even the automatic enhancement of UN peacekeeping missions by equipping them with mandates on these issues.⁹⁸ While other voices stated in retrospect that UN peace operation could have played a stronger role in ensuring that the opportunity provided by the transitional period was *inter alia* used to establish effective, efficient and equitable frameworks for the exploitation of natural resources.⁹⁹

⁹⁴ S. R. Lyons (note 5).

⁹⁵ S. R. Lyons (note 5).

⁹⁶ R. Dawn/L. Bailey (note 7), 11 et seq.

⁹⁷ R. Dawn/L. Bailey (note 7), 10 et seq. The NTGL inevitably capitalized on tensions between partners. It accused international actors of seeking to impose a *de facto* trusteeship on Liberia, launching an active press campaign that singled out the United Nations, the most prominent international presence in Liberia; for criticism and further descriptions of the negotiation process see *inter alia*: R. Dawn/L. Bailey (note 7), 11 et seq.; also S. Wibarta, *Peacebuilding: The new international focus on Africa*, in: *Armaments, Disarmament and International Security*, SIPRI Yearbook 2006, 149 et seq.

⁹⁸ R. Dawn/L. Bailey (note 7), 11 et seq.; S. R. Lyons (note 5).

⁹⁹ These authors furthermore find, that economic governance issues could be essential for the traditional core peace and security mandate of peace operations, but, in practice, the understanding of the political economy of the conflict and its legacy in the post-conflict period have not been manifested in mandates given to UN peace operations. In Liberia the UNMIL had a far-reaching mandate, although the Mission was rather limited in the area of natural resource governance to a role of providing assistance, which made the Mission a relatively

In the end, Liberia signed the GEMAP Agreement, which included in its final version compromises on all these controversial components, especially concerning the international involvement in the judiciary, which was, as outlined above, limited to experts with advisory functions selected by ECOWAS.¹⁰⁰ These arrangements and compromises appeased the critical voices on the negotiation table.

Any concerns that the NTGL did not have the legitimate authority to enter into a such an arrangement,¹⁰¹ next to the argument of coercion, were remedied by the fact that the later-elected President of Liberia, *Ellen Johnson Sirleaf*, pleaded for and admitted Liberia's responsibility for implementing GEMAP during her administration. The effective implementation of GEMAP began and was completed under her presidency.¹⁰²

small player in economic governance, both before and during GEMAP, *J. Ford/K. Tienhaara* (note 7), 362, 371.

¹⁰⁰ See GEMAP Agreement and the comprehensive overview in *R. Dawn/L. Bailey* (note 7), 11 et seq.

¹⁰¹ *S. R. Lyons* (note 5); *M. Chessen/R. Krech* (note 28), 3 et seq.; Representatives of the World Bank and European Union also welcomed the adoption of GEMAP but were quick to make assurances that the programme would not impinge the national sovereignty of Liberia. Proposals to bring foreign judges into Liberian courts were scrapped from the approved programme. GEMAP was endorsed with the signature of the chairman of the transitional government. The NTGL approved GEMAP, which was from there on valid for an initial period of 36 months. This also meant that the incoming elected government of Liberia had to abide by the terms of GEMAP for the first three years in office, see *Liberia: Anti-graft plan endorsed to cheers from world donors*, Monrovia, 15.9.2005, <http://www.irinnews.org/>; an observer said: "The fact that the government is corrupt and the chairman signed the document anyway is an indication of the gravity of the problem [...]", asked whether he thought that it was problematic that GEMAP was agreed to by an unelected government, he replied: "All parties agreed that GEMAP was a response to threats to the Comprehensive Peace Agreement's implementation [...]. Weaknesses in economic governance corruption, graft-risk undermining [its] objective [...] the preservation of peace and reconstruction. Thus signing the GEMAP clearly fell under the rule of the transitional government as consistent with the CPA [Comprehensive Peace Agreement].", in *N. Jabr* (note 83).

¹⁰² "If we are to achieve our development and anti-corruption goals, we must welcome and embrace the Governance and Economic Management Program (GEMAP) which the National Transitional Government of Liberia, working with our international partners, has formulated to deal with the serious economic and financial management deficiencies in our country. We accept and will enforce the terms of GEMAP, recognizing the important assistance which it is expected to provide during the early years of our Government. More importantly, we will ensure competence and integrity in the management of our own resources and insist on an integrated capacity building initiative so as to render GEMAP non-applicable in a reasonable period of time.", Inaugural Address of H.E. *Ellen Johnson Sirleaf*, 16.1.2006; see also *A. Subrke/T. Wimpelmann/M. Dawes*, *Peace Processes and Statebuilding: Economic and Institutional Provisions of Peace Agreements*, World Bank and UNDP, Chr. Michelsen Institute, Bergen (Norway) 2006-2007, 48 et seq.

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In conclusion, although it did not qualify as an international treaty, the GEMAP Agreement created a limited shared-sovereignty arrangement between the NTGL, the ICGL, and international donor organisations, supported and endorsed by the SC and finally implemented by and with the later-elected President of Liberia.¹⁰³ The agreement outlined a sector-focused model of shared sovereignty, a model, which temporarily affected the domestic sovereignty but not the Westphalian and international sovereignty of Liberia and left the formal ownership of the overall peace process with Liberia. Yet, it has to be admitted that the NTGL had to negotiate the agreement under high political and economic pressure from international donor organisations and the SC. The NTGL argued that this was tantamount to the imposition of GEMAP and that it would mean there could be no clear exit from the agreement.¹⁰⁴ In other words, the NTGL had no other choice than to negotiate an agreement. Nevertheless, it has to be acknowledged that neither of the negotiation parties reached their maximal claims. Altogether this indicates that the agreement was negotiated on the fringe of coercion in the very fragile situation of the Liberian peace process in a limbo between creating legal obligations and crafting a strong political pledge.¹⁰⁵

2. The UN Security Council and Economic Development in Post-Conflict Situations

Which role did the support and endorsement of GEMAP by the SC play from a legal perspective? On the one hand it could be argued that the placing of foreign experts into domestic governmental institutions also created a robust economic interference into Liberia's sovereignty based on Chapter VII authorisation by the SC. On the other hand, it could be claimed that the SC simply *welcomed* and *endorsed* GEMAP but did not impose enforcement measures on the parties, especially Liberia. The SC supported the process by welcoming and endorsing the signing and implementation of GEMAP on its own initiative and by the invitation of the international donor organisations. Acting under its Chapter VII powers, the SC extended the mandate of UNMIL and established a link between the implementation

¹⁰³ S. R. Lyons (note 5).

¹⁰⁴ R. Dawn/L. Bailey (note 7), 13.

¹⁰⁵ C. Lipson, Why are Some International Agreements Informal?, *International Organization* 4 (1991), 495 et seq.

of the GEMAP Agreement and its sanctions based on Chapter VII.¹⁰⁶ GEMAP could be perceived as a new approach and new form of international involvement, lying between two legal-political options: the installation of a temporary international administration based on a Chapter VII mandate by a SC resolution and weaker forms of external involvement such as capacity building measures, which, in some cases, have proven ineffective due to a lack of commitment or a lack of effective implementation power by a post-conflict government.

This new development, exemplified by the GEMAP, raises the question as to whether far-reaching economic interference of international donor organisations into a state's sovereignty – especially into key-state institutions of the executive power – can be based on, or endorsed by the SC relying on its Chapter VII authority.

a) Addressing Post-Conflict Situations with Economic Sanctions

Generally, Art. 2 VII of the UN Charter rejects interventions of the UN into domestic matters of its member states, but it points out that this principle shall not prejudice the application of enforcement measures under Chapter VII in case of a threat to peace.¹⁰⁷ The SC adopts economic sanctions under Art. 41 of the UN Charter responding to a threat to international peace and security. Measures taken under Art. 41 include traditional economic tools of the SC, such as trade embargos, which have been used numerous times to change the behaviour of targeted states.¹⁰⁸ Over the past decades, the SC established a practice to take action with respect not only to interstate but also intrastate conflicts, like the conflict in Liberia.¹⁰⁹ The SC

¹⁰⁶ “[...] to expedite the lifting of measures imposed by resolution 1521 (2003) [...]”, U.N.-Doc. S/RES/1625, 14.9.2005, preamble para. 6.

¹⁰⁷ Art. 2 VII UN Charter; S. R. Lyons (note 5).

¹⁰⁸ See an overview analysis K. Boon, Coining a New Jurisdiction: The Security Council as Economic Peacekeeper, Vand. J. Transnat'l L. 4 (2008), 1001 et seq.

¹⁰⁹ See in general: J. A. Frowein/N. Krisch, in: B. Simma (ed.), Chapter VII. Action with respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression, UN Charta Commentary, 704 para. 8; U.N.-Doc. S/RES/733, 23.1.1992 (Somalia), U.N.-Doc. S/RES/918, 17.5.1994 (Rwanda); SC Resolutions addressing Mano River Union countries, intra-state conflicts and regional dimension U.N.-Doc. S/RES/1231, 11.3.1998; U.N.-Doc. S/RES/1346, 30.3.2001; U.N.-Doc. S/RES/1400, 28.3.2002; U.N.-Doc. S/RES/1436, 24.9.2002; U.N.-Doc. S/RES/1446, 4.12.2002; U.N.-Doc. S/RES/1470, 28.3.2003; U.N.-Doc. S/RES/1521, 22.12.2003; the limitation of the paper does not allow a general discussion of the spectrum of questions which could be raised in this context, such as: What makes a SC-Resolution binding and who can be bound by a SC-Resolution? And directly connected to that: How can SC-Resolutions be interpreted? And also can the SC exercise quasi-judicial functions? This paper

has also several times based economic measures, respectively economic sanctions, on Chapter VII, while the states have either agreed to and/or even asked for these measures.¹¹⁰ This implies on the one hand that economic measures were endowed with greater legitimacy based on the state consent; but on the other hand, as sanctions based on Chapter VII, these measures became independent from the continuation of the state's consent. This might also explain the persistent reluctance of the NTGL to accept any involvement of the SC at the beginning of the negotiation process.¹¹¹

After all, the SC seems to apply a broader interpretation of what is peace than the pure absence of war. The consequences of intrastate conflicts provoked the SC to depart from the traditional view that a relevant threat to peace and security can only be created by international conflicts. The SC takes economic measures to address these conflict situations which are a threat to peace and security, but it seems questionable whether economic instability in a post-conflict situation or in a weak state alone could amount to a threat to peace in accordance with Art. 39 of the UN Charter and could trigger Chapter VII measures.¹¹²

follows; *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, ICJ Reports 1971, 53 para. 114; recently confirmed and referred to in *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, 22 July 2010, General List No. 141, 34 para. 94; Security Council Report, Special Research Report, Security Council Action Under Chapter VII: Myths and Realities, No. 1, 23.6.2008, www.securitycouncilreport.org; M. C. Wood, The UN Security Council and International Law, Hersch Lauterpacht Memorial Lectures, held at the Lauterpacht Centre for International Law, University of Cambridge, 7.-9.11.2006, www.lcil.cam.ac.uk, M. C. Wood, The Interpretation of Security Council Resolutions, in: Max Planck UNYB 9 (2005), 73 et seq.

¹¹⁰ J. A. Frowein/N. Krisch (note 109), 704 margin number 15. *Comment*: Economic causes of conflict and the importance of socio-economic reconstruction and development in post-conflict societies have started to attract more and more the attention of the UN and the SC. Measures taken by the SC included sanctions that targeted whole economic sectors through trade embargos and measures to restrict illicit financing.

¹¹¹ See J. A. Frowein/N. Krisch (note 109), 704 para. 15.

¹¹² This view is also underlined and adopted by the United Nations, for instance, in a statement of the President of the SC in 1992 according to which "[t]he absence of war and military conflict of States does not in itself ensure international peace and security. The non-military sources of instability in the economic, social, humanitarian and ecological fields have become threats to peace and security. The United Nations membership as a whole, working through the appropriate bodies, needs to give the highest priority to the solution of these matters.", Note by the President of the Security Council delivered to the Security Council, U.N.-Doc. S/23500, 1.1.1992, 3.

b) Economic Instability as a Threat to Peace and Security?

Even if one recognises that the concept of *peace* has a wider meaning and that the absence of war and military conflict does not automatically ensure international peace and security, it has to be stressed that the SC's functions under Chapter VII are closely linked to military conflicts and situations involving comparable levels of violence. Although the SC enjoys a considerable margin of interpretation in determining what constitutes a threat to peace, there are no examples in which a SC resolution referred exclusively to an economic situation as a threat to peace in accordance with Art. 39 UN-Charter.¹¹³ In the case of Liberia, it could be observed that despite the internal conflict formally had ended with the signing of the Accra Agreement, the SC continued to consider that the situation amounted to a threat to peace and security, thus indicating that its decision was based on the continuous presence of at least latent violence. Subsequent resolutions, however, solely refer to the overall situation in Liberia.¹¹⁴ As the security in the country gradually improved, the severe economic problems may have constituted a contributing factor to the repeated determination of a threat to peace and security, but they did not form the single reason.¹¹⁵

The support and endorsement of GEMAP by the SC can be considered a strong legal-political measure which contributed to a certain compliance pull with the outlined framework, especially for the NTGL and the later elected government. The SC's evolving role as legal-political and economic peacekeeper is visible and significant, as economic conditions are linked to international peace and security, and the SC, as the organ of the UN with executive functions, will sooner or later become involved in these processes. In the past decade, the economic dimension of conflict and reconstruction has become central to the SC's engagement under Chapter VII. As the example of GEMAP shows, the support and endorsement as well as the over-

¹¹³ J. A. Frowein/N. Krisch (note 109), 719 para. 5; K. Boon (note 108), 1020 et seq.

¹¹⁴ See e.g. U.N.-Doc. S/RES/1626, 19.9.2005.

¹¹⁵ In S/RES/1532 the SC takes the strongest reference to the economic situation of Liberia, in "[...] Recognizing the negative impact on Liberia of the transfer abroad of misappropriated funds and assets and the need for the international community to ensure as soon as possible, in accordance with paragraph 6 below, the return of such funds and assets to Liberia, / Also expressing concern that former President Taylor, in collaboration with others still closely associated with him, continues to exercise control over and to have access to such misappropriated funds and property, with which he and his associates are able to engage in activities that undermine peace and stability in Liberia and the region, / Determining that this situation constitutes a threat to international peace and security in West Africa, in particular to the peace process in Liberia [...]", U.N.-Doc. S/RES/1532, 12.3.2004.

all involvement of the SC in the implementation of the Accra Agreement and of GEMAP was additionally connected with a legitimising function.

3. The Termination of GEMAP and the Continued Involvement of International Donor Organisations and the UN

Is GEMAP a success story? The Liberian Government, relevant international donor organisations and other observers consider GEMAP as such a story.¹¹⁶ In 2007, the board of the World Bank decided to clear Liberia's outstanding arrears. In the same year the IMF, secured sufficient financing pledges from member states to allow debt relief for Liberia. In the same year Liberia was declared to be an eligible candidate for the Peacebuilding Fund and a Priority Plan was formulated.¹¹⁷ By the end of October 2009 four state-owned enterprises and agencies *graduated* from GEMAP. The co-signature authority of the GEMAP's internationally-recruited financial controllers ended in the same month.¹¹⁸

In 2005, it was assumed that "The effectiveness and legitimacy of the plan over the next three years will not only affect Liberia, but could reinforce the

¹¹⁶ The Analyst, Liberia: GEMAP Has Succeeded, 30.9.2009, <http://allafrica.com/>; in April 2008, *Antoinette Sayeh*, then Minister of Finance for Liberia, praised GEMAP for helping to improve transparency and performance of state-run enterprises, see *T. Woods/R. Bate*, Stimulus for Zimbabwe, 27.3.2009, www.american.com; for a comprehensive overview of the programme and lessons learned see: Is Liberia's Governance and Economic Management Assistance Program a "Necessary Intrusion?", USIP, 5/2008, www.usip.org; see also *J. Ford/K. Tienbaara* (note 16).

¹¹⁷ For more information see www.unpbf.org.

¹¹⁸ *Forest Development Authority* (PDA), completed June 2009; *Roberts International Airport* (RIA), September 2009 (increased net income from \$0.5 mil. loss in 2005 to nearly \$1.0 mil. gain in 2008); *Liberia Petroleum Refinery Corporation* (LPRC), October 2009 (approaches \$10 mil. gain, in 2005/2006 it has been depending on bank overdrafts); *National Port Authority* (NPA), October 2009 (increased revenues from \$9.6 mil in 2004 to \$19.7 mil. in 2008); USAID and other organisations will continue technical assistance, the USAID Mission Director: "Openly counting how much government money is collected, tracking how it is spent, and preventing misuse by officials or cheating by taxpayers, are central to good governance, to earning the public trust, and to attracting foreign and local private investors to lift Liberia. GEMAP helps to protect the money that belongs to all Liberia. Making economic and social progress, and keeping the peace, is directly tied to Liberia's public integrity." USAID-funded GEMAP assistance include: Ministry of Finance, General Services Agency, Ministry of Lands, Mines, and Energy, State-Owned Enterprises, Roberts International Airport, National Port Authority, Forestry Development Authority, Liberia Petroleum Refining Corporation, Monrovia City Corporation, Ministry of Public Works, Liberian Institute of Public Administration, Liberia Anti-Corruption Commission, Ministry of Planning, see for overviews USAID on GEMAP, <http://liberia.usaid.gov/>; and <http://gemap-liberia.org>.

international donor community's commitment to transparency and good governance".¹¹⁹ This prognosis proved true. GEMAP is widely considered as a model for future good economic governance projects and post-conflict economic development and reconstruction. It is used as a counterexample to the failed Chad-Cameroon-Pipeline project and as a possible model for a governance programme in Zimbabwe.¹²⁰ There is a good reason to believe that GEMAP could serve as a model that would expand the range of instruments available to international donor organisations in post-conflict situations which are seeking to erect or run administrative structures during a transitional period and that also affect neighbouring countries and entire regions.¹²¹

IV. Conclusion and Outlook

Can a shared sovereignty arrangement, which is also supported and endorsed by the SC, serve as a veritable tool for improving governance, democracy and accountability in a state emerging out of conflict?

The Accra Agreement outlined the structure for a political transition, it addressed the immediate conflict situation and strove to balance the negative short-term effects in the area of public administration and economic reform. When the established NTGL proved unable to implement standards of good economic governance, the international donors and the UN had other instruments at their disposal to press the case for better governance and natural resource management. These included the UN sanctions regime and the GEMAP. The GEMAP, while imposed on a reluctant transitional government, proved to be effective when backed by the newly elected government, which embraced the arrangement as a useful tool of statecraft for the administration.¹²² From the example of GEMAP, the generalised conclusion can be drawn that there is a need to balance local needs with international responsibilities and standard setting in order to successfully establish good economic governance and create sustainable (socio)economic development in a post-conflict situation. The major components of GEMAP were, *inter alia*, to embed external experts in institutions, specifically ex-

¹¹⁹ Quoted from S. R. Lyons (note 5).

¹²⁰ T. Woods/R. Bate (note 116).

¹²¹ E. Duruigbo (note 74), 224; International Crisis Group, Liberia: Staying Focused (note 56); S. D. Krasner (note 72); S. D. Krasner (note 70); S. R. Lyons (note 5).

¹²² A. Subrke/T. Wimpelmann/M. Dawes, Peace Processes and Statebuilding: Economic and Institutional Provisions of Peace Agreements, World Bank and UNDP, Chr. Michelsen Institute, Bergen (Norway) 2006-2007, 49.

perts equipped with co-signature authority, experts with access to board management, to create partnership structures between host government and international donor organisations, and to assess policies, procedures, laws, and regulations as well as organisational efficiency. Every model of shared sovereignty which is formed based on the example of GEMAP needs to be carefully balanced between external involvement and domestic sovereignty; this must be done by designing clear provisions and regulations that still leave enough room for the necessary flexibility to adapt the designed framework to cope with the highly dynamic context of a peace process. One key challenge of a shared-sovereignty arrangement is to include international standards, conditions, and benchmarks and to adapt or apply them to local conditions, whilst balancing this external involvement with the formal and *de facto* ownership of the state over its (socio)economic development and the peace process. In the case of GEMAP, the formal ownership stayed with the state. The paper, however, raised serious concerns whether Liberia in fact had full and effective ownership of the transformation process during the implementation of GEMAP. Nevertheless, shared sovereignty arrangements, which follow the example of GEMAP, could serve as an alternative to other instruments, such as trusteeships or mandates that are even more intrusive.¹²³ Additionally, to be truly effective, shared sovereignty arrangements need to be more robust than for instance the failed Chad-Cameroon Pipeline arrangement and therefore must involve encroachments on state sovereignty and strong self-enforcement mechanisms, such as the concept of co-signature and bodies like the ESGC.

Whether, in the long term, governments will more readily accept constraints on their sovereign power for a sustainable economic and socio-economic transformation in a post-conflict situation and whether far-reaching shared-sovereignty arrangements like GEMAP will become a practice

¹²³ Nevertheless, GEMAP was viewed with the constant suspicion that it was trying to create a new form of colonialism, especially in the media, and the debates about the legitimacy of external supervision or oversight are often premised on sensitivities to local ownership or sovereignty that do not adequately account for all the interests of the wider population in post-conflict societies. Once it is acknowledged that local elites do not necessarily represent the people and their interests, the case for greater external oversight of contract negotiations during transitions is harder to attack by reference to convenient arguments about paternalist, neo-colonial conduct on the part of external peace builders. Thus, while for political acceptability reasons the reality of external supervision is often masked behind the language of local ownership, the Liberian example reveals that along with the inherent difficulty of supervision and the resistance of certain local actors, the key problem may have been extensive reference to discourses of interference and local ownership of processes. There are considerable political challenges involved in determining when benign administration becomes neo-colonialism, see J. Ford/K. Tienhaar (note 16); J. Ford/K. Tienhaar (note 7), 368.

can hardly be answered fully or in the affirmative at this point. Nonetheless, this case study identified some key questions and problems that will continuously arise in this context and the need to balance the advantages and disadvantages of far-reaching international donor involvement.

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