THE 3RD HAGUE PEACE CONFERENCE

THE HAGUE
UNIVERSITY OF
APPLIED SCIENCES

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Joris Voorhoeve, Editor

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The Hague University of Applied Sciences, 2015

"Modern man suffers from a kind of poverty of the spirit,
which stands in glaring contrast to his scientific and technological abundance.
We've learned to fly the skies like birds, we've learned to swim the seas like fish,
and yet we haven't learned to walk the earth as brothers and sisters"

Dr. Martin Luther King, 1968

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REPORT ON THE 3RD HAGUE PEACE CONFERENCE

THE 3RD HAGUE PEACE CONFERENCE was originally scheduled for 1915, but World War I broke out in 1914 and the conference did not convene. One hundred years later, The Hague University of Applied Sciences (THUAS) demonstrated its commitment to peace and justice by ensuring that the 3rd Hague Peace Conference took place. This time not by emissaries of states, but by representatives of the new generation: students in the 21st century.

Seventy-four students from 33 countries attended the event.

WEDNESDAY
JULY 1

Morning programme

July 1, 2015, was a perfect summer day, and the warmest of the season so far. The Hague's Peace Palace, set in beautifully maintained gardens, looked its best. Inside, the scene was set for The 3rd Hague Peace Conference. The Peace Palace, which opened in 1913, was one of three venues hosting the conference.

At 10am, **Steven van Hoogstraten**, Director of the Carnegie Foundation and the Peace Palace, spoke a word of welcome. He discussed the Palace, the first two peace conferences and other efforts to prevent war. He went on to deliver the lecture prepared by **Ingrid van Engelshoven**, Deputy Mayor of The Hague. The Hague is the seat of many international organizations, such as the International Court of Justice and the International Criminal Court, and is often referred to as the Legal capital of the United Nations (UN) system.

The next speaker was **Ton Koene**, a professional photographer and World Press Photo winner who applies his experience of working for Médecins sans Frontières in his work about humanitarian issues relating to war. In perfect sync with his explanations, he shared images of sorrow, injury and frustration captured throughout Africa and Asia. "How realistic is it to strive for a world without war?" he asked. "The first victim of war is morality. In war you either flee or fight for your life."

Koen addressed the disintegration of war-torn societies and the abuse of religion by the power-hungry. His pictures portrayed young men recruited by IS, hanging around at street corners and in teahouses. "Often it's the frustration of enforced idleness that drives these men to war. The conflict offers them work, a sense of belonging and a way out of the hopelessness of their existence. Showing a portrait of himself posing as a heavily armed fighter, he wondered: "What would I have done if I'd been born in a different place?"

The presentation was followed by a spirited discussion, which set a trend that ran through the whole conference: the audience raised more questions than the speakers had time to answer. To one of the more personal questions: "Have you lost hope?" Koene replied: "I hate humanity, but I love people."

During the coffee break, some of the foreign diplomats in attendance explained why they had come. “Because of the combination of education and international law,” said Adia Sakiqi-Vandecasteele, Albania’s Ambassador to the Netherlands. Dr. Kajal Bhat, First Secretary at the Embassy of India, called the insights into global issues enlightening.

Improving the Security Council’s decision-making process was the subject chosen by **Nico Schrijver**, Scientific Director for International Legal Studies at Leiden University. The UN, he said, is far behind in repositioning itself as a general justice organization: “We need new ideas – yours too.” After criticizing the UN’s effectiveness, transparency and global governance in general, he pointed to the role of civil society and the business sector. He also discussed models to reorganize the UN, proposed by Kofi Annan in 2004-’05. Looking ahead, he suggested several possible guardians of public interest.

An African participant brought up the support from Western countries for some dictators and China’s role in Africa. Schrijver’s conclusion: “The key word is dialogue.”

Afternoon programme

After lunch at the Peace Palace the programme shifted to THUAS, hosted by former Director of Lectorates and Research, Ineke van der Meule. There were **three different workshops** on the agenda, each of which was repeated twice, so that the participants could attend them all.

Rajash Rawal, newly appointed as Dean at the Faculty of Management and Organization, gave the students advice on ways of sharpening their **essay writing skills**. The most common mistake, he said, was that they spend too much time sourcing information and not enough analyzing the subject matter and developing original thoughts. Rawal was struck by the students’ drive, targeted questions and eagerness to learn. “They asked for tips on how to use their own minds and ideas, which is promising for the future since old ideas got us into the messes we are in now.”

Lecturers Vladimir Ignjatovic and Maria Vanlaeken-Kester took the workshop on **how to deliver an excellent pitch**. Ignjatovic identified voice power, body language and eye contact as key aspects of a successful pitch.

The third workshop, on **how to make peace go viral**, related directly to the theme of the conference. Social Media Coordinator David Suswa started by explaining what ‘going viral’ means and how it is achieved. He emphasized the importance of picking the right moment, triggering positive emotions and choosing the most effective communication channel – 82 percent of content going viral comes from Facebook. One of his examples was #notinmyname, which achieved huge exposure. Suswa also suggested various ways of successfully using calls to action.

At the end of the first conference day, a barbecue dinner awaited the students.

THURSDAY
JULY 2

Morning programme

The host for the second day of the conference was Henno Theisens, THUAS' Professor of Public Governance. He introduced the President of the Executive Board **Leonard Geluk**, who asked his audience to react to various symbols.

"For global justice," he said, "we need to teach our students to be open and become world citizens."

Robert Heinsch, Associate Professor at Leiden University's Grotius Centre for International Legal Studies, was the next person to take the floor. He spoke about the need for revision of the Geneva Conventions, upon which all speakers appeared to agree.

He observed that we now have to deal with many different kinds of armed conflict, up to 90 percent of which are not inter-state: "It's increasingly unclear who is fighting whom." He used the situation in Ukraine as an example of what he called 'new wars' and 'asymmetric and hybrid conflicts'. In legal terms, groups often referred to as terrorists are heterogeneous, elusive partners, to whom the Geneva Conventions don't apply. "If a uniform law had been in place in Ukraine, it would have greatly facilitated the procedures."

Heinsch concluded his lecture with a look at the evolution of the battlefield which uses modern technology. We now have drones, increasingly automatic weapons and even 'killer robots'. The need for a new system of weapons control is increasingly felt. "First of all," Heinsch concluded, "we have to achieve a broad consensus of necessary changes."

During the coffee break, a conversation developed between three participants. A male European Studies student from Germany and female students from Liberia and Zimbabwe discovered common ground in that their countries all have strong leaders who have been in power a long time. They discussed the effect of power on Angela Merkel, Ellen Johnson Sirleaf (Liberia's and Africa's first female president) and Robert Mugabe. The conversation was about corruption, shifting politics and the difference between inside and outside views, moving on to the way in which age, experience and responsibility affect political and social ideas.

For the essays submitted ahead of the conference, the participants had been given a choice from two themes: *Modernizing the Humanitarian Rules of War and Improving the Maintenance of Peace by the UN Security Council and Regional Organizations*. Thursday's **parallel sessions**, held in four different locations, followed the same division.

Robert Heinsch pursued the theme he had addressed earlier, modernization of the Geneva Conventions. He shared the session with Mirjam de Bruin, Legal Advisor for the Dutch Red Cross.

Prevention of war and peacebuilding after violent conflict was the subject chosen by Joris Voorhoeve, Lector at THUAS, Professor at Leiden University and a former Dutch Minister of Defense. Voorhoeve was in fact the initiator of The 3rd Hague Peace Conference. His session took the form of a lecture, with occasional interaction with the students. For the conflict zones in Syria he proposed the establishment of 'safe havens'. "They are areas which are excluded from the war, where intruders will be disarmed." As a way of preventing war, he mentioned the strategy of deterrence – but that, he said, is poker play: "If it works it's great, so long as it isn't challenged. The Allied air bridge to Berlin backed up by missiles in the UK, for example, deterred the Soviet Union from occupying the city after the Second World War. More recently, the no-fly zone in northern Iraq created a deterrent for Saddam Hussein."

Afternoon programme

Professor Heinsch, De Bruin and Voorhoeve took a new group of students for parallel sessions, while aspects of the maintenance of peace, the second theme, were addressed by Rens Willems, a Fellow of The Hague's UPEACE Centre, and Paul Meerts, an Associate of the Clingendael Institute.

"To prevent war or build peace... where do you start?" Rens Willems asked the students gathered in the main auditorium. He challenged them to think hard about the need to understand the causes of conflict, and provoked a discussion about what they might be. He also addressed the different phases in a conflict: its catalysts and triggers, the role of education, and the concept of the 'fragile state'.

Paul Meerts, who tackled the optimization of UN diplomacy, confronted his students with a fictitious crisis in the Mediterranean necessitating the evacuation of EU citizens. Small groups of participants, each of whom represented a country, had to agree on a course of action. Meerts explained the principles of diplomatic negotiation, which he said should be both structured and flexible. Peppering his session with examples garnered from his long career, he mentioned trade-off techniques, temporarily 'parking' issues and managing the negotiation process.

The day ended with the screening of the award-winning documentary *We Are The Giant*, made by Greg Barker, a moving film about the choice between violence and peaceful resistance during revolution.

FRIDAY
JULY 3

Morning programme

The morning was reserved for individual pitches, based on the essays and followed by a short discussion. Seven rooms, each with its own moderator, had been set aside for the pitches.

One by one, the students presented their ideas for a more peaceful world, some of which were highly original. Here are a few of them.

- A student from Germany: "I'd write a new Geneva Convention if I could." The new kinds of war, she said, don't fit into any of the old boxes. She wanted to start by changing at least three sections in the Convention.

- "The Geneva Conventions seek to protect individuals, so individuals should be given a higher status," said a Brazilian student in her pitch. "A simple procedure should be designed to give individuals more influence."

- A young man from Argentina pleaded for an amendment of the UN Charter to give more power to regional organizations: "We have to look after our own regional affairs, solve our own problems. It may not be an ideal solution, but it could be a start."

- A participant from Moldova had given her essay the form of a letter to the UN. She proposed the introduction of a new world currency, "a little like a bitcoin but legal", to deal with the planet's ecological challenges.

- A female Indonesian student championed a transformational approach: "The Security Council should institutionalize mediation processes and invest more in peace talks, which must include non-state actors. We can't change the world if we are afraid of change ourselves."

- A Canadian participant suggested blending the formal UN processes with alternative measures like mediation, arbitration and dialogue. She introduced the concept of restorative justice, "to be used between states and individuals at both the micro and macro levels".

- A Kurdish student shared his knowledge of the situation in his country. Taking a positive approach to peace-making in which NGOs would have a role to play, he proposed giving a legal status to non-state fighters, so that they too would be bound by humanitarian law.

- "The UN should have its own army," a participant from Brazil suggested, "a more moral one than the existing ones. Its soldiers should be taught to think as well as fight. We need rational thinking."

Afternoon programme

A walk across the bustling center of The Hague, which takes pride in its epithet of City of Peace and Justice, took the participants to Humanity House. The exhibitions and events organized here are centered on humanitarian issues relating to war and peace. Humanity House is the regular venue for the HagueTalks, which offer a platform for discussion. Frederiek Bieman, Head of Programmes and Exhibitions, moderated the sessions that followed.

The first HagueTalks speaker, Joris Voorhoeve, reflected on the concept of human rights, which he said originates not from Europe, but from India. He had valuable advice for the students: "Diversify the people and the media you listen to in order to avoid a blinkered vision." After emphasizing the importance of good leadership, he encouraged his audience to be 'safely influential': "You have to stay alive." When a student asked what keeps him going, he replied: "It's great fun to work toward peace and progress."

Next on the agenda was a plenary presentation of **five selected pitches**.

- Instead of pitching her essay, Miracle Uche from Nigeria told the audience how, as a schoolgirl, she had become aware of the huge divide between local tribes. Arriving in The Hague for the conference, she had been warmly welcomed by a Nigerian student from a different tribe, who called her "sister". Uche was deeply moved by the encounter. To rapturous applause she invited her soul sister to join her on stage for a heartfelt embrace.

- Takashi Mori from Japan focused on children caught in armed conflict, some of whom he'd met while working in Gaza. "Protecting children is protecting the future," he said. He spoke of child soldiers and forced marriages, and of a Muslim man who had donated his dead son's organs to Israel.

- Accountability during peacekeeping operations was the subject chosen by Janhavi Pande from India. Unchecked power is a global problem, she insisted. It leads to brutality with impunity, perpetrated by regular armies as well as UN peacekeeping forces. The latter abuse the very people they're supposed to protect she explained.

- "How can I be peaceful when my country is at war?" The fourth student speaker, Alexa Magee from the US, expressed her distress at the fact that for two-thirds of her life her country had been involved in some kind of war. Her frustration had led her to offer her services to the Red Cross. Adapting a quote from Gandhi, she said that the true value of international humanitarian law is found in the treatment of the most vulnerable members of the opposing side.

- Argentinian student Fernando Navarro Trinca had a positive opinion about the current situation in his home country. Its relations with Chile, he said, are much improved. "We now have a combined peacekeeping force. We can show Europe how much progress we have made."

Finally, it fell to **Maryam Faghih Imani**, founding president of the Centre for Cultural Diplomacy and Development, to deliver the inspirational closing talk. She sketched her youth in Iran as the daughter of a prominent ayatollah at the start of the Islamic Republic, and related how she had escaped from this conservative environment to create a new life for herself in the West. "Get together, keep together and work together," she advised her enthusiastic audience. "You're the future leaders. Together, we can face all challenges." After answering several questions, she concluded: "Peaceful coexistence is the only way."

After a countdown from number 24 by Joris Voorhoeve, Bantayehu Demlie Gezahegn, the only participant from Ethiopia, emerged as the winner of the essay competition. He was presented with his prize, a place at The Hague Summer School, and said a few words about the political situation in his country. Voorhoeve, the initiator of the conference, concluded its official programme: "Your essays will be the building blocks for a book we are going to publish. Your work will last."

It was a delight to feel the enthusiasm and positive vibes pervading Humanity House at the closing reception. Here was a group of smart young global citizens who believe that world peace is possible – and who are also prepared to fight for it.


PEACE
PROGRAM
THE 3RD HAGUE PEACE CONFERENCE
JULY 1–3
2015

ABBREVIATIONS LIST

ASEAN	Association of Southeast Asian Nations
ARIO	Articles on Responsibility of International Organizations
AU	African Union
AP	Additional Protocol
AP II	Additional Protocol II
BPP	Beneficiary Pays Principle
BRICS	Brazil, Russia, India, China, and South Africa
CIHL	Customary International Humanitarian Law
DDoS	Distributed Denial of Service
ECHR	European Court of Human Rights
EU	European Union
GC	Geneva Conventions
G4CM	Global Complementary Currencies for Climate Change Mitigation
GHG	Greenhouse Gas
GIEWS	Global Information and Early Warning System
HEWS	Humanitarian Early Warning Service
ICC	International Criminal Court
ICJ	International Court of Justice
IGE	International Group of Experts from the Tallinn Manual on the International Law Applicable to Cyber Warfare (2009)
IHL	International Humanitarian Law
ILC	International Law Commission
IO	International Organisation
IP	Internet Protocol
LMT	Legitimate Military Targets
NGO	Non-Governmental Organization
NATO	North Atlantic Treaty Organization
NIAC	Non-International Armed Conflict
OSCE	Organization for Security and Co-operation in Europe
P5	UNSC Permanent members – China, Russia, France, the United Kingdom and the United States
PES	Payments for Ecosystem Services
PMSC	Private Military and Security Contractor
POW	Prisoner of War
QMV	Qualified Majority Voting
R2P	Responsibility to Protect
R2NV	Responsibility Not to Veto
SAARC	South Asian Association for Regional Co-operation
UN	United Nations
UNDP	United Nations Development Program
UNHCR	United Nations High Commissioner for Refugees
UNSC	United Nations Security Council

TOWARDS A NEW INTERNATIONAL ARCHITECTURE IN PURSUANCE OF GLOBAL PEACE

ON THE FIRST DAY of The 3rd Hague Peace Conference, Dr. Nico Schrijver, Scientific Director of the Grotius Centre for International Legal Studies at Leiden University, held the following speech on improving the decision making process of the UN Security Council.

DR. NICO SCHRIJVER

Scientific Director of the Grotius Centre for International Legal Studies, Leiden University

Introduction

The composition of the group of five permanent members of the Security Council, which is still based on the balance of power in 1945, is anachronistic. However, recent reform efforts in the context of the World Summit in 2005 were not successful. In retrospect the question arises whether this should be regretted. It may well be that the focus in 2005 was too much on reforming the UN of the 20th century rather than adequately equipping the UN of the 21st century for the needs of future generations.

1. Review of recent reform proposals

In its 2004 report *A More Secure World* (1), the High-level Advisory Panel elaborated two alternative models for expansion of the membership of the UN Security Council. Both models would lead to a Council of 24 (rather than the current 15) members, with a distinction between four (rather than the current five) main regions in the world: Africa, Asia and the Pacific, Europe and the Americas.

Model A envisaging six new permanent members (without veto) and three additional non-permanent members and model B envisaging eight new semi-permanent members with 4-year renewable terms and only one additional non-permanent seat. The proposal to enlarge the Council to 24 members is in line with the trend in other universal organizations to enlarge the size of their non-plenary organs (2).

Model A

Regional Area	Number of States	Permanent seats (continuing)	Proposed new permanent seats	Proposed two-year (non-renewable) seats	Total
Africa	53	0	2	4	6
Asia and Pacific	56	1	2	3	6
Europe	47	3	1	2	6
Americas	35	1	1	4	6
Totals model A	**191**	**5**	**6**	**13**	**24**

Model B

Regional Area	Number of States	Permanent seats (continuing)	Proposed four-year renewable seats	Proposed two-year (non-renewable) seats	Total
Africa	53	0	2	4	6
Asia and Pacific	56	1	2	3	6
Europe	47	3	2	1	6
Americas	35	1	2	3	6
Totals model B	**191**	**5**	**8**	**11**	**24**

Source: *A More Secure World*, UN Doc. A/59/565 (2004), pp. 67-68.

In his March 2005 report In *Larger Freedom* (3), Annan explicitly opened the option for any other viable solutions on which consensus might emerge (4). However, such proved ultimately not be the case. Neither the so-called G-4 proposal (5) (tabled by the four large aspirants for permanent seats: Brazil, India, Japan and Germany) nor the rivalling 'Uniting for Consensus' proposal (6) of the so-called coffee club gained sufficient support. This was tabled by a loose coalition of mostly middle powers who are the regional rivals of the states that would acquire permanent membership: Argentina, Canada, Italy, Mexico, Pakistan, Republic of Korea, Spain and Turkey; previously also known as the 'coffee club').

The G-4 proposal purported to increase the membership of the Council from fifteen to twenty-five by adding six permanent and four non-permanent members. Somewhat reluctlantly the G-4 ultimately proposed that the new permanent members were not to obtain the right of veto, but they would otherwise have the same responsibilities and obligations as the current permanent members.

The 'Uniting for Consensus' proposal wanted to double the non-permanent seats from ten to twenty, each serving on terms of two years. However, the proposal provides for the possibility of immediate re-election, subject to the decision of their respective geographical groups (7).

2. Some alternative ideas

In the light of the stalemate on reform proposals it is only wise to pause and to think which alternative ways could be employed to improve the representativeness and effectiveness of the Council in the near future.

First of all, one may wonder whether it is wise at all to expand the Council. As the former Dutch Ambassador to the UN, Peter van Walsum noted in a commentary: "No one can seriously believe a council with 24 members can be more effective than one with 15, but it has become politically incorrect to point this out." (8)

Secondly, even in this multi-actor world we seem to be caught in thinking of Security Council reform in terms of expanding its membership with more States. However, in the 21st century it would be more fitting to represent regional organizations in the Security Council, rather than add even more individual countries as permanent members, whether or not with the right of veto. Despite all the divisions and disappointments, the significance of European political cooperation has grown enormously. The African Union is making bold attempts to transcend the weaknesses and eventual fate of its predecessor, the OAU (Organization of African Unity). In Southeast Asia and Latin America, regional cooperation is visibly improving. These regional organizations could be initially represented by their presidencies, and in time, preferably by their independent organs: in the case of the EU, the European Commission or alternatively the High Representative for Foreign Affairs. Furthermore, this could well be a proper way to give more substance to the two criteria of Article 23 – i.e. effectiveness and representativeness – and perhaps also give more impetus to the provisions of Article 52 (2) requiring the member states to make every effort to achieve pacific settlement of local disputes through or by regional arrangements before referring them to the Security Council. On their turn, regional associations could then be expected to deepen their common security and foreign policy in order to ensure their representativeness for the region concerned as well as the effectiveness of the Council.

Drastic reform of the Security Council, on the other hand, may not necessarily be effected only by expanding the size of the Council. Much can be gained by improving transparency and accountability through other means, for example by improving the working methods of the Council and institutionalizing the co-operation of the Council with other principal UN organs as well as by strengthening the consultation with other relevant actors. It tends to be overlooked that an expanded Council will not be more democratic and representative unless its working methods provide for more transparency, accountability and inclusiveness (9). Besides, for most of the 193 member states the improvement in the working methods of the Council would also have a more immediate impact than the necessarily modest change in its size and composition.

Already during the 1990s, many informal improvements were introduced into the working methods of the Council, especially as regards the transparency and accountability of its deliberations. The impression, however, remained that the progress has not gone far enough and thus reform proposals continued to feature high on the agenda. It needs to be observed that both the G-4 (10) and 'Uniting for Consensus' (11) draft resolutions on Security Council reform included elaborate proposals on how to further improve the Council's working methods. Regrettably, the World Summit Outcome Document eventually did not come further than recommending the Security Council to "continue to adapt its working methods so as to increase the involvement of States not members of the Council in its work, as appropriate, enhance its accountability to the membership and increase the transparency of its work." (12)

Most of the proposals presented so far include the institutionalization of the emerging practice of more open debates of the Council and in which experts can also be heard, briefings by the President of the Council to the press and structured consultations between the President of the Council with the Presidents of the General Assembly and the Economic and Social Council. Moreover, the strengthening of consultation with other relevant actors has been proposed. This is to be achieved by a more structural involvement of troop contributing States in the work of the Council (see also Art 44 UN Charter), a better hearing of States affected by Security Council discussions and decisions, and a much improved co-operation with other international agencies, first of all those within the UN system such as UNICEF, the World Food Programme and UN Development Programme, but also specialized agencies such as the World Health Organization, the World Bank group and regional associations. In view of the little chance for institutional change in the near future, such initiatives not requiring any amendments of the Charter may well prove to be the only feasible avenues in the years ahead to better equip the Council in its pursuance of collective Security (13). As Sir Michael Wood wrote: "If pressure for unilateral action is to be resisted, the world needs a Security Council that is capable of acting promptly and effectively and that is seen to act wherever necessary. In the long-term, a Security Council that is not perceived to be legitimate will not be effective".

CITATIONS

Towards a New International Architecture in Pursuance of Global Peace – Nico Schrijver

(1) A More Secure World, supra note 28.

(2) See N. M. Blokker, 'Towards a Second Enlargement of the Security Council? A Comparative Perspective', in N. M. Blokker and N. J. Schrijver (eds.), *The Security Council and the Use of Force* (2005), pp. 253-260.

(3) Kofi Annan, In Larger Freedom. *Towards Development, Security and Human Rights for All*, UN Doc. A/59/2005 of 21 March 2005.

(4) "I urge Member States to consider the two options, models A and B,...or any other viable proposals in terms of size and balance that have emerged on the basis of either model." In Larger Freedom, *supra* note 34, para. 170.

(5) A/59/L.64 of 6 July 2005, re-tabled as A/60/L.46 of 9 January 2006.

(6) A/59/L.68 of 21 July 2005.

(7) See also P. Hilpold, 'Reforming the United Nations: New Proposals in a Longlasting Endeavour', (2005) 52 *Netherlands International Law Review*, pp. 389-432.

(8) Peter van Walsum, 'A hitch could still stall the momentum in favour of a P-11 UN Security Council', *Financial Times*, 18 April 2005, at 14.

(9) K. van Kesteren, 'Reforming the Security Council: Views from Practice', in N. M. Blokker and N. J. Schrijver (eds.), *The Security Council and the Use of Force* (2005), pp. 261-268.

(10) The G-4 draft resolution (A/59/L.64 of 6 July 2005, para. 8) proposed the following measures: more public meetings; regular consultation with non-members; granting non-members access to and participation in subsidiary organs; making draft resolutions and other draft documents available to non-members; providing frequent, timely and qualitative briefings for non-members on matters discussed within the Council; holding regular and timely consultations with troop-contributing countries and other countries concerned with peacekeeping operations; improving consultations with presidents of GA and ECOSOC; providing substantive and comprehensive annual evaluation of the Council's work; and making use more frequently of special reports pursuant to article 24(3) of the Charter. These proposals have been reiterated in a more recent draft resolution on Security Council reform (A/60/L.46 of 9 January 2006, para. 8).

(11) The 'Uniting for Consensus' draft resolution (A/59/L.68 of 21 July 2005, para. 7) called for: restraint in the use of veto; procedures to guarantee transparency in decision-making, accountability in performance and access to information, including open briefings and interaction with all interested parties; consultation, cooperation and adequate exchange of information with the GA and ECOSOC: access and better participation of non-members of the Security Council; and adoption of formal rules of procedure.

(12) World Summit Outcome Document, *supra* note 1, para. 154.

(13) See also the comment that "political convergence precedes institutional change, not the other way around" of E. Luck, 'How Not to Reform the United Nations', (2005) 11 *Global Governance* 407, at 410-411.

MODERNIZING INTERNATIONAL HUMANITARIAN LAW: THE NECESSITY OF DEALING WITH THE CHALLENGES OF 21ST CENTURY WARFARE

ON THE SECOND DAY of The 3rd Hague Peace Conference, Dr. Robert Heinsch, Associate Professor at the Grotius Centre for International Legal Studies at Leiden University, held the following speech on one of the two main themes: modernizing the Geneva Conventions.

DR. ROBERT HEINSCH

Kalshoven-Gieskes Forum on International Humanitarian Law

Grotius Centre for International Legal Studies, Leiden University

Already after World War II, but increasingly with the end of the Cold War, there has been a change in the conduct of armed conflicts. We have witnessed a move away from classical interstate wars towards usually non-international armed conflicts, which are no longer characterized by two equal armies on each side. Rather, the majority of conflicts involve a (militarily) superior party, usually government troops opposed by armed rebel groups, freedom fighters, or terrorist cells – parties which are characterized by their conventionally weaker position. The inherent asymmetry of these conflicts creates a temptation for the inferior party to use war tactics that violate rules of international humanitarian law (IHL) in order to make up for disadvantages in matters relating to materiel, resources and fighters. This links in with the observation that today's conflicts ('new wars') are not characterised mainly by the objective to gain territory or military victory in the classical sense, but are rather about achieving independence, identity, ethnic cleansing of an area, spreading terror and publicity for their cause in the case of terrorist groups. At the same time, new technologies like cyber warfare, drone strikes, and autonomous weapon systems, which might be employed at least by one side in these conflicts, raise questions whether IHL is actually applicable to their use in the first place, because the Geneva Conventions and additional protocols were drafted at a time when none of these technologies were available or their development even anticipated.

Against this backdrop, I believe that it is necessary to think about reforming international humanitarian law in three main areas: we need to (1) further assimilate the two legal regimes applicable for international armed conflict and non-international armed conflict; (2) prepare international humanitarian law for the fact that some of the non-State actors do not seem to be willing to follow the rules of the law of armed conflict due to the fact that they challenge the international legal system (and their values) as such; and (3) think about adequate responses in order to deal with the challenges presented to us by modern technologies.

Considering the first major challenge, the assimilation of the legal regimes for international and non-international armed conflict, we have to see that in this regard the current international humanitarian law regime still reflects a system which might have been adequate immediately after World War II, but unfortunately is in many ways not up-to-date in the current times. The fact that the rules for international armed conflicts are much more elaborate than for non-international armed conflicts does not reflect the fact that nowadays the majority of armed conflicts are non-international in character. In addition, it does not take into account that for the victims suffering from these armed conflicts, it does not make a difference whether it is an international or a non-international armed conflict. As the Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia (ICTY) has stated its famous Tadić Decision: "What is inhumane, and consequently proscribed, in international wars cannot but be inhumane and inadmissible in civil strife". Although through the jurisprudence of the ICTY as well as the development of customary international law during the last 20 years, the gap between the rules for international and non-international armed conflict has become smaller, there is still much needed room for improvement. Fighters in non-international armed conflict still do not receive the benefits of being "combatants" when they are regular fighters, and also do not receive the Status of "Prisoners of War" when they are captured. Especially the problem of detention in non-international armed conflict is much less regulated in these situations, leaving the question open which rules are to be applied in this moment. Finally, the list of war crimes, i.e. serious violations of international humanitarian law, which can be prosecuted when committed in non-international armed conflict, is still much shorter than the one for war crimes in international armed conflicts. I believe that it is necessary that the international community continues to work on bridging this gap between the two legal regimes for international and non-international armed conflicts, so that finally we have one coherent regimes applicable for both types of conflicts.

Addressing the second major challenge, the growing asymmetry in conflicts, and the problem that some of the modern non-State actors seem to disregard the international legal system as such touches upon a crucial distinction in international law: the distinction between the armed conflict paradigm which is the basis for the application of international humanitarian law on the one side, and the law enforcement paradigm which usually is accompanied by the application of the international human rights

regime. While international humanitarian law is the older system and was developed originally to regulate the relations between States in armed conflict, it also - and mainly because of that - presupposes a certain willingness of the subject objects of the legal regime to adhere to its rules. This important starting point for the regime of international humanitarian law is questioned more and more during modern conflicts, in which terrorist groups often out of principle disregard the respective international law standards, also in order to challenge and provoke the international community. One way to at least partially solve this problem is to think more about ways to include non-State armed groups in the drafting and law-making process of the respective international humanitarian law treaties. This would enhance the legitimacy of the respective documents, and most probably on the long run would lead to greater adherence to the regime of international humanitarian law. However, we have to be aware of the fact that some groups do not even want to be included in further developing the current international legal order, but just will continue to violate its rules. In these circumstances, we have to find a more efficient way to enforce rules of international humanitarian law in those situations where there is actually an armed conflict taking place, through the prosecution of war crimes before national and international Courts and Tribunals. We also have to clarify and probably expand the rules applicable for situations below the threshold of armed conflict, i.e. when we need international (human rights) standards clearly stating how people in these kinds of situations are to be treated. This area is unfortunately still underdeveloped, mainly because of the problem of extra-territorial application of human rights. But probably the biggest challenge the international community has to tackle here is to come up with a system which allows for the setting up of an international police/security force, which is actually able to prevent further violations of international law in crisis situations. The current system under Chapter VII of the United Nations Charter seems to have proven not to be able to deal with a lot of the current problems, as demonstrated for example by the conflict in Syria.

Coming to the third, and final major challenge, the new technologies like cyber war, remote controlled weapons, and lethal autonomous weapon systems. All three areas are too complex to cover them in detail here, but what combines them is the fact that the law of armed conflict was drafted at a time when neither of these technologies had been developed. That a such does not exclude the current IHL regime to be applicable to them, and the International Committee of the Red Cross as well as many academic colleagues have clearly shown that the current IHL regime is abstract enough to also give adequate answers to these new technologies. But concerning the possibilities of cyber warfare one has probably to admit that we have not yet seen all the possibilities in practice, and we should be prepared for the fact that non-State actors will take advantage of the fact that cyber capacities are easily available and that the effect of using them as a weapon in today's interconnected world can be dramatic. In this regard, it seems advisable to further look into ways to regulate the area of cyber warfare (but also cyber crime, being below the armed conflict threshold), a process that has already been started by the Tallinn Manual Group of Experts. With regard to remote controlled

weapons and especially concerning lethal autonomous weapons the international community needs to ask itself whether it wants to allow "killer robots" to autonomously take the decision whether the life of a human being can be taken. It might be sensible to continue the discussion whether there is not the need for banning this kind of weapons in order to ensure that the principles of humanity in armed conflict are actually taken into account by a human being.

Overall, this brief overview has hopefully shown that there is a continued need for further improving and updating the already quite sophisticated system of international humanitarian law in order to ensure that also the victims of 21st century warfare are sufficiently protected during these situations of modern armed conflict.

"I was born in the midst of a civil crisis that lasted through my childhood to my teenage years, so I will never know what it is like to be a child – my childhood was stolen. Most of my teenage memories are haunted by faces of young men and women whose dreams were shattered as they were killed, raped, abducted or forcibly conscripted into warring factions. This is a reality shared by millions of people and a reflection of the current crisis that we face around the world. I believe peace is possible in the world but only if we use the bottom up approach, and not the other way around."

LAURA GOLAKEH LIBERIA

"The world that was born at the end of World War II is very different from the world that we live in. Local crisis and the emergence of extremist groups are the main diplomatic challenge of our century, which cannot be solved only by the bias of the five major powers that permanently occupy the UN Security Council, losing legitimacy with every armed conflict that it is not able to prevent. Participation of new global players should be strongly considered and encouraged, but the Council should work initially to establish local mechanisms of defense. At the same time, foreign policy should not be a one sided affair, but a process that also involves the population itself. The strategic measure to elucidate the foreign policy crisis of legitimacy is creating political participation mechanisms that provide greater transparency. The consultation must expand without loss of agency or coordination capacity."

IGOR PATRICK SILVA BRAZIL

PART 1: REFORM OF THE SECURITY COUNCIL

EDITOR'S NOTE: A number of essays have been abbreviated to avoid unnecessary text duplication or misstatements. Some corrections have been made to prevent misunderstandings. To save space, some source citations have also been removed.

photo: Ton Koene

1 REFORMING THE SECURITY COUNCIL

DARREN POWER CANADA

Why Reform?

Former Secretary General Kofi Annan's proposals to reform the Security Council (1) were not approved of by world leaders and member states. Critics, therefore, have a fair point questioning: Why continue calls for reform? Am I not aware of the adage, 'insanity is doing the same thing over and over again and expecting different results'...? (2). The P5, however, remain in a fixed structure, unwilling to relinquish their positions, while the problems facing them have vastly changed. The UN was established to prevent international wars, yet the task of maintaining peace has shifted from preventing war among states to wars inside states (3). Africa and the Middle East – two unfortunate host regions of a majority of modern conflicts – dominate the Council's agenda, but have no authoritative representation in the Council itself. It is ironic that local ownership is elemental to peacebuilding, yet it is the P5 that control major conflict prevention and peacekeeping programs in the region. The Council is an outdated power structure whose executive members are not always the most relevant stakeholders in the conflicts that they seek to solve.

Thus far, states known as the G4 - Germany, India, Brazil, and Japan - have been the most serious permanent member candidates. Their hopes of ascension are continually renewed by P5 leaders, such as Barack Obama who recently stated, 'I support a reformed United Nations Security Council that includes India as a permanent member' (4). Japan and Germany, for example, have consistently been major contributors to the United Nations (5), and it is only reasonable that they desire some control over its activities. Brazil has applied for membership since the very creation of the Council (6). Moreover, Brazil and India are part of the 'BRICS', who have begun to challenge the United States' domination of development funding (7). Ultimately is worth asking, how long can the Council be an arena of politicized inaction before other nations lose interest and find alternative methods of contributing to peace? This will be especially relevant in future years as the world experiences the decline of US hegemony, and the rise of emerging states. It may be politically advantageous for P5 members to allow other nations in before the Council is deemed irrelevant.

Expansion

One common plan is to add new permanent or non-permanent members. However, the actual implementation – selecting who to add, and what powers to allow them – is a political minefield. States view this as a zero sum game, in which '... their conservative instincts and fear of change come to the surface. ...[They] begin to fret that their relative positions...could be affected by unpredictable renovations' (8). As such, this method has consistently failed to achieve support. Moreover, while adding more members would increase democratic legitimacy, it would further elongate processes of an already slow and bureaucratic organization. As Paul and Nahory assert, 'the Council is already past the outer limit of the size-efficiency range for an executive body with such big

responsibilities' (9). A Council with more actors' views to consider , and whose processes take longer, is likely to even further delay action. Thus, expansion does not bode well for reforms chances, no matter how popular or justified it is.

Qualified Majority Voting

Alternatively, the Council could learn from the development of the European Union, which has increasingly used a Qualified Majority Voting (QMV) system to settle gridlocked policy areas (10). This would allow the P5 to censor themselves by removing or reducing the veto power on specific actions, and allow actions to be taken only upon reaching a predetermined majority. If this were already implemented, the Council may have been able to, for example, condemn the state sponsored violence in Syria. Introducing QMV would be a small step in that direction, and set the stage for increased cooperation in the future. And just as in successful peace agreements, it is small concessions of power that can build trust amongst past rivals – such as the US and Russia – and begin building political momentum for a more cooperative organization. It is clear that reform will only come when the P5 value power sharing over asserting their sovereignty. If globalization and its erosion of state sovereignty continue to increase, then it is precisely more cooperation and QMV-style systems that bodies like the Council need to develop. This is even more relevant as a new, globally minded generation of citizens assume influential positions, and are faced with new challenges – such as climate change and terrorism – which require cooperative action.

2 REDUCING VETO ABUSE

PATRICK BALBIERZ UNITED STATES

Recent failures to address the growing dire situation in Syria have drawn great attention to the Secretary General's 2009 Report on Implementing the Responsibility to Protect (R2P) (1). Permanent Security Council members used their veto to prevent intervention by the UN where it noted mass atrocities were occurring due to the lack of governance. This issue was accentuated in the recent French proposal of the Responsibility Not to Veto (R2NV), an attempt to coordinate permanent Security Council members to abstain from using their veto against intervention when a rescue or humanitarian mission demanded UN assistance in various forms (2). R2NV however, has drawbacks that require addressing in order to facilitate successful humanitarian missions in Syria and future conflicts with similar time-sensitive crisis. I propose that the implementation of a bypass voting mechanism would allow for a circumvention of veto powers in light of genocidal crimes identified under R2P.

R2P lacks the necessary enforcement capabilities to implement successful policies. The main hurdle in launching successful humanitarian missions where potential genocides are occurring is in the outdated, systematically detrimental single veto power that can undermine these missions. While the veto is a key foundational component the

permanent members of the Security Council will not rescind, it is important to update the ways in which this power can be utilized with the situations that face the United Nations today and in the future.

Eliminating the veto is neither feasible nor logical, as it still serves a purpose in preventing attempts to implement lopsided policies through the UN. The debate of using vetoes typically dealt with power projections in various regions, largely during the times of the Cold War where constant balancing involved blocking adversaries' policies in the Security Council. Currently however, this long held power has restricted the protection of people across the globe in conflict areas (3). Such situations can be addressed in a restructured voting mechanism that can bypass minority veto powers. The proposed procedural adjustment is as follows.

In situations that have been identified as genocidal atrocities and exasperated humanitarian crisis by UNHCR, the Security Council should be allowed to circumvent a veto by securing both a majority of permanent member votes who hold vetoes, in conjunction with a majority vote of the entire security council. This would not only allow for greater voice among the non-permanent members of the Security Council, but also create increased global governance by preventing a single state from withholding necessary aid and protection to affected peoples based on individual state preferences. This in turn retains the power of the veto among permanent Security Council members, a key factor in their approval of such adjustments, but simultaneously limits its ability when the responsibility to protect should transcend global politics and economic ties. These policies, if enacted, would have surpassed the vetoes of China and Russia during the 2014 Syria resolution in which three of the remaining five favored humanitarian intervention, as well as securing a majority among all Security Council members.

A second example where a bypass system would have secured necessary UN intervention was in Kosovo from 1998-1999. The North Atlantic Treaty Organization (NATO) took the initiative for military action in response to atrocities occurring within the former Yugoslavia. The proposed bypass could have been given an explicit legitimization of the intervention that saved Kosovo (4).

Eliminating the veto entirely would never survive a political debate among the permanent members. However, a limited restriction of its utility in situations where thousands of lives are at risk could become institutionalized. The bypass system could only be invoked when genocidal or humanitarian crisis exist, thus highlighting the conflict as an event that demands the international community's oversight and support in order to address potential war crimes before they occur. This would shift the Security Council from a reactionary institution to one that seeks to actively prevent crimes against humanity. It guarantees that permanent members would still be able to implement their veto power in instances that do not involve R2P. This is key in the survival of such a proposal getting through a vote among the UN.

In today's world where interstate conflict is increasingly common in place of intrastate wars, the role of the veto is shifting from a tool of global power politics to a tool that yields control over regional influence, particularly in the Middle East, Africa, and Southeast Asia. The UN is continuously adapting its agencies, focuses, and strategies to address these trends. In the protection of those who cannot protect themselves, Security Council procedures should operationalize the dedication to human rights. This bypass mechanism represents a way in which we can achieve this goal.

3 NEGOTIATION AND MEDIATION

ARDANIA K. PUTRI INDONESIA

The Security Council has introduced frameworks for humanitarian purposes such as the Responsibility to Protect (R2P) under resolution 1674 (2006), outlining the justification for the international community to take any necessary measures if a state is deemed unable or irresponsible in protecting its citizens from war crimes, ethnic cleansing, genocide, and crimes against humanity. Other resolutions assert the importance of 'appropriate measures' to supply assistance for civilians during conflict times, most of which however have concentrated solely on military operations. Many governments are troubled with the potential erosion of their national sovereignty, considering the fact that R2P provides justification for non-consensual military intervention (1). The problem grows as we consider the institutional structure of the Security Council itself, with certain members having the political interests and opportunity to block humanitarian initiatives, therefore preventing the UN to take the necessary actions in the wake of conflicts and atrocities (2).

Military operations often fail to create sustainable peace. Currently, there are 16 conflict cases where UN peacekeeping troops are deployed (3), most of which can still be considered as troubled areas where conflict and violence prevail (4). While there is a lack of consensus on the effective strategies and methods of military interventions, discussions on alternative and/or complementary solutions are often marginalized (5).

According to Lederach and Maiese (2003), conflicts are natural elements of human relationships triggered by clashes of needs and interests. Based on this, they argue for the transformational approach towards conflict, through the establishment and maintenance of dialogue in order to create understanding among a variety of social groups, with non-violent methods focusing on personal, relational, structural, and cultural dimensions. By giving more attention to communication and relationships, underlying causes of conflict can be addressed and managed through compromises (6). Negotiation and mediation processes should be facilitated by the Security Council, particularly to expand platforms of communication with non-state actors. It is necessary for the UN to invest more on peace talks, negotiations, and mediation through cooperation with local and regional institutions, notably to encourage belligerents to achieve their political goals through non-violent means.

UN peacekeeping operations shall accommodate these processes by preventing belligerents from fighting and navigating them to the negotiation table accordingly. In an organization as politically sensitive as the Security Council, it is this complementary aspect that makes institutionalizing negotiation and mediation processes through a binding resolution realistic.

The Security Council should explore various prospects of cooperation with civil society organizations that may facilitate diplomacy through shaping public opinion as well as influencing government decision-making processes (7). By expanding their toolbox, particularly by using dialogue side-by-side with military operations, one may even witness an increasing level of cooperation among the (permanent) member states of the UN Security Council.

4 COUNTERTERRORISM AND PEACEKEEPING

BANTAYEHU DEMLIE GEZAHEGN ETHIOPIA

United Nations (UN) and regional peacekeeping missions increasingly influence political processes not only in places of operation but also in troop-contributing nations. A case in point is the security dilemma Kenya is undergoing following repeated attacks on its civilians by Al-Shabaab in retaliation for the nation's peacekeeping troop contribution in neighboring Somalia. On April 2, 2015, Somalia-based militant group Al-Shabaab stormed the Garissa University College killing at least 142 students, three policemen and three soldiers (1). The Al-Qaeda-affiliated group also took responsibility for earlier attacks including the September 2013 Westgate mall attack in Nairobi that caused about 67 deaths and 200 injuries (2).

Gaps in the Existing Peacekeeping Architecture

The existing UN peacekeeping mechanism has flaws with distinct implications in counterterrorism contexts (See Guéhenno, 2006; Jacobson, 2012) (3,4).

First, the UN does not have a standing army composed of diverse nationalities. It relies on rich nations for funding and poor nations for troops. Leading troop-contributing nations such as Pakistan, Bangladesh, India and Ethiopia are in volatile regions. That means peacekeeping troop contribution by these nations especially for deployment in their own geopolitical regions may create animosity between the nations and neighboring warring factions. This in turn may make civilians of troop sending nations potential targets of reciprocal terrorist attacks as the Garissa case demonstrates.

Secondly, reliance on troops from neighboring nations also poses a serious threat on the legitimacy of the peacekeeping mechanism itself. It may create a situation of conflict of interest that may in turn prompt an undue interference in the domestic affairs of host nations or territories. This may destroy the image of peacekeeping from being a neutral en-

terprise to a partisan one. Such an image may be perceived or real. As 21st century conflicts become more of intrastate rather than interstate, and as UN peacekeeping becomes more involved in active state-building initiatives in conflict-prone areas (3), the probability of neighboring country troop contribution to be perceived as, or actually become, an intervention in the domestic affairs of the host situation is high. This may exacerbate risks of terrorism, perpetuate situations of conflict and make peacekeeping ineffective.

My above arguments should not lead to the conclusion that there will be no terrorism risks to civilians of troop contributing nations located far from the place of operation. Methods and means of warfare have changed dramatically in our century (5), making it possible to wage war from anywhere. The oft-mentioned 9/11 incident exemplifies that terrorist attacks on civilians are borderless. I also imagine counter arguments that hold that troops coming from neighboring countries or regions may be better situated in knowing the culture, topography and possibly the language of host situations, making it easier for facilitating grassroots peacebuilding. Nevertheless, possible overriding conflict of interest and regional rivalry may make such peacekeeping operations catalysts for further conflict.

Implications of Troop Contribution on Domestic Politics of Contributing Nations

The Al Shabaab-Kenya deadlock highlights a current challenge to the global peacekeeping apparatus. Following the attack, Kenya reportedly bombed two al- Shabaab camps in Somalia. It is also now considering constructing a great wall along Kenya-Somalia border (6). The country also passed a controversial security (amendment) law in December 2014.

Militant groups attacking peacekeeping troops on duty is not uncommon. For instance, UN peacekeepers were killed in Mali in October 2014 and in January 2015 (7,8). Philippine peacekeepers were attacked in Syria in August 2014 (9). The Garissa attack is unique in that it targets not the troops themselves but civilian populations in the territory of troop contributing nations. This has several implications.

First, as civilians become targets of retaliatory terrorist attacks, they may demand that the decision to contribute troops for peacekeeping should engage active public participation. Although civilian control of the military is one of the principles of democratic governance, as military decisions are traditionally in the executive domain, the general population may practically have little or no mechanism to have a say on whether or not to contribute troops. Yet, more public involvement in the decision to contribute troops may again entail lengthy procedures to be followed amidst emergency situations that require swift responses. This leaves troop contributing nations with a policy dilemma of whether to respond to domestic demands or to international commitments.

Secondly, more troops come from nations with good governance challenges. Participation in peacekeeping brings promotion and economic rewards for army members. This may create competition, and be accompanied by corruption in various forms. The fact that

troops from developing countries may more likely be less well trained and under-supplied (10) may further be complicated by corruption.

Assuming that peacekeeping will continue to rely on contributions from nations, in order to more effectively respond to peacekeeping challenges in the context of terrorism– based on the above-discussed analysis– I recommend that the UN and regional peacekeeping missions should be composed of as diverse nationalities as possible in a way that make the missions a global response rather than as an expression of interest (or worse interference) by a few states. Deployment of troops from neighboring countries or from similar geopolitical regions should be avoided as much as possible so as to avoid conflict of interest and perceived or real partisanship that may instigate retaliatory terrorist attacks. Troop contributing nations need to assess terrorism risk in the decision to contribute and should engage the public in the process.

5 YAU HING YU CHINA

"A crucial long term strategy against the terrorist threat is the strengthening of the research centers for regional security. Case studies can be conducted to discover the fundamental reasons behind the present terrorist threat and formulate measures to mitigate it. Existing institutions such as the Conflict Prevention Centre (CPC) of the Organization for Security and Cooperation in Europe (OSCE), and Regional Information Exchange System of Economic Community of West African State (ERIES) can be utilized for these purposes (1). Presently, research has mainly focused on the whereabouts of terrorists or the effectiveness of border control; however, the underlying reasons, which possibly include the prolonged disrespect of ethnic minority, surging unemployment rate and constant suppression on religious freedom, are essential to maintaining long-term security. Examples include Chechnya in Russia and Tibetan in China, which are caused by the prolonged disrespect of ethnic minorities and the constant suppression on religious freedom, respectively. The research centers of regional organizations should regularly report to UNSC on the latest risk assessment or evaluation of continental tension leading to potential outbreak of terrorism. This will not only facilitate information exchange between nations which may have limited ability to identify global security threats but also facilitates the formulation of well-informed regional public policy."

6 PAVLO MALYUTA UKRAINE

"It is the moment for the OSCE to define its future: choose the way of comprehensive reform to increase effectiveness and take up a confident position in the European security architecture or become trapped in the inability to respond appropriately to contemporary challenges... and sink into oblivion."

7 THE SECURITY COUNCIL AND REGIONAL ORGANIZATIONS

GONZALO PEREDA ARGENTINA

Until the permanent members with a veto power do not seriously undertake the task of restructuring the United Nations Security Council (UNSC) - to make it truly representative of the international community and capable of dealing with the challenges that are arising in the twenty-first century (terrorism, global warming, refugees, civil and ethnic wars, economic and humanitarian crisis, etc.) - I propose a renewed lecture of Article 52 of the UN Charter in light of the principle of subsidiarity, with the aim of strengthening the efforts of regional organizations in maintaining international peace.

Guided by this principle, the international community must endeavor to ensure that regional organizations find themselves progressively more capable of safeguarding peace and security in their own territories without depending on the UNSC. In other words, regional organizations must be the principal actors in the task of maintaining peace and stability in their respective areas of influence and, to that end, cooperation with the UN must be governed by the principle of subsidiarity: the UNSC must take action to aid the efforts of regional organizations for safeguarding peace only in those conflicts in which they cannot deal with effectively.

Taking this into account, the UNSC must encourage the strengthening of regional organizations so they can carry out an increasingly leading role in the processes of identifying, preventing and resolving disputes which threaten international peace and security. In a multipolar world, “decentralization, delegation and cooperation with the United Nations” (1) are the key words which portray the path of action into a pacific twenty-first century. This process of decentralization and delegation in regional organizations must always be supervised and coordinated with the UNSC, since “under the Charter, the Security Council has and will continue to have primary responsibility for maintaining international peace and security” (2).

In view of the subsidiary principle, there are many ways in which the UNSC can contribute to boosting regional organizations. For instance, through systematic exchange of military missions, formation of regional or sub regional risk reduction centers, arrangements for the free flow of information, including the monitoring of regional arms agreements (3), coordination of economic measures, sanctions and embargoes, diplomatic and operational support, consultations, co-deployment, etc.

The UN Charter provides for the existence of regional arrangements under Chapter VIII (4) and states that “the Members of the United Nations constituting such agencies shall make every effort to achieve pacific settlement of local disputes through such regional arrangements before referring them to the Security Council” (5). Moreover, and in accordance with the ideas herein set forth, the Charter establishes that “the Security Council shall,

where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority" (6), and that "the Security Council shall at all times be kept fully informed of activities undertaken or in contemplation under regional arrangements or by regional agencies for the maintenance of international peace and security" (7).

Notwithstanding the existence of these provisions, member states of the UN currently fall short in their interpretation of Chapter VIII. The main issue lies in the lack of consciousness of states in recognizing the importance of their roles in regional organizations for maintaining peace and security. Until a well-functioning and truly representative UNSC is established, member states of regional organizations must reinterpret Chapter VIII in light of the principle of subsidiarity, taking adequately into account that the leading actors responsible for bringing about peace and security are themselves and not the UNSC.

Regional organizations must be strengthened and empowered so they can supervise the maintenance of peace and security in a progressively more active way until reforms at the UN are initiated. It is necessary to encounter some middle ground between a not yet existing modified UNSC, which could effectively maintain world order and stability, and an anarchic situation in which an unrepresentative Council is relegated to a mere observer of international events with no real power. Such equilibrium can be found in the role that regional organizations can play in maintaining international peace and security with the coordinated and subsidiary support of the UNSC.

8 REGIONAL ORGANIZATIONS

STEFAN MÜHLENHOFF GERMANY

The conflict landscape of the world has changed. The majority of conflicts are violent disputes triggered by political or religious groups. Different to the Cold War era these groups often do not act as proxies of a superpower. As in the case of Boko Haram in Nigeria, Al-Shabaab in Somalia or the different parties in the Syrian civil war these groups fight for themselves. Their roots are regional and their impacts are regional as well. Even though some combat groups are still supported by foreign countries the situation is far different from the situation in the Cold War era.

The international security architecture should acknowledge this shift to a more regional character of modern combat. According to the UN Charter, it is the UNSC that has the "primary responsibility for the maintenance of international peace and security" (1). Yet, it is questionable whether an institution, that is dominated mainly by its five permanent members can effectively deliver solutions for peacekeeping in a changing world structure. In order to recognize the mainly regional character of modern warfare, the primary responsibility for the maintenance of peace and security should be shifted from the UNSC to regional organizations. Regional organizations, such as the African Union or the

Organization of American States have the potential to be more effective in maintaining security in their particular region than the UNSC, which is more often than not stuck in conflict between the P5. Whereas regional organizations should have self-interest in creating and maintaining peace and stability in their region, the UNSC is mainly dependent on the interests of the P5. Furthermore, one can expect regional organizations to have a far more sophisticated view on conflicts in their areas. Member states come from a similar political and cultural background. Why should Russia or the United States have more influence on the conflict in Syria than countries like Lebanon, Jordan or Turkey? The latter countries are all directly affected by the conflict which also threatens their own security. In contrast, no P5 state is directly affected by the fighting. Their actions are more guided by strategic interests, which do not necessarily include peace and stability.

Regional organizations such as the European Union, the African Union or the Organization of American States have grown considerably over the last decades. There is almost no area in the world where no regional organization exists. There should be one organization for every continent or region that takes over the main responsibility for peace and security. How the organizations interpret their mandate must be left to their own responsibility. Every world region has an individual political culture that must be respected. There cannot be one standard that every organization has to adopt. The only necessary condition is that responsibilities between the organizations are clear. Many states are members of different regional organizations. It must be clearly defined which is the supreme authority for maintaining peace and security in every world region.

It needs to be acknowledged that regional organizations are not free from strategic interests of their member states. However, since unsolved local conflicts can lead to a destabilization of whole regions it can be assumed that member states will have a self-interest in maintaining peace and security in their respective areas. Further, it can be expected that security interests will outweigh other interests that member states of local organizations will have.

What is needed then is a new understanding of the role of the UN and the UNSC. Rather than being the primary institution for maintaining peace and security the UNSC should become an institution where the world´s regional security organizations can meet. There are still several topics that can only be challenged on a global agenda, such as subjects like climate change or migration. Both cannot be addressed by regional organizations alone, and both will have relevant impacts on peace and security in the future. There may also be cases in which a peacekeeping mission is better comprised of soldiers from other world areas who represent a higher degree of neutrality. Those cases could also be brought in front of the Council. The UNSC should not be resolved, but its structure should be reformed. Every regional organization could send one member to Council meetings, which would also secure a more equal composition of the Council, and would lead to a higher authority. The Council could no longer be regarded as an elite club of the winner states of the Second World War, but as an institution representing every region of the world.

It is obvious that some regional organizations have a better capacity for keeping peace and security than others. Some regions such as Europe or North America have a far lower frequency of armed conflict than other parts of the world. The UN could become the institution that coordinates capacity building programmes for the weaker ones.

Of course, the dismissal of a single central security organ that represents the world´s largest powers does bear certain risks. Relations between the United States, Russia or China will remain important. Nonetheless, the reformation of the UNSC will not do away with bilateral relations between countries. Bilateral agreements will always remain important, especially when it comes to other non-security related matters, such as trade or technology transfer.

No political institution should be regarded as self-evident. Institutions must be flexible and be able to adapt to changing realities. They can only work successfully if their structure and decision making processes meet practical requirements. The UNSC was constructed to meet the requirements of the Cold War era. Yet, since the international arena has dramatically changed after the end of the Cold War, it is necessary to adapt the world´s most important peace and security institution to the circumstances of a new global arena.

9 SECURITY COUNCIL AND SOUTH ASIA

PRANAAV GUPTA INDIA

Peace is best understood to be the creation of appropriate conditions that are conducive for the overall development of a person. In an increasingly globalized world, the threats to peace, that we now face, would include; “poverty, infectious disease and environmental degradation; war and violence within States; terrorism etc…”(1) Tackling these threats requires close co-ordination between the UNSC and other regional organizations. Finding this perfect balance is of immense importance. This will automatically lead to improving long term trust and ensuring greater co-operation between the UNSC and other regional organizations and therefore improve the maintenance of peace.

The United Nations Charter in Chapters, VI, VII, and VIII has made specific references to regional organizations and their importance in the maintenance of peace. There have been an umpteen number of UN High level committee reports, UNSC resolutions, General Assembly resolutions and UN Secretary General reports, all highlighting the need for enhanced co-operation between the UNSC and other regional organizations.

More specifically, The UNSC in its resolution 2171 (2) has recognized the importance of increasing engagement with regional and subregional organizations to improve the maintenance of peace, in similar light, the United Nations General Assembly Resolution 68/303 (3), has highlighted the need for regional organizations to improve their mediation capacities.

Presently the United Nations is engaged with 15 regional organizations in various high level meetings (4). These organizations include the European Union, NATO, and African Union etc. and are 'divergent in spatial destination as well as structure, competence, and role' (4). The SAARC has not yet been a part of such substantive dialogue.

Finding the right balance

The UNSC is directly engaged with the NATO, European Union and African Union in certain conflict areas with regard to the enforcement of the maintenance of peace. With regard to the African Union and its military capability, it has unfortunately been noted by the International Peace Academy that, "the profound institutional weaknesses of African regional agreements can be attributed, to their lack of financial, logistical and military resources to undertake effective military operations" (5). It has also been recognized that regional organizations such as the Arab League and Economic Community of West African States have played crucial roles in helping reduce conflict in Libya and Syria; and Sudan, Mali and Somalia respectively. It is important that The UNSC must improve its dialogue process and engage with a greater number of regional organizations to ensure the continuation of a sustained dialogue.

South Asia

South Asia is covered by the regional bloc, the South Asian Association for Regional Co-operation (SAARC). This organization was formed in 1985, and presently has 8 member countries. Though formed with lofty ambitions of ensuring regional integration through the maintenance of peace, the SAARC has, in most respects, continued to remain a paper tiger.

The region has been a hotbed of conflict. Ever since the British left the subcontinent, Kashmir, the disputed territory between India and Pakistan, does not seem to have a solution in sight. It is important to note that the SAARC Charter explicitly mentions that, 'bilateral and contention' issues cannot be raised at SAARC Summits (6), thus negating the possibility of any role of the regional institution in solving the Kashmir dispute. This raises multiple questions on security and peace building measures that the UNSC can undertake in partnership with the SAARC.

Though the 8 SAARC, countries are riddled with a myriad of problems of their own, for the region to have any sort of collective relevance, the SAARC must be given more teeth. Once it is used as an effective dispute settlement mechanism it would also be a regional institution referred to in Article 33 of the UN Charter. It would therefore act as an effective gatekeeper for the Security Council.

Comparatively, other regional organizations have had successes, such as the African Union which has contained the conflict between Ethiopia and Eritrea, the ASEAN which has been instrumental in the peaceful transformation of the entire South East Asian region. Yet, a similar role of the SAARC is hard to imagine, given the present set up.

There is a three pronged solution to improve the maintenance of peace in South Asia. Firstly, given the set-up of the SAARC, there should be a greater engagement of civil society (Track II diplomacy) between the 8 participating countries; this would definitely go a long way in reducing the suspicion with which nationals of one country view another potentially hostile South Asian country. Secondly, providing greater teeth to the SAARC, by including a dispute settlement mechanism as a part of the organization. In the absence of such a dispute settlement mechanism, there can be little or no engagement with the UNSC under Chapter VI, VII and VIII of the UN Charter. Finally, once a dispute settlement mechanism is put in place, the UNSC must actively engage with the SAARC in making the entire South Asian region more peaceful and relatively conflict free by adopting global best practices.

It is important to evolve a dispute settlement mechanism, different from the informal consensus oriented approach followed by the ASEAN, which prevented it from taking definite action in East Timor (7). Similarly the SAARC must ensure that it does not demonstrate the lack of political will shown by the Arab League and the Organization of Islamic Conference in resolving long standing disputes between its members, which have therefore hampered their functioning.

10 MAINTAINING PEACE IN SOUTHEAST ASIA

ANET ADILLA INDONESIA

Since its establishment in the 1967, the Association of Southeast Asian Nations (ASEAN)'s primary purpose is to promote peace and stability in Southeast Asia. Moving forward from balancing the situation of the Cold War era to facing the challenges of globalization, ASEAN has bound its ten member states together with a shared vision of the region with peace as the cornerstone. ASEAN's commitment to peaceful settlement of dispute is reflected in ASEAN's basic documents and the implementation of its norms and values through "The ASEAN Way". The year 2015 will also marks the establishment of the ASEAN Community, which will create more robust interaction and cooperation in the political, economic and socio-cultural fields. The cases of the South China Sea and the Thailand-Cambodia border dispute are examples of ASEAN's active contribution in maintaining peace in the region.

The Bangkok Declaration 1967 as the founding document of ASEAN stated that the objective of the regional organization is to promote regional peace and stability (1). ASEAN was created to respond to the situation of the great-power rivalry in the Cold War era by enhancing its member's political and diplomatic standing. From the start, ASEAN also served a forum for the peaceful settlement of disputes by helping to foster and strengthen mutual trust and understanding amongst its member (2). The Treaty of Amity and Cooperation (TAC) which was stipulated in the First ASEAN Summit further established the principles and policies of ASEAN conflict management. Most

importantly, the TAC required its signatories to respect the sovereignty of fellow member countries, to avoid intervention in their internal affairs, to solve problems between them peacefully, and to renounce the threat or use of force (3).

The distinct characteristic of how ASEAN member states interact and conduct these principles is called "The ASEAN Way". The ASEAN Way is a consensus and consultation based approach in dealing with the differences between members. This includes, among others, the principles of seeking agreement, harmony, sensitivity, non-confrontation, and private diplomacy. Although the ASEAN Way is often criticized as a soft approach to conflict resolution, it should be understood in a broader sense of the regional identity and spirit. It has been applied with good results in conflict resolution through direct and indirect measures of restraint, pressure, diplomacy, communication and trade-offs (4).

The 2007 ASEAN Charter marked another step in ASEAN's development into a more binding and rule based organization to manage the challenges of globalization (5). This Charter set forward the vision of ASEAN Community 2015 and ruled out a specific dispute settlement mechanism. According to Articles 22 and 23 of the ASEAN Charter, disputing Member States have the option to request the Chairman of ASEAN or the Secretary-General, in an ex-officio capacity, to provide good offices, conciliation and mediation to resolve a dispute within an agreed time limit (6). ASEAN Community 2015, which will be established formally on December 2015, is visioned to pursue better regional integration. This Community is comprised of three pillars of ASEAN Political-Security Community, ASEAN Economic Community, and ASEAN Socio-cultural Community with the vision of "ASEAN as a concert of Southeast Asian nations, outward looking, living in peace, stability and prosperity, bonded together in partnership in dynamic development and in a community of caring societies" (7).

With the establishment of the ASEAN Community 2015, ASEAN is expected to fully capitalize its potential of 600 million people and a combined GDP of $2.4 trillion (8). ASEAN is a major global hub of manufacturing and trade, as well as one of the fastest-growing consumer markets in the world with competitive advantages of labors, natural resources, and growing infrastructures (9). The ASEAN Community 2015 entails not only economic integration but a political and security dimension and the creation of a sense of a Southeast Asian identity (10). The wide ranging scope of ASEAN Community means that it will reach multi areas of cooperation such as free trade, transnational crime, public health, tourism, youth, energy, etc. ASEAN has also put greater emphasis to become a more people-centered organization and it encourages active participation from the business sectors, academia, civil society and other stakeholder (11). ASEAN Community formation will provide significant contribution as a base for peace and stability in the region through deeper integration. In one side the cost of conflict will be too high for the overall development of the region and in the other side it provides venues and large networks for peace and conflict resolution (12).

In the external front, ASEAN engaged the regional and global powers through the long-standing mechanism of ASEAN Dialogue Partner. The Dialogue Partners include Australia, Canada, China, the European Union, India, Japan, New Zealand, the Republic of Korea, the Russian Federation, the United Nations, and the United States of America. ASEAN and the Dialogue Partners are committed to work closely to promote peace, security, stability and prosperity, as well as to explore ways in addressing common challenges (13). ASEAN further envision the concept of "regional architecture", in which it manages to position itself as a center by engaging with various external partners in forums like ASEAN Regional Forum, East Asia Summit, and ASEAN Plus Three. These initiatives indicate ASEAN's growing confidence to contribute positively in creating peace and security not only in Southeast Asia but also in the wider region (14).

The two recent cases of the South China Sea and the Thailand-Cambodia conflict illustrated ASEAN's active role in maintaining peace. The South China Sea is a contested maritime territory between China and four ASEAN member states. Considering its strategic significance, the South China Sea is a potential flashpoint of the future conflict in the region. Since the 1990s, ASEAN has shown unity and collective efforts in addressing the issue, both through Track I and Track II diplomacy. In 2002, ASEAN and China successfully signed the "Declaration on the Conduct of Parties in the South China Sea". Although the overlapping claim is still ongoing, the continuous engagement and consultations between ASEAN and China helped to de-escalate the tension and expected to establish the binding Code of Conduct as a comprehensive solution (15).

The conflict between Thailand and Cambodia on the overlapping border claims on Preah Vihear temple erupted in February 2011. ASEAN involvement in the conflict resolution process was conducted through its 2011 Chairman, Indonesia. ASEAN interrupted the conflict escalation in February by prompt reaction, from shuttle diplomacy to consultation with the United Nations Security Council. ASEAN also brought the Thailand-Cambodia conflict "into the table", instead of the policy of "shoving it under the rug". This was shown through open discussions to address the conflict, in all level of ASEAN mechanisms including on the level of the Head of States/Head of Government (16).

11 REGIONAL ORGANISATIONS AND PEACEBUILDING

MIRACLE C. UCHE NIGERIA

An adoption of a resolution by the UNSC (in accordance with relevant provisions of UN Charter) on sustainable Governance practices (possibly mapping out consequent sanctions and penalties) of agreed standard of practice to be incorporated by all member states into domestic laws on governance, will go a long way in preventing further suppressive systems of governance, and will serve as a preventive peacebuilding tool.

Creation of a Special Regional 'Independent State Practices Monitoring Agency'

Although the UN has explored an aspect of this approach since its existence, there are more issues within a state or regions that caused Armed Conflicts (ACs) which could have been prevented if identified and neutralized at the root stage by using a specialized monitoring agency. Increase in population, change in demographics, unemployment, inflation, influx of refugees in the region, scarcity and property disputes are all interlinked and create a chain of reaction possibly ending in armed conflict (1); a monitoring agency may closely monitor these possible AC catalysts within a region and with the help of UN special agencies such as the Economic and Social Council, propose workable solutions to the UNSC and the endangered member state to implement and prevent such future catastrophe. An example will be creation of more employment opportunities and expansion of infrastructure. The recent South African anti-immigrant killings may have been prevented through such an agency.

The establishment of this agency and formulation of its mandate should be the duty of the UNSC in close collaboration with the UN economic and social council (ECOSOC); since they have regional presence, which will make the monitoring agency more practical and able to create solutions for expected economic and social challenges within the resected regions. Mode of operation should be dependent on the region and further dependent on countries, considering differences in cultural response to challenges; a more tailored approach can prove effective than a centralized approach, which is why it will be advisable to employ locals as well as economic, social and cultural experts in the respective regions to ensure an effective work and excellent results.

Regarding the method of operation of such an agency, a collaboration with the departments in charge of registration of births and deaths of such country as well as UN population division, will be ideal in order to identify population trends and predict future possibilities; alongside with the Trade and commercial activities department or ministry of such a state and UN ESCOCO to prevent a possible unemployment escalation due to increased population (possibly intensified by new births and refugee influx within the region) by creating economic policies that can tackle any predicted economic downturns.

Creation of a Refugee Integration, Rehabilitation, and Income Stability Program

Most refugees fleeing their AC stricken countries usually seek refuge within an immediate region, and sometimes these areas share similar language, culture and 'religion'. Religion, however, can bring fear of religious suppression to both the refugees and indigenous people - for example, the Crimea Tartar refugees fleeing to Mainland Ukraine (2). In order to prevent these fears from materializing into a conflict, a cultural integration program by way of social events and cultural parties can be organized in acceptable locations in the receiving state to bring together the indigenes and the refugees to mix up and share exciting diversities and similarities within their culture. In addition, access to amenities such as parks and playground should be made available to the children, to help minimize their trauma (3), and create a relatively stable life for

them. The youths on the other hand should have access to education, even if it is done in an informal setting (that is outside traditional classrooms) they should not be completely caught off from this essential right; maintaining constant access to education can reduce hopelessness and anger of the devastating effects of the war and can keep them focused on life beyond war. Although UNICEF has started this project (4), a huge majority of children (including youths of university level education) are yet to have access to the program according to UNICEF statistics (5); creating and running such programs can be achieved by the help of the many volunteers from around the world (particularly with regards to education and play activities for the youth and children) and can be sustained with funding from the UNHCR and other willing funding organizations.

These programs mentioned above serve as a means of avoiding a future outbreak of war; this is because during war times, refugees who have suffered due to the war are in a vulnerable stage and could easily be radicalized; such cultural, social and economic integration programs as well as activities suggested above can be used a means of rehabilitating the refugees, and preventing further psychological breakdown (due to post traumatic disorder). A refugee who has hope of a future, and who believes that he or she has not lost out completely on the future and the many exciting opportunities, will strive harder to survive and to get out of the war alive, whole and full of energy to realize his dreams, and will have no time to orchestrate another war. With the younger generation, desiring a better life and society than one stricken with war, what is done during the long days in refugee camps can either create a resolve never to allow re-occurrence of war or a negative turn out of future outbreak due to unmanaged effects of war. These activities therefore, if well planned and executed will serve as an effective war/armed conflict preventative tool.

Besides the programs planned for the children and youths, the adults and the older generation need to be taken into account; following integration within host states, income stability can be achieved by means of temporary work program that allows (especially) the semi-skilled and highly skilled refugees to work both in the refugee camps and other establishments in the receiving. Additionally, Youths whose education has been affected can be placed in educational institution at all level in different parts of the world, with the help of UNSC, member states and regional organizations. Each member state submits the number of students it can accommodate in its educational institutions, possibly on scholarships or subsidized tuition rate (and other terms to be fixed by the relevant bodies). This program can be used as a preventive and aftermath means geared towards improving peaceful living and integration of the refugees in the society, preventing gaps in different areas of their lives that may lead to frustration and resort to AC and ultimately to ensure a smooth transition in the post-conflict era of their state.

Despite the large number of post-conflict recovery processes that have been initiated over the years, statistics have shown that out of 10 countries with past AC, 3 return

photo: Ton Koene

back to AC in 5 years and 6 in 10 (6) portraying the fact that a change of approach and reformation of existing programs is needed; hence the creation of a "commission [UNPBC] by Resolution 60/80 and 1645" (7) of the UNGA and UNSC (respectively), focused on peacebuilding. More programs focused on children, youths and women who are the most affected part of the population in armed conflicts should be created, with the mindset of preventing a possible future outbreak of war catalyzed by the effects of the 'past armed conflict' war; keeping in mind that an armed conflict can only be referred as 'past' when the effects are no longer controlling the present nor determining the course of the future.

PART 2: INTERNATIONAL HUMANITARIAN LAW

12 MODERNIZE THE LAWS OF WAR

ALEXA MAGEE UNITED STATES

The challenge of modernizing International Humanitarian Law first lies in confirming its imperative. While the applicability of specific rules within IHL can always (albeit with difficulty) be altered to fit future situations within armed conflict, the general principles of jus in bello—which bring the law's object and purpose to life—cannot be altered without damaging its integrity. If the general principles of IHL are deemed worthwhile, then IHL is not outdated and a more united effort can be put towards creating rules and clarifications that are more realistically applicable for future armed conflict.

Four general principles exist to guide those engaged in armed conflict as to proper behavior in accordance with IHL: distinction, proportionality, military necessity, and unnecessary suffering. This essay will examine the principle arguably most vulnerable to criticism – distinction – to further engage the idea that IHL maintains continued moral validity within the changing context of modern armed conflicts.

The Value and Applications of the Principles of IHL: Distinction

The principle of distinction establishes the norm that measures should be taken at all times to distinguish between civilians and combatants and civilian objects and military objectives (1). This principle is based on the rationale that, while the goal of armed conflict is to prevail politically (or ideologically), acts of violence towards achieving that goal may only be directed towards overcoming armed forces of the enemy. Acts of violence against persons or objects of political, economic or psychological value may possibly provide more efficient means for overcoming the enemy, but they are never necessary – every enemy can be overcome by sufficiently weakening its military forces alone (2). Since the only legitimate goal a party to a conflict can pursue is weakening the military forces of the enemy, direct attacks on civilians or civilian objects can never be justified.

In the context of modern armed conflicts, distinguishing who is a combatant or what is a military objective is increasingly difficult. Parties to the conflict often do not wear uniforms and choose densely populated areas to carry out combat activities. Some participants in conflict are not members of state armies, but are civilians who temporary take up arms—unlawful combatants (3). Unlawful combatants receive reinstated immunity from attack

the moment they drop arms, creating a "revolving door" protection (4). Falling short of direct participation in hostilities, the military is becoming increasingly civilianized, with civilians executing many former military tasks. Additionally, combatants from non-state parties in non-international conflicts do not receive the same privileges as combatants to an international armed conflict (5), providing for a gap in regulation.

It is naïve to assert that the traditional combatant/civilian categories used in IHL will be functional in future armed conflicts; however, the definitions of "combatant" and "civilian" can be altered to accommodate reality without voiding the entire principle. Perhaps removing the category of "unlawful combatant," which still falls under the jurisdiction of domestic law, would improve continuity within IHL. If an armed conflict exists and a person directly participates in hostilities, they are given combatant status and can be attacked until they are otherwise hors de combat.

Further defining "direct participation in hostilities" in the context of modern armed conflicts could provide clarification for when it is permissible to target civilians performing military tasks and eliminate revolving door protections. In this case, the definition of "combatant" could be altered to focus on a person's intent and behavior, rather than behavior alone, straying from a stricter "continuous combat function" requirement (6). This could include intent and conduct based analyses: (a) Does the person intend to assist one side's military objectives by taking certain actions?, and (b) Does the person's actions result in substantial contributions to overcoming the military forces of the enemy (7)? If both conditions are met, this could equate to a de facto joining of armed forces, forfeiting any further civilian protections.

Since combatants from non-state parties in non-international conflicts do not receive the same privileges as combatants to an international armed conflict, non-state party actors are still subject to prosecution under domestic law for lawful and unlawful IHL actions, alike. Additionally, they do not receive prisoner of war protections when captured, reducing the likelihood of compliance with IHL rules and principles. Providing combatant status to all participants in hostilities in non-international armed conflicts would fill regulatory gaps and provide much needed incentives for compliance.

At the core of all amendments to the current rules of IHL regarding distinction lies the central question: should the only legitimate aim of war still be to weaken the enemy's armed forces? This principle still maintains moral validity, as, especially as the number people who remain victims of the harmful effects of armed conflict rapidly grows. They deserve equal protection, for they are not necessarily responsible for the means or goals of their party.

Conclusion

The application of the principle of distinction to current types of armed highlights some of the difficult challenges facing the modernization of international humanitarian

law. The three other principles – proportionality, military necessity, and unnecessary suffering – also face their own challenges, but the procedure for analyzing their moral validity should remain the same. If these principles are disregarded, war has the potential to procure even more damage and destruction. These principles are not outdated. They serve an important purpose of reinserting humanity into the world's most damaging humanitarian crisis—war. The challenge is making the rules of IHL realistic for future armed conflicts. It does not benefit the IHL regime to bind the hands of parties to armed conflicts to the point of disregard. While altering international law is by no means a fast or easy process, it is a worthwhile endeavor to assert that even future wars have limits.

13 MODERNIZING THE HUMANITARIAN RULES OF WAR

DAPHANE CALÁBRIA DA SILVEIRA BRAZIL

The first normative document of, jus in bello, was the Geneva Convention of 1864 (1), from which was founded in 1880 the International Committee of the Red Cross. From that ancient time to the present days, the Geneva Convention was amplified. Firstly, the convention was revised in 1907(2) to extend its principles to naval warfare (Hague Convention). Then in 1929 (3) the third Convention of Geneva established the protection of prisoners of war. This long document regulates the capture, the captivity and the work of war prisoner, among others important devices designed to ensure the minimum of dignity to people trapped in this condition. Finally, in 1949 (4) the fourth Geneva Convention enlarged their subject to include the protection of the civilian population victim of an armed conflict.

Currently, over 190 (5) countries are parties to the Geneva Convention and certainly these four treaties that compose the convention have positively impacted the humanitarian law. However, the world needs more effective solutions that are able to protect populations involved in war conflicts. This essay aims to indicate some modifications that could be made in international law in order to ensure better protection of human rights.

The effectiveness of Geneva Convention

As defined above, humanitarian law aims to resolve the tragic effect that an armed conflict has on a population. Thus, the norms established in the fourth Geneva Convention created greater protection for civilians who were so strongly affected by the conflicts in Asia, Africa and Europe at the beginning of the twentieth century. At that time, the horrors of World War II were a clear example of the need to create an effective protection of the populations in war (6). However, it was expected that with the technological development, actual human to human battles in warring countries would severely decrease. Consequently, the war prisoner problem would also decrease,

and, with some luck, that would be an anachronistic issue (7), as described by Konder Comparato. It was also expected that the civilian population would suffer much less with massive bombings, and therefore, the new technological wars would be much "safer" than the ancient ones. Unfortunately, this theory has been proven wrong.

According to the human development report made by the United Nations in 1998, civilian victims of armed conflicts accounted for 90 % of the total of dead, wounded and missing people (8). This sad fact is even more frightening when we analyze the statics of the wars that happened in the late 90's and early 2000. During the Gulf War more than 65,000 Iraqis were arrested. Moreover, NATO's bombing killed an outrageous number of civilians during its intervention in the Kosovo war. Until this day the exact number of casualties has not been defined ranging from 500 to 5.700 civilian deaths (9).

All this data shows the need to extend the range of people protected by this convention. The respect of human rights does not depend on an acknowledgement of States. Therefore the protection offered by the convention to the population situated in a conflict zone must be absolute and completely independent of any nationality issue. Human dignity is independent of State recognition. According to the declaration of human rights all men are born free and equal in dignity and rights. This attribution is not granted by the State. Thus, the recognition or not of the Convention cannot present any obstacle to its full implementation, otherwise the very principles of humanitarian law would be disrespected.

Furthermore, the application of the convention to prisoners involved in terrorism complaints is also a highly discussed topic. Often, people involved in such situations are not soldiers from armed forces of another country. Thus, some voices claim the inapplicability of the Geneva Convention to such prisoners. This issue has become especially relevant after the invasion of Afghanistan in 2001 and the invasion of Iraq in 2003, by the United States. The prisoners maintained in captivity by the Americans suffered with an abject treatment provide by its captors (10). Moreover, many ad hoc courts were created to judge these prisoners and frequently these courts did not respect the due process of law. All these offenses were based on classification of terrorism prisoners as non-state actors. This classification would prevent the application of the Geneva Convention, and therefore the protection given by it. This legal argument was so absurd that even the Supreme Court of the United States rejected such a theory on a judgment that took place in 2006, in the case of Hamdan v. Rumsfeld (11).

The Geneva Conventions are too dependent on political decisions. Only rarely States recognize the applicability of humanitarian laws, which makes its cogent force extremely fragile. In this scenario a more effective statement from the UN and International Justices Courts is necessary, but we rarely observe this kind of attitude from such organs.

14 A ROLE FOR INTERNATIONAL COURTS AND TRIBUNALS

JANHAVI PANDE INDIA

An ongoing concern for the international community is the ground-level operation of the peace missions, not only in terms of logistics, support staff and 'clear mandates' (1) but also in terms of keeping with the rule of law (2). Alleged instances of human rights violations by IOs during peace operations can possibly date as far back as the time they first began under the aegis of the UNSC. And while the UN itself has taken steps to mitigate the shortcomings, be it SC Res. 1327 or the latest, Office of Rule of Law and Security Institution, these are still internal reforms that do not step outside the political framework of the UN. Additionally, none of these steps have been designed, keeping in mind similar flaws in regional arrangements such as the NATO which have surfaced in the past (3).

International Organizations before Courts and Tribunals

The problem when dealing with human rights crises born out of peace operations is that their invariable attribution to the parent organization has led to the creation of a vacuum in facilitating justice for the victims, at both, the national and the international judicial fora. The earliest evidence of this is Behrami and Saramati (4) before the ECHR wherein the Court dismissed the applicants' claims as inadmissible, given that the impugned acts were attributable, not to KFOR but to the UN broadly. The decision in Behrami found its fair share of criticism in academia, notably on the ground of ignorance of the principle of "plurality of responsibility" in according responsibility to the KFOR (5). What has remained nevertheless, is the dichotomy between what the International Law Commission [ILC] envisaged while drafting the Articles on Responsibility of International Organizations [ARIO] and the actual settlement of claims in judicial practice.

In the Reparations Case (6) the ICJ declared that the United Nations possessed a legal personality distinct from that of its individual member states. Further literature on the legal personality of IOs reveals that the intention of its founding members is key to determining their legal character (7). However, assuming one is past that particular hurdle of making determination of the legal character of an organization, what are the consequences that are expected to accrue to the said organization? Assuming it can be deemed to be a 'subject of international law,' meaning thereby that it is not merely a norm-creator but also a norm-abider, what happens in the event that such organization breaches its international obligations? To answer this question, the ILC included within its subjects the task of codifying the law of responsibility of IOs as distinct from the Articles on State Responsibility. However, as noted by the Special Rapporteur Giorgio Gaja himself, several of these articles "are based on limited practice" thus acquiring a character of "progressive development of international law" as opposed to a codification of custom (8).

A Way Forward

As noted earlier, once a conduct which is the subject of a claim has been attributed to an

international organization, that claim comes in danger of being declared inadmissible before a court of law (9), unless the court, in what is surely a rare practice, decides to hold a member state individually responsible (10). Also, apart from the issue of plurality of responsibility, the question that persists is whether IOs can be made parties before international courts as they stand today. The reason why this question is important, is because if the answer is in the negative, an applicant might simply be left without recourse in any case wherein the conduct is attributable to an organization (at times, even in cases where plurality of responsibility is engaged, as seen above). However, if the answer is positive, then the only real hurdle would be that of an organization constituting a necessary third party to the dispute (11) - a hurdle which can more easily be remedied, depending on the forum. The ILC for its part clearly seems to presume the latter. And there is state practice to support the presumption (12). Of course, this is still a work in progress, but the author sees no reason why IOs in the future cannot be subjected to human rights regimes as well as regimes of humanitarian law that govern their conduct during peacekeeping provided the creation of a consensus.

Can international courts subject resolutions/decisions of IOs to judicial review? If one is to go by the decision of the ECJ in the Kadi dispute in 2013 (13, 14), the answer is a resounding yes. This control is possible even within the framework of the UN if one is to take a closer look at the ICJ's statute which, inter alia lists the sources to be relied upon by the Court (art. 38). I posit that a perusal of art. 38 (1)(c) of the statute should enable the Court to review resolutions of IOs including the SC, even though the Court itself has been reluctant to do so in the past (Lockerbie Cases, Preliminary Obj., ICJ, 1993) (15). I further posit that there is nothing in the Charter or within the Statute that explicitly prevents the Court from rendering an effective remedy in instances where a Chapter VII legislation by and of itself is in violation of international law, provided a dispute in that regard is before the Court.

15 IS PROTRACTED CONFLICT BEYOND THE PRINCIPLE OF PROPORTIONALITY?

EDEL HEUVEN NETHERLANDS

War is allowed to continue for eternity, as long as it does not cross any of the International Humanitarian Law (IHL) prohibitions. This makes me wonder why it is not allowed to use biological weapons, while it is allowed to let people suffer for decades in a protracted conflict. Why it is not allowed to commit genocide, while it is allowed that generations are raised without any knowledge of peace? With these questions in mind, I started to reflect on the Geneva Conventions and IHL in general and how these take into consideration the way people on the ground experience protracted conflicts. In this essay, I will focus on the interaction between human experience in wars and its time dimension and will argue that in order to do justice to the principle of proportionality from the perspective of human experience a rule should be included in IHL that seeks

to create legal arrangements to curb protracted conflicts in which severe and inhuman suffering is taking place.

The Geneva Conventions and International Humanitarian Law

The Geneva Conventions were founded in 1949 on the humane standpoint of respecting and protecting the individual and his/her dignity, by reducing human suffering and limiting the effects of war (1, 2). It focused on restricting the means and methods of warfare and protecting persons who are not or are no longer participating in hostilities. It set out legally binding rules, ensuring that war was 'fought justly' (jus in bello) referring to the means adopted in warfare and the targets set out by the conflicting party (3). In principle, the Geneva Conventions and IHL in general, are not concerned with the question whether a war 'is just' (jus ad bellum), referring to reasons of war. Although it is therefore criticized for legitimizing conflicts by mitigating its violence (4), it is considered that war can be the lesser of bad choices; for example, people should be able to start a war to protect themselves from oppression or aggression. Further criticism has been raised regarding IHL's implementation and enforcement, often considered to be insufficient. Moreover, IHL is often considered to be outdated, because it mainly covers armed international conflict, leaving a large gap for the governing of internal conflicts and terrorism (5).

Nevertheless, IHL has been crucial in the past and present. The ideas and the legally binding rules have had a significant effect on the shaping and forming of the practices of (most of) the conflicting parties in war. All great powers tend to want to adopt the humanitarian discourse, indicating the real strategic significance of the humanitarian idea and language as it projects credibility, legitimacy and the claim of morality (6). IHL sets the internationally accepted norms for warfare, shaping the room in which conflicting parties try to maneuver and generate legitimacy. It generates a moral awareness that steers actions in a certain direction by creating incentives. IHL can thus be considered to be highly relevant and significant in warfare (even if not fully enforced).

However, to improve IHL additional rules need to be considered. To enhance the path to its aim of reducing and alleviating human suffering, we should consider the element of time dimension. Up until this moment, no consideration has been made regarding the element of time (7) and how this interacts with human experience in war. As will be explained below, the neglect of the time leads to conflicts that are disproportional if perceived from a human experience perspective and therefore rule is needed in IHL that curbs protracted conflicts in which inhuman suffering is taking place.

Proportionality, the Human Experience and Time

Liked stated before, conflicts are theoretically allowed to last for eternity if all the rules are followed. However, considering the human suffering that is associated with war one might wonder why. In my perspective, some protracted conflicts go beyond the principle proportionality which is one of the principles of the jus is bello theory on which IHL is based. Johnson explains this principle by stating that 'the evil produced by

the war must not be greater than the good done or the evil averted by it' (8), indicating that the costs of the war must not outweigh the benefits. At this moment, the way the concept of proportionality is interpreted only focuses on the kind of force that is morally permissible in warfare. For example, biological or chemical weapons are not allowed because they cause unnecessary injury and are not easy to control.

However, in this way the timespan of a conflict and its impact on a country and its population is overlooked. In my opinion, the interpretation of proportionality should be expanded to include time. By focusing on force, IHL only considers the physical aspects of the violence of war, while the human experience and suffering resulting from protracted conflicts is ignored. Although war can physically harm people, it leaves psychological scars behind as well, for the ones directly fighting, but also for the ones indirectly involved in war. The violence of war shapes the realities of people in it, killing their hopes and making their future plans into a casualty (9). Thus, conflict has an enduring effect on the whole of society; it changes the meaning people give to life and alters the practices that people employ to life.

Legal arrangements that curb protracted conflicts are one step to include the human experience of the ones directly and indirectly involved in a conflict. This human experience should be included to do justice to the principle of proportionality. The inclusion of the dimension of time in the interpretation of proportionality provides us with a legitimization to deal with protracted conflicts. Looking at the suffering in many of these protracted conflicted, the need for these legal arrangements can easily be identified. First of all, is the simple fact that the longer a war continues, the longer human suffering takes place; suffering can intensify and deepen as war drags on, crossing the line of proportionality at one moment. Conflicts are associated with high economic, political and institutional costs, as economic progress is disrupted, political networks are ripped apart and institutional systems are broken down. Moreover, conflicts have severe social, cultural and psychological costs. These costs severely impede on recovery and possibly lead to a conflict trap, referring to a change in social environment that the most logical choice of action for actors is to continue with the conflict (10). Finally, the longer a war is taking place, the more likely it is that it spills over regionally or globally leading to further security dilemmas.

We should redefine the way the principle of proportionality is currently interpreted, because it only considers the physical aspect of the violence of war, neglecting the human experience and suffering resulting from its duration. However, if the aim is to truly prevent human suffering, attention should be refocused to human experience. Although it might be difficult to incorporate the human experience in IHL, I think that the consideration of the time dimension and the identification of protracted conflicts can be considered one of the necessary steps. After a protracted conflict has been identified, I would see it fitting that an independent investigation on the social, psychological, economic and political consequences would start to evaluate the proportionality of the conflict. In the case that a conflict is judged to be beyond proportion from a human experience perspective, further actions would be justified based upon this rule.

16 RULES RELATED TO CHILD SOLDIERS

TAKASHI MORI JAPAN

After working in the Gaza Strip as an aid worker and seeing Hamas conscripting children, working in Tohoku where the Great East Japan Earthquake occurred and realizing how vulnerable children are, and studying international humanitarian law, it was inevitable for me to become academically interested in children who are mistreated in armed groups. That is the reason why I chose to write my essay on modernizing the humanitarian rules of war - the Geneva Conventions - focusing especially on the implementation of rules related to child soldiers.

Full implementation of such rules at the national level is desirable but it is not rare for national bodies to become unable or unwilling to implement the humanitarian rules of war. The complementarity of third parties is essential in order to strengthen the implementation of international humanitarian law. The International Criminal Court (ICC), with the longest and most comprehensive list of war crimes (1) including grave breaches of the Geneva Conventions and other serious violations of the laws and customs applicable in armed conflicts, is one of those third parties. The essay will examine a case related to child soldiers held by the ICC, Prosecutor v. Thomas Lubanga Dyilo (2), in order to see whether the Court could successfully played its role in the implementation of humanitarian rules of war.

Lubanga Case

The ICC delivered its first-ever judgment in March 2012, the Lubanga case. The Court found Lubanga "guilty of the crimes of conscripting and enlisting children under age of fifteen years...and using them to participate actively in hostilities" (3). The case illustrated a certain limit; some children were considered as non-combatants, and were excluded from the definition of child soldiers despite of the fact, for instance, that those children were sexually abused resulting in abortions, forcedly used for housework, recruited as domestic servants, or/and treated as if they are the commanders' wives (4).

The provision related to child soldiers covers "both direct participation in combat and also active participation in military activities linked to combat" (5). The drafters' intention here was to expand the scope of child soldiers. The drafters, however, also pointed out that "it would not cover activities clearly unrelated to the hostilities" (6). The activities unrelated to hostilities such as coerced sexual services, domestic chores and forced marriage might not be considered as direct nor active participation in hostilities. They could only fall into the definition of child soldier when their works and supports made them potential military targets (7).

Moreover, the Rome Statute contains separate provisions related to sexual violence but the Court did not apply those provisions in the Lubanga case. The Court states that "not

only did the prosecution fail to apply to include rape and sexual enslavement at the relevant procedural stages, in essence it opposed this step," and "it submitted that it would cause unfairness to the accused if he was tried and convicted on this basis" (8). The reasoning is not understandable as Judge Odio Benito stated in his separate and dissenting opinion that "by failing to deliberately include within the legal concept of 'use to participate actively in the hostilities' the sexual violence and other ill-treatment by girls and boys, the Majority of the Chamber is making this critical aspect of the crime invisible" (9).

Cape Town Principles

Cape Town Principles and Best Practices (10) have foreseen the above mentioned situation already in 1997. It stated that child soldier "includes girls recruited for sexual purposes and for forced marriage," and "it does not, therefore only refer to a child who is carrying or has carried arms." Unfortunately, there is no binding force in the principles. It does not mean, however, that the principles have no influence. In the Lubanga case, for instance, the United Nations Special Representative of the Secretary-General on Children and Armed Conflict criticized the ICC by stating that "the exclusion of girls from the definition of child soldiers would represent an insupportable break from well-established international consensus" quoting the Cape Town Principles (11).

Special Court for Sierra Leone (SCSL)

In the case of Prosecutor v Alex Tamba Brima, Brima Bazzy Kamara, and Santigie Borbor Kanu held by the SCSL, the Court found Brima, Kamara and Kanu guilty not only for using child soldiers including girls but also for committing sexual violation including forced marriage (12). The Court showed that it is not impossible to combine relevant provisions of child soldiers and sexual violation in order to provide more comprehensive legal remedies for female children who were engaged in activities in armed groups. What the SCSL did in this case was not giving up on the high principle that can be seen in the Cape Town Principles but pursuing the high principle to include those who had been excluded by applying not only provisions related to child soldiers but also provisions related to sexual violation in the SCSL statute.

Despite the fact that the international consensus could be found in the Cape Town Principles to include those who are excluded from the term of child soldier such as girls who are recruited for sexual purposes and for forced marriage, and despite the fact that there are already provisions which can be combined with provisions related to child soldier in order to provide more comprehensive legal remedies for those who are exclude, the ICC still found difficult to do so in the Lubanga case. I must emphasize here that it was not a preferable precedent set by the ICC for the future development of the implementation of humanitarian rules of war. The practice shown by the SCSL as mentioned above should have been followed by a greater legal institute, the ICC.

17 PRIVATE MILITARY COMPANIES

PINAR CIL CANADA

In the immortal words of Senator James William Fulbright, one of the most prominent American statesmen of the twentieth century: "Insofar as international law is observed, it provides us with stability and order and with a means of predicting the behavior of those with whom we have reciprocal legal obligations." (1). Yet, what occurs when it is unclear whether certain actors possess legal obligations in the first place? How do the tenets of stability and predictability function in an ambiguous realm of uncertainty? Such is the case for Private Military and Security Contractors (PMSCs)—colloquially equated to modern-day mercenaries (2).

According to Jutta Joachim and Andrea Schneiker (2012), "PMSCs are non-state actors that challenge the state's monopoly on the use of force [...]." (3). For human rights expert Jose-Luis Gomez del Prado (4), "Private military and security companies operate in a legal vacuum: they pose a threat to civilians and to international human rights law." (5). Furthermore, private firms typically work on the frontline as 'business providers' of professional security services linked to warfare (6). In the last decade alone, a number of firms have demonstrated increasing ambition to undertake operations, contesting that they can provide more efficient and cost-effective support to armed forces and other organizations in complex situations like peacekeeping and delivering humanitarian assistance. However, the growing reliance of PMSCs also means the potential for several underlying abuses, including a lack of accountability, transparency, adherence to IHL principles and state obligations.

The status of PMSCs remains questionable in several categories. Firstly, while the use of mercenaries has been sanctioned under the 1989 United Nations Mercenary Convention, some observers argue that PMSCs are distinct from mercenaries and have clearly defined roles as legitimate support units (7). Secondly, PMSCs often blur the lines between combatant immunity and civilian protection. While their modus operandi is similar to that of a conventional army, PMSCs are not regarded as soldiers or supporting militias under IHL since they are not officially part of a national army, nor do they follow a uniform chain of command structure. Finally, PMSCs do not satisfy the traditional definition of civilians, which posits that civilians are persons who are not members of any armed forces (8) and who do not directly participate in hostilities during armed conflict (9). As a result, PMSCs have morphed into a new category of their own, whereby neither the designations of mercenary, combatant, nor civilian apply (10).

Today, the problem with PMSCs in the defense and humanitarian realms is two-fold: (a) the liability issues vis-à-vis their conduct towards civilians and civilian targets, and (b) their applicable protection in the event of capture and their prospects of enjoying said protection under the Geneva Conventions. Given the legal quagmire surrounding

PMSCs, is it high time to put a leash on these 'dogs of war'? Finally, will the privatization and commercialization of warfare create future ethical and moral dilemmas for PMSCs? For nation states?

The analysis begins with a general discussion of combatant status and the criteria under which individuals must satisfy in order to claim combatant immunity under IHL (Part II). Moreover, Part III presents recommendations for reconciling the Third Geneva Convention relative to the Treatment of Prisoners of War (POWs) and the Fourth Geneva Convention on the Protection of Civilians with PMSCs. In particular, it suggests that PMSCs should be explicitly addressed in the Geneva Conventions in order to provide further clarity to their IHL obligations. For the purposes of this discussion, issues surrounding compliance and enforcement mechanisms are not examined.

The Importance of 'Status' and Definitions in IHL

The term combatant holds great weight among legal and military circles. During times of armed conflict, the designation of some persons as combatants may 'make or break'an individual's fate. Under the general principles of IHL, combatants are entitled to (i) immunity from prosecution for taking part in hostilities (excluding war crimes and crimes against humanity), and (ii) the right to POW status. The 1907 Hague Regulations—a precursor to the 1949 Geneva Conventions—classified the following groups or persons as combatants: national armies, militias, volunteer corps, and civilians who engage in a levée en masse (11). The Third Geneva Convention also qualified that militias and volunteer corps must: (i) demonstrate a responsible command system, (ii) possess fixed and distinctive emblems, (iii) carry arms openly, and (iv) respect IHL rules and principles (12). In the context of PMSCs, the first criterion— 'responsible command system'—may be arguable, as most private firms run their chains of command at an ad hoc basis with limited coordination (13). While PMSCs may satisfy the second and third criteria, their adherence to IHL rules and norms is worrisome at best. For example, former American PMSC firm Blackwater, "was perceived as so powerful [in Iraq] that its employees could kill anyone and get away with it." (14). In 2009, US Secretary of Defense Robert Gates acknowledged the Department's failure to adequately prepare for PMSCs when he testified that the use of contractors occurred,

[. . .] without any supervision or without any coherent strategy on how we were going to do it and without conscious decisions about what we will allow contractors to do and what we won't allow contractors to do [. . .] We have not thought holistically or coherently about our use of contractors, particularly when it comes to combat environments or combat training (15).

According to the Geneva Conventions, if a combatant follows the laws of war, then he or she is considered a privileged combatant and upon capture, he or she would qualify as a POW under the Third Geneva Convention (16). An unprivileged combatant

or unlawful combatant is an individual, such as a mercenary, who directly takes part in hostilities, but who, upon capture, does not qualify for POW status (17). There remains a question over whether PMSC personnel qualify as traditional mercenaries or as unlawful combatants in the first place. Commensurate to Article 47(2) of Additional Protocol I (API), to be considered a mercenary, the person has to fulfill six criteria:

Article 47 – Mercenaries

1. A mercenary shall not have the right to be a combatant or a prisoner of war.

2. A mercenary is any person who: (a) is specially recruited locally or abroad in order to fight in an armed conflict; (b) does, in fact, take a direct part in the hostilities; (c) is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a Party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of that Party; (d) is neither a national of a Party to the conflict nor a resident of territory controlled by a Party to the conflict; (e) is not a member of the armed forces of a Party to the conflict; and (f) has not been sent by a State which is not a Party to the conflict on official duty as a member of its armed forces.

According to Gomez del Prado, "for PMSCs and their employees to be considered mercenaries, all the requirements in the definition of the international instruments must be cumulatively met."(18). In other words, there must be a uniform understanding of the term in order to avoid the current definitional confusion. Interestingly, the United States—one of the largest employers of PMSCs—are not signatories to API, and thus, do not follow the definition of 'mercenary' under Article 47. While thirty-two states have ratified the Mercenary Convention, most of the governments that are party to the Convention do not contract PMSCs (19). For there to be a universal acceptance of the term, the Geneva Conventions must ultimately incorporate some of the more narrow language of 'mercenary' (from either API or the Mercenary Convention) in order to: (i) broaden its application to PMSCs and (ii) prohibit or attempt to ban their employment.

Recommendation

The multiplicity of uncoordinated ad hoc investigations and inter-agency finger pointing in certain cases has resulted in frustration and total confusion over which body of law applies to PMSCs. Given the complex IHL issues surrounding PMSCs, this essay recommends that the Geneva Conventions ought to modernize key provisions to either definitively prohibit private security firms from engaging in combat during times of armed conflict or, at the very least, remind the international community that PMSCs fall under a new hybrid category of specialized actors, who are obliged to respect IHL. Furthermore, the Third and Fourth Geneva Conventions ought to adopt a better definition of mercenary and, at the same time, clearly define unlawful combatants in order to ascertain whether private security and military personnel fall into this category as well (20).

With the outsourcing of moral and combatant responsibility on the rise, this essay has shown that private military and security contractors are plagued with ad hoc chains of command and an ambiguous understanding of accountability and transparency. As a result to regulating PMSCs and unlawful combatants, IHL has, in essence, become a game of semantics. In response to the US-led campaign in Afghanistan, Knut Dörmann, a legal advisor at the International Committee of the Red Cross (ICRC), aptly stated: Whereas the terms "combatant", "prisoner of war" and "civilian" are generally used and defined in the treaties of international humanitarian law, the terms "unlawful combatant", "unprivileged combatant/belligerent" do not appear in them. They have, however, been frequently used at least since the beginning of the last century in legal literature, military manuals and case law. The connotations given to these terms and their consequences for the applicable protection regime are not always very clear (21).

In the end, while the drafters of the 1949 Geneva Conventions proposed groundbreaking humanitarian principles that have stood the test of time, they did not envision the roles and responsibilities of actors akin to modern PMSCs. For this reason, the Geneva Conventions must take into account the changing realities on the ground, and the ways in which modern warfare is fought.

18 ENDING SEXUAL VIOLENCE AGAINST WOMEN DURING WARTIME

LOYCE MREWA ZIMBABWE

Examination of IHL through Gendered Perspectives

Common Article 3 of the 1949 Geneva Conventions is applicable to all NIACs (1); it has compulsory and universal application due to entry into the corpus of customary international law (2). Moreover, certain rules of CIHL govern NIACs (3). Only Common Article 3 and Customary International Humanitarian Law (CHIL) will be analyzed since they have universal and compulsory application due to their status as customary law (4); unlike AP II whose application is dependent upon ratification and only applies to conflicts which meet a certain threshold (5).

Common Article 3 regulates sexual violence indirectly through prohibitions of 'outrages upon personal dignity and violence to person' which have been interpreted by international courts as encompassed within the above provisions (6). Prohibitions of various forms of sexual violence are explicitly spelled out within CIHL (7). However, both Common Article 3 and CIHL provide only minimal regulation, a negative obligation, simply a prohibition (8). This minimalist approach alludes to how the perception of rape within IHL does not take female experiences (9) of war into account where sexual violence is systematic and even used as a method of warfare. If rape was construed as it is in reality for most women, it is unlikely that a simple negative obligation would be adopted to deal with such a heavy matter. Moreover, consequential harms of the

perpetration of sexual violence are not addressed in IHL. Silence regarding the above harms alludes to a lack of gender which limits protection since such harms are not even identified within IHL (10). Additionally, the minimalist approach is contra to its humanitarian aim of mitigating human suffering caused by war and assisting victims as far as possible.

IHL was originally drafted in the late 1940s (11), the likelihood that perceptions towards women during that time in relation to their roles or experiences of war are also likely to have been incorporated into IHL since such perceptions were normal and acceptable at that time (12). The drafters of IHL could not have foreseen the role gender would play during wars and conflicts of the 21st century where sexual violence could be used as a method of warfare. However, things have changed considerably since the 40s, the ways in which conflict impacts women has changed since systematic rape and other forms of sexual violence are now used as a method of warfare. This highlights how gender plays a bigger role than previously in conflicts nowadays. For instance, in Eastern DRC rebel groups commit various forms of sexual violence to terrorize (13), demoralize (14) and subjugate (15) communities as a strategy for achieving military objectives such as dominance and control. Once control is established other military objectives can be more easily realized such as the financing of military activities (16) and security from being discovered and captured by State forces (17).

It is important to have comprehensive and specific obligations since women face discrimination globally, regardless of the prohibition of adverse distinction (18), which limits the likelihood of States implementing measures aimed at responding to the specific needs of women of their own volition (19). This resistance is illustrated by State practice (usus) and opinio juris sive necessitates, 'the belief of whether such practice is required', which does not include measures for reducing or preventing the incidences of rape even in usus directly aimed for the protection of women such as within Rule 134 of CIHL (20). Moreover, gendered perspectives would be more effective in comprehensively identifying and creating safeguards within the law to prevent the incidence of sexual violence (21).

Proposals for development of IHL

Given the obvious shift in the nature of war where gender plays an increasing role, it is necessary if not imperative for IHL to be revised and developed to reflect such changes. A gendered perspective could be included in IHL through the drafting of an Additional Protocol hereinafter AP; this approach is presently more feasible than reforming IHL in its entirety. However, in the long run it is necessary to reform IHL in its entirety to be in sync with experiences of wars in the 21st century since law is a dynamic phenomenon which should constantly be revised and amended to respond to changing needs (22).

In an AP, States would be obligated to adopt measures for increasing gender awareness in society generally and for military personnel. For instance, gender education and

awareness-raising could be made part of military training so that soldiers are educated and trained to perceive the perpetration of sexual violence as unacceptable at all times (23). This could lead to the redefining of gender perspectives of soldiers, ways of expressing masculinity (24) and perceptions towards rape and other forms of sexual violence during conflicts which fuel such violence (25). A change in perceptions could possibly lead to greater compliance with obligations in IHL if armed groups and members of society are encouraged and conditioned into submission. This approach can also be construed as an indirect means of strengthening implementation and enforcement of IHL.

A number of authors agree with me that military commanders should have an obligation to build institutions aimed at preventing and mitigating the likelihood of their subordinates committing sexual violence (26); and that commanders be held accountable in cases where subordinates perpetrate such violence to ensure that serious and effective measures are setup to prevent and or reduce its incidence (27). However, before IHL is revised and or a new protocol drafted more extensive research should be undertaken to further conceptualize and identify the root causes of the perpetration of different forms of sexual violence during conflicts before measures are adopted to address such issues (28).

Presently, in the absence of a gendered AP or amendments, IHL will have to be complemented through the sustained efforts of stakeholders (29). This group should advocate and lobby for all measures outlined above, particularly awareness-raising aimed at changing perceptions of wartime sexual violence. Peacebuilding should also be intensified since without war, wartime sexual violence becomes obsolete. However, such assistance should be supplementary and not an alternative to revising IHL which is the primary organ regulating armed conflicts in a universal, provisions part of jus cogens, and somewhat exhaustive capacity unlike other agencies which have limited mandates that hinder the possibility of fully addressing needs (30).

19 CYBER WAR: DECIPHERING MILITARY OBJECTIVES

DIANNE KEUR NETHERLANDS

It has only recently been agreed that next to land, sea, air and space, cyberspace also constitutes a domain of armed conflict (1). Through cyber operations, which can be deployed to defend, attack, or exploit an adversary's network or computer system, societies can be deregulated in an unprecedented manner (2). In situations where cyber operations constitute or belong to an armed conflict, they are governed by the rules and provisions of international humanitarian law (IHL) (3). One of the core purposes of this legal body is the protection of civilians and civilian objects from the harmful consequences of an attack, known as the principle of distinction. Following this principle, combatants should ensure that "constant care [is] taken to spare the civilian population,

civilians, and civilian objects" (4). This paper is specifically interested in the latter, the protection of civilian objects in cyberspace.

The shift from battlefield to so-called battlespace has presented a range of new conceivable military targets, including computer networks and servers (5). The introduction of these objects poses two different challenges to traditional IHL. First, the IHL-definition of an 'object' was written with physical objects in mind and hence does not automatically cover virtual entities. The scope and contemporary relevance of this traditional definition will be examined below. Second, a majority of computer network devices is used by armed actors and civilians alike. Such dual-use objects are considered military objectives. This paper challenges the automatism in classifying dual-use computer devices as military targets, by arguing for enhanced emphasis on the "effective contribution" of an object to military actions.

Disentangling the Definition

As mentioned above, constant care should be taken to spare civilian objects in armed conflict. Civilian objects are defined in IHL as "all objects which are not military objectives" (6). Military objectives are defined in treaty and customary IHL as "those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization in the circumstances ruling at the time, offers a definite military advantage." (7).

Traditionally, an object is understood in IHL as something that is "visible and tangible" (8). Given that computer devices may accord to neither, they would fall outside the scope of this understanding. However, it has generally been accepted that the reference to tangibility and visibility was suggested to separate objects as a 'thing' from the 'aim or purpose' of military operations. It can therefore be presumed that when computer devices constitute a 'thing', they constitute an 'object' (9). Additionally, data stored in computers can be classified as an 'object' when it is directly transferable into a tangible entity, such as banking account data, or has intrinsic value, like digital art (10).

An object can qualify as a military objective when it conforms to the elements of either nature, location, purpose or use. In theory, computer network devices can fulfil all these requirements. 'Nature' includes objects that are intrinsically military and are specifically designed to contribute to military activities, like military computers (11). Cyber objects that qualify through 'location' are located in a geographical area that contributes to the adversary's military activities, such as the logistical system of an electricity grid used on a military base (12).

Next to these elements, the 'purpose' and 'use' criteria are of specific relevance. 'Purpose' relates to the intended future military use of an object, whereas 'use' refers to its present deployment. All objects used or intended to be used for military purposes qualify as military objectives. This includes those that are simultaneously used by

civilians and constitute dual-use objects (13). The automatic qualification of dual-use objects as military objectives is concerning, as the majority of cyber objects is near-universally interconnected through the internet without distinguishing between civilian and military use (14).

Fulfilment of either the nature, location, purpose or use requirement is however not a definitive inference to the status of an object as a military objective. The object must through one of these four elements also make an "effective contribution to military action". This subjective requirement is a direct reference to the IHL principle of military necessity (15). The International Committee of the Red Cross supports a narrow definition of "effective contribution", including only those objects that are of "special importance for military operations" (16). Computer networks that are merely shared between armed actors and civilians would not necessarily fulfil this requirement. Contrary to this narrow approach however, states such as the United States have adopted a broad understanding of the definition, including war-sustaining objects such as economic targets (17). It has generally been agreed that this connection is too remote. According to the Tallinn Manual, "effective contribution" can only be subscribed to war-fighting and war-supporting objects (18).

Determining whether a dual-use object is effectively contributing to military action depends on the available intelligence. In case of doubt whether an object that is normally dedicated to civilian purposes is effectively contributing, the object shall be presumed not to be so used (19). Cyberspace is exceptionally unpredictable in this respect. It is generally impossible to foresee at which instance certain components of the civilian cyber-infrastructure will be used to contribute to military operations. From a humanitarian perspective, the presumption in such situations should be in favor of protected status (20).

The last component of the definition of a military objective states that total or partial obliteration of the respective object should offer "a definite military advantage" (21). The advantage gained is not measured through psychological successes, such as demoralization of the civilian population through distributed denial of service (DDoS) attacks, but only through attacks that result in death, injury, damage or destruction (22). This further restricts the qualification of dual-use cyber objects as lawful military targets, for not all attacks on these objects will offer the military advantage required.

Modernizing IHL?

The given analysis demonstrates that the traditional definition of a 'military objective' is equally applicable to (virtual) computer devices in contemporary armed conflict. However, the traditional interpretation of this definition appears to inadequately fit the recent cyber-related innovations of warfare. The current automatic classification of dual-use cyber objects as military targets is of serious concern. Given that most cyber objects are of dual-use nature, automatic classification creates an extensive list of military objectives that in practice would be predominantly used by civilians.

In order to forestall this, it is critical for governments and military groups to give enhanced consideration to the criterion of "effective contribution" when classifying cyber objects. Computer devices that are of dual-use nature but that do not meet this criterion should be regarded as civilian objects. Greater attentiveness to the classification of cyber objects is essential to serve the prevailing purpose of IHL: the protection of civilians and civilian objects from the harmful consequences of an attack.

In light of the above, IHL as it currently stands appears to be adequately capable of embracing the challenges that the introduction of cyber objects has brought to the battlefield. In order to safeguard the protection of cyber objects, it is however critical that the understanding and interpretation of IHL evolves in conjunction with the developments and innovations of warfare. It is only then that the word and spirit of international humanitarian law can effectively be maintained.

20 THE PRINCIPLE OF DISTINCTION IN CYBER-WARFARE

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The Principle of Distinction

Distinction is fundamental to international humanitarian law (IHL), enshrined in treaty law (1) and practice (2), and is arguably as applicable to cyber-warfare as to kinetic conflicts (3). For the distinction principle to apply a cyber-operation must constitute an 'attack' (4). Very few weapons are intrinsically incapable of distinction, though a clear example is biological weapons, as transfer of illness cannot be controlled once deployed (5); this is perhaps analogous to computer viruses, which can spread to civilian networks (6).

Legitimate Military Targets (LMTs)

Computer networks may be considered LMTs depending on their nature, location, purpose and use (7). Some networks may be considered intrinsically LMTs, owing to their function as a component of a weapon system, or, if a general-use network, by their adaption/use for military purposes (8). If unclear, it must be assumed there is no military function (9), though computers lose this assumed civilian status if installed on military bases (10).

Can Cyber-Attacks Distinguish Between Civilian and Military Targets?

Distinction prohibits indiscriminate attacks, where a party does not directly target protected persons or objects, but is reckless as to whether they harm them (11), either owing to the use of inherently indiscriminate weapons, or to inappropriately imprecise weapons for the location (12). Preventing the harm of protected persons or objects may be problematic given the interconnectivity of computers (13), which may be difficult to adequately foresee. (Whilst 'Stuxnet' had built-in limitations to infect but not harm non-target systems, this is considered non-typical for a worm (14)). In practice, most

systems that might be targeted can best be understood as dual-use (15); primarily civilian but potentially military in wartime, so becoming LMTs (16).

Targeting civilian networks or infrastructure, causing harm to civilians, is undoubtedly unlawful under IHL, but in reality cyberattacks are likely to be more inconvenient than harmful (17). Owing to the high integration between civilian networks and actual or potential military effects, there is a fine line delineating attacks causing widespread inconvenience from those directly leading to death or harm, or affecting military operations (18).

Definition and Identification of Combatants

Compliance with the principle of distinction requires that civilian and military targets be sufficiently defined (19). Hague Law sets out four criteria for categorization as a combatant (20) while AP/I provides looser requirements (21). The definition of lawful combatant requires a degree of organization or state command responsibility (22). This is a cumbersome fit for cyber-warfare, in which unorganized individuals can participate on an ad hoc basis (23), not as lawful combatants, but either unlawful combatants or unprotected civilians for the time they directly participate in hostilities (24). As such they become LMTs, within the parameters of temporal limitations and proportionality (25).

Hacktivists could potentially be categorized as levee en masse and enjoy POW status (26). However, the extent to which they "carry arms openly" is disputable, and many cyberattacks allow instigators to remain undetected (27). Charging states with ensuring their infrastructure is not used for cyberattacks could lessen this, although this raises some issues regarding online freedom (28).

Despite the simplicity of identifying IP addresses, thus tracing actions to devices, it remains challenging, though not impossible, to determine a device's user (29). One suggested solution is requiring any cyber-warfare attack to originate from designated military IP addresses, and only permitting attacks on such addresses (30). This would, however, render military sources highly vulnerable to attacks, as recognizing military IP addresses would be easy (31). Furthermore, many forms of cyber-attacks, including DDoS attacks, rely upon source IPs not being predictable, by 'recruiting' agent machines and 'spoofing' source addresses. So, restricting IP addresses essentially paralyses a state's cyber-warfare capabilities (32). Finally, attacks are typically routed through multiple servers and 'botnets', each with multiple IP addresses, further obfuscating the identity of the original perpetrator (33).

Potential Amendments to IHL

The current IHL instruments were established with conventional conflicts in mind and are not easily commensurable with cyber-warfare. These problems are not intractable, however, and altering the interpretation of certain provisions could allow the accommodation of cyber-warfare.

As considered above, the lawful combatant definition requirement of a degree of organization or state command responsibility (34) is not readily commensurable with cyber warfare (35). Amending the definition of lawful combatant so as to allow for the relative ease with which hacktivists may participate and retreat from directly participating in hostilities is one potential solution. Dispensing with, for example, the element of organization or state control (36) as a necessary condition, and reducing it to one of some sufficient conditions, might serve to alleviate this.

As discussed above, GC/III, Art.4(a)(6) could assist in categorizing 'hacktivists' in armed conflict, thereby distinguishing them from civilians. Providing that civilians participating in cyber warfare attacks on an ad hoc basis need not 'carry arms openly' would allow for them to be categorized, pending satisfaction of additional requirements, as levee en masse. This would also offer them some protections (e.g. POW status) (37). However, the IGE was divided as to whether the term included civilians attempting to counter a cyber-attack, the majority advocating that the concept be construed strictly and narrowly, still requiring physical invasion of national territory (38).

As aforementioned, when applied to cyber-attacks, the default definition of military objectives converts many civilian elements of cyber infrastructure to LMTs. To mitigate this, numerous approaches have been suggested: the creation of 'digital safe havens', the exemption of essential central cyber infrastructure from attacks despite any military function, and potential precautionary obligations so as to delineate between military and civilian objects (39). It has also been proposed that the wording 'damage to civilian objects' within the proportionality principle (40) be interpreted dynamically, so as to include the degradation of systems serving an indispensable or high-value civilian function (41). Contending that it is outmoded and counterintuitive to constrain only physical effects of warfare by proportionality, the authors suggested that IHL reflect that many cyber-attacks result not in physical destruction but in suspension of functionality or 'neutralization' of the target (42).

However, this does not always hold, as Stuxnet appears to have produced a physical effect, seemingly damaging or destroying centrifuges at the Natanz Enrichment Plant.43 Irrespective, this 'dynamic interpretation' would diminish the effects of the wide-reach of dual-use objects in cyberspace by incorporating loss of functionality as a factor for consideration in the assessment of proportionality. Whilst this is undeniably relevant to non-cyber conflicts in which dual-use objects present comparable problems, this is accentuated in cyberspace where dual use is 'the rule rather than the exception.'(44).

Droege states that the potential for the principle of distinction to offer meaningful protection to civilians or civilian objects in cyber-warfare is limited, owing to the dual-use of internet infrastructure, and the interpretation of dual-use objects as military objectives (45). Without further development of the law, systems that are essentially civilian and serve important civilian functions will be susceptible to cyber-attacks. Without such development Droege posits that the main source of protection will be the principle of proportionality (46).

PART 3: THE RESPONSIBILITY TO PROTECT

21 R2P: A DUTY TO INTERVENE OR A RIGHT TO REFRAIN?

JOOST VAN DEN ENDE NETHERLANDS

The Geneva Conventions have been overtaken by the harsh reality of modern warfare. Wars are hardly being fought between states anymore. Looking at the current conflict in Ukraine for instance, Russia has not officially sent an army but supports the pro-Russian separatists by providing resources and sending anonymous soldiers. No rebel group or private military contractor or other non-state group has signed agreements for humanitarian conduct in wars. Warfare is unlikely to return to only being a method of settling disputes between nations. This does not mean the Geneva Conventions are redundant. They can of course be useful for prosecuting misconduct after wars are over. Punishing non-state actors might become easier when the rules of war for them are clearly set out beforehand. For now, however, to be able to maintain or re-establish peace, it is more effective to change the ad-bellum rules than to renegotiate the in-bello rules and hope everyone will follow them.

From the philosophical tradition of Just War Theory, there are three possible justifications for intervention in another state: (i) Secession and National Liberation: when two communities live in a single territory and fight over independence; (ii) Counter-intervention in civil war: when another foreign power has intervened in a state that is in civil war, in order to restore balance; (iii) In the case of Human Rights violations such as genocide (1). These three reasons at least, are reasons to breach the right of state sovereignty. In his doctrine, Walzer holds on to the right to remain neutral in wars, so that intervention remains a possibility, and not a duty. What we have now is that intervention is permissible, but can this also imply a duty?

The proposed norm of the R2P draws heavily upon Just War principles and proposes a viewpoint in which state sovereignty is not an absolute right (2). The global community has a responsibility to protect people worldwide, following the universal declaration of human rights, should the state concerned fail in protecting its own citizens. Interestingly, this report has been interpreted by some as imposing a duty for the international community to protect civilians worldwide. They think the failure or reluctance to intervene might be just as bad as unjustly waging war. In whatever way

it is interpreted, R2P is a stronger criterion than just the permissibility of intervention and has quite some implications for states. For instance, the responsibility entails that the sovereignty of an obliged state is interfered with, since they are told what to do and they cannot remain neutral anymore.

According to Tan (3), the R2P report makes the mistake to simply assume responsibility and take the "only obstacle to the performance of this responsibility" to be the principle of non-intervention. The permissibility of intervention when the obstacle is taken away immediately leads to a responsibility under the R2P report. The removal of absolute sovereignty in the target state alone does not lead to a duty. The sovereignty of the potential interveners has to be removed as well. Tan thinks this can be done and argues that whenever an intervention is permissible, it is also necessarily obligatory. Intervention is regularly taken to be permissible when human rights violations are so severe that they "shock the conscience of mankind" (3). If the sovereignty of the offending state can be violated in the name of human rights, then so can the rights of other states to remain neutral. Tan argues with Shue that "human rights generate the duty to avoid depriving...; a duty to protect from deprivation...; and a duty to assist those who are deprived." (4). So there are duties to avoid harming others as well as to protect others from third parties that violate rights, which would include military intervention. Rights entail both positive and negative duties so the argument that sovereignty entails a right to remain neutral cannot hold. The right to neutrality can, in the case of severe human rights violations, not be more important than the right to non-intervention. Both follow from sovereignty and if the crisis is severe enough to override the sovereignty of one state, it is severe enough to override the sovereignty of the other. Tan notes that "it is not the active violation per se of human rights that has overturned the sovereignty of the offending state, but the fact that basic human rights are not being protected" (5). Since no state can remain neutral in the case of grave human rights violations, the duty to intervene is the burden of the international community.

While the UN Charter and the universal declaration of human rights are rather straightforward about this and suggest a responsibility to intervene, in practice it regularly works different. Instead of focusing on the responsibility to protect individuals, the Security Council holds on to a statist perspective. States often remain the point of focus for judging interventions rather than individuals and decisions are made from a statist perspective. For humanitarian intervention, they should take an individualist humanitarian perspective and judge cases of intervention as a necessity rather than an option.

We should move from permissibility, through a responsibility, to a downright duty to protect. At least in the case of human rights violations, I argue that the society of states has a duty to intervene. If it is permissible to override the sovereignty of the failing state, then it is equally permissible to override the sovereignty of all other states. There is a collective duty to put an end to gross human rights violations. Whenever intervention is permissible, it is also obligatory because the right to neutrality can, in the case of severe human rights violations, not be more important than the right to non-intervention.

22 R2P: ENGAGING EMERGING POWERS ON THE RESPONSIBILITY TO PROTECT

BOCHEN HAN CANADA

2005 was supposed to be a landmark year. The World Summit Outcome Document adopted by the UN General Assembly outlined the Responsibility to Protect (R2P) (1), sending a strong signal worldwide that sovereignty entailed responsibility, and that it no longer exclusively protected states from foreign interference. Yet even now—a decade after I first picked up Romeo Dallaire's Rwanda memoir—we are still almost at where we began, still struggling to come to a consensus on what it means when it comes to implementing doctrines like the R2P, and what it means to be a 'responsible power'. Still, every single day, we hear of state violence targeted at ethnic groups, of leaders shirking from their responsibility to live up to past crimes, of innocent civilians being denied the most basic right to adequate survival. Still, we live in a myth of "never again".

Naturally, the recognition of the R2P's importance has prompted a surge in analysis from academics and civil society of the positions on R2P in emerging powers. Yet these discussions remain largely limited to policy elites from Europe, North America and Australia at the exclusion of major rising powers like Brazil, South Africa and China (2)—nations poised to define the multipolar world that experts say we are moving towards (3).

Underlying the problem is an unwillingness to listen, upheld by a narrative of Western superiority and Eastern intransigence. With debates about the Syrian humanitarian crisis, for instance, we see Western media attention and diplomatic rhetoric focus unrelentingly on China and Russia's vetoes, providing an overly simplistic depiction of their stances on humanitarian intervention, as well as of their willingness to embrace values enshrined in the R2P. With the ICC's indictment of Kenyan president Uhuru Kenyatta we see a barrage of accusations from Africa of an ICC-sponsored neo-imperialism. And I must admit, as a casual consumer of the mainstream Western media I initially found all of this easy to eat up.

In actuality, China and Russia, along with other BRICS nations, have supported numerous UNSC resolutions on the Syrian humanitarian crisis. There is, expectedly, a common non-interventionist thread through those resolutions: none invoke language to do with Chapter VII of the UN Charter, regime change, or referral of individuals to the ICC. But what's more notable is that most are riddled with R2P-related language and strongly worded condemnations of the Syrian authorities, pointing to at the very least BRICS acceptance of pillar I of the R2P. As R2P scholar Alexander Bellamy emphasizes, the emerging economies that make up BRICS are fundamentally not opposed to the R2P. They only differ from Western nations in regards to the extent of implementation, or, pillar III (4).

Similarly, accusations of the ICC holding a bias against Africa are largely unfounded—the large number of African cases can be attributed to factors like the density of conflict in the continent and initiative by individual African nations in bringing cases to the Court (5).

It is utterly ironic that Western nations are accusing emerging powers of what they perform on a daily basis—that is, acting in line with their strategic interests. Russia and China, as with all states, are intent on cultivating favorable international reputations, but will not sacrifice their principles to cater to anyone else's interests. Ultimately their behavior is neither "inconsistent" (6) nor unpredictable. In fact, the way forward for emerging powers is quite clear: they will continue to argue for non-intervention and purely political settlements when strategic considerations are not urgent enough to demand otherwise. And thus, remaining fixated on the perspective that the East is shirking its duties, or consistently condemning developing nations in the absence of honest dialogue, is simply unproductive.

It is equally crucial for the nations of the developing world to begin viewing organs like the ICC as legitimate mediators of conflict rather than weapons of Western dominance. Given the historical legacy of colonialism it has become dangerously salient for developing powers to slap the neo-imperialist label on Western projects, often at a detriment to movements for justice. Contrary to popular belief developing nations can garner significant leverage in Western-dominated institutions via manipulation of international media, as Kenya did during the ICC investigation of Kenyatta. And unfortunately this self-perpetuation of victimhood only distracts from efforts for genuine engagement.

Defining the concept of responsible stakeholdership should be a process of mutual accommodation and dialogue on overlapping interests, and not, in the words of Bates Gill, a "scorecard by which the [West] measures the [East]'s progress" (7). The simple truth is that we cannot address the questions that arise from atrocity prevention without more nuanced, better-informed debates between key actors from all sides. It is time to move past the narrow, often militarized label of the R2P (8), and channel debates into already existing frameworks in emerging nations—ones focused on peacekeeping, preventative diplomacy and mediation efforts.

There is much potential to be tapped. In Brazil, India and South Africa, there are numerous civil society actors with the interest and potential to deepen national debates on atrocity prevention. In these open societies the West should actively support, financially or otherwise, universities, think tanks and NGOs already participating in debates on protection. With closed societies like China, Western nations can encourage broad internal debates within policy branches and political parties via multilateral conferences and working exchanges. Despite political constraints, there is room in China to deepen debates taking place in elite academic circles on the practical dimensions of protection like humanitarian aid, state-building and peacekeeping (9) —fronts that China has already been very active on.

23 EARLY WARNING SYSTEMS

KIM WILKINSON AUSTRALIA

For many, the deterioration of the security situation in Iraq and the birth of the 'Islamic State' came as a surprise. However, for 'Iraq watchers' there were a number of telling indicators. The same could be said of the Arab Spring, it was unanticipated by many scholars, however the warning signs were there – in economic and political disenfranchisement, food and water insecurity. Effective early warning systems could pick up on these indicators and feed them back to the UN, policymakers and humanitarian organizations to limit the human fallout. This essay will argue that in order to improve the maintenance of peace by the UN Security Council and regional organizations, humanitarian early warning systems should be improved, through better coordination and information sharing, while the UN's capacity to act on such warning also needs to be augmented. This will enable the UN to predict and better respond to emergent crises, be they genocide, crimes against humanity or the outbreak of violent conflict. There are three main reasons that this is a useful intervention: current initiatives, such as the Responsibility to Protect, have largely failed, programming is ad hoc and reactive, instead of evidence based, and there is a compelling financial argument for preventive policy. The case for augmented early warning systems will now be argued, using examples and exploring potential hurdles to the implementation of this idea.

This essay recognizes that there are a number of widely discussed critiques of the UN, however it is beyond its scope to address them in-depth (1). Instead this essay seeks to focus on a less talked about – but potentially revolutionary – intervention aimed at improving the UN's efforts to build and maintain peace: the improvement of humanitarian early warning systems. Early warning has been much discussed within the UN, however little progress has been made: "In fact, unlike some regional organizations, the United Nations still lacks the capability to analyze and integrate data from different parts of the system into comprehensive early warning reports and strategies on conflict prevention" (2). Some early warning projects have been established, such as the Humanitarian Early Warning Service (HEWS) for natural disasters, developed by the Interagency Standing Committee on Preparedness. It covers environmental disasters such as seismic activity, locust plagues, storms and floods. HEWS II includes socio-political risk, and represents more of an inter-agency effort. There is also the Food and Agriculture Organization's Global Information and Early Warning System (GIEWS), which monitors food supply and demand. Additionally, the UNDP in Jordan are planning to develop an early warning mechanism for conflict at the local level. However, this is limited to the governorates of Mafraq, Irbid and Zarqa, and is the result of only three month's data collection. Other offices within the UN also have early warning capabilities, but these are systematically underfunded, limiting their effectiveness (3). Projects like these are emblematic of the problem: uncoordinated, ad hoc responses, overlapping in some areas, while entirely neglecting others. What is required is a comprehensive, well-resourced, and integrated early warning system, and better mechanisms within the UN system to act on these early warnings.

One might ask what is at the root of the above problem. The UN is a sprawling behemoth of an organization. As a result, cooperation between UN bodies is hindered and data is not always shared (4, 5). It is clear that addressing organizational secrecy will be a challenge to developing an integrated knowledge resource (6). However, an early warning portal – bringing together extant early warning data from different sources – could provide a mechanism for better information sharing and coordination in itself. It is recommended that the organization responsible for developing this early warning portal be a body outside the UN. Independence will be important in gaining support, as one UN insider (7) described the situation: conflict warning systems are seen as "too hot to touch" within the UN system. An integrated early warning portal should be developed, bringing together all early warning data available and synthesizing it.

Within the UN itself, little time is assigned to early warning. Inside the Secretariat, operational matters take up most of the time of the Department of Political Affairs, Department of Peace Keeping Operations and the Department of Humanitarian Affairs (8). Worryingly, crises identified by early warning systems can also have difficulty reaching the UN Security Council, "the UN body with the most robust capacity and mandated authority to respond" (9). The UN Security Council has a rigid agenda, and incorporating additional agenda items – even urgent threats to international peace and security - is difficult. Prioritizing early warning within UN bodies must be addressed if augmented early warning systems are going to have the biggest impact.

One way to address the structural issues preventing the UN Security Council from responding to early warnings while at the same time addressing the issue of political will, would be to establish an independent early warning advisory council. This council would be composed on experts who would monitor situations around the globe (10). When they identify an evolving emergency, such as genocide or crimes against humanity, the council would report to the Secretary General who would be required to table this at the Security Council; the Security Council would have to provide a report on the issue tabled. This intervention would ensure that issues neglected by members of the Security Council for political reasons get promptly addressed, while it would deal with the problem of the Security Council's stacked agenda, by including an obligation for these issues to be promptly tabled.

Better coordinated humanitarian early warning systems, coupled with the creation of an early warning advisory council could have real dividends; they have both financial advantages and represent a tangible step towards improving peace and security. More effective early warning programs could guide preventive humanitarian programming, which is a much cheaper approach than responding to crises. To give some scale of the cost of humanitarian programming, in December 2014 the UNHCR asked for £5.3 billion in a new humanitarian and development appeal for the Syria crisis (11). Investment in early warning programs is also an investment in human security. Late warning could mean hundreds, thousands or tens of thousands more civilian-lives lost.

photo: Ton Koene

The proposed intervention is aimed at galvanizing international action, offering a boon to the beleaguered "Responsibility to Protect" which, after much enthusiasm during its inception, has lost steam in the face of recent crises. As the first Caliph Abu Bakr (12) said: "without knowledge action is useless and knowledge without action is futile". Augmented early warning systems should help put knowledge into the hands of those who can act.

Current forays into early warning represent silo approaches, when what is needed is an integrated approach, which hinges on better integration and data sharing. One concrete recommendation to address this is writing inter-agency cooperation into the mandates of UN bodies, as put forward by Zenko and Friedman (13). Another suggestion is that existing early warning systems be better integrated. Additionally, making early warning more of priority within the UN is necessary. An independent advisory council reporting to the Secretary General, with an obligation to table emergent crises on the Security Council agenda would go a long way to addressing some of the main issues. Augmented early warning has fiscal advantages and can save lives, in aiding UN Security Council members, policymakers, and humanitarian organizations to better anticipate and respond to threats to peace and security. Without a doubt, attempting to predict the future with 100 percent certainty is a fool's error, however mobilizing extant resources with the goal of developing better-informed, more responsive policy to prevent another Rwanda or Cambodia, this is a feasible and worthy intervention.

PART 4: OTHER PROPOSALS

24 COUNTERING SEXUAL OFFENSES BY UN PERSONNEL

THAÍS DUTRA FERNÁNDEZ BRAZIL/SPAIN

Although peacekeepers are military personnel from national armies, working for and in the name of the United Nations, the organization has a very narrow jurisdiction to discipline those responsible for the crimes and to demand countries to investigate and hold accountable such transgressors (UN NEWS, 2015) (1). The U.N. has taken different measures but no substantial reform has been made. Although the occurrence of such acts have diminished, they still continue to happen, which threatens the credibility of the missions, making the acceptance of international operations by citizens in areas of crises even more difficult.

Recent exposures of cases of abuse and sexual exploitation perpetrated by UN peacekeepers have harmed the reputation of the missions and threaten their ability to fulfill the mandates assigned to them by the Security Council (4). The number of registered cases has undermined the population's trust and constitutes a violation to the fundamental duty of caring, one of the fundamental elements of peacekeeping forces.

The UN Secretary and the Member States have reacted to this by taking a series of measures intended to prevent and to punish misconducts in the missions. The Department of Peacekeeping Operations has established a working group to provide personnel with guidance and tools so that the issue of sexual exploitation and abuse can be effectively handled. A special section responsible for the matter was also established at the Department. In the field, a team responsible for conduct and discipline was formed. All the peacekeeping personnel receive training on rules of conduct, such as the prohibition of sexual relations with people younger than 18 years old and the strongly disapprove of relations with "beneficiaries" – the members of the host population (5).

The UN Research Services and Supervision has conducted inquiry processes, which resulted in the dismissal of several civilians and the repatriation of dozens of members of the military. Several countries that contribute with troops have prosecuted individuals from their military services. Administrators and commanders are advised of

their responsibilities and those who do not take preventive measures are exonerated. The United Nations is committed to implementing a zero-tolerance policy on sexual exploitation and abuse, which means a total absence of complacency before credible allegations and zero level of impunity when the charge is proven. An UN working group, which includes representatives of several departments, also developed new policies in the field of assistance to victims of sexual exploitation and abuse (5).

Although several measures have been taken and the number of reports of sexual assaults has decreased throughout the years, the problem continues to occur. The continuity of these actions has demonstrated that the policies taken were not enough to eliminate them. Besides, measures to punish the people responsible for such crimes are not as effective as the ones designed to prevent it. When one is punished for their wrongful acts, the damage has already been done; the principles of the organization have already been ignored and the whole goal of the mission has been put into question.

Due to this problem, greater measures must be taken before the troops and civilian personnel arrive at the host country. The staff needs to be well prepared mentally so that they can support those in need. In this sense there is a need for better training. Nowadays, the demand for peacekeeping operations is no surprise. Therefore, personnel can be prepared well in advance so when deployed they are less susceptible to committing acts of violence toward the people they are meant to protect.

25 PROPOSAL FOR A NEW CURRENCY TO COUNTER CLIMATE CHANGE

VERONICA CARAMAN ROMANIA

On 17 April 2007, the UN Security Council held its first debate on the impacts of climate change on peace and security. The Secretary-General Ban Ki-moon asserted that it was essential to include climate change as a UNSC responsibility. He said climate change "...not only exacerbates threats to international peace and security, it is a threat to international peace and security...". Ban Ki-moon called for a "long-term global response" (1) to deal with climate change. For the UNSC to have the capability to respond, it will need a suitable 'tool' through which it can influence mitigation markets. The G4CM should be that tool.

The UNSC could implement a new market-based instrument that can globally incentivize climate mitigation. The recommended instrument is a world currency system that we may call Global Complementary Currencies for Climate Change Mitigation (G4CM) for providing global Payments for Ecosystem Services (PES) under the Beneficiary Pays Principle (BPP). G4CM should not be issued with traditional banking methods, but rather it should be issued as subsidies for de-carbonizing industrial and energy systems, and as rewards for sequestering carbon. I propose that new stabilizing socio-

economic systems can be created with the G4CM to meet the global challenge of climate mitigation. A monetary approach is supported by history. Monetary innovations are the common pathway for nation states when they seek to control their economies in the face of existential threats, such as war. Today the threat is anthropogenic climate disruption. It is a global threat, and so it is necessary to embrace a world currency system that can 'internalize' mitigation costs into the global economy. There are three major components to the G4CM, as follows:

Item 1: A Currency Market & Protocol: world currency markets should be managed with a centralized macro-economic protocol for increasing the demand for, and the value of, the G4CM.

Item 2: Mitigation Market & Assessments: worldwide mitigation should be assessed with a decentralized administrative system that offers the G4CM as mitigation subsidies and rewards. Currency issuance is with 'assessor-mitigator relationships', whereas commercial banking issues fiat with 'lender-borrower relationships'.

Item 3: Digital Network: a global digital network is needed that is scalable, secure, and decentralized. The network will link the G4CM currency and mitigation markets for trade and investment.

Organization

The UNSC may assume the responsibility of developing and controlling (Item 3) the G4CM digital network. The UNSC may then request regional organizations to undertake (Item 2) mitigation assessments as pilot projects. When the G4CM is in operational condition, the UNSC may then oversee the development of (Item 1) the monetary protocol. The monetary protocol should offer a politically acceptable deal in which nations can offer some of their fiscal sovereignty and monetary autonomy in exchanged for mutual climate protection and globalized inflation. The responsibilities of Items 1 and 2 may be shared with the UN Economic and Social Council and suitable financial institutions.

Macro-Economics

The long-term financing of the G4CM will require an international monetary policy to lift the G4CM exchange rate over decades. A forward-looking exchange rate schedule for the G4CM should be published on a regular basis. The G4CM price schedule may be achieved with a semi-autonomous monetary protocol that transfers purchasing power from major currencies into the G4CM. The approach should not depend on new taxes, and this is to substantially reduce political delay. Studies have shown that political delay is the biggest risk for long-term mitigation (2).

The G4CM should be a worldwide trading currency to generate a global price signal to further increase its value and leverage mitigation markets. The G4CM will complement

all tax-based price signals and carbon markets, and so it can be used to promote international cooperation through trade.

Micro-Economics

The G4CM should have a unit of account defined as a mass of GHGs verifiably mitigated (e.g. 100 kg CO2-e mitigated), and should be issued directly to communities and firms in proportion to the mass of GHGs avoided and sequestered. Assessments should be defined by universal formulas based on objective scientific and economic principles, and managed by citizens through a digital social-knowledge network. The administration should be decentralized and delivered through a public digital network (i.e. over Internet, mobile phones, and banking infrastructure) with open-source accountability. The network should empower people, communities, and businesses to mitigate emissions.

UNSC Climate Change Resolution

This recommendation is to introduce a UNSC resolution based on Global Complementary Currencies for Climate Change Mitigation (G4CM). This resolution may be introduced in an open forum with a clear description of the intent to provide global rewards and subsidies for GHG mitigation. The 'human face' of the resolution is the offer of debt-free de-localized income for improved land-use management, bio-sequestration, forestry management, and protected biodiversity. Other sectors of the global economy should be covered by the resolution in stages; beginning with private/domestic emissions, and followed by energy supply, light industry, and then heavy industry.

UNSC Long Term Strategy

The G4CM could be a pivotal tool for the UNSC by providing the basis of a long-term strategy for strong GHG mitigation and related co-benefits. Five permanent members comprise the UNSC - Russia, United Kingdom, France, China, and United States - who can veto any substantive UNSC resolution. In 2013, China and Russia rejected the idea of UNSC involvement in climate change (3). The offer of a G4CM, with its co-benefits, may be sufficient to encourage all permanent members to negotiate the new resolution. The resolution may be introduced as a contingency plan.

Conclusion

To appreciate the implications of climate change, we should pay attention to the Arctic where sea-ice is melting (4), and to Greenland and Antarctica where glacial flows are accelerating. Humanity has yet to understand the full implications of these changes, which may include (self-reinforcing) methane feedbacks and unpredictable political responses. For these and other reasons, the UNSC should consider the G4CM for coordinating a global response to climate mitigation and the maintenance of peace and security. My hope is that this letter will eventually reach the President of the UNSC, François Delattre, and other distinguished leaders and officials of the UN including the Secretary General Ban Ki-moon and Economic and Social Council President, Martin Sajdik.

26 PALESTINIAN ACCESSION TO THE INTERNATIONAL CRIMINAL COURT

JULIANE KUBE GERMANY

Introduction

"The world must not forget about us. For in the end, only if all sides are heard there can be a real chance for peace." Those are the words of Naji Owdah who supervised me during my internship in a Palestinian refugee camp. He had lived all his life in Deheishe Camp, had been arrested, imprisoned and was at times struggling to maintain his Camp-leadership position, yet seemed to still hold onto his remarkable sense of optimism for change.

During the past couple of months there have been indeed some new developments in the field of international law that hold potential for some change and closure in the seemingly perpetual Israel-Palestinian struggle: On the 31st of December 2014 Palestinian President Abbas signed the Rome Statute. In the following short article, I will analyze potential struggles and opportunities that the Palestinian accession to the International Criminal Court would entail, outlining a bureaucratic struggle that could potentially help to change or settle the conflict.

The International Criminal Court has not yet been able to attain jurisdiction about any potential crimes committed in these conflicts between Israel and the Palestinians, since a) it did not exist during the majority of the conflict; b) neither the Israelis nor the Palestinians are a state party and; c) the veto-power of Israel's ally United States makes a referral by the Security Council under Chapter VII of the UN Charter basically impossible.

Obstacles and Opportunities

All parties involved -Israelis, Palestinians and the Court itself- are facing some contentious issues following the official admission of the Palestinians two weeks ago. For the Palestinians the opportunities are definitely outweighing. They stand to gain the chance to refer situations "in which one or more crimes within the jurisdiction of the Court" appear to have been committed to the Prosecutor (1).

Furthermore, already the act of the accession itself might bring the Palestinians closer to their goal of complete independence, since the accession is connected to the acknowledgement of "statehood", since only states can be members. More countries might hence follow the example of the UN General Assembly that has accepted the Palestinian Territories as non-member observer state with an overarching majority, following up on the arrangement of the continued mission of the PLO since the 1970s (2,3).

What might however somewhat dampen the Palestinian enthusiasm for the Court are the potentially long waiting periods as well as the Israeli pressure to withdraw the request.

The state of Israel has for instance decided to withhold tax money from the Palestinian Authorities from the 3rd of January onwards, as a reaction to the Palestinians' application to the ICC of the previous day (4). Additionally, Israel, itself not a member of the International Criminal Court, has been cited to have gathered "quite a bit of ammunition when it comes to war crimes" and is hence likely to also push charges in front of the ICC if it came to an investigation (5).

The acceptance of a Palestinian State as a member of the International Criminal Court also holds several implications for the Court itself. Firstly, (a) Even though a judicial body should theoretically not be concerned with it, the response of the United States might be unsettling for the Court's authority. The probable accusation of political partiality, in case the Palestinians should be successful, will furthermore complicate the work of the ICC. Furthermore, (b) the added workload for the Court is also to be considered. As discussed above, on top of the charges the Palestinians will refer to the ICC, the Israelis will also present charges. Even the preliminary examination distinctly adds to the workload already (6). Additionally, (c) the Court should also keep in mind that, if it comes indeed to an indictment and individuals from the Israeli side are to be charged with crimes, the state of Israel has some history with the non-compliance with international decrees, when viewed as potentially unfavorable. In the past years this has shown in the ignorance of several UN GA resolutions as well as the refused entry to a United Nations-established fact-finding mission in regards to Israel's recent violent conflict with Gaza (7). Such lack of cooperation, which has also been not uncommon from the other side, could not only be damaging for possible investigations, but such open dismissal of the Court's authority might also weaken the ICC's overall credibility in general. On the other hand, this might also be considered as a sort of trial for the validity of the back-up the ICC enjoys in the international community. As such it will be up to the foreign ministries and leading figures of especially western countries, to publicly support the Court's proceedings and insist on compliance from both sides. Lastly, (d) the conflict between the Israelis and the Palestinians has been one of the most prominent of the last century. It is often referred to as unsolvable. A young court such as the ICC might also see involving itself in that conflict as a challenging opportunity to gather more international recognition and prestige. It would furthermore be a chance to diversify the regions the Court's cases originate from and therefore appease the critics that claim that the International Criminal Court operates under some sort of Africa-bias.

27 IEVGEN TSAREGORODTSEV UKRAINE

"Deformed information can cause the same terrible consequences in the long run as the blast of a nuclear bomb. People who receive deformed information are behaving with regard to the deformed dogmas, and make decisions in political life based on wrong


photo: Ton Koene

ideas. That is why my message is: “Affordable education for all, without borders!”. Education has to embrace all layers of society. I truly believe that non-violent methods, such as education and trustworthy information sources can destroy the violence and militarization of our planet.”

28 LAURA GOLAKEH LIBERIA

“The United Nations Office for Disarmament Affairs says that about 526,000 people die from armed violence every year, at an annual opportunity cost to the global economy of approximately $400 billion. Where has the world gone wrong? We have failed to realize how important and unique young people are to society and how structural violence is a threat to peace. It is these people, and this mindset we need to work on in order to ensure that we maintain peace on our world. Jose Antonio Ocampo said young people hold the key to society’s future. “Their ambitions, goals and aspirations for peace, security, development and human rights are often in accord with those of society as a whole”. This is why it is crucial that young people are a key part of building, protecting and maintaining peace. A recent research says young people under 25 represent over half the world’s population, and in many developing countries this figure is over 60% (1). With over 200 million youth living in poverty, 130 million illiterate, 88 million unemployed, and 10 million living with HIV/AIDS, the case for investing in young people today is clear (2). There can be no peace when our world is full of disempowered young people. Reducing Poverty, unemployment, illiteracy, and disease is an important role in maintaining peace around the world.”

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(4) Slim, H. 2001. Violence and Humanitarianism: Moral Paradox and the Protection of Civilians. Security Dialogue 32 (3): 325-339. Page 327.

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(10) Collier, P., V. L. Elliot, H. Hegre, A. Hoeffler, M. Reynal-Querol and N. Sambanis. Breaking the Conflict Trap: Civil War and Development Policy. A World Bank Policy Research Report. New York: World Bank.

16. Rules related to Child Soldiers — Takashi Mori, Japan

(1) Robert Cryer and others, An Introduction to International Criminal Law and Procedure (Cambridge University Press 2010) p. 274.

(2) Prosecutor v Thomas Lubanga Dyilo (Judgment in Trial Chamber I) ICC-01/04-01/06 (14 March 2012).

(3) Prosecutor (n2) para. 1358.

(4) Prosecutor (n2) pp. 388-391.

(5) 'Report of the Preparatory Committee on the Establishment of an International Criminal Court' UN Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court (Rome 15 June-17 July 1998) (14 April 1998) UN Doc A/CONF.183/2/Add.1 p. 21.

(6) Report (n5) p. 21.

(7) Prosecutor (n2) para. 882.

(8) Prosecutor (n2) para. 629.

(9) Prosecutor v Thomas Lubanga Dyilo (Separate and Dissenting Opinion of Judge Odio Benito) ICC-01/04-01/06 (14 March 2012) para. 17.

(10) UNICEF, 'Cape Town Principles and Best Practices: Adopted at the Symposium on the

Prevention of Recruitment of Children into the Armed Forces and on Demobilization and Social Reintegration of Child Soldiers in Africa' (30 April 1997). Accessed from http://www.unicef.org/emerg/files/Cape_Town_Principles%281%29.pdf on 31, March 2015.

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(12) Prosecutor v Alex Tamba Brima, Brima Bazzy Kamara, and Santigie Borbor Kanu (Decision in Appeals Chamber) SCSL-2004-16-A (22 February 2008) 11-12.

17. Private Military Companies — Pinar Cil, Canada

(1) "Quotes of Senator J. William Fulbright" The Fulbright Academy of Law, online: http://www.fulbrightacademylaw.org/index.php/senator-fulbright-s-quotes.

(2) Steve Fainaru, Big Boy Rules: America's Mercenaries Fighting in Iraq (Philadelphia: Da Capo Press, 2008); Eugene Robinson, "A Whitewash for Blackwater?" Washington Post, (9 December 2008), online: http://www.washingtonpost.com/wp-dyn/content/story/2008/12/09/ST2008120900107.html.

(3) Jutta Joachim and Andrea Schneiker, "New Humanitarians? Frame Appropriation through Private Military and Security Companies" (2012) 40 Millennium: Journal of International Studies 388 at 366.

(4) Gomez del Prado is also a member of the United Nations Working Group on the Use of Mercenaries, which was established in July 2005 pursuant to Commission on Human Rights Resolution 2005/2.

(5) Jose L. Gómez del Prado, "The Role of Private Military and Security Companies in Modern Warfare: Impacts on Human Rights" (2012) The Brown Journal of World Affairs, online: http://www.globalresearch.ca/the-role-of-private-military-and-security-companies-in-modern-warfare/32307 [Gómez del Prado].

(6) Peter Singer, The Private Military Industry and Iraq: What have we learned and where to next? (Geneva: DCAF, 2004) at 1.

(7) Michael Scheimer, "Separating Private Military Companies From Illegal Mercenaries in International Law: Proposing an International Convention for Legitimate Military and Security Support the Reflects Customary International Law" (2009) 24 American University Int Law Rev 646 at 613-614.

(8) Additional Protocol I, Article 50 (adopted by consensus); Draft Additional Protocol II submitted by the ICRC to the Diplomatic Conference leading to the adoption of the Additional Protocols, Article 25; ICTY, Blaškić case, Judgment.

(9) "Customary IHL Rules: Rule 5. Definition of Civilians" (2015) International Committee of the Red Cross (ICRC), online: https://www.icrc.org/customary-ihl/eng/docs/v1_cha_chapter1_ rule5#Fn_99_5.

(10) See Lindsey Cameron, "Private Military Companies: Their Status Under International Humanitarian Law and Its Impact on Their Regulation" (2006) 88 Int'l Rev Red Cross 573, 579 & n.21, noting that the ICRC has found the Protocol I definition of a mercenary to be part of customary international law, however, the United States has long rejected this view.

(11) Convention (IV) Respecting the Laws and Customs of War on Land and its Annex: Regulation concerning the Laws and Customs of War on Land (1907 Hague Convention IV) 187 CTS 227.

(12) Geneva Convention Relative to the Treatment of Prisoners of War (Third Geneva Convention), 12 August 1949, UNTS 135, Article 4 (A)(1)&(2).

(13) Moshe Schwartz and Jennifer Church, "Department of Defense's Use of Contractors to Support Military Operations: Background, Analysis, and Issues for Congress" (2013) Congressional Research Service 5.

(14) Matt Apuzzo, "Ex-Blackwater Guards Given Long Terms for Killing Iraqis" The New York Times (13 April, 2015), online: http://www.nytimes.com/2015/04/14/us/ex-blackwater-guards-sentenced-to-prison-in-2007-killings-of-iraqi-civilians.html?_r=0.

(15) U.S. Congress, Senate Committee on Armed Services, To Receive Testimony on the Challenges Facing the Department of Defense, 110th Cong., 2nd sess., January 27, 2009.

(16) Geneva Convention Relative to the Treatment of Prisoners of War (Third Geneva Convention), 12 August 1949, 75. UNTS 135. See also Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, 1125 UNTS 3, Article 47 (1).

(17) Under Article 47 of Protocol I (Additional to the Geneva Conventions), "A mercenary shall not have the right to be a combatant or a prisoner of war." Under Article 2 of the UN Mercenary

Convention– International Convention against the Recruitment, Use, Financing and Training of Mercenaries, it is an offence to employ a mercenary.

Furthermore, Article 3.1 states that "A mercenary, as defined in article 1 of the present Convention, who participates directly in hostilities or in a concerted act of violence, as the case may be, commits an offence for the purposes of the Convention."

(18) Gómez del Prado, supra note 5.

(19) Gómez del Prado, supra note 5.

(20) While the concept of an unlawful combatant is included in the Third Geneva Convention, the phrase itself does not appear in the document.

(21) Knut Dörmann, 'The legal situation of "unlawful/unprivileged combatants"' (2003) 85 IRRC at 46.

18. Ending Sexual Violence Against Women During Wartime — Loyce Mrewa, Zimbabwe

(1) Common Article 3 of the 1949 Geneva Conventions.

(2) Tadić (ICTY), Case No. IT-94-1-AR-72 para 98; Henckaerts, 2005 p.187; Pictet, 1952 p.64.

(3) Henckaerts & Doswald-Beck, 2005 p . XVI & XXXV.; Henckaerts, 2005 p.196.

(4) Tadić (ICTY), Case No. IT-94-1-AR-72 para 98; Henckaerts, 2005 p.187; Pictet, 1952 p.64.

(5) Article 1(1) of Additional Protocol II to the Geneva Conventions of 1949; Sandoz et al., 1987 para. 4453& 4457.

(6) Common Article 3 of the Geneva Conventions of 1949 (1a) (1c) regulates through an

obligation to treat civilians humanely and the prohibitions against outrages upon personal dignity, in particular humiliating and degrading treatment and violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; Henckaerts & Doswald-Beck, 2005 p.323-324; Gardam, 2005 p.200; Akayesu (ICTR); Case No. ICTR-96-4; Kunarac et al. (ICTY), Case Nos IT-96-23 and IT- 96-23/1-T); Furundžija (ICTY), Case No IT-95-17/1-T para.172.

(7) Rule 93 of CIHL; Rule 90 of CIHL; Rule 91 of CIHL; Rule 94 of CIHL.

(8) Common Article 3 of the Geneva Conventions of 1949; Rule 93 of CIHL; Rule 90 of CIHL; Rule 91 of CIHL; Rule 94 of CIHL.

(9) Gardam & Jarvis, 2001 p.93-95.

(10) Gardam & Jarvis, 2001 p.93-95; Gardam 2010 p.65-66.

(11) Geneva Conventions I, II, III & IV were all drafted in 1949.

(12) Durham & O'Byrne, 2010 p.35 – 36.

(13) Human Rights Watch, 2009 p. 15.

(14) Brown, 2012 p.32.

(15) Brown, 2012 p.32.

(16) UNSC, 2014 para. 32-33,69, 96; UNSC, 2013 para. 165.

Rebels group finance their military activities through the imposition of indirect taxes on communities in territories under their control and abduct women who are only released after payment of a ransom. The success of such schemes largely depends on their dominance over communities and a community's perceived inability to fight back.

(17) Jones 08-04-2014. This is beneficial for insurgents such as the FDLR who often hide within civilian populations. They benefit from dominance since civilians are often too afraid to report their presence and location to State forces.

(18) Common Article 3 of the Geneva Conventions of 1949 and Rule 88 of CIHL.

(19) Gardam, 2005 p. 210, 218-219.

(20) Henckaerts & Doswald-Beck, 2005 See Introduction & p. 475-479.

(21) Durham & O'Byrne, 2010 p.49 – 51.

(22) It is necessary to reform IHL concurrently with changes in which wars are fought to ensure that it is does not become remote from the experiences of war nowadays and subsequently become obsolete. For instance, in addition to gendered perspectives issues such as drone use and the use of modern and newer weapons should also be regulated.

(23) Skjelsbæk, 2013 see Group focus: Responsibilities in extraordinary contexts.

(24) Skjelsbæk 2013 see Cultural focus: Militarized masculinities.

(25) Ibid. see Group focus: Responsibilities in extraordinary contexts & Cultural focus: Militarized masculinities.

(26) Cohen et al. 2013 p.12-13.

(27) Cohen et al. 2013 p.12-13; Skjelsbæk, 2013 see Individual focus: Perpetrator personalities section.

(28) Cohen et al. 2013 p.12- 13

(29) Security Council resolution 1325 (2000); Security Council resolution 1960 (2010); Security Council resolution 2106 (2013); Security Council resolution 2122 (2013). UNiTE to End Violence against Women: http://endviolence.un.org/ last accessed on 14/07/2015.

(30) Gardam, 2005 p. 214 -216; Lindsey, 2001b p.4-5.

Primary sources - International legal instruments
Security Council resolutions 1325 (2000), 1960 (2010), 2106 (2013), and 2122 (2013).

Case law
ICTR, Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, Judgement, 2 September 1998.

ICTY, Prosecutor v. Furundžija, Case No IT-95-17/1-T, Trial Judgement, 10 December 1998.

ICTY, Prosecutor v. Tadić, Case No. IT-94-1-AR-72, Decision on the Defense Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995.

ICTY, Prosecutor v. Dragoljub Kunarac, Radomir Kovač and Zoran Vuković, Case Nos IT-96-23 and IT- 96-23/1-T, Judgement, 22 February 2001.

19. Cyber War: Deciphering military objectives — Dianne Keur, Netherlands

(1) United States of America Department of Defense, 2011.

(2) Dinstein, 2012, 265; Schmitt (e.d.) 2013 Rule 30; Schmitt, 2013, 240.

(3) Roscini, 2014, 168.

(4) Additional Protocol I to the Geneva Conventions, 1977, Article 57(1) [hereinafter: Additional Protocol I]; Henckaerts and Doswald-Beck, 2005, Rule 9 (both for international armed conflict and non-international armed conflict).

(5) Schmitt, Dinniss, Heather and Wingfield, 2004, 1.

(6) Additional Protocol I, 1997, Article 52(1).

(7) Additional Protocol I, 1977, Article 52(2); Henckaerts and Doswald-Beck, 2005, Rule 8 (emphasis added).

(8) Pilloud, 1987, §2007-2010.

(9) Lubell, 2013, 268; Harrison Dinnis, 2012, 184-5.

(10) Schmitt, 2011, 122.

(11) Pilloud, 1987, §2020.

(12) Schmitt (ed.), 2013, Rule 38.

(13) Schmitt (ed.), 2013, Rule 39; Additional Protocol I, 1977, Article 52(2).

(14) Brown, 2006, 194.

(15) Palojärvi, 2009, 78.

(16) Pilloud, 1987, §2021.

(17) Schmitt, H.A. Harrison Dinnis, T. C. Wingfield, 2004, 6.

(18) Schmitt (ed.), 2013, Rule 38.

(19) Additional Protocol I, 1977, Art 52(4).

(20) Geiss and Lahmann, 2012, 387.

(21) Whether the destruction or neutralization of an object leads to a definite military advantage refers to the military operation as a whole. (Henckaerts and Doswald-Beck, 2005, Rule 14).

(22) Schmitt (ed.), 2013, Rule 38.

20. The Principle of Distinction in Cyber Warfare — Lucy Turner, United Kingdom

(1) Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) (opened for signature 8 June 1977, entered into force 7 December 1979) 1125 UNTS 3 (hereinafter AP/I) Arts. 48, 51, 51; Protocol on Prohibitions or Restrictions on the Use of Mines, Booby Traps and Other Devices (Protocol II) Annexed to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects (3 May 1996) (hereinafter AP/II), Art. 13; Declaration of St. Petersburg Preamble; UN General Assembly, Rome Statute of the International Criminal Court (last amended 2010) (17 July 1998). Art. 8(2)(b)(i)-(ii).

(2) ICJ, Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion of 8 July 1996, 1996 ICJ Rep. 226, para. 434; ICTY, Prosecutor v. Tadić, Decision on the Defense Motion for Interlocutory.

Appeal on Jurisdiction, Case No. IT-94-1-A, Appeal Ch., 2 October 1995, para. 435; ICTY, Prosecutor v. Martić, Judgment, Case No. IT-95-11, Trial Ch. I, 12 June 2007 para. 463.

(3) Dinstein, 'The Principle of Distinction and Cyber War in International Armed Conflicts', JCSL (2012).

(4) When its scale and effects are comparable to non-cyber operations rising to the level of a use of force. See NATO Cooperative Cyber Defense Centre of Excellence, Tallinn Manual on the International Law Applicable to Cyber Warfare, (2009), Rule 11, (2009).

(5) Ibid.

(6) Boothby, Weapons and Law of Armed Conflict, (2009).

(7) AP/I, Art. 52(2).

(8) Supra n.3.

(9) AP/I, Art.50(1).

(10) Supra n.3.

(11) AP/1, Arts.51(4)-(5).

(12) See ICTY, Prosecutor v. Martić, Judgment, Case No. IT-95-11, Trial Ch. I, 12 June 2007 para. 463.

(13) Supra n.3.

(14) Broad, Markoff, Sanger, (2011) 'Israel Tests on Worm Called Crucial in Iran Nuclear Delay', NYT.

(15) Turns, 'Cyber Warfare and the Notion of DPH' JCSL (2012).

(16) ICTY, 'Report Committee Established to Review the NATO Bombing Campaign Against FRY' (2000) ILM.

(17) See Russia's 2008 DDOS attacks against Georgia, which vandalized and restricted access to political and news websites: 'Cyber-attacks on Georgia Websites Tied to Mob, Russian Government', LA Times (2008).

(18) Turns, 'Cyber Warfare and the Notion of DPH' JCSL (2012).

(19) Dorman, 'Proportionality and Distinction in the ICTY' AILJ (2005).

(20) Regulations Respecting the Laws and Customs of War on Land annexed to The Hague Convention (IV) Respecting the Laws and Customs of war on Land, (18 October 1907), Arts.1-2.

(21) AP/I, Art. 44(3).

(22) AP/I, Art. 43.

(23) Gervais, Cyber Attacks and the Laws of War (2011).

(24) AP/I, Arts. 47, 51(3); AP/II, Art. 13.

(25) AP/I, Art. 51.

(26) GC III, Art. 4(a)(6).

(27) Gervais, Cyber Attacks and the Laws of War (2011).

(28) Ibid.

(29) Remote administration 'trojan horse' tools can reveal the identity of a user (using their devices' own webcam/microphone), but not necessarily their combatant status.

(30) Dinniss, Cyber Warfare and the Laws of War (2012).

(31) Ibid.

(32) Mirkovic, Jelena, Reiher, "A taxonomy of DDoS attack and DDoS defense mechanisms." ACM SIGCOMM CCR, (2004).

(33) Dinniss, Cyber Warfare and the Laws of War (2012).

(34) AP/I, Art.43.

(35) Gervais, Cyber Attacks and the Laws of War, BJIL (2012).

(36) As in AP/I, Art.43.

(37) GC III, Art. 4(a)(6).

(38) See NATO Cooperative Cyber Defense Centre of Excellence, Tallinn Manual on the International Law Applicable to Cyber Warfare, (2009), at Rule 27 §4-5.

(39) Geiß and Lahmann, Cyber Warfare: Applying the Principle of Distinction in an Interconnected Space, ILR 45(3) pp.381-399 CUP (2012).

(40) Within the meaning of AP/I. Art.51(5)(b).

(41) Geiß and Lahmann, Cyber Warfare: Applying the Principle of Distinction in an Interconnected Space, ILR 45(3) pp.381-399 CUP (2012).

(42) Ibid. at p.398.

(43) Albright, David, Brannan, Paul, and Walrond, Christina, Did Stuxnet Take Out 1,000

Centrifuges at the Natanz Enrichment Plant?, Institute for Science and International Security (22 December 2010) [http://isis-online.org/uploads/isis-reports/documents/stuxnet_FEP_22Dec2010.pdf] (Retrieved 20 May 2015).

(44) Geiß and Lahmann, Cyber Warfare: Applying the Principle of Distinction in an Interconnected Space, ILR 45(3) pp.381-399 CUP (2012), at p.399.

(45) C. Droege, Get off my cloud: cyber warfare, international humanitarian law, and the protection of civilians, ICRC Law Review, Volume 94 Number 886 Summer 2012, at p.566.

(46) Ibid at p.566.

21. R2P: A Duty to Intervene or a Right to Refrain? — Joost van den Ende, Netherlands

(1) Walzer, M. (1977), Just and Unjust Wars, New York: Basic Books, fourth ed. 2006. Page 90.

(2) ICISS (2001), The Responsibility to Protect, available at: http://responsibilitytoprotect.org/ICISS%20Report.pdf

(3) Tan, K. (2006) "The Duty to Protect" in: Nardin, T. & Williams, M.S. (Eds), Humanitarian Intervention, pp.84-116, New York: New York University Press. Page 4.

(4) Shue in Tan, 2006. Tan, K. (2006) "The Duty to Protect" in: Nardin, T. & Williams, M.S. (Eds), Humanitarian Intervention, pp.84-116, New York: New York University Press. Page 5.

(5) Tan, K. (2006) "The Duty to Protect" in: Nardin, T. & Williams, M.S. (Eds), Humanitarian Intervention, pp.84-116, New York: New York University Press. Page 6.

22. R2P: Engaging Emerging Powers on the Responsibility to Protect — Bochen Han, Canada

(1) The three pillars of the Responsibility to Protect as outlined by the 2005 World Summit Outcome Document are as follows: 1) The state carries the primary responsibility for protecting populations from genocide, war crimes, crimes against humanity and ethnic cleansing, and their incitement; 2) The international community has a responsibility to encourage and assist States in fulfilling this responsibility; 3) The international community has a responsibility to use appropriate diplomatic, humanitarian and other means to protect populations from these crimes. If a State is manifestly failing to protect its populations, the international community must be prepared to take collective action.

(2) Sarah Brockmeier and Philipp Rotmann, "Debating the Responsibility to Protect?: Policy Debates in Brazil, China and South Africa on Protecting People from Atrocity Crimes," Global Public Policy Institute (2015): 3, accessed July 13, 2015, http://www.gppi.net/fileadmin/user_upload/media/pub/2015/Brockmeier-Rotmann_2015_Debating-R2P_WEB.pdf.

(3) Xiaoyu Pu and Randall Schweller, "After Unipolarity: China's Visions of International Order in an Era of US Decline", International Security 36, no. 1 (Summer, 2011): 42.

(4) Oliver Stuenkel, "The BRICS and the Future of the R2P," Global Responsibility to Protect 6 (2014): 13, accessed April 1, 2015, doi:10.1163/1875984X-00601002.

(5) Chatham House, "Africa and the International Criminal Court," July 2013, accessed April 4, 2015, http://www.chathamhouse.org/sites/files/chathamhouse/public/Research/International%20Law/0713pp_iccafrica.pdf.

(6) Joel Wuthnow, Chinese Diplomacy and the UN Security Council: Beyond the Veto (New York: Routledge, 2013): 10.

(7) Carnegie Endowment for International Peace, "China as a Responsible Stakeholder," June 11, 2007, accessed April 11, 2015, http://carnegieendowment.org/2007/06/11/china-as-responsible-stakeholder/2kt.

(8) As Western University Professor Cristina Badescu argues, the appraisal of the R2P should not be reduced to a question of the effectiveness of a military response. In her analysis of the international response to the conflict in Darfur, she laments that the two most visible responses—AMIS and UNAMID—represent a lack of unified and timely prioritization of non-coercive and coercive political and diplomatic actions outside of military intervention.

(9) Sarah Brockmeier and Philipp Rotmann, "Debating the Responsibility to Protect", 3.

23. Early Warning Systems — Kim Wilkinson, Australia

(1) The UN has a varied track record in terms of its mandate to maintain peace and security (Findlay 2002). This has seen a peacekeeping mission to Srebrenica unable to protect civilians in a designated UN "safe area", but also armed peacekeeping missions accused of contributing to the violence as was the case with UNISOM II in Somalia (Findlay 2002: 166); in other instances, such as in the Syrian crisis, efforts by the Security Council have been stymied. Recommendations voiced include reforming the UN Security Council, with a focus on permanent member's veto, and the need to address the lack of a standing peacekeeping force. See Findlay, T. The Use of Force in UN Peace Operations (2002).

(2) Kofi Annan cites Zenko, M and R Friedman, 'UN Early Warning for Preventing Conflict' International Peacekeeping 18(1) (2011), 21-37. Page 21.

(3) Ibid. Page 32.

(4) Trettin, F and J Junk, 'Spoilers from Within: Bureaucratic Spoiling in United Nations Peace Operation' Journal of International Organizations Studies 5(1) (2014), 13-27. Page 16.

(5) Trettin and Junk (2014) go as far as to argue that "bureaucratic spoilers" have usurped UN peacekeeping activities.

(6) Problems with organizational secrecy are touched upon in the Report of the Secretary-General titled 'Early warning, assessment and the responsibility to protect' (UN General Assembly 2010: 3).

(7) Cited in Zenko, M and R Friedman, 'UN Early Warning for Preventing Conflict' International Peacekeeping 18(1) (2011), 21-37. Page 29.

(8) Sutterlin, J. 'Early Warning and Conflict Prevention: The Role of the United Nations' in K Walraven (ed), Early Warning and Conflict Prevention: Limitations and Possibilities (1998). Page 124.

(9) Zenko, M and R Friedman, 'UN Early Warning for Preventing Conflict' International Peacekeeping 18(1) (2011), 21-37. Page 30.

(10) Such a mechanism has also been suggested by the Advisory Council on International Affairs. Advisory Council on International Affairs, The Netherlands and the Responsibility to Protect: The Responsibility to Protect People from Mass Atrocities, (2010) 34-72. Page 34.

(11) UNHCR, 'UN and Partners Seek £5.3 billion for new Syria program in 2015' 18 December 2014 http://www.unhcr.org.uk/news-and-views/news-list/news-detail/article/un-and-partners-seek-pound53-billion-for-new-syria-programme-in-2015.html Accessed on April 15 2015.

(12) cited Tucker K, T Hahn and S Roberson, Your intentional Difference (2014). Page 70.

(13) Zenko, M and R Friedman, 'UN Early Warning for Preventing Conflict' International Peacekeeping 18(1) (2011), 21-37. Page 33.

24. Countering Sexual Offenses by UN Personnel — Thaís Dutra Fernández, Brazil/Spain

(1) United Nations News Centre. UN rights chief urges inquiry into violations by international forces in Central African Republic. May 31, 2015. Available at: http://www.un.org/apps/news/story.asp?NewsID=51012&&Cr=Central%20African%20Republic%20&&Cr1=#.VWw_Q2RViko

(2) Oudraat, Chantal de Jorge. The United Nations and Internal Conflict. In: BROWN, M. The international dimensions of internal conflicts. London: MIT Press, 1996.

(3) Boutros-Ghali, Boutros. An Agenda For Peace: Preventative Diplomacy, Peacemaking and Peacekeeping, New York, United Nations, 1992.

(4) Dallaire apud York. York, Geoffrey. Failure to act on sex abuse by UN peacekeepers undermines missions: Dallaire. May13, 2015. Available at: http://www.theglobeandmail.com/news/national/canadians-join-campaigners-calling-for-end-to-un-peacekeeper-sex-abuse/article24420285/

(5) Stern, Jenna. Reducing Sexual Exploitation and Abuse in UN Peacekeeping: Ten years after the Zeid Report. Policy Brief number 1. February 2015. Available at: http://www.stimson.org/images/uploads/research-pdfs/Policy-Brief-Sexual-Abuse-Feb-2015-WEB.pdf

25. Proposal for a New Currency to Counter Climate Change — Veronica Caraman, Romania

(1) http://www.un.org/press/en/2007/sc9000.doc.htm

(2) Rogelj et al (2013). Probabilistic cost estimates for climate change mitigation. Joeri Rogelj, David L. McCollum, Andy Reisinger, Malte Meinshausen & Keywan Riahi. Nature 493, 79–83 (03 January 2013).

(3) http://sids-l.iisd.org/news/un-security-council-discusses-security-implications-of-climate-change/

(4) http://en.wikipedia.org/wiki/File:Plot_arctic_sea_ice_volume.svg

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2014 Energy and Climate Outlook: MIT Joint Program on the Science and Policy of Global Change. Massachusetts Institute of Technology, Cambridge MA, USA.

Jin and Chen (2015, unpublished). A World Currency for Climate Mitigation: Advances in

Monetary Theory. Abstract submitted to Advances in the Economics of Climate Change. A workshop at Stanford University (October 9-10, 2015).

Jin et al. (2016, unpublished). World Currency for Climate Mitigation. Abstract submitted to the American Economic Association 2016 Annual Meeting (3-5 January, 2015).

Chen et al (2015, unpublished). World Currencies for Sustainability. Abstract submitted to the World Economics Association Conference. Ideas towards a new international financial architecture? (1st May – 30th June, 2015).

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26. Palestinian Accession to the International Criminal Court — Juliane Kube, Germany

(1) International Criminal Court. Rome Statute (n.d.): 17 July 1998. Web. 10. Apr. 2015. http://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf.

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27. Ievgen Tsaregorodtsev - Ukraine

(None)

28. Laura Golakeh - Liberia

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PLENARY SPEAKERS

photo: Roos Trommelen

Deputy Mayor **Ingrid van Engelshoven,** MSc, studied political science at Radboud University Nijmegen and law at Leiden University. It was during her college days that she became involved in politics, chairing the Nijmegen chapter of the social- liberal D66 party from 1987 to 1989. In 1989 Ingrid became a D66 staff member in the Dutch House of Representatives and served as secretary to party leader Thom de Graaf until 1996. She has worked as a consultant in public administration and public servant Since 2009 she has been a partner at the consultancy Dröge & Van Drimmelen and has served as the acting director of the Centrum voor Merk en Communicatie (CMC) in Amsterdam.

Holding a degree in Emergency humanitarian practice, **Ton Koene,** MSc, worked for 16 years for Medecins Sans Frontieres in various conflict areas as a country representative During his humanitarian work, he started to take pictures of the consequences of war Over time, his photographic skills developed and became his passion Koene's work focuses on social and humanitarian issues His Features are always about people and showing their strength and struggle Koene produced several photobooks and filmdocumentaries Between 2010 and 2014 he was assigned to the leading Dutch newspaper the Volkskrant in Afghanistan and Pakistan.

Nico Schrijver, Ph.D., is Professor of International Law and Academic Director of the Grotius Centre for International Legal Studies, Leiden University and a Senator in the Dutch Senate. He served as the President of the International Law Association (2010-2012) and the Royal Netherlands Society of International Law (2003-2011). Schrijver is member of the UN Committee on Economic, Social and Cultural Rights (since 2009), the Permanent Court of Arbitration, the Royal Netherlands Academy of Arts and Sciences and the Institut de droit international Schrijver has published widely on issues of war, peace, human rights and the pertinence of international law and international co-operation.

Leonard Geluk, LL.M., has been President of the Executive Board at The Hague University of Applied Sciences since 1 April 2014. From 2004 to 2009, he was the Alderman for Youth & Education in Rotterdam, which he combined with the position of Child and Adolescent Welfare Portfolio Administrator in the Rotterdam Metropolitan Region from 2006 onwards. In addition to Youth & Education, Geluk was the Integration Portfolio Administrator from 2004 to 2006. From September 2009 to March 2014, he was President of the Executive Board for the Central Netherlands Regional Education and Training Centre.

Robert Heinsch, LL.M., is an Associate Professor of Public International Law at the Grotius Centre for International Legal Studies of Leiden University and the Director of its regular LL.M. Programme in Public International Law. He is also the Director of the Kalshoven-Gieskes Forum on International Humanitarian Law at Leiden University and its IHL clinic, and has been appointed Rapporteur of the ILA study group on the "The Conduct of Hostilities under International Humanitarian Law – Challenges from 21st Century Warfare". Previously, Heinsch has worked as a Legal Advisor in the International Humanitarian Law Department of the Red Cross Headquarters in Berlin, in the Trial Chamber of the International Criminal Court in The Hague and a as Visiting Lecturer at Bochum University.

Joris Voorhoeve, Ph.D., is Lector in International Peace, Law and Security at The Hague University of Applied Sciences, Professor of International Organizations at Leiden University, member of the Dutch Advisory Council on International Affairs and Director of Studies at the Amartya Sen Foundation for Research and Education in International Cooperation. He chairs the Board of Supervisors of Oxfam International and is Co-chair of the Global Partnership for the Prevention of Armed Conflict. Voorhoeve was Director of the Institute of International Relations Clingendael and Minister of Defense in the Netherlands (1994-1998). Between 2007 and 2013, he was chairman of the Supervisory Board of Oxfam Novib in the Netherlands. Voorhoeve is the initiator of The 3rd Hague Peace Conference.

photo: Mantas Grigaliunas

Maryam Faghih Imani, MPhil, is the founder and president of the Centre for Cultural Diplomacy and Development (CCDD), which builds a bridge between Iranian, Israeli and Arab youth and women through cultural activities and entrepreneurship. Faghihimani was born and raised in Iran as a daughter of one of the prominent ayatollahs, a friend of Ayatollah Khomeini, the founder and leader of Islamic Republic of Iran. She grew up in a very conservative and religious environment and went to an elite school where there was a strong emphasize on political values of the Iranian government. By reading other books, she has adopted a liberal perspective. After being repeatedly denied right to higher education and work because of her gender and secular-liberal thoughts, she left Iran in 2003. In spite of her father's demands, Faghihimani has pursued an academic career in Europe focused on peace building, cultural diplomacy, sustainable development, human rights, and in particular women's rights. She believes that peace will come through people's constructive dialogues and working with other sides to bring prosperity in the region. The key to a sustainable peace process is to focus on how to build a future instead of looking into the black holes of the past.

WORKSHOP SPEAKERS

Rajash Rawal is Principal Lecturer in Politics at European Studies & Communication Management, The Hague University of Applied Sciences. His publications include Politics & the Internet in Comparative Context (with P.G. Nixon & D. Mercea) and Understanding E Government in Europe (with V. Koutrakou and P.G. Nixon, 2010). Rawal specializes in the impact of media on political agents in the modern era. He is a regular paper giver and panel chair at international conferences.

Vladimir Ignjatovic teaches English Business Communication at the Hague University of Applied Sciences, focusing on the skills and competencies of effective communicators in the workplace. He came to The Hague to work as a translator for the United Nations and spent a number of years at the International Criminal Tribunal for the Former Yugoslavia. He has an MPhil in English and Applied Linguistics from the University of Cambridge and a BA in English Language and Literature from the University of Belgrade in his native Serbia. Inspired by his work at the Tribunal, he also pursued postgraduate studies in Human Rights Law at the University of London.

David Suswa holds a Master in International Communication Management and is social media Coordinator at The Hague University of Applied Sciences and HagueTalks. In the past, he led teams that engaged stakeholders via social media for three international peace and justice events under the HagueTalks platform and its predecessor, TedxHagueAcademy. Two of these events had hashtags that trended on Twitter, and each of the three had active audiences in at least 23 countries.

Mirjam de Bruin, LL.M., specializes in international humanitarian law and military law with a focus on intelligence studies. She holds an interdisciplinary Master's in international law and international relations at the Free University (Amsterdam), and an LL.M. in Military Law at the University of Amsterdam. Previously, De Bruin has worked as a course coordinator and lecturer at the University of Amsterdam, Tilburg Law School and the Free University. She also guest lectured at Bard College (United States). At the Peace Palace in The Hague, she has worked as an education officer of the Carnegie Foundation Currently, De Bruin is Legal Advisor International Humanitarian Law with the Netherlands Red Cross.

Rens Willems, Ph.D., is research Fellow at the University for Peace (UPEACE) Centre The Hague, where he conducts research on issues related to peace, conflict and security. Willems holds a Ph.D from Utrecht University and an MA (cum laude) in Conflict Studies and Human Rights at the same university. He is currently involved in a 2-year research project on justice issues in South Sudan and also teaches courses on conflict and human rights at The Hague University of Applied Sciences. Before, he was a project researcher and a doctoral candidate with the Centre for Conflict Studies at Utrecht University and has conducted extensive field research in the Democratic Republic of Congo, Burundi and South Sudan.

Paul Meerts, Ph.D., is a Senior Research Associate of the Clingendael Institute and a Visiting Professor in International Negotiation Analysis at the College of Europe in Bruges (Belgium). He is a Member of the Steering Committee of the Clingendael Processes of International Negotiations (PIN) Program and of the Advisory Board of the Journal of International Negotiation (Washington). As co-founder of Clingendael Institute he has been Director of the Department of Training and Education (1983-1989), Deputy Director of the Institute (2000-2006) and Advisor to the Director (2006-2011). Before, he did research on Dutch Political History at the Universities of Groningen and Leiden (1974-1978) and trained young Dutch Diplomats at the Netherlands Society of International Affairs in The Hague.

Steven van Hoogstraten, LL.M., is General Director of the Carnegie Foundation, Director of the Peace Palace and Treasurer of the Hague Academy of International Law, which attracts hundreds of students to its famous summer courses. He is also a board member of the Hague Academic Coalition, a cooperative framework of academic institutions in The Hague. Before, Van Hoogstraten took up a career with the government in various positions. As Director of the Peace Palace, he is host to the Permanent Court of Arbitration and the International Court of Justice. Both institutions seek to settle legal disputes on the basis of international law.

Ineke van der Meule, LL.M., MSc, has worked mostly in education, first at the University of Applied Sciences in Utrecht, followed by the position of Director at the Rotterdam School of Management at the Erasmus University of Rotterdam and Director of the Academy of Public Management. Since 2001 Van der Meule works at The Hague University of Applied Sciences, successively as Dean of the Academies of Health and Social Studies and of Education, Sport and European Studies and later as Dean of the Centre for Research and Development. Since last April 2015 she is Associate Professor of Metropolitan Development.

Henno Theisens, Ph.D., is Professor of Public Governance at The Hague University for Applied Sciences. His work focuses on the effective governance of today's complex public systems, like education, health and public safety. He has extensive experience in the area of education on issues related to governance and long term strategy. Theisens holds a Ph.D. in Comparative Higher Education Policy Research from University of Twente (Center for Higher Education Policy Studies, CHEPS), an MSc in European Politics and Policy from the London School of Economics and Political Science (LSE) and an MA in Public Policy and Public Administration from the University of Twente.

FEEDBACK ON THE 3RD HAGUE PEACE CONFERENCE

VIA FACEBOOK, TWITTER AND E-MAIL

It was wonderful meeting you in the Hague and an honor contributing to The 3rd Hague Peace Conference. Once again, I would like to thank you and your colleagues for providing such a platform for all of us to meet, discuss opportunities and getting inspired.
MARYAM FAGHIH IMANI, KEYNOTE SPEAKER

I just wanted to say thank you. I think the peace conference has been great [...]. It was always fun, but always productive.
RAJASH RAWAL, WORKSHOP LEADER

I wanted to tell you how great the peace conference was. [...] The content, the speakers, the logistical arrangements, the locations, the catering, it was all super. I rarely have seen so many international students together. What a performance! Thanks sincerely.
HENNO THEISENS, SPEAKER

I had an amazing time in The Hague and it was all because the conference was organised so well (and the beers kept flowing :P) A big thanks to Janneke who managed to be so approachable even while being busy with an event on this scale. Also, a huge shout out to the buddies, all of whom were relentlessly cheerful and good-natured. In particular Demi Jo Oliha and Susana José Monteiro. You guys rock.

I felt like I lived several months in these past three days and it was because of being around such a smart and diverse group of people and having stimulating conversations. In particular I noticed how many of us are really global citizens in some manner, living, studying and working in countries that we've managed to call a second home. I feel like the conference may have spoiled me a little because it's going to be difficult having superficial conversations after having heard Miracle speak or learning about Turkish politics from Ethem Coban.

I'm leaving The Hague tomorrow but I know if I do ever come here again in the future, it'll be strange because this is not a city I'll associate with Madurodam or the Escher museum, but The 3rd Hague Peace Conference.
KARTHIK SHANKAR, INDIA, PARTICIPANT

These guys made it worth it!
HASSAAN AHMAD BUTT, PAKISTAN, PARTICIPANT

I would like to thank each and everyone of you for a most wonderful week! It has been a privilege and great pleasure to meet and get to know you all during this unforgettable week. I look forward to meeting you guys again, when-and-wherever that may be. And untill that time: Fired Up! Ready To Go!
LAURENS DEN HARTOG, THE NETHERLANDS, BUDDY

A beautiful three days...
PRACHI TADSARE, INDIA, PARTICIPANT

Hi, everyone! I'd like to say thank you to Janneke Bosman and Iris Meerts. It was an amazing opportunity you all have given me. Additionally, I want to thank Jacqueline Verweij and Myrna De la Peña for your kindness and charisma. Both of you were like sister, who I do not have. I hope you all come to Brazil one day. Best wishes for you all and I hope to see you again!
TAMIRES LACERDA, BRAZIL, PARTICIPANT

I was really proud to participate in the Hague Peace Conference today. I was surprised to meet such critical yet positive people from all over the world, and see that there are people from a new generation with hope to confront all the cynicism (mine included) that Peacebuilding attracts. It was a pleasure to meet you all. Safe trips home, or to wherever you're off to!
DARREN POWER, CANADA, PARTICIPANT

I would like to thank all participants for these wonderful 3 days, additionally for all the insightful discussions we had! Hope we meet again sometime in the future! Cheers!
ARDANIA K. PUTRI, INDONESIA, PARTICIPANT

A very big thank you to Janneke Bosman, Iris Meerts and to all the buddies for such a wonderful conference and amazing hospitality
ANANT MALAVIYA, INDIA, PARTICIPANT

It's worth to say that you made a great job! The conference was extremely productive and well-organized! Thank you and your team for new friends that i got!

We made in Den Haag so to say 'Kingdom of happiness' because it looks like that everybody were excited. Keep going wherever you are heading to and look forward to the future meetings!!! Met vriendelijke groet.
IEVGEN TSAREGORODTSEV, UKRAINE, PARTICIPANT

Thank you so much for the wonderful opportunity. I learned a lot and it was an enriching experience.
SHEEBA ASAD, PAKISTAN, PARTICIPANT

I am in Amsterdam now and will be leaving in the afternoon. Thank all the organizers for me. I just don't know what to say.

I formally use this opportunity to say a big thank you for everything. I am really grateful and humbled. Thank all the team members and any other group who in one way or the other made this programme a success.
ENOCH OPARE MINTAH, GHANA, PARTICIPANT

Allow me to express my thankfulness and appreciation to this conference which left me very impressed. The attention-to-detail and high degree of organisation was visible from beginning to end. Against this background: Thank you for all your efforts and time you have invested into this! Best regards.
ETHEM COBAN, TURKEY, PARTICIPANT

I wish to thank Iris and Janneke for all the hard work you did before, during and after the Conference. You have no idea how much it helped me to grow, not only on a professional and academic level, but most importantly on a personal level. The experience abroad helped me gain a lot of self-confidence and it also helped me to decide that a career in Diplomacy is the right choice for me and what I truly want. I am really fortunate to have been a part of the Peace Conference. Best regards and thank you!!!
GONZALO PEREDA, ARGENTINA, PARTICIPANT

Hello everyone! I want to thank all of you for those amazing days at the Hague Peace Conference! I leant with each one of you, about the world and about myself! I'm sure we will keep contact and maybe see all together again! My really thanks, especially to the organizers and the buddies!
FERNANDA CARVALHO, BRAZIL, PARTICIPANT

Thanks so much for organizing the Conference again. It was fantastic! All the best!
ALEXA MAGEE, UNITED STATES, PARTICIPANT

I would like to thank you for those amazing days at The 3rd Hague Peace Conference! Everything was so organized (I still impressioned that you gave the list name to the police at the immigration :D), and so well prepared (the hostel was so nice and the food was great, I ate so much, lol!) And besides the organization, the event was so rich in all the ways! Firstly, being in a place with more than 30 nationalities is really amazing! Then, the Conference was really interesting and hight level. I came back to Brazil with the spirit of spreading Peace, knowing that I have the right contacts to do it now on. I hope to see you again, maybe in a Peace mission, or somewhere in the world that we could break the news! Cheers!
FERNANDA ALVES DE CARVALHO, BRAZIL, PARTICIPANT

I hope that we can congregate again and have an even better experience than the one we just had. It was indeed a wonderful conference, and I am positive that we made the first step toward what we were collectively trying to achieve, which is world peace. All the best, and I hope to see you all soon in Holland or perhaps as our guest in the USA. With much love and respect.
ADAM A. AZIM, UNITED STATES, PARTICIPANT

Thank you very much for the organization of the conference and the feedback on my essay. I thought the conference was inspiring and I learnt a lot.
EDEL HEUVEN, THE NETHERLANDS, PARTICIPANT

I appreciate this so much ! It was a pleasure to be and work with all of you! I hope we will meet again, wish you best of the best with my whole heart! Best regards.
TAMAR CHKHAIDZE, GEORGIA, PARTICIPANT

It was nice being in the Hague, Netherlands. Back in Uganda. Keep in touch!
VINCENT KISEMBO, UGANDA, PARTICIPANT

I would like to thank you again for organising such a wonderful conference.
PRANAAV GUPTA, INDIA, PARTICIPANT

Thanks again for the great conference, it was a true pleasure to be part of it. I hope you are looking back proud. All the best!
DIANNE KEUR, THE NETHERLANDS, PARTICIPANT

Thank you once again for this unique opportunity -- I had an amazing time at the conference and was quite impressed by its organization. Well done! All the best!
PINAR CIL, CANADA, PARTICIPANT

It was my pleasure to participate in The 3rd Hague peace conference.I really learn a lot. it was a big opportunity for me. God bless.
LUZINDANA ADAM BUYINZA, UGANDA, AUDIENCE

Special thanks to Janneke Bosman, Iris Meerts and to all The 3rd Hague Peace Conference participants for the immense privilege and great pleasure that was the conference. I learned so much from each and every one of you. Until we meet again!
MARILYNN RUBAYIKA, CANADA, PARTICIPANT

photo: Ton Koene

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