Journal of International Organizations Studies

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The *Journal of International Organizations* Studies is the peer-reviewed journal of the United Nations Studies Association (UNSA), published in cooperation with the editorial team at Georgia State University. JIOS provides a forum for scholars who work on international organizations in a variety of disciplines. The journal aims to provide a window into the state of the art of research on international governmental organizations, supporting innovative approaches and interdisciplinary dialogue. The journal's mission is to explore new grounds and transcend the traditional perspective of international organizations as merely the sum of their members and their policies.

Details on Submission and Review

JIOS is published twice annually, in spring and fall, online and print-on-demand. Submission deadline for the fall issue is 1 May each year and for the spring issue is 1 November of the previous year. JIOS publishes three types of articles:

- Research papers (8,000–10,000 words, including footnotes and references)
- Insider's View (3,000–7,000 words, including footnotes and references): contributions from practitioners illuminating the inner workings of international organizations
- Reviews of literature, disciplinary approaches or panels/workshops/conferences (single book reviews, panel or workshop reviews: 800–1,200 words, multiple book or subject reviews: 2,000–3,000 words, including footnotes and references)

Please send submissions to editors@journal-iostudies.org. For submissions and formatting guidelines, please see www.journal-iostudies.org/how-submit-your-paper. All papers will be reviewed by two or three external reviewers and then either accepted, rejected, or returned to the author(s) with the invitation to make minor corrections or revise and resubmit (medium to major changes). The final decision on acceptance of submissions rests solely with the editors.

Contact Information

UN Studies Association, c/o Coconets, Hannoversche Str. 2, 10115 Berlin, Germany

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LETTER FROM THE EDITOR

The UNSA and I are very happy that we are publishing the first of issue out of a series of three JIOS issues, featuring all articles whose publication has been pending for quite a while now. UNSA as the responsible publisher wishes to apologize to all the authors for the backlog, caused by organizational constraints and severely amplified by the Corona epidemic crisis. We thank you all for your patience and understanding, and hope that you enjoy the reading.

Reflecting our journal's mission, this issue covers a wide range of topics, methods, and perspectives regarding the study of IOs. Our authors examine the challenges to European unity during the Yugoslav Wars (Fabiano Capano and Tobias Greiff), measure donor influence at the World Bank (Trevor Blemings), address transnational human rights advocacy with a focus on local claims in international climate agreements (Andrea Schapper), and analyse international organizations' perceptions and responses in global food security governance (Angela Heucher). Susan Siggelakis provides insights on George Oakley Totten, Jr., the International Association of Architects and the issue of copyright. Jeanne-Pierre Murray looks closely at the UNODC and its human rights approach to human trafficking. James Meernik analyzes public support for international law and the role of international courts using data from the International Committee for the Red Cross's People on War survey, while Jed-Lea Henry proposes and discusses an interesting view on reforming the United Nations Security Council. Finally, we are pleased to provide you with new book reviews and our curated section on developments in international norms and governance.

Last but not least the UNSA and I wish to thank our long-lasting partner, the Editorial Team at Brigham Young University under the leadership of Managing Editor Cory Leonard, which has decided to pass the baton on to a new Editorial team. We are so grateful for all the great work that BYU's team has done for us for over a decade. At the same time, our heartfelt thanks to my team at Georgia State University - Alla Manukyan and Kathleen Barrett - and to Helen Hemblade of the UNSA and Deborah Cotton that stepped in and helped us getting back on track. Without their tremendous effort, these issues would have not been possible.

Henry (Chip) Carey
Editor-in-Chief
hcarey@gsu.edu

CONTRIBUTORS

Travis Blemings is an Assistant Professor of International Relations at Temple University. His research interests include economic development, international organizations, and foreign policy. Dr. Blemings' current research focuses on the World Bank, the politics of development aid, and the determinants the World Bank's lending behavior.

Dr Fabio Capano is a historian of twentieth century Europe. His work focuses on nationalism, Cold War borderlands, and the politics of identity in post-war Europe. He received his Master's Degree in International Relations from the School of International and European Studies at University of Trento (Italy) in 2007 and his Ph.D. in European History from West Virginia University in August 2014. His work has been published in edited volumes and peer-reviewed journals, such as *Modern Italy, Journal of Modern Italian Studies and Nationalities Papers*. He is currently preparing a manuscript of his dissertation entitled *Cold War Trieste: Nationalism, Localism, and "Italianità" in a Contested Borderland at the Terminus of the Iron Curtain*.

James Meernik is Regents Professor of Political Science at the University of North Texas; Coordinator of the Divisions of Social Science and Director of the Castleberry Peace Institute. He is author of nine books, dozens of book chapters and even more peer-reviewed essays on conflict resolution, transitional justice, human security and democratization.

Jean-Pierre Murray is a PhD Candidate in Global Governance and Human Security at the University of Massachusetts-Boston. His research interests include global and regional governance, transnational organized crime (drug trafficking and human trafficking), critical security studies (securitization theory), migration, Latin America and the Caribbean. His dissertation research focuses on the securitization of South-South migration in the Latin America and Caribbean region.

Tobias Greiff is a policy and conflict analysist focusing on peace and security in the Western Balkans and the Assistant Dean for Academic Programs at the Elliott School of International Affairs (George Washington University). He is the author of *Violent Places: Everyday Politics and Public Lives in Post-Dayton Bosnia and Herzegovina* (Nomos: 2018) and *Identität und Anspruch: Die Funktionen von Symbolen im Friedensprozess in Bosnien und Herzegowina* (Tectum: 2010).

Jed Lea-Henry is Assistant Professor in at Vignan University's School of Management, Humanities and Social Sciences in Guntur, India. He is the host of the "Korea Now" and the "Popperian" podcasts. Related to the latter, his thesis is entitled, "A Poggean Approach to Mass Atrocities: Addressing Indeterminacy and Failures of Political Will for Humanitarian Intervention and the Responsibility to Protect."

Angela Heucher is an evaluator at the German Institute for Development Evaluation (DEval). At DEval, she works on the German human rights strategy and on gender equality in post-conflict contexts. Research for this article was conducted when the author was a research

associate at the Collaborative Research Center (SFB 700) "Governance in Areas of Limited Statehood" at University of Potsdam and Freie Universität Berlin (2014-2018). At the SFB 700, she was part of a research project on the role of international organizations as external governance actors in the field of food security ("'Talk and Action': How International Organizations Respond to Areas of Limited Statehood"). She received her doctoral degree from University of Potsdam and was a research affiliate at the Berlin Graduate School for Transnational Studies. In her doctoral dissertation, she addressed the question of how international organizations perceive the organizational field of global food security governance and how they respond to overlap and fragmentation.

Andrea Schapper is a Senior Lecturer in International Politics at the University of Stirling, UK. Her research focuses on institutional interlinkages between the human rights and the climate change regime. She has published a research monograph on children's rights in Bangladesh (Routledge), a textbook on 'Human Rights and the Environment' (Routledge, with Sumudu Atapattu) and journal articles, among others, in *Human Rights Quarterly*, *Environmental Politics*, *International Environmental Agreements* and *International Relations*. At Stirling, Andrea is also the Programme Director for the MSc International Conflict and Cooperation as well as the Co-Director of the Centre for Policy, Conflict and Cooperation Research.

Susan J. Siggelakis is Associate Professor, Department of Political Science, at The University of New Hampshire in Durham, New Hampshire. She is a Co-Director of the 'UNH in Budapest' Study Abroad program and a long-time officer of Beta Chapter, Phi Beta Kappa.

Challenges to European Unity During Conflict in its Neighbourhood: The Yugoslav Wars

Fabio Capano and Tobias Greiff

The European Union's peacebuilding efforts at the onset of the Yugoslav crisis showed little effect in preventing an uncontrolled escalation of violence. The violent collapse of socialist Yugoslavia vividly demonstrated huge Inner-European disagreements, leading to criticism by the EU's international partners, and raising the following question: Why does the EU – a union successful in stabilizing Europe and preventing violent conflict between its members – struggle with promoting peace in its immediate neighbourhood? Undoubtedly, the EU's failure in preventing the gruesome spiral of violence that shattered Yugoslavia for five long years signalled inherent political weakness within the Union and yet not unique in its genre. Indeed, the Russo-Ukrainian War of 2014, the Syrian conflict and the ongoing refugee crisis have further signalled the EU's limits in responding to growing instability at its borders and exposed the strength of national interests in undermining a cohesive EU response in the time of crisis.

Building upon the Yugoslav case, this paper unveils the complex mechanisms governing the EU's peacebuilding politics and practices in the early 1990s, by analyzing the inner discussions and decision-making processes of the EC/EU throughout the Yugoslav crisis. It draws on new archival research, including the European Bulletin and documents capturing the communication behind individual peace proposals. Moreover, it undertakes a press analysis of several major European newspapers and recently published reflections of key decision makers to evaluate the influence of European public opinion on EU's peacebuilding strategy in the early 1990s.

Introduction

In 1991, while speaking for the European Union (EU) Presidency, Luxemburg's Foreign Minister Jacques Poos claimed that "this is the hour of Europe, not the hour of the Americans." (Gompert 1994). These words greatly reflected public opinion between 1991 and 1992, a time in which the European Community (EC) made a firm commitment to mediate a peaceful solution and prevent the outbreak of a war within the former Social Federal Republic of Yugoslavia. Following his bold statement, confidence would soon be replaced by bitter disappointment due to the ineffectiveness of the EC's policies. These policies ultimately proved that the EU was merely a civilian power, a term which specifically refers to "the influence that an actor has on the behaviour of another actor of the system by non-military means such as sanctions, rewards, persuasion, encouragement and support through the exercise of a controlled influence and penetration of the system" (Sjostedt as cited in Attinà 2001, 71).

This article discusses the European response to end the fratricidal civil war that shattered the Yugoslav Federation between 1991 and 1995 (Ramet 2002; Burg and Shoup 1999; Woodward 1995). Investigating the formative stages of the EC's conflict resolution policy in the Balkans, it seeks to understand why and how the European political community became a bystander to the bloodiest conflict that occurred after 1945 in the very heart of Europe. Although scholars have generally focused on the war itself, the dramatic experience of mass genocide and ethnic cleansing, as well as the process of post-war reconstruction in former Yugoslavia (Kappler 2014), few have devoted attention to the actions of the EC/EU during the Yugoslav crisis (Faucompret 2001; Marolov 2012; Doga 2012). Thus, this study fills this scholarly lacuna and broadens the scholarly debate on the role that the two-track process of European integration played on Europe's peacekeeping and peacebuilding capabilities after 1989. In line with Glaurdic's argument that "it was political realism which had a decisive impact on the violent nature of Yugoslavia's breakup" (2011, 7), this article suggests that the Community's inability to perform the functions of regional peacemaker and conflict mediator largely depended on its contrasting political views and limited resources, especially regarding its military dimension.

Most importantly, the conflict showed that the EU had to further deepen its process of political integration to adequately respond to the regional conflicts in the new post-Cold War international context (Bianchini and Nation 1998, 43-47). To demonstrate this point, this work mainly relies on the examination of the Bulletin of the European Community (BEC) as well as the study of selected memoires and reflections from European decision makers who shaped EC/EU policies toward Yugoslavia between 1991 and 1995: the German Canceller Helmut Kohl, the British member of the House of Lords and EU Special Representative David Owen, as well as the former major of the city of Bremen, Hans Koschnik, who became EU administrator for the reconstruction of the city of Mostar in 1994. While the Bulletin of the European Community provides a glance into the views, strategies, and perceptions of the twelve members states that responded to the implosion of the Yugoslav Federation, the memoires of the European leaders offer insight into the political debate that marked the formative stages of a European Common and Defense Policy. Above all, studying a central episode of EC/EU history in a time of tremendous change enhances scholarly understanding of the difficulties that marked the EU's transformation from a union of states into an international peace builder. Thus, this study ultimately aims to better assess EU's strength and weknesses when it acts as a peace and security provider in and beyond its neighbourhood.

Responding to the Yugoslav Crisis

In the 1970s, the Yugoslav Federation began to experience a steady economic decline. Richer Republics of the Yugoslav Federation such as Slovenia and Croatia increasingly opposed the transfer of local wealth toward the central government. Over time, the opposition between centralists and its opponents boosted political antagonism. In addition, the discriminatory measures of the Federal government and the uneven taxation of the non-Serbian minorities, as well as the territorial confiscation of Kosovo to the Albanians inflamed the socio-political confrontation. These factors ultimately intertwined with the increasingly nationalist tone of both Serbian and Croatian leaders and fomented phenomena of ethno-political violence that underscored territorial ambitions.[i]

The EC, firmly intent on preventing tragedies such as Auschwitz from happening again, promptly claimed its willingness to handle the Yugoslav crisis (Pond 2006). Indeed, during the

first phase of the conflict, which lasted from June 1991 to April 1992, the EC were the main contact for the peace process. The EC initially interpreted Slovene and Croatian declarations of independence as threats to the Yugoslav geopolitical stability. In particular, it feared that the dissolution of the Federation would fuel separatist ambitions in other regional contexts and produce a massive wave of refugees, an issue that would demand further financial efforts on its part (Reno and Lynch 1996). Thus, both the European Council and the European Parliament strongly underscored the unity of the Yugoslav Federation.[ii] Above all, the EC used terminology such as "Balkan tribes" to explain the war as a uniquely Balkan phenomenon that resulted from previous irrational animosity, equally blaming all members of the Federation (Bennett 1995, 194). This skewed view, while certainly reinforcing EC's aspirations to preserve the territorial integrity of the Yugoslav Federation, caused the reverse effect and facilitated the rise of a devastating wave of micro-nationalisms (Turkes and Gokgoz 2006, 673).

Analysis of the 1991 Bulletin of the European Community proves that the European Council supported Ante Marković, the last prime minister of the Socialist Federal Republic of Yugoslavia, and signed a protocol including financial, cultural, and economic cooperation. In addition, the EC invited the Federal government to revise its Constitution to firmly reassert the indisputable nature of human rights, including the right of self-determination.[iii] Nonetheless, Serbian violations against the Albanian minority in Kosovo quickly proved the ineffectiveness of the European measures to enforce the leading principles outlined by the Commission on Security and Cooperation in Europe (CSCE). Meanwhile, Serbian President Milosevic "made crystal clear that he would not shun violence to reach his aim" (Faucompret 2001, 6). After the June declaration of independence, Slovene troops faced the Federal Army for about ten days in what became known as the Ten Days War. On July 5, 1991 the European troika (Jacques Poos, Gianni De Michelis, and Hans Van den Broek) exercised political pressure on both the Slovenian and Federal governments to reach a cease-fire and open diplomatic negotiations inside the CSCE. Moreover, it also imposed an embargo on weapons and suspended the economic and financial agreements previously signed. A few days later, on July 7, under the EC's political sponsorship, Slovenian, Croatian, and Federal governments signed the Brioni's agreement, which postponed the recognition of Slovenian sovereignty by three months and saw the gradual withdrawal of the Federal troops.[iv] This agreement was the EC's single diplomatic success during the conflict, however the EC was unable to contain the escalation of the conflict in the following months (Marolov, 12). Indeed, the conflict in Croatia, anticipated by the May declaration of independence of the Serbs living in the region of Krajina, opposed Croatian troops to the Yugoslav National Army (JNA) as well as irregular Serbian militia until January 1992 and later again in 1995.

During the summer of 1991, the EC called for a peace conference and created an International Arbitration Committee, which was led by the President of the French Constitutional Court, Robert Badinter. Although the Committee blamed the Federal Republic of Yugoslavia (the new subject consisting of the Republics of Serbia and Montenegro) for the escalation of conflict in the Balkans, it also advised the European Community to proceed with the recognition of the Republics once they met the CSCE criteria for democracy and respect of human rights (Noutcheva and Huysseune 2004, 117-118). At the same time, the Badinter Committee supported a free union of independent republics with a single custom policy, cooperation in economic and foreign policy, and broad political autonomy in regions that were

inhabited by multiple minorities.[v] However, in a few months, European support for the maintenance of a united Federation had waned.

At the opening of the Hague Peace Conference in September, Federal President Mesić, Prime Minister Marković and EC negotiator Lord Carrington sought for a negotiation on the inviolability of the current borders, and reached a new cease-fire in Croatia. At the time, however, the war in Bosnia-Herzegovina, a mosaic state with a large Muslim majority, took on an overwhelming ethnic meaning (Greiff 2018, 38-46). Its Muslim population fell victim to Serbian authoritarianism and, more critically, international ineffectiveness. By the beginning of 1992, after being occupied by the Federal Army in September 1991, and following the proclamation of the Serbian Republic of Bosnia, Serbian troops occupied roughly 70% of its territory. Due to Serbian continuous violations of the Hague's deliberations, the EC asked for the support of the UN Security Council on October 25, 1991.[vi] While recognizing the right to independence of the Yugoslav Republics, the EC also stressed the major implications of the Yugoslav conflict for international peace. To defuse this threat, the European Council imposed economic sanctions on the Yugoslav Federation and asked each Republic to elaborate a plan for the protection of minority rights.

In December, in an attempt to support the Yugoslav economy, the EC decided to reactivate the PHARE program, the financial aid program of the European Bank for Investment, and the regime of preferences for the agricultural products coming from Bosnia-Herzegovina, Croatia, Slovenia, and Macedonia. Despite the efforts of the EC members to pursue a strategy which concurrently aimed to both economically and politically isolate the Serbian government, in December 1991 they firmly supported the independence of the Yugoslav Republics.[vii] Thus, on December 17, under the pressure of German Foreign Minister Hans-Dietrich Genscher, who vouched for Germany's unilateral recognition of sovereign and independent Yugoslav Republics in absence of a common European declaration, EC's members agreed to recognize those Republics that satisfied criteria, such as the respect for human rights, including minority rights; the use of diplomacy to resolve controversy; respect of current borders; and constitutional as well as political guarantees for its citizens. These principles became the object of a harsh dispute between the German, French and British governments (Faucompret 2001, 11; Holbrooke 1998, 31-33). While the former supported the secessionist Republics, the latter feared that the European recognition could further exacerbate the conflict in Bosnia-Herzegovina. Above all, while the German government saw, in the right to self-determination, a mirror of its recent past, the French government opposed unilateral action by any member of the EC and feared the extension of the German influence to the Balkans.

Meanwhile, the German pressure against Belgrade's ambition for a Great Serbia clashed with the UN resolution 724 (December 1991), which explicitly required members of the international community to avoid any action that would further escalate the conflict.[viii] Furthermore, differing opinions among the EC members quickly extended from diplomacy to the use of military action. Each state envisioned differently the use of the Western European Union (WEU) and the military branch of the EC (Bianchini and Spanò 1993). Since September 1991, the European Council had debated sending a military contingent only if the Yugoslav Republics could effectively commit to a cease-fire.[ix] In particular, Kohl and Mitterrand agreed on using a European contingent to enforce a temporary truce of arms between the belligerents. Denmark, Great Britain, and Portugal, however, opposed this option. Not only were some members of the European Community opposing any military intervention

but also the Serbian and Russian governments firmly pitted against any military external interference in the conflict. While the former feared an extension of German influence and condemned its support for the secessionist Republics, the latter feared an uncontrolled escalation of the conflict and threatened to use its power of veto inside the UN Security Council. In such a context, German constitutional constraints, Italy's past military aggressiveness toward the Balkans, British memories of guerrilla warfare in North Ireland and French perplexities toward the level of hostility, further undermined the European military response to the crisis (Owen 1995, 12). Despite the latent disagreement inside the European Community, its members decided to proceed with the recognition of the Slovene and Croatian Republic on January 15, a decision that was further reinforced by the support of the Holy See.

Meanwhile, the Badinter Committee stated that only Slovenia and Macedonia met the European criteria to be recognized as independent Republics. Croatia, instead, still lacked Constitutional guarantees toward its minorities, especially its Serbian residents.[x] After the Croatian Parliament's approval of a law to enforce minority rights, the EC also recognized Croatia as an independent Republic in October 1991. The Macedonian Republic, for its part, met the insuperable opposition of the Greek government, which claimed the historical, cultural and geographical right over its denomination. Any decision toward Bosnia-Herzegovina, instead, was postponed until after the results of its national referendum. The Badinter Committee also stated that the Yugoslav Federation, contrary to Serbian opinion, was experiencing a process of fragmentation and, therefore, its dissolution had to be handled according to international law. Thus, the different Republics had to freely agree to take up and share former responsibilities of the Federation. The European Parliament's recognition of both Slovenia and Croatia further validated the dissolution of the Yugoslav Federation.[xi]

As discussed so far, the EC attempted to respond to the Yugoslav implosion by means of both diplomatic talks and economic sanctions until 1992. However, differing political views, historical traditions and commercial interests toward the Balkans undermined the cohesive political action of the EC. At the same time, the overlapping process of EU construction, the concurrent process of the German unification and, above all, the reticence to militarily intervention in the region decisively impaired European ambitions (Salmon 1998, 235). In such a complex political context, the February 1992 EC Peace Conference in Lisbon, also known as the Carrington-Cutileiro-Peace-Plan, proposed the creation of a weak central government in former Yugoslavia and the devolution of ample administrative powers at the district level. Most importantly, it proposed to classify all territorial units as "Bosniak, Croat and Serb" even in cases lacking a clear ethnic majority.

1992-1994: Europe Who?

On February 21, 1992, in a proposal from the UN delegate Cyrus Vance called for the deployment of a peacekeeping force, the Security Council approved the resolution 743 which authorized sending a UNPROFOR contingent to Croatia.[xii] Its goals were to supervise the withdrawal of the Federal troops (JNA), facilitate the return of the refugees, and disarm irregular militias. The UN mission, however, lacked both the capacity and authority to respond to any military aggression, a factor that strongly affected its ability to contain possible phenomena of ethno-political violence. General Rupert Smith, a Senior international command who was highly involved in NATO and UN operations in the Balkans, magnificently summarized this problem by stating that the UNPROFOR mission was deeply undermined by the decision to send a peacekeeping mission where "the combatants did not

want collective peace" (Smith 2008, 338). A few months later, in April 1992, Bosnia was also officially recognized as an independent state by the UN. Despite this, the European Community merely acted as a bystander to the violence and occupation of the newly independent and sovereign state, by the new Federation of Serbia- Montenegro. Due to European inaction, the UN rather than the EC became the pivotal actor to find a solution to the Yugoslav crisis by imposing economic sanctions, deploying military troops and creating safe areas in Sarajevo, Goražde, Žepa, Bihać and Tuzla in May 1993 (Leurdijk 1996, 3-16).

Meanwhile, the Lisbon agreement in its original form was first rejected on March 11 to be later approved in an altered version that included ethnically split cities on March 18; however, on March 28, the President of the Republic of Bosnian and Herzegovina Alija Izetbegovic also firmly rejected the altered version. In Izetbegovic's mind, any plan that included the partition or division of Bosnia was fundamentally anti-Bosniak (Doga 2012, 59-60). To further complicate any effective response to the Yugoslav crisis, the EC was also entangled by the irreconcilable views over the Atlantic or European leadership in any possible future military operation. This diatribe, which was aroused in the weeks that anticipated the signature of the Maastricht Treaty, saw the net contraposition between Great Britain and France. While the former was favourable to connect the new political union to the Atlantic framework, the latter advocated a separate and autonomous European organization (Corbett 1992). Italy and Great Britain underscored their special relationship with the US and auspicated a major European contribution to international peace by the means of the Western European Union (WEU) whose activities remained subordinated to the decision of both the European Council and the Atlantic organization. To contrast, France and Germany, while recognizing the crucial role of the WEU, called for its unique submission to the decision of the European Council. The unified French and German brigade became the hallmark of the European will to further enhance political and military cooperation in the area of defence. The Treaty of the European Union ultimately supported the aspiration of the French and German governments to forge a European identity in the field of international defence. Yet it also requested significant convergences with the policies and decisions that were taken by the Atlantic organization.

In June 1992, after months of debates and negotiations, the European members approved the use of the WEU for peacekeeping missions.[xiii] This declaration, which also became known as the Petersburg Declaration, approved the use of European military forces for humanitarian goals if required by the CSCE and left the ultimate decision to each member state. For example, Denmark and Ireland decided to participate as observers while Turkey, Norway, and Iceland chose to temporarily refrain. Thus, after the European Council of Lisbon, the WEU supported the actions of NATO, such as in the naval blockade stemming from the UN Resolution 713 of September 1991 and Resolution 757 of May 1992.[xiv] During the Lisbon Council, the EC also pointed to Serbian responsibilities and refused to recognize Serbia-Montenegro. While supporting the UN resolution 758, the EC also agreed to enforce a global commercial, economic, and cultural embargo toward Serbia. In the midst of this apparent unity of intents, French President Mitterrand travelled to Sarajevo. While many observers read this initiative as a demonstration of French traditional ambitions to play a prominent role in a future and united Europe, others speculated that Mitterrand intended to prove to the European public that France had a special relation with Serbia and, therefore, could successfully lead future peace negotiations.

Between August 25 and 27 of 1992, at the International Conference on the former Yugoslavia (ICFY) in London, the Community took a firm stance toward the prosecution of war crimes and the respect for national sovereignty as well as territorial integrity of the new Republics. By doing so, the Community also advocated major international control to end the violence in Bosnia and Herzegovina.[xv] In addition, European members agreed to establish a permanent steering committee headed by the two co-chairmen, the UN representative Cyrus Vance and EC representative David Owen, as well as six commissions for the examination of issues related to Bosnia such as the economy, the succession of the former Yugoslav Federation and the implementation of a wide set of propositions drafted by both the CSCE and the UN. From then onwards, the ICFY continued to permanently meet in Geneva (Owen 1995, 1-2).

During the Fall of 1992, the Geneva negotiations experienced a prolonged deadlock, and the international community designed a peace plan that, named after the two co-chairmen of the permanent steering committee, became known as the Vance-Owen-Peace-Plan (VOPP). The VOPP proposed dividing Bosnia-Herzegovina into 10 cantons, entrusting the local administration to the European Union, and disarming the conflicting factions to stop ethnic cleansing. During the Fall, the VOPP found support by all EC members and the hopes for a diplomatic solution grew. However, many issues adversely affected the implementation of the plan, and its main terms merely remained on paper. Thus, internal disagreements among the EC members as well as resistance from the warring parties facilitated the continuation of atrocities on the ground (Owen 1995, 149). On 4 December 1992, after more than sixty consultations, German Chancellor Kohl and French President Mitterrand released a joint declaration that demanded the immediate stop of the mass killing of civilians, to prevent the conflict from spreading to other parts of the Balkans, and the search for a diplomatic settlement among the warring parties. In addition, both agreed on an immediate emergency support initiative to bring relief to the people struggling to survive in the kettle of Bihać. A week later, during the Edinburgh meeting, the EC members echoed the German-French position (Kohl 2007, 508-509). However, the European powerlessness in stopping the spread of extreme atrocities against civilians in Bosnia led to a growing critique from Atlantic partners, and to the symbolic resignation of the German Federal Minister Christian Schwarz-Schilling on 14 December 1992. Later, Schilling became the High Representative of the EU, the principle agency to supervise the Dayton Peace Accord. Schilling's resignation and similar political changes led to a new governmental Cabinet in Germany, and heightened interest by German citizens in the Bosnian crisis; however, it did little to increase German or European efforts to stop the violence. Due to the continuation of heavy fighting and atrocities after the winter of 1992-1993, and despite an initial period of isolation in which U.S. President Bill Clinton did not consider the Yugoslav conflict as an American vital interest, the United States became increasingly influential in the peace process both from a diplomatic and military point of view (Glenny 1995). The growing U.S. interest first led to the UN Resolution 816 of 31 March 1993, through which a no-fly zone was implemented over Bosnia to control airspace and reduce violence from the air. This no-fly zone had to be enforced and controlled by an international NATO AWACS unit comprised of soldiers from the US and several European nations. However, even under a clear UN mandate, and as part of an international force, Germany was unprepared to send its 162 soldiers into the mission. At the time, the German Constitution (Grundgesetz) did not allow German soldiers to engage in military actions in other states. Only after a rushed decision of the Federal Constitutional Court of Germany was

the German government able to send its share of soldiers into the first military action for Germany since the end of World War II (Kohl 2007, 565-568).

At the same time, the general elections in France led to a shift in the composition of the parliament. With the success of the conservative parties, Balladour became the Prime Minister of France, creating a difficult political situation for President Mitterrand to follow through on his promises. Just weeks before the elections, Mitterrand had convinced Milosević to put more pressure on the Bosnian Serb elite to return to the negotiating table. Not only did Mitterrand emphasize the historical close alliance between France and Serbia, but he also voiced French support to lift UN sanctions against Serbia (Owen 1995, 124-125). This episode demonstrates that election cycles adversely affected EU's engagement in Yugoslavia and, more generally, its ability to intervene both militarily and politically in its neighbourhood.

Not only national politics, but also changes in international politics impacted the EU's strategy toward Yugoslavia. The April 1993 meeting between Van den Broek (representative of the political cooperation, EPC) and Russian Foreign Minister Tchourkin demonstrates this point. Following the dismemberment of the Soviet Union, many European states saw Russia as a valuable ally in the effort to force Serbia to the peace table. Thus, aware of the Russian-Serbian amicable relationship as well as Moscow's desire to move forward with a comprehensive agreement that would "establish a basis for the inclusion of Russia within the European economic space," Van de Broek persuaded the Russian Government to actively engage in the peace negotiations (White and Feklyunina 2014, 63). As a result, Russia became a key player in the management of the Yugoslav crisis. By contrast, the EU's role was further minimized.[xvii] Meanwhile, at the European Council in Copenhagen, the Community reaffirmed the principles of the VOPP such as the respect for human rights, inviolability of borders, engagement in humanitarian aid, and financial support to the UN. With the support of U.S. President Clinton, German Canceler Helmut Kohl proposed in Copenhagen to strengthen the Muslim/Bosniak party by directly supplying them with weapons. Kohl stated that "we must answer the question if it is not a moral duty to help the Muslims defend themselves" (Los Angeles Times 1993), a statement that showed wavering support among the members of the European Community in their opposition to lifting the UN arms embargo against all of the territory of the former Yugoslavia. Indeed, Kohl's proposal met widespread support among other European state representatives who also promised to send troops to Bosnia (Kohl, 2007, 599-600). In addition, the European Council in Copenhagen welcomed U.S. and Russian diplomatic intervention and publicly supported Resolution 836 authorizing UNPROFOR to return fire if attacked in areas declared protected. At the same time, the Community condemned Bosnia's abandonment of the Geneva negotiations and expressed concern for the deteriorating situation that was leaving increasingly less room for diplomacy and more room for force.[xx]

In such a context, growing U.S. involvement also led to a significant breakthrough in the Athens negotiations of May 1993. During these negotiations, Slobodan Milosević, the President of the Socialist Republic of Serbia and defacto President of the still existing state of Yugoslavia, persuaded Radovan Karadizić, the leader of the Bosnian Serbs and the president of the Republica Srpska, to sign an agreement towards peace. In the meantime, France, Russia, the UK and Spain also pressed for a UN Security Council resolution that would incorporate the Athens Agreement on the Serb sanctions. However, the US strategically waited to support any UN Security Council Resolution (Owen 1995, 437-438). General Mladidć, commander of the Bosnian Serb forces, interpreted American appeasement as proof that Karadzic's agreement with Milosevic had less weight in international negotiations. As a result, division inside the Bosnian-Serb leadership as well as between the Serb and Bosnian-Serb leadership grew stronger. More importantly, these tensions significantly contributed to the demise of the VOPP and further demonstrated the necessity of a major shift in the EU strategy (Owen 1995, 151-184).

In May 1993, the UN approved the Resolution 827 which established the International Criminal Tribunal for the Former Yugoslavia (ICTY) to punish war crimes committed since the break out of violence in 1991.[xxi] In July, Thorvald Stoltenberg, who succeeded Cyrus Vance, together with David Owen drafted a new peace plan that, unlike the VOPP plan, foresaw a three-way ethnic division of Bosnia rather than its preservation as a set of ethnically defined cantons (Burg and Shoup, 263-279). Thus, multilateral negotiations about partition resumed in September 1993 on board of the British vessel HMS Invincible and led to an amendment of the initial Owen-Stoltenberg proposal as well as a new road map to peace (Burg and Shoup, 280-286). The idea of the Invincible talks fed into what later became known as the EU Action Plan. Although the three-way division of Bosnia later became a two-way division, it also represented a core feature of the successful Contact Group Proposal of 1994 (US, UK, France, Germany and Russia) that led to the end of the Yugoslav conflict.

In October 1993, the European Union also made its first statement of common foreign and security policy toward former Yugoslavia. It condemned the repeated violations of the agreements on the passage of humanitarian convoys and threatened to interrupt their flow, should the belligerent factions fail to guarantee security. While acknowledging the diplomatic deadlock over Bosnia and Herzegovina, the Community also reclaimed a prominent role in the peace conference, supported Bosnian territorial demands and maintained a total embargo against Serbia and Montenegro.[xxii] Despite this apparent unity of intentions, the EU was crossed with lingering tensions (Allen and Smith 1996, 70-72). First, Greece's view toward Macedonia remained unaltered and significantly diverged from the rest of the Union. Second, the member states could not reach a common position toward the option of using military force by NATO. Finally, the Owen-Stoltenberg plan, which prospected a presumably uneven and pro-Serb partition of Bosnia-Herzegovina, was rejected by the Bosnian government and was completely marginalized in international politics. Moreover, towards the end of 1993, economies of bordering EU states such as Hungary started to suffer from the trade embargos against Serbia and Montenegro. In order to maintain their political and economic stability, different states vouched for a gradual relief of the sanctions. In addition, France and Great Britain started to openly talk about the withdrawal of their military contingents. Both feared that the increase of violence on the ground would threaten the lives of their personnel (Woodward 1995, 312).

As discussed above, between 1992 and 1994, the EU enhanced its political cooperation and agreed on the use of the WEU in support of the actions of the international community. At the same time, however, the Community's ability to effectively influence the peace process was adversely affected by lingering political disagreements and the increasing role of other international actors, above all the UN and the U.S. government. As a result, the EU was replaced by the Contact Group, which was comprised of USA, Russia, Great Britain, France and the country in charge of the EU Presidency (Kramer 1993). While the Contact Group became the main political broker to find a peace settlement to the Yugoslav crisis, NATO became the Western leading military tool during the last year of the war.

The US Torpedoing the VOPP

On January 1994, NATO members met in Brussels and decided on airstrikes against the tightening of the sieges of Sarajevo as well as other UN Safe Areas. On January 30-31, Kohl met President Clinton in Washington. At this time, it was clear that none of the three sides in Bosnia were innocent. The Bosnian Army had heavy arms, gained territory, and committed atrocities. Several international actors recommended putting pressure on the Bosniaks, but Clinton and Kohl agreed not to exercise any unilateral pressure. Instead, Kohl privately asked Clinton to support Bosnia against the Serb militias (Kohl 2007, 653-654). The Clinton-Kohl talks continued in July 1994 during Clinton's visit to Berlin. While the German-American axis further proved the EU's inability to stop violence in Bosnia, it also strengthened trans-Atlantic cooperation between individual EU member states and the US, spearheaded by the Contact Group and backed by NATO forces. A few months later, in March 1994, increasing pressure by American Secretary Hoolbroke and the Contact Group forced the former Yugoslav Republics to reach the first agreement on the creation of a Croatian-Muslim Federation, also known as the Washington Agreement. At the time, the European members firmly believed that the conflict depended on the opposing factions' will to fight and could be resolved by diplomacy. Nonetheless, members of the Atlantic Council agreed to authorize military operations outside the territory of its states to prevent threats to its collective security (Leurdijk 1996, 33-54). In April 1994, the European Council also issued a note asking the Serbian troops to withdraw from one of the safe enclaves, Goražde, and to release the UN personnel.[xxiii] In addition, it strongly supported the American-Russian initiative to impose a cease-fire to all the belligerents and further demonstrated its firmness against Serbian violence by approving the initiative of the European Parliament which advocated the action of the International Court in the Hague against genocide and ethnic cleansing in former Yugoslavia.[xxiv]

When analyzed retrospectively, this set of initiatives demonstrates that the European Union had already embraced a new political role in 1994 as an agent of political stabilization in the Balkans. Unlike the rhetorical claims of the summer of 1991, the EU gradually projected its image of a civilian rather than military power, and, though unable to stop the conflict, it strongly committed to the socio-political reconstruction of the former Yugoslav Republics. Indeed, beginning in May 1994, the EU made an economic contribution to the Mostar administration and approved the participation of its troika to the peace talks set by the Contact Group. The EU's involvement in Mostar, which originally had been requested by the warring parties during the VOPP negotiations, further confirms a new phase of EU peacebuilding on the ground. Through humanitarian and economic support, this time overseen and organized by an EU administrator permanently deployed to Mostar, the EU tried to foster peace in this central city, which many viewed as the key to the stability of the young Croat-Muslim Federation (Koschnik and Schneider 1995, 23-35). In particular, European countries understood Mostar as an example of successful peacebuilding to be expanded to other divided areas of Bosnia. While major successes in terms of infrastructural reconstruction and improvement of livelihood of the population could be reported rather soon, the larger goals towards a stable peaceful social and political order in Mostar was not be achieved as expected. Again, EU's long internal decision processes, inefficient organization, major delays in mandates, and administrative mistakes not only left the EU personnel vulnerable to attacks, but also hindered the administration of the city. It ultimately impeded a prompt end to ethnic cleansing, the building of a unified and trustworthy local police force, as well as the definition of stellar answers to the pressing questions about émigrés' return and properties (Koschnik and Schneider 1995, 233).

Only in early June of 1994, the US officially removed the arms embargo on the Republic of Bosnia and recognized its right to self-defence. During the Corfu meeting of June, the European Council asked both Croatia and Serbia to abide by the cease-fire previously agreed upon and supported the prospected partition of Bosnia-Herzegovina: 51% to a Croat-Bosniak Federation and 49% to a Serb Republic.[xxv] After the parties accepted this solution, the European countries also agreed to ease the embargo on the Federal Republic of Serbia and Montenegro. A month later, the G7 meeting, or the first G8 meeting counting Russia as a guest, was held in Naples. The war in Bosnia was one of the central topics and led all sides to publicly agree to support the Contact Group in its work. However, even with all the international support, only minor progress was made in moving towards peace in the Fall of 1994.

However, throughout January and February 1995, the Yugoslav crisis appeared to take a decisive turn. Indeed, the four-month truce that was achieved after the mediation of former American President Jimmy Carter with Milosević, Izetbegović and Croatian President Franjo Tuđman boosted European confidence in an imminent resolution.[xxvi] In appointing Carl Bildt as the co-chair of the International Conference on the Former Yugoslavia (ICFY), the EU also hoped to facilitate the political dialogue as well as the mutual recognition between the different Republics. Despite this, Serbian violations during the four-month truce provoked the military intervention of NATO forces. In response, Serbian militias captured and used blue helmets of the international force as human shields. Moreover, the Serbian attack on Bihać fueled EU's fears of a new possible escalation of the conflict. Following the Serbian violations of the UN resolutions 819, 824, and 836 in Srebrenica, the European Council issued a note in which it firmly criticized the Serb violence, requested the release of the UN hostages, as well as the end of the bombing of the city of Žepa.[xxvii] In such a tense context, Croatian forces carried out a military attack in the Krajina region.

Although the EU was unable to militarily contain new clashes between Serbian and Croatian forces, European countries further embraced their role of regional peacebuilder and designed a set of specific guidelines to further pursue peace negotiations. First, it demanded the recognition of the multi-ethnic and democratic nature of Bosnia-Herzegovina, the inviolability of minority and human rights, as well as the national sovereignty of each former Yugoslav Republic. It also auspicated the creation of a free-market economy and gradual disarmament of the popular militia throughout the Yugoslav territory. With regard to Kosovo, it instead advocated its broad regional autonomy. Finally, the EU confirmed its commitment to support refugees and assist the local population. To better coordinate the European efforts, the EU suggested appointing one personality, a High Representative, who would be chosen by the UN Security Council to work as a liaison between the units of peace-keeping and the international agencies to better assist the civilian population. While Bosnia-Herzegovina and Croatia were promptly included in the program of both the International Monetary Fund (IMF) and the World Bank (WB), the Federal Republic of Yugoslav (composed of the Republic of Serbia and the Republic of Montenegro) was asked to first abide by the terms of the peace treaty, cooperate with the International Court and recognize Kosovo's autonomy. While the CSCE controlled the disarmament and weapon control process, the EU decided to continue the administration of Mostar and, after overcoming the Greek opposition, reached an agreement with the Former Yugoslav Republic of Macedonia (FYROM).[xxviii]

Nonetheless, the statements of the European Union remained substantially theoretical and did not affect the strategies of the opposing factions on the ground. It was rather the Croatian offensive and the massive bombing by NATO that induced the Serbian government to peace talks and ultimately led to the Dayton Agreement of 21 November 1995. These agreements were a direct consequence of U.S. military intervention. In the words of Carl Bildt, "the simple and fundamental fact of this story was that the United States was the only player who possessed the ability to employ power as a political instrument and, when forced into action, was willing to do so." (Chollet 2005, 29) Although Dayton, also portrayed as a "bold blueprint for the Bosnian state," effectively led to peace, critics highlighted that it symbolized the triumph of short-term pragmatism and ultimately "rewarded ethnic cleansing by dividing Bosnia into ethno territorial entities." (Toal 2005, 33)

As discussed above, between 1994 and 1995 the EU firmly supported the initiatives of the international community and confirmed its commitment to the process of post-war reconstruction. It greatly relied on financial support through international organizations such as the IMF and WB, the use of communitarian programs such as PHARE, support from NATO troops in Bosnia- Herzegovina and Macedonia, and the democratization of local and national state institutions. At its meeting in Madrid, the European Council issued its last statement on the Yugoslav war by praising its contribution to the Paris Agreement of December 1995. It reaffirmed its political support for Bildt in his action as High Representative and announced the deepening of political cooperation between the EU and FYROM.[xxix] While assessing the impact of the conflict on the historical process of European integration, the European Council bluntly affirmed that the Yugoslav crisis showed how Europe transformed from divided countries into a united continent based upon the principles of democracy and tolerance. We now can see that the Yugoslav crisis not only forced the European Community to re-think its role in international affairs and deepen political integration, but the Yugoslav events made also a point in case - as Erik Faucompret suggests, "the cart was put before the horses" and the Common Foreign and Security Policy mechanisms crumbled in front of different minds (Faucompret 2001, 30).

Conclusion

This article has stressed that a lack of political unity and military power weakened Europe's ambitions to stop a local conflict which quickly escalated into a humanitarian tragedy marked by ethnic cleansing and mass genocide. Over time, the EU's means of preventive diplomacy and economic sanctions proved gravely inadequate in ending the conflict in Yugoslavia (Glenny 1996, 67). In addition to exposing the impotence of the European Union, the events in Yugoslavia highlighted a wide gap between the Community's expectations and its capacity to implement them (Holland 1995, 555-559). The failure of the European policy was the result of its inefficacy to impose penalties, constitute common strategies and effectively mould national interests in the sphere of a common foreign policy and security (Nuttall 1994).

In September 1992, a Parisian newspaper stated that "Europe died in Sarajevo" (Finkielkraut 1996, 30). These words correctly described Europe's repeated failures to stop the conflict and, as later re-proposed by Alain Finkielkraut in his book "The Crime of Being Born," vividly exposed the European weakness to respond to the abrupt geo-political changes that followed 1989. The premature recognition of national sovereignty for both Slovenia and Croatia, the ambiguous policy toward the individual responsibilities of each belligerent, as well as the conflicting views toward both the WEU and the Atlantic Alliance decisively

undermined the communitarian strategy. In particular, the Yugoslav case demonstrated that the centrality of the nation-state and the strenuous defence of national sovereignty within the communitarian political framework debilitated European ambitions to act with a single voice in a time of crisis (Lavdas 1996, 228). Above all, it showed that "decades of integration have transformed Europe's nation states into member states but not into a unified super-state." (Thomas 2011, 4). Its bureaucratic structure and norms, rather than its alleged indifference toward the Yugoslav tragedy, effectively became the primary reason of the European failure to respond to the Balkan crisis.

However, following the Yugoslav crisis and especially the Stabilization and Association Process of 1999, the EU firmly committed to effectively cope with political instability inside the region. According to Karen Smith, the Stability Pact represented one of the rare successes of the Common Foreign and Security Policy after 1989 (Smith 1999). European commitment toward the region was further confirmed in 2003 during the EU-Western Balkans Summit. On this occasion, the European countries declared that the "future of the Western Balkans is within the European Union" (Prifti 2013, 13). This statement, also known as the Thessaloniki Declaration, greatly exposed Europe's interest to peace and stability in its backyard after years of bloody confrontations. Nonetheless, in an international context which is still highly de-stabilized by the Syrian conflict, the Ukrainian crisis and the tragedy of refugees escaping across both the Mediterranean and South-Eastern Europe, one may wonder whether Europe has learned anything from its past.

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ENDNOTES

i. During the first few months of 1990, Croatian violence against Serbs in Vukovar and Serbian discrimination against Albanians in Kosovo exponentially aroused animosity between the Republics. For a study which explains the breaking-up of Yugoslavia by emphasizing the ethno-nationalist dimension of the conflict see Stefano Bianchini and George Schöpflin (1998), *State Building in the Balkans: Dilemmas on the Eve of the 21st Century* (Ravenna: Longo Editore).
ii. Bulletin of the European Community (BEC) January-February 1996, 96.
iii. BEC June 1991,13, 88, 92, 104.
iv. BEC July 1991, 86, 105-110.
v. BEC September 1991, 48, 63, 64.
vi. BEC October 1991, 71, 85, 87, 89.
vii. BEC December 1991, 98, 116-117.
viii. S/RES/724 (1991).
ix. The WEU was originally established in 1948 by 5 of the original members and later joined by the others. Immediately overshadowed by the creation of the NATO and the failure of EDC, this organization, which represented European ambition for military integration, experienced a long impasse. Only after 1975 and the Helsinki Act, the European countries decided to re-launch their dreams to act as a single political subject in international politics and gave new impulse at the WEU as a response to US aggressive Cold War's policy.
x. BCE January-February 1992, 82-84, 98, 104-105, 110.

xi. BEC March 1992, 83, 89, 98.
xii. S/RES/743 (1992)
xiii. BEC June 1992, 15, 17, 19, 21, 90-93, 108-109.
xiv. S/RES/757 (1992).
xv. BEC July-August 1992, 82-86, 106, 108-110.
xvi. BEC January 1993, 74 -76, 86, 88, 95-97.
xvii. BEC April 1993, 57, 72, 74, 79.
xviii. S/RES/713(1991).
xix. S/RES/836 (1993).
xx. BEC June 1993, 14, 19, 107,115,117,121,123,125.
xxi. S/RES/827 (1993).
xxii. BEC October 1993, 8, 11, 23, 84, 91.
xxiii. BEC April 1994, 69, 73, 98.
xxiv. S/RES/808 (1993).
xxv. BEC June 1994, 19, 105, 115.
xxvi. BEC January-February 1995, 35, 99.
xxvii. BEC July 1995, 13, 82, 83, 102-104.
xxviii. BEC September 1995, 50, 64-65.
xxix. BEC December 1995, 20-21,40-41,151-155.

Measuring Donor Influence at the World Bank

Travis Blemings

Previous research on international financial institutions (IFIs) has shown that organizations, such as the World Bank, are subject to political pressures from powerful donor states when allocating international financial assistance. This article seeks to broaden our understanding of the role of donor states in shaping the lending activities of the World Bank, by developing an additive index of donor-borrower relations for each of the Bank's top five largest financial contributors: Japan, Germany, the United Kingdom, France, and the United States. Utilizing regression analysis of the relationship between donor influence and the annual value of aid countries received during the period between 1990 and 2011, the data largely supports the null hypothesis that donor-borrower relations have no impact on the allocation of development aid. Contrary to the dominant explanation in the literature, the data suggests that donor influence from the Bank's top five largest donors, including the United States, has little to no impact on the World Bank's aggregate lending decisions. However, in reality, support for the null hypothesis may have more to do with inherent limitations in the newly developed donor-borrower relations indices (DBRI) rather than with the application of donor influence.

Introduction

The World Bank Group (WBG), commonly referred to simply as the World Bank, is an international organization tasked with promoting economic development and combating poverty in the developing world. The WBG is comprised of several interrelated branches: the International Bank of Reconstruction and Development (IRBD) provides development services to middle-income countries, the International Development Association (IDA) offers discounted funding to the world's poorest countries, and the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA) provide aid to the private sector. As part of its mission, the WBG helps plan, implement, and fund development projects, which, among other things, build schools, water treatment plants, and hydroelectric dams. The World Bank is one of the largest, most well-funded and influential international institutions in the world. Given the depth of its resources, the scope of its reach, and its unique mandate, the Bank has a profound impact on the lives of millions of people across the globe.

Numerous studies have shown that across multiple dimensions the World Bank's lending decisions correlate with the United States' (US) political preferences. For example, studies have shown that countries with close economic and political ties to the US are more likely to receive development aid and to receive larger volumes of funding (Andersen et al. 2006; Dreher et al. 2009b; Fleck and Kilby 2006; Vreeland & Dreher 2014). The central conclusion of this research is that politically well-connected aid recipients receive greater amounts of development assistance than their less well-connected peers. Research on the politicization of the international financial institutions (IFIs) has traditionally focused on the influence of the US; however, there is good reason to suspect that other wealthy and political influential donors are similarly able to shape the Bank's lending decisions. Studies examining the World Bank from a principal-agent (PA) perspective have argued that the Bank is subject to political

pressures from multiple donor states, which often compete with one another to realize their disparate development agendas (Nielson and Tierney 2003; Nielson et al. 2006; Weaver 2008). The present study combines the insights of the foreign aid and principal-agent literature to examine the impact of a broader swath of donor influence at the World Bank. Specifically, this study expands the scope of relevant donors to include the Bank's top five largest financial contributors: the United States, Japan, Germany, the United Kingdom, and France[i].

Conclusive evidence of the politicization of development aid has been difficult to obtain. Anecdotal accounts of donor meddling in the Bank's internal decision-making processes to steer development funding to friends and allies abounds (Gwin 1997; Toussaint 2008; Wade 2002), but such instances can be written off as outlier events that do not accurately reflect the Bank's typical behavior. As such, several studies have analyzed aggregate trends in the Bank's lending portfolio in search of systematic evidence of political interference. The nature of large scale, aggregate data analysis necessitates the use of uniform measures, which creates a methodological obstacle for researchers attempting to measure donor influence. What looks like political pressure in one context may not apply in others. To bypass this problem existing research tends to utilize indirect measures of donor influence based on assessments of donor-borrower relations (Andersen et al. 2006; Fleck and Kilby 2006; Kilby 2013; Neumayer 2003). If donors are systematically intervening in the Bank's funding decisions, as anecdotal evidence suggests, it is reasonable to assume that they are steering aid toward friends and allies as opposed to enemies and rivals. If this is, in fact, the case, aggregate analysis of the Bank's various investment portfolios should show that aid recipients with closer ties to influential donors receive more aid on average than their peers with weaker or antagonistic relations to powerful donors.

Existing research generally confirms the presence of donor influence in the allocation of multilateral aid, finding a positive relationship between different dimensions of donor-borrower relations and the amount of aid countries receive. For example, both Dreher et al. (2009) and Vreeland and Dreher (2014) find that temporary members of the United Nations Security Council (UNSC) receive disproportionately high levels of funding from the World Bank. Vreeland and Dreher (2014) argue that this is evidence that powerful countries pressure the Bank to increase lending to temporary UNSC members in exchange for their support on important votes undertaken by the Security Council. This interpretation is supported by additional evidence which shows that developing countries with close, economic, political, and geostrategic ties to the US are both more likely to receive development aid and to receive greater amounts of funding than their peers (Andersen et al. 2006; Fleck and Kilby 2006; Neumayer 2003).

Despite evidence confirming the presence of donor influence in the allocation of development assistance, our understanding of the extent of that influence is limited in two important ways. First, such evidence tends to focus mainly on the role of the US (Andersen et al. 2006; Fleck and Kilby 2006; Kilby 2013; Neumayer 2003) or does not specify the precise donor exerting pressure on the Bank (Dreher et al. 2009b; Vreeland and Dreher 2014). Therefore, we do not know if the US's influence is unique among donors or if other major financial contributors are similarly able to direct the flow of development funding. Second, while the logic of employing indirect assessments of donor influence remains consistent across the various studies on the subject, to our knowledge, no attempt has been made to develop a multifaceted and conceptually valid measure of donor-borrower relations. Existing studies utilize individual dimensions of donor-borrower relations, whether it be trade-ties, bilateral aid, or voting behavior at the United Nations, as a proxy for donor influence. It is important, however, to explore how these different dimensions combine and interact, especially considering their use as a substitute for direct measures of donor influence. It is possible that each of these individual measures is picking up the causal influence of some omitted covariate other than donor influence. In order to be sure that the positive correlation observed in the existing literature is due to variation in donor-borrower relations, a more robust assessment of this dyadic relationship is necessary.

Following the work of those such as Andersen et al. (2006), Dreher et al. (2009b), Fleck and Kilby (2006), Vreeland and Dreher (2014), this study seeks to develop a novel measure of donor-borrower relations to more rigorously test the assertion that those with closer ties to the Bank's top donors receive greater amounts of aid than their less well-connected peers. Consequently, this study has created an index of donor-borrower relations to quantify the geostrategic ties between the Bank's clients and its top-five largest financial contributors.

Preliminary iterations of the donor-borrower relations index (DBRI) reveal surprising results. Contrary to the main finding of the World Bank literature, by utilizing an additive index of donor-borrower relations, this study reports evidence that there is no statistically significant relationship between ties to the US and the amount of aid recipients receive. At face value, this finding contradicts the main assertion of the foreign aid literature and implies that the US exerts no statistically significant influence on the IBRD's funding decisions. Further, expanding our assessment to include the Bank's other major financial-backers, there is similarly little evidence that donor-borrower relations are systematically correlated with the Bank's lending decisions. Interestingly, there is some suggestive evidence that countries with closer geostrategic ties to Japan and France are more likely to receive development aid from IBRD, though these findings remain tentative. These results overwhelmingly support the null hypothesis, calling into question the extent of donor influence at the World Bank; however, these results should be considered preliminary and thus taken with a grain of salt. In addition to the mass of evidence in the World Bank literature which supports donor influence arguments, Blemings (2017) recently found that utilizing a disaggregated assessment of donor-borrower relations generally confirms the presence of donor influence in the allocation of development aid.

The null findings reported here are possibly a result of poor construct validity related to the operationalization of the DBRI. The DBRI is a simple additive index, premised on the assumption that each subcomponent of the donor-borrower relationship (trade, bilateral aid, and political affinity at the UN General Assembly) are valued equally, however, there is some evidence to suggest that trade and donor aid are greater indicators of close donor-borrower relations than political affinity. Several studies have examined the Bank's lending behavior during similar time periods and found positive correlations between the Bank's lending practices and the amount of trade and bilateral aid received from the Bank's top donors (Blemings 2017; Andersen et al. 2006; Fleck and Kilby 2006; Neumayer 2003). In light of these studies, it seems that the support for the null hypothesis found here is due to conceptual validity errors in the measurement of donor-borrower relations. It is likely that alternative weighting specifications will yield different results. As such, the attempt here to develop a multifaceted and robust assessment of international political relationships represents a tentative first step in the right direction on the long road to understanding how such relationships impact the operation of international institutions (IOs) like the World Bank.

The remainder of this article is organized as follows: Section I outlines the broad contours of the World Bank literature, elaborating on the logic of donor-influence arguments and specifying a set of hypotheses derived from it. Section II explains the data and methodology used to test the hypothesized relationship between donor-borrower relations and the amount of development aid countries receive, detailing the process by which the DBRI is created. Section III presents the results from a series of regression analyses of the relationship between the DBRI for each of the Bank's top-five donors and the value of aid received. Finally, a brief conclusion discusses the implications and limitations of this study.

Theory

Studies of the World Bank are largely divided into two categories, the foreign aid and the international organizations (IO) literature. The former specifically addresses the issue of aid allocation while the latter examines a broader swath of the Bank's behavior, with emphasis on institutional processes and organizational reform.[ii] In addition to focusing on different aspects of the Bank's operation, these two strands of literature develop largely competing conclusions about the Bank and the sources of its behavior. The present study draws on insights from both sets of literature to develop and test a set of observable implications regarding the role of international politics and donor-state influence in the provision of multilateral development aid.

The foreign aid literature focuses on variation in the allocation of financial assistance across bilateral and multilateral sources of funding, arguing that both types of aid are in part awarded according to international politics, with politically connected countries receiving greater amounts of foreign assistance than their less well-connected peers. Studies on the determinants of bilateral aid flows have consistently shown that wealthy donor states use aid as an instrument of statecraft, in which economic assistance is employed to bolster donor's foreign policy agendas (Alesina and Dollar 2000; Vreeland and Dreher 2014; Kuziemko and Wreker 2006)[iii]. In addition to the evidence from bilateral aid flows, the role of politics in allocating foreign aid is also observed at the International Monetary Fund (IMF). Numerous studies have demonstrated that politically well-connected countries receive preferential treatment from the IMF. The well-connected are more likely to receive aid in the first place, receive greater volumes of financial support than their peers, and receive aid with fewer strings attached (Dreher et al. 2009a; Dreher et al. 2015; Thacker 1999)[iv].

Such findings are largely mirrored at the World Bank, where several studies have shown that politically connected countries receive preferential treatment from the World Bank as well (Dreher et al. 2009b; Andersen et al. 2006; Fleck and Kilby 2006). Dreher et al. (2009b) and Vreeland and Dreher (2014) have shown that temporary members of the United Nations Security Council (UNSC) receive a greater number of World Bank loans than non-UNSC members, suggesting that powerful donors pressure the Bank to lend more to temporary UNSC members in exchange for their votes on important decisions at the United Nations. The politicization of development aid is also observed at the UNGA, where several studies have shown that countries who vote similar to the United States are more likely to receive aid (Andersen et al. 2006; Kilby 2013; Neumayer 2003). Finally, Fleck and Kilby (2006) find evidence of a positive correlation between economic and political ties to the US and the amount of aid countries receive. Specifically, Fleck and Kilby show that countries who trade more with the US and that receive greater levels of direct bilateral aid from the US also tend to receive higher levels of World Bank funding than their peers. The underlying logic behind these findings is that powerful donors, such as the US, intervene in the World Bank's internal decision-making process to steer aid towards friends and allies while pressuring the Bank to withhold funds to rivals and enemies (Gwin 1997; Wade 2002).

Despite the evidence of donor influence provided by the foreign aid literature, insights from IO studies on the World Bank add complicating wrinkles to how we think about this variation in the Bank's lending behavior. Several studies working from a principal-agent perspective have argued that the World Bank retains significant autonomy from powerful donor states and that it is often able to resist exogenous pressures (Nielson and Tierney 2003; Nielson et al. 2006; Weaver 2008)[v]. For example, Nielson and Tierney (2003) argue that because the Bank is beholden to multiple donors at once, often with divergent preferences, it is able to resist external pressures to reform by playing competing interests against one another to preserve the status quo. Similarly, Weaver (2008) argues that the Bank often engages in seemingly hypocritical behavior, in which it embraces certain institutional policies and reforms, only to fail to implement them, as a way to respond to competing pressures from multiple donor states. According to Weaver, such hypocritical behavior is a coping mechanism, which allows the Bank to appease its various donors while maintaining independence. Nielson et al. (2006) further highlight the Bank's autonomy from powerful donors by showing that reforms advocated by donor states are more likely to be adopted successfully when they "fit" within the Bank's existing organizational norms. Nielson et al. argue that outside pressure from donor states is unlikely to be received within the Bank unless it aligns with the Bank's internal culture and policies.

To summarize, the IO and foreign aid literature largely draw opposite conclusions about the relationship between donor influence and World Bank behavior. Nielson and Tierney (2003), Nielson et al. (2006), and Weaver (2008) stress the Bank's autonomy and highlight the difficulty states have in controlling international organizations. In contrast, Andersen et al. (2006), Fleck and Kilby (2006), Dreher et al. (2009b), and Vreeland and Dreher (2014) emphasize the impact donors have over the World Bank, arguing that powerful financial donors, such as the United States, intervene in the Bank's funding decisions to steer aid toward friends and allies. The present study draws on insights from both interpretations, to develop and test a set of hypotheses which expand the empirical analysis of donor influence over the World Bank's funding decisions. As emphasized in the IO literature, the World Bank is beholden to multiple donor states, each with potentially divergent preferences for how the Bank should allocate its development aid. As such, this study expands upon traditional measures of donor influence to examine the potential impact of each of the Bank's top five largest financial contributors—the United States, Japan, Germany, the United Kingdom, and France—on the allocation of development aid. Following the logic of donor influence arguments established by those such Andersen et al. (2006), Fleck and Kilby (2006), and Neumayer (2003), we should observe that borrowers with closer geostrategic ties to the Bank's largest financial backers receive greater levels of funding than their less well-connected peers. In other words, we expect to observe a positive correlation between donor-borrower relations and the value of aid recipients are awarded (*hypothesis 1*).

Based on insights from the IO literature, we know that international institutions like the World Bank are under pressure from multiple principals, including several prominent financial backers, beyond the United States. This would suggest that multiple donors are potentially able to influence the Bank's allocation decisions, directing funding toward their individual foreign policy goals. If this is true, we should observe a positive correlation

between the donor-borrower relations with each of the Bank's top-five largest donors and the value of aid countries receive (*hypothesis 2*). Alternatively, it is possible that the Bank is able to navigate the push and pull of the alternative foreign policy preferences of its top donors, to cancel out such influence and maintain autonomy over funding decisions. In this case, the null hypothesis should be true, and we should find no correlation between donor-borrower relations and the value of aid received.

> H_1: Donor-borrower relations are positively correlated with the value of aid countries receive from the World Bank.
> H_2: Donor-borrower relations with the Bank's top five largest financial backers are positively correlated with the value of aid countries receive from the World Bank.

Data and methodology

To test the hypotheses outlined in the previous section, this study creates an additive index of geostrategic ties between donors and borrowers referred to as the donor-borrower relations index (DBRI). To the best of our knowledge, the DBRI is the first measure which seeks to move beyond single dimensions of geostrategic relations to capture the broader and more multifaceted nature of the relations between countries in their international relations. The patterns in donor-borrower relations which are captured by the DBRI, serve as an indirect or proxy measure of donor influence over the aid allocation process at the World Bank. Trends in the DBRI, are compared against the loan portfolio of the main agency of the World Bank for the period between 1990 and 2011. The relationship between donor-borrower relations and the value of aid countries received is evaluated utilizing a series of quantitative analyses: a basic OLS linear regression model and a two-stage selection model.

The main dependent variable of interest, *Value of Aid*, measures the annual amount of development assistance a country received from the main agency of the World Bank, the International Bank for Reconstruction and Development (IBRD), measured in constant 2005 USD. In addition, a log measure of the value of aid (*Ln Value of Aid*) is included to smooth out the high levels of variance in the distribution of development aid[vi]. This measurement choice is common among existing studies on the determinants of World Bank lending including Andresen et al. (2006) and Vreeland and Dreher (2014)[vii]. Data on the IBRD's loan portfolio is obtained from the World Bank's Projects and Operations Database available online.

The main explanatory variables of interest in this study are a newly designed set of additive indices intended to quantify the extent of geostrategic relations between the World Bank's top financial backers and its clients. The donor-borrower relations indices are intended to capture the strategic importance of aid recipients to the Bank's largest donors on a scale ranging from (0-16). Zero indicates absolutely no ties between an aid recipient and a donor, while sixteen indicates very close ties. The indices are composed of three dimensions of the relationship between countries, including trade flows, bilateral aid exchanged, and political affinity at the UN General Assembly—all factors which have individually shown positive correlation with the Bank's lending decisions (Andersen et al. 2006; Dreher et al. 2009; Fleck and Kilby 2006; Vreeland and Dreher 2014). Each individual dimension of donor-borrower relations (exports, imports, bilateral aid, and political affinity) is divided along an ordinal level measurement scale corresponding to the categories: no relations = 0, weak relations = 1, moderate relations = 2, strong relations = 3, and very strong relations = 4[viii]. For example, countries which make up a very small amount of the US export market would receive a value of 1 for the strength of their export relations with the US, while countries which purchase large volumes of US exports would receive a value of 4. This process is repeated across the four different dimensions, resulting in a maximum DBRI score of 16, indicating very close geostrategic ties between a donor-borrower dyad. Assignment to each category (0-4) is determined by dividing each dimension into quartiles corresponding to the categories low through very high, with no relations corresponding to zero.

The final DBRI score is an additive assessment of how close the Bank's clients are to a given donor, assuming that each of the four dimensions of donor-borrower relations is valued equally[ix]. For example, a country with very strong trade ties to the United States, which also receives high levels of bilateral aid, and tends to vote with the US at the UN General Assembly would receive a maximum *US index* score of 16. According to the logic of donor influence arguments, the United States intervenes in the Bank's funding decisions on behalf of such countries to steer greater levels of development funding their way. If donor influence arguments are correct and the Bank's principal donors are interfering in the IBRD's funding decisions, we should observe a positive relationship between the various donor-borrower relations indices and the *Value of Aid*.

The use of donor-borrower relations measures allows us to gain insight into the broad aggregate patterns in the allocation of development aid. Using such measures, we can assess the total impact of politics on the Bank's funding decisions. While such an approach allows for a holistic assessment, it necessarily entails sacrificing precision for generalizability. Proxy measures cannot offer definitive proof of donor influence, but they can provide robust suggestive evidence which spans a great number of cases and periods of time.

Table 1: Components of the Donor-Borrower Relations Index (DBRI)

Category (Range)	Description
Trade: Exports (0-4)	**The Strength of Export Relations** **Based on the annual value of donor exports purchased (constant USD)* -Very Strong Relations (4) -Strong Relations (3) -Moderate Relations (2) -Weak Relations (1) -No Relations (0)
Trade: Imports (0-4)	**The Strength of Import Relations** **Based on the annual value of imports sold in donor countries (constant USD)* -Very Strong Relations (4) -Strong Relations (3) -Moderate Relations (2) -Weak Relations (1) -No Relations (0)
Bilateral Aid (0-4)	**The Strength of Development Relations** **Based on the annual amount of bilateral donor aid received (constant USD)* -Very Strong Relations (4) -Strong Relations (3) -Moderate Relations (2) -Weak Relations (1) -No Relations (0)
Political Affinity (0-4)	**The Strength of Political Affinity** **Based on annual average vote similarity at the UNGA* -Very Strong Relations (4) -Strong Relations (3) -Moderate Relations (2) -Weak Relations (1) -No Relations (0)
DBRI Scale (0-16)	

Each of the four dimensions is divided into quartiles, based on their individual distributions relative to each of the top-five donors (United States, Japan, Germany, United Kingdom, & France). The strength of relations across each dimension is then summed for each donor-borrower dyad to arrive at the final DBRI Score (for details refer to Appendix A).

The data involved in the creation of the DBRI are derived from several sources. Data on trade flows between countries are obtained from the IMF's Direction of Trade Statistics data series. Data on the annual amount of bilateral aid awarded from donors directly to borrowers are available through the Organization for Economic Cooperation and Development (OECD). The final component of the index's centers on voting patterns at the UNGA. Several studies have shown that vote similarity at the UN is correlated with the lending behavior of the international financial institutions (IFIs) (Thacker 1999; Dreher and Jensen 2003; Barro and Lee 2003). The data on political affinity is derived from records of UN voting behavior provided by Strezhner and Voeten (2013). The specific measures of political affinity employed in the creation of the donor-borrower relations indices are novel, as assessments of the dyadic vote similarity between all borrowers and each of the Bank's top donors were not previously available[x].

In addition to the DBRI, which proxies for donor influence, this study also controls for several demographic and economic covariates which likely influence the IBRD's funding decisions. Such factors include population, gross domestic product, per capita income, annual economic growth rates, domestic savings, and foreign direct investment (FDI)[xi]. Data for all of the demographic and economic controls were obtained from the World Bank's World Development Indicators (WDI) data series.

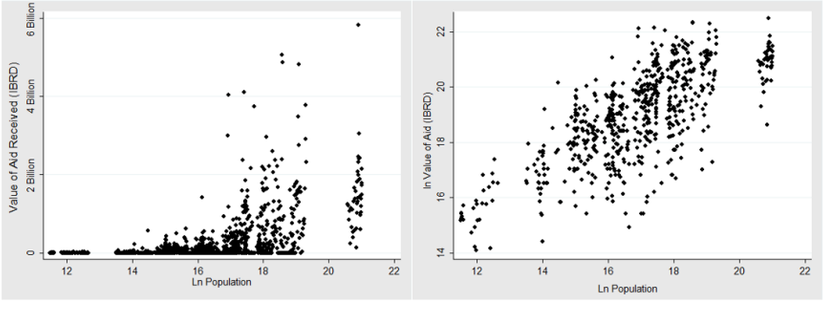
The sample of panel-data used in this study covers the period between 1990 and 2011 and includes 57 different countries, for a total sample size of n=1,264[xii]. To be included in the sample, observations had to pass a three-step case selection process, designed to isolate those countries with an existing financial relationship to the IBRD. In order to be included in the sample, countries must have been a member of the IBRD during the entire period under study, have borrowed at least once during that period, and data must be available for all of the explanatory variables[xiii]. This selection criterion focuses on only those countries which have a financial relationship with the Bank. The sample omits developed countries with no need for the World Bank's services and developing countries, which, for whatever reason, have never borrowed from the Bank. As such, this sample provides an accurate snapshot of the IBRD's loan portfolio for the 1990s and the first decade of the 2000s—omitting only borrowers for which complete data is unavailable or those who joined the Bank during the study period, thus running afoul of panel-data analysis[xiv].

This sample may elicit concerns about selection bias. Some may be worried that in focusing only on countries who have borrowed, the coefficients produced by regression analysis will be biased and therefore inaccurate. There are two variants of this concern. The first is that such a research design fails to speak to the experiences of those countries which are likely to borrow but never have. To a certain extent, this is a valid criticism; however, it does not hinder the specific research objective of this particular inquiry. This study is concerned with understanding why some countries receive more aid than others. The implicit scope condition inherent in this project is that all results apply only to those nations which have a financial relationship with the Bank—those that have borrowed at least once. Given the opaque nature of the World Bank's lending process, we have no way of precisely discerning whether a country has elected not to borrow, as is the case with prosperous developing countries, or whether would-be borrowers are denied access. As such, any country that has not borrowed falls outside the purview of this study. All generalizations derived from this project apply only to those countries with an established financial relationship with the Bank.

The second concern regarding selection bias is that, if international politics renders some countries more likely to receive aid, then focusing on only those countries which have borrowed potentially underestimates the effect of politics on the Bank's funding decisions. This would be a problem if there were little temporal variation in the Bank's lending portfolio and recipients received aid every year. There is, however, significant variation in the timing and frequency of when countries are awarded funding. Very few countries receive aid every year, rather most countries receive aid sporadically—with the notable exception of countries like China, India, and Brazil. In fact, a substantial proportion of the observations on the dependent variable are years in which a particular country received no aid at all. An example of this is illustrated in the left-hand side of Figure 1. Within the sample of the IBRD loans, the

percentage of observations in which no aid was received in a given year is at just above 50%. The presence of so many zero observations nullifies the concern that the sample is biased in favor of those which receive aid. If anything, the sample is biased conservatively against the influence of international politics. The presence of so many zero observations increases the standard errors associated with any individual regression coefficient; in effect creating a difficult test to pass. Therefore, any evidence demonstrating the influence of international politics should be considered especially rigorous given the higher threshold required to attain statistical significance.

Figure 1: Zero-Point Clustering on the Response Variable



On the left-hand side, we have the relationship between the Value of Aid and population. Here we can see the large concentration of zero observations on the dependent variable (instances in which no aid was awarded in a given year). On the right-hand side, we see the same relationship expressed using a log-scale without the zero observations. This comparison highlights the distorting effect of numerous zero observations (non-events) for continuous response variables.

While the relatively high percentage of zero observations on the dependent variable creates a difficult test to pass, thus strengthening any conclusions drawn from statistically significant results, it may also risk the problem of zero-point clustering (as illustrated on the left-hand side of Figure 1). Zero-point clustering occurs when there is a large proportion of observation on the dependent variable for which no event occurred—in this case when countries do not receive development aid in a specific year (Belotti et al. 2015). If the concentration of zeros (non-events) is severe enough it can bias the coefficients produced by regression analysis, effectively masking the true relationship between the response and explanatory variables. The presence of a large concentration of non-events in the distribution of a continuous response variable will flatten the slope of the regression line associated with any given explanatory variable. Additionally, the severity of zero-point clustering also impacts the standard errors associated with each coefficient, increasing the average amount of error and undermining the generalizability of the results. It is worth repeating that the presence of such bias would act conservatively against the influence of politics in the aid allocation process, but for the purposes of this study, merely establishing the presence of donor influence represents a step forward.

To address the potential problems associated with zero-point clustering, an additional set of analysis is conducted using a two-stage model, similar to the common Heckman section model. During the first stage, the model estimates the probability of receiving World Bank aid (PR Aid), while the second stage estimates the *Value of Aid* received for only those observations in which aid was awarded (Heckman 1979). This approach essentially breaks the data into two separate samples, allowing us to accurately assess the influence of the explanatory variables without the distorting effects of all the zeros (non-events).

In sum, to evaluate the impact of donor influence over the World Bank's lending decisions, this study creates an index of donor-borrower relations to quantify the geostrategic relations between the Bank's clients and its top donors. Patterns in DBRIs for each of the Bank's top five largest donors are compared against two measures of the annual value of aid countries have received, the *Value of Aid* and the *Ln Value of Aid*. To evaluate the relationship between these variables, a series of three quantitative models is developed. The first utilizes basic OLS regression analysis of the factors influencing the *Value of Aid*. The second follows the same approach, but for the *Ln Value of Aid*. Finally, a third variant employs a two-stage selection model for the *Value of Aid*.

Results

According to the logic of donor influence arguments, powerful donor countries intervene in the aid allocation decisions of the IFIs to steer funding to their friends and allies while withholding development support from enemies and rivals. Existing evidence suggests that the United States has historically exerted such influence over the Bank (Andersen et al. 2006; Fleck and Kilby 2006; Kilby 2013; Neumayer 2003). I extended the logic of donor influence arguments to test whether the Bank's other leading financial backers are similarly able to guide the flow of development funding. Specifically, I hypothesize that donor-borrower relations relative to each of the top donors are positively correlated with the amount of World Bank funding countries receive. In order to test this proposition, I employ an indirect assessment of donor influence based on the political relationships between each of the Bank's top five largest donors and a sample of countries which borrowed from the World Bank between 1990 and 2011. Utilizing an additive index of donor-borrower relations, I find little support for traditional donor influence arguments. In contrast with the major findings of the foreign aid literature, I find no statistically significant relationship between geostrategic ties with the United States and the value of aid countries receive from the IBRD. Expanding the analysis beyond US influence yields similarly weak support for donor influence arguments. There is some evidence to suggest that countries with close ties to both the United Kingdom and Germany actually receive less development aid instead of more, as predicted. One exception to these results is that countries with close ties to Japan and France were more likely to receive development aid from the IBRD. Beyond this limited support, however, the donor-borrower relations indices largely fail to operate as expected.

Table 2: Influences on the Value of Aid Countries Receive from the IBRD

VARIABLES	(1) Value of Aid	(2) Ln Value of Aid	(3) Pr (Aid)	(4) Value of Aid
Ln Population	1.149e+08***	0.667***	0.0181	2.745e+08***
	(3.796e+07)	(0.154)	(0.233)	(8.896e+07)
Ln GDP	7.704e+07*	0.209	0.454**	3.902e+07
	(3.965e+07)	(0.149)	(0.230)	(8.616e+07)
Ln Income	1.052e+08**	0.519***	0.190	3.287e+08***
	(4.316e+07)	(0.158)	(0.226)	(9.144e+07)
Growth Rate	1.899e+06	0.0106	0.0172	1.207e+06
	(2.564e+06)	(0.0110)	(0.0170)	(6.379e+06)
Savings	-3.825e+06***	-0.0114***	-0.0179***	-383,630
	(1.177e+06)	(0.00373)	(0.00531)	(2.155e+06)
Ln FDI	3.034e+07***	-0.0579	-0.117**	1.338e+07
	(7.139e+06)	(0.0397)	(0.0550)	(2.293e+07)
US Index	-1.924e+06	-0.00414	0.0385	-3.017e+06
	(5.264e+06)	(0.0261)	(0.0360)	(1.507e+07)
UK Index	9.507e+06	-0.0894***	-0.0813**	1.669e+07
	(7.347e+06)	(0.0311)	(0.0412)	(1.799e+07)
JP Index	-3.873e+06	-0.0230	0.132***	-1.905e+07
	(8.454e+06)	(0.0284)	(0.0417)	(1.645e+07)
GR Index	-3.931e+07***	0.0288	-0.00478	-4.752e+07**
	(1.190e+07)	(0.0371)	(0.0585)	(2.146e+07)
FR Index	2.888e+06	0.0102	0.0870**	-6.923e+06
	(4.790e+06)	(0.0261)	(0.0386)	(1.509e+07)
Constant	-4.480e+09***	0.679	-11.74***	-7.276e+09***
	(3.965e+08)	(1.028)	(1.519)	(5.945e+08)
Sample Size	1,208	607	1,208	607
R-squared	0.306	0.621	Pseudo .16	.396

*Standard errors reported in parentheses (*** p<0.01, ** p<0.05, * p<0.1). Column 1 reports the results from the standard model using PCSEs. Column 2 lists the results for a log version of the value of aid. Columns 3 & 4 report the results from the two-stage model. Column 3 reports the findings for stage one, the probability of receiving aid based on a logit model, while column 4 reports the results for stage two, after accounting for the likelihood of receiving aid.*

Table 2 reports the results of the regression analysis across several different model specifications. Column 1 reports the results from the standard OLS regression model[xv]. Column 2 presents the findings for a version of the model based on a log measure of the dependent variable. Finally, columns 3 and 4 report the results of the two-stage model, which accounts for any potential problems related to zero-point clustering. Here we can see that aid recipients' relations with the United States have no statistically significant impact on the amount of aid they receive from the IBRD. Further, and in contrast with donor-influence arguments, the coefficients associated with the *US Index* are consistently negative across model specifications, indicating that, for the countries included in the sample, closer relations with the United States are surprisingly associated with less development aid. This finding fails

to support hypothesis 1 and suggests that contrary to existing studies, the World Bank is free from US political influence.

The evidence regarding hypothesis 2 is slightly mixed, but also largely fails to support expectations. The coefficients that measure donor-borrower relations with the UK and Germany yield statistically significant negative results, which undermines hypothesis 2 and strongly clashes with the implications of the foreign aid literature. As illustrated in Figures 2 and 3, countries with closer geostrategic ties to the United Kingdom are both less likely to receive IBRD funding (Model 3 Stage 1) and are found to receive less development aid than their peers (Model 2). Similarly, those with closer ties to Germany are also shown to receive less development aid from the IBRD. The data does offer very limited support for hypotheses 1 and 2 in that IBRD clients with higher DBRI scores for their relations with both Japan and France are found to be more likely to receive development assistance from the Bank. As reported in Column 3 of Table 2 and illustrated in Figure 3 (Stage I), those with closer geostrategic ties to Japan and France are statistically more likely to receive an IRBD loan in any given year than their peers. Taken as a whole, these findings largely refute hypotheses 1 and 2, and contradict donor influence arguments, suggesting that the Bank is much more independent than the dominant narrative of the foreign aid literature asserts.

Figure 2: Interval Estimates of Donor Influence (95% Confidence) Models 1 & 2

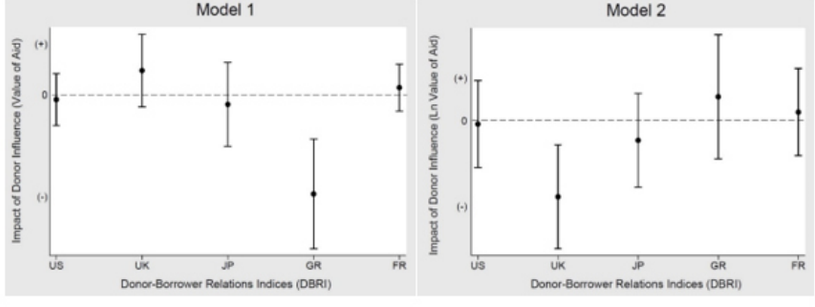
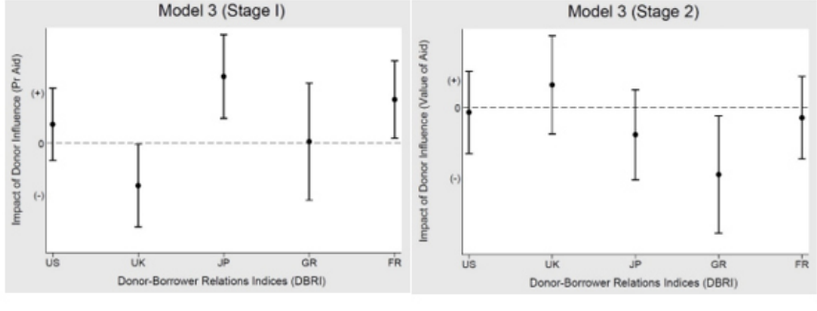


Figure 3: Interval Estimates of Donor Influence (95% Confidence) Model 3



In addition to the results pertaining to donor influence, analysis of the IBRD's loan portfolio during the 1990s and early 2000s reveals that the main agency of the World Bank allocates a greater share of its resources to large, economically productive countries with

relatively high levels of affluence and potentially greater access to foreign sources of capital. The coefficients for population, GDP, per capita income, and FDI all yield consistently positive and statistically significant results. In other words, larger, more economically successful IBRD clients are found to receive greater levels of funding than their smaller, less economically robust peers. In some respects, these results make sense, as the IBRD concentrates the majority of its investment in large developing economies which represent safe returns on investment. On the other hand, these findings are strikingly out of sync with the Bank's image as a development institution working for the world's poorest. Among IBRD's aid recipients, the weakest economies seem to be receiving the least amount of development support[xvi].

Overall, the results pertaining to the role of international politics largely support the null hypothesis and, in some cases, suggest the opposite relationship predicted by donor influence arguments. There is limited suggestive evidence that Japan and France may be pressuring the Bank to provide loans to their friends and allies but given the overall weakness of the results produced by the DBRI measures, such findings should be considered tentative. At face value these findings cast doubt on the validity of donor influence arguments, however, it is important to situate these findings within a broader context. Within the literature on the subject, a growing number of studies have found a positive association between US influence and lending decisions of the World Bank. As such, it is possible that the weak support for donor influence arguments found in this study result from construct validity limitations inherent to the creation of the DBRIs. When constructing the indices, for example, each of the various subcomponents (trade, bilateral aid, and political affinity) were treated as equally important dimensions of donor-borrower relations, it is possible, however, that some of these dimensions are more important than others and that less salient components are masking the true impact of international politics.

Additionally, when creating the DBRIs, these subcomponents, most of which are interval-level phenomenon, were truncated into an ordinal level measurement scale. The process by which this conversion was implemented relied on dividing the distribution of each component into quartiles corresponding to low through high levels of strategic importance. It is possible that in flattening the data in this way, the true nature of the strategic relationship was obscured or distorted. Subsequent efforts to develop valid and robust measures of the political relationships between countries should focus on alternative weighting and measurement schemes which may yield results more consistent with the dominant conclusions of the foreign aid literature. Alternatively, if such studies also fail to support donor-influence arguments, it may be necessary to reexamine the empirical basis of the emerging consensus within the foreign aid literature—that aid is awarded, in part, according to the preferences of powerful donors such as the United States.

Given the inconclusive results of this study, some readers may be inclined to reject donor influence arguments and conclude that the World Bank is largely an independent actor awarding development aid according to its own private preferences. Some have suggested that internal divisions among the Bank's executive board—which is made up of representatives from each member state—prevent powerful donors from influencing lending decisions. Others have suggested that the Bank suffers from a form of agency slack, in which the Bank's principal donors, represented on the executive board, are unable to control the behavior of the Bank's lending staff. Yet, while such interpretations are consistent with the findings of the present study, they are not supported by either the broader findings of the World Bank literature or the internal structure of the Bank itself.

On the first point, that there may be little consensus among the executive board, it may be the case, that the US's preferences for how multilateral development aid is awarded are accurately captured by the DBRI, but that those preferences are not effectively translated into reality due to bureaucratic politics among the Bank's executive directors. However, while this conclusion is consistent with the findings of this paper it is inconsistent with other well-established facts. The most obvious being the previously mentioned studies, which find statistically significant evidence of donor influence over the Bank's lending practices (Blemings 2017; Andersen et al. 2006; Fleck and Kilby 2006; Neumayer 2003). Additionally, it has been well documented that the Bank has a pro-lending bias, in which the vast majority of loans presented to the executive board are approved, so much so, that the executive board has been criticized as being little more than a rubber-stamp.

On the second point, regarding the issue of the executive board's control over the lending bureaucracy; while there is certainly a significant amount of agency slack at the World Bank, especially related to issues of environmental and good governance reforms, the structure of the funding approval process effectively ensures the board's control over the rank-and-file loan officers. The board has final authority over all lending decisions and no loans can be funded without the authorization of the executive board. In practice, the board is often overwhelmed with loan requests, forcing it to give superficial analysis to the details of any given project, thus allowing staff to circumvent specific policy preferences of donors, but the lending bureaucracy cannot award funding without board approval.

Finally, some have criticized the indirect approach of measuring donor influence employed in this study, arguing that the real preferences of donors cannot be truly known without direct engagement with the Bank's staff. On this point, I completely agree. The most effective way to determine whether the Bank's top donors intervene in its lending decisions would be to utilize a two-step multi-method process. The first step would involve documenting a positive correlation between donor-borrower relations and the value of aid countries receive. The second step would be to confirm that the observed correlation is in fact due to donor influence, by speaking directly to the Bank's loan staff, who guide loan applications from conception to board approval. Without such triangulation, even statistically significant results are open to alternative explanations. Following the trend of the existing literature, the present study is concerned with step one in this two-stage process. Before going to speak with Bank officials, it is important to have a solid understanding of the descriptive facts of the Bank's loan portfolio.

Conclusion

This study has sought to expand arguments about the nature of donor influence over the World Bank and to develop a more rigorous assessment of donor-borrower relations. The dominant narrative in the foreign aid literature suggests that the World Bank is largely beholden to its largest financial backer, the United States. However, insights from the IO literature suggest that the Bank is actually subject to political pressures from multiple donors beyond just the US. This study has developed a novel set of measures to quantify the geostrategic ties between the Bank's clients and its largest and most politically influential donors. Utilizing additive indices of donor-borrower relations, this study finds little evidence of donor influence over the Bank's aid allocation process, related to the US or other top donors. These findings seem to

support the conclusions of the PA literature, which stresses the autonomy of international institutions like the World Bank. However, the weak findings related to donor influence may be the result of measurement limitations and not necessarily an indictment of the efficacy of donor influence arguments. Additional research and further development of measures of donor-borrower relations are necessary in order to speak more definitively about the relationship between international politics and the allocation of multilateral development aid.

Appendix A: Index codings for relations with countries

Index coding for relations with the United States

Variable	No ties (Very Low)	1st quarter (Low)	2nd quarter (Middle)	3rd quarter (High)	4th quarter (Very High)
US Exports (annual)	--	Less than 1 - 116	117 - 847	848 - 3,480	3,481 - upwards
US Imports (annual)	--	Less than 1 - 111	112 - 1,083	1,084 - 4,714	4,715 - upwards
US Aid (annual)	--	Less than 100k	100k - 6.5	6.6 - 51	52 - upwards
US Affinity (annual)	--	.21 - .43	.44 - .56	.57 - .71	.72 - upwards

(Very low = 0, Low = 1, Middle = 2, High = 3, Very High = 4)

*Trade data is expressed in millions of $US

Index coding for relations with the United Kingdom

Variable	No ties (Very Low)	1st quarter (Low)	2nd quarter (Middle)	3rd quarter (High)	4th quarter (Very High)
UK Exports (annual)	--	Less than - 32	33 - 119	120 - 600	601 - upwards
UK Imports (annual)	--	Less than - 37	38 - 176	177 - 869	870 - upwards
UK Aid (annual)	--	Less than 110k	110k - 1.24	1.25 - 7.6	7.7 - upwards
UK Affinity (annual)	--	.93 - 1.14	1.15 - 1.24	1.25 - 1.33	1.34 - upwards

(Very low = 0, Low = 1, Middle = 2, High = 3, Very High = 4)

Index coding for relations with Japan

Variable	No ties (Very Low)	1st quarter (Low)	2nd quarter (Middle)	3rd quarter (High)	4th quarter (Very High)
JP Exports (annual)	--	Less than 1 - 39.7	39.8 - 196	197 - 1,218	1,218 - above
JP Imports (annual)	--	Less than 1 - 14.1	14.2 - 94	95 - 655	656 - above
JP Aid (annual)	--	Less than 430k	430k - 8.3	8.4 - 42.6	42.7 - above
JP Affinity (annual)	--	1.28 - 1.45	1.46 - 1.52	1.53 - 1.60	1.61 - above

(Very low = 0, Low = 1, Middle = 2, High = 3, Very High = 4)

Index coding for relations with Germany

Variable	No ties (Very Low)	1st quarter (Low)	2nd quarter (Middle)	3rd quarter (High)	4th quarter (Very High)
GR Exports (annual)	--	Less than 1 - 45.5	45.6 - 232	233 - 1,581	1,581 - above
GR Imports (annual)	--	Less than 1 - 29.9	30 - 258	259 - 1,251	1,252 - above
GR Aid (annual)	--	Less than 510k	510k - 14	15 - 37.4	37.5 - above
GR Affinity (annual)	--	1.15 - 1.34	1.35 - 1.43	1.44 - 1.51	1.52 - above

(Very low = 0, Low = 1, Middle = 2, High = 3, Very High = 4)

Index coding for relations with France

Variable	No ties (Very Low)	1st quarter (Low)	2nd quarter (Middle)	3rd quarter (High)	4th quarter (Very High)
FR Exports (annual)	--	Less than 1 - 37.2	37.3 - 317	318 - 1,018	1,019 - above
FR Imports (annual)	--	Less than 1 - 23.5	23.6 - 230	231 - 907	908 - above
FR Aid (annual)	--	Less than 605k	605k - 6.5	6.6 - 33.2	33.3 - above
FR Affinity (annual)	--	1.03 - 1.24	1.25 - 1.31	1.32 - 1.39	1.40 - above

(Very low = 0, Low = 1, Middle = 2, High = 3, Very High = 4)

Appendix B: List of countries included in the Sample

Algeria	Grenada	Poland
Argentina	Guatemala	South Africa
Barbados	Honduras	South Korea
Belize	Hungary	St. Lucia
Bolivia	India	St. Vincent & Grenadines
Botswana	Indonesia	Swaziland
Brazil	Iran	Thailand
Cameroon	Jordan	Trinidad and Tobago
Chad	Lesotho	Tunisia
Chile	Malaysia	Turkey
China	Mauritius	Uruguay
Colombia	Mexico	Venezuela
Congo	Morocco	Vietnam
Costa Rica	Mozambique	Zimbabwe
Cote d'Ivoire	Namibia	
Cyprus	Nigeria	
Dominican Republic	Pakistan	
Ecuador	Panama	
Egypt	Paraguay	
El Salvador	Peru	
Fiji	Philippines	

Of the 88 countries in the IBRD's loan portfolio, 57 are included in the sample.

Appendix C: List of excluded borrower countries

Albania	Iraq	Russia
Armenia	Jamaica	Serbia
Azerbaijan	Kazakhstan	Seychelles
Belarus	Latvia	Slovak Republic
Bosnia and Herzegovina	Lebanon	Slovenia
Bulgaria	Lithuania	St. Kitts and Nevis
Croatia	Macedonia	Turkmenistan
Czech Republic	Moldova	Ukraine
Dominica	Montenegro	Uzbekistan
Estonia	Papua New Guinea	
Georgia	Romania	

31 borrower-countries are omitted from the sample either due to data availability restrictions or to the fact that they joined the World Bank during the study period.

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ENDNOTES

i. This study focuses on the Bank's top five, historically largest, donors, not necessarily the current top five. The US, UK, Japan, Germany, and France have historically been the dominant members at the World Bank; however, more recently China has emerged as a significant donor within the IBRD. As of 2017, China is the third largest donor at the IBRD, yet it remains a minority contributor at the other agencies of the WBG. Given that China only recently emerged as a major financial contributor, it is not included as a top donor.

ii. For more on organizational reforms at the World Bank refer to Miller-Adams (1999), Chwieworth (2008), and Phillips (2009).

iii. On this point see also, Meernick et al. (1998), Lundborg (1998), and Reynolds and Winters (2016).

iv. For more on the politicization of IMF aid refer to Barro and Lee (2001), Oatley (2003) and Dreher and Jensen (2003).

v. Principal-agent theory as it pertains to IR, argues that states and international organizations (IOs) are engaged in an ongoing contractual relationship in which both parties exert causal influence over IO behavior. In this framework, states represent principals who hire or contract IOs, who are agents, in order to perform some function that states are either unwilling or unable to perform themselves. Organizations like the World Bank are analogous to the employees of nation-states, possessing delegated authority to act on behalf of states. For more on PA theory refer to Hawkins et al. (2006), Koremenos (2008), Bradley and Kelley (2008).

vi. Cross-national quantitative analyses typically utilize log measures of aggregate national statistics, such as the value of aid received, in order to smooth-out high levels of variance resulting from the inclusion of highly dissimilar countries. For example, small island countries compared to large BRIC countries. The presence of such high levels of variance can bias the coefficients and increase the standard errors in regression analysis, thus undermining our ability to identify causal relationships. The use of logarithmic scales reduces this variance and allows meaningful comparison of otherwise dissimilar countries. However, in this case, the use of log transformations combines with quirks in the Bank's loan portfolio to create methodological tensions (more on the nature of these tensions will be discussed later in this section). In order to accommodate such tensions, two versions of the dependent variable are employed, an absolute assessment and log measure of the value of aid.

vii. Alternative measures include the share of aid received (Fleck and Kilby 2006) and the number of loans received (Dreher et al. 2009b).

viii. For details on the coding of each dimension refer to Appendix A.

ix. The equal weighting of each dimension of donor-borrower relations is a simplifying assumption which is likely inaccurate in reality but serves as a starting point in the process of developing a holistic assessment of donor-borrower relations. Subsequent studies may alter the weighting of each dimension of donor-borrower relations once the efficacy of such measures has been established.
x. The political affinity variables measure how often two countries vote the same way at the UNGA in any given year. Affinity scores range from (0-2), with 0 representing complete disagreement, 1 representing partial agreement—voting the same half of the time—and two representing complete agreement, or voting the same all the time. Here higher annual affinity scores indicate greater vote similarity and imply that the two countries are political allies.
xi. All of the covariates, with the exception of annual growth rates and domestic savings, are measured on a logarithmic scale to smooth out high levels of variability in their individual distributions, as is common practice in aggregate cross-national comparisons.
xii. Refer to Appendix B for a full list of the countries included in the sample.
xiii. This sample selection criterion omits all countries which joined the World Bank after 1990, including former members of the Soviet Union, which gained their independence and joined the Bank gradually over the course of the early 1990s.
xiv. Of the 88 countries included in the IBRD's loan portfolio during the study period 57 are included in the sample. For of a list of aid recipients which were omitted from the sample refer to Appendix C.
xv. The Standard model utilizes panel-corrected standard errors (PCSEs) to account for contemporaneous correlation in the data.
xvi. A subset of IBRD's poorest clients are also eligible for supplemental assistance from the Bank's discount lending division, the International Development Association (IDA), however, only a small number of highly impoverished nations are eligible to borrow from both sources, as such the observation that IBRD is out of sync with its humanitarian image still stands.

Transnational Human Rights Advocacy for Local Claims in International Climate Agreements

Andrea Schapper

The relationship between climate change and human rights is complex: The consequences of climate change lead to adverse effects on the right to life self-determination, food, adequate housing and health. Climate policy implementation, however, can also infringe on the rights of local population groups. Against this background, transnational advocacy networks (TANs) advocate for an institutionalization of human rights in the international climate regime. In this article, I investigate the activities of TANs to explain why and how human rights become anchored in climate agreements. I argue that information delivery from local community groups to international state negotiations, persuasion mechanisms and the boomerang pattern explain increased institutional interaction between the human rights and the climate regime. This research is based on expert interviews, a content analysis of primary documents and participant observations at the Conferences of the Parties (COP) 19 in Warsaw (2013) and COP 21 in Paris (2015).

Introduction

Climate change can be understood as alterations in the composition of the global atmosphere directly or indirectly attributed to human activity (UNFCCC 1992). These alterations lead to climate impacts, such as global warming, rising sea levels, diminishing snow and ice and changes in precipitation (IPCC 2018). Climate impacts result in human impacts, including damages to infrastructure, agriculture, fisheries, tourism, homes, property and human life. The main purpose of the United Nations Framework Convention on Climate Change (UNFCCC), which is legally binding for 197 state parties, is the stabilization of greenhouse gases in the atmosphere and the prevention of dangerous anthropocentric interference with the climate system (UNFCCC 1992).

In the international climate regime, civil society organizations (CSOs) have considerable institutional access to the negotiations of the member states of the UNFCCC. The annual Conferences of the Parties (COP) are held to review the Convention's implementation, adopt legal instruments or to make additional institutional arrangements. CSOs can participate in UNFCCC negotiations as accredited observers representing the interests of particular societal groups. Whereas the UNFCCC has initially been characterized by strong engagement of business stakeholders and environmental organizations, other actors have entered the scene during the last decade, among them indigenous peoples, youth groups, trade unions, gender advocates and human rights activists often organized in transnational advocacy networks (TANs) (Keck and Sikkink 1998).

TANs can be understood as communicative structures, in which a range of activists guided by principled ideas and values interact. These ideas and values are central to the networks and determine criteria for policy criticism and advocacy, as well as evaluating whether established policies, actions, or outcomes are just or unjust (Ibid: 1). TANs create new

linkages, multiply access channels to the international system, make resources available to new actors, and help to transform practices of nation states. Within these networks, international and local CSOs, foundations, the media, churches, trade unions, academics, government agencies, and even members of regional or international organizations (IOs) collaborate. Their overall objective is to change the policies of states and IOs, as well as advocate for new norms, treaties or international laws, often implemented or overseen by IOs (Ibid: p. 9).

Strong TAN participation can make state negotiations more complex and difficult – introducing new themes and issues, such as the adverse human rights impacts of climate change and climate policies. Human rights concerns, especially the question of whether certain climate policies lead to rights infringements, complicate negotiations. These concerns cannot be easily ignored but require immediate political action (Hiskes 2009). States, therefore, have long refrained from applying a human rights language in climate negotiation processes (Wallbott and Schapper 2017).

Nevertheless, human rights have entered the preambulatory and operative clauses of the climate agreements made at COP 16 in Cancun, Mexico in 2010 and have again been institutionalized in the Preamble of the 2015 Paris Agreement at COP 21 in France. Their inclusion in the Paris Agreement is particularly meaningful as this is the first binding environmental treaty containing human rights (Atapattu and Schapper 2019). The Paris Agreement states that all climate change action should be undertaken while respecting, promoting and considering states' respective human rights obligations, including the right to health, as well as the rights of indigenous peoples, local communities and people in vulnerable situations (UNFCCC 2015).

Moreover, in the appendix of the non-binding Cancun Agreements 2010, procedural human rights, including respect for the knowledge and rights of indigenous peoples as well as participation of relevant stakeholders and local communities, have been installed for forest protection and management programs called Reducing Emissions from Deforestation and Forest Degradation (REDD+). Their introduction for projects under the Clean Development Mechanism (CDM), a flexible mechanism defined in the Kyoto Protocol providing for emission reduction projects, has been debated at COP 19 in Warsaw in 2013 and at subsequent negotiations with a view to revising the modalities and procedures of the CDM. Rights-based social and environmental safeguards to regulate global carbon markets under the Paris Agreement (part of the Paris implementation guidelines or Paris Rule Book) will be negotiated at COP 26 in Glasgow, Scotland (Article 6 negotiations) in 2021.

Procedural human rights are of particular importance in environmental law. They establish a link between the state and civil society by fostering transparency and participation in environmental decision-making (Gupta 2008). The most important procedural rights are the right to information, the right to participation in decision-making and the right to judicial and administrative recourse. All these rights are anchored in the 1948 *Universal Declaration of Human Rights*, the 1966 I*nternational Covenant on Civil and Political Right* and the 1998 *Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters*.

In this article, I argue that the activities of TANs, including international human rights and environmental civil society organizations, representatives from youth groups and indigenous peoples as well as international organizations, explain why and how human rights have entered climate agreements. TANs use local experiences and case studies at the international

climate negotiations to demonstrate that both, climate change and climate policies, can have adverse effects on rights for the population on the ground. Simultaneously, TANs emphasize the need for observing existing rights obligations in all climate-related actions and for strengthening procedural rights in climate policies to protect the local population. By interacting very closely with state representatives, international non-state partners within TANs transmit local claims to the states' negotiation table. They sometimes persuade state actors that are receptive to human rights arguments to introduce text passages that include rights language. States in which rights infringements in climate policy implementation occur and that have an active domestic civil society can experience pressure from below (through civil society) and from above (through TANs). In this way, pressure exerted by state governments on their local population in the course of policy implementation can come back to these governments at the international climate conferences, and we can observe a boomerang pattern (Keck and Sikkink 1998; Risse, Ropp and Sikkink 1999 and 2013). This article will reveal new insights on the mechanisms and tactics employed by TANs, including information politics, symbolic politics, leverage politics and accountability politics, to foster institutional interaction between the human rights regime and the climate change regime.

This article is structured as follows. First, I explain the complex relationship between climate change, climate policies and human rights. Second, I review the literature on civil society participation and the activities of TANs at the international climate conferences. Third, I present a case study on the Human Rights and Climate Change Working Group (HRCCWG). I selected the HRCCWG because it continues to be the only TAN active at the COPs that is solely focusing on institutionalizing human rights in the climate regime. Moreover, the HRCCWG was the initiator and coordinator of a broader "super-network" (Schapper 2020) at COP 21, an inter-constituency alliance stipulating human rights in the Paris Agreement. My empirical assessment builds on a content analysis of primary documents, including observer submissions, press releases, network tweets, as well as reports from International Organizations (IOs) and CSOs. Additionally, I evaluated transcripts from expert interviews conducted at the international climate negotiations in Warsaw (Poland) in 2013 and in Paris (France) in 2015, and field notes from coordinating meetings of the HRCCWG, in which I participated as an observer. Finally, I will conclude with new insights on the social mechanisms explaining institutional interaction between the human rights and the climate regime.

The Relationship between Climate Change and Human Rights

The relationship between human rights and climate change flows in two directions. On the one hand, the consequences of climate change can entail adverse effects on the enjoyment of human rights. On the other hand, the implementation of climate policies can lead to rights infringements of local communities, in particular indigenous peoples and pastoralist groups.

In the face of climate change, all three dimensions of human rights - civil and political rights, economic, social and cultural rights, and collective rights - (Krennerich 2010, 7) are at risk. Climate impacts, including heat waves, floods, storms, droughts and exceptional weather events can – in extreme cases – threaten civil and political rights, first and foremost, the *right to life*. It is a non-derogable right in the *International Covenant on Civil and Political Rights* (1966) and the *Convention on the Rights of the Child* (1989). Sea level rise, floods, droughts, extreme weather events and changes in precipitation can, at the same time, negatively affect the right to food, the right to water, the right to health, the right to adequate housing or the right

to education (OHCHR 2009, 13). All of these social rights are an integral part of the 1966 *International Covenant on Economic, Social and Cultural Rights* (ICESCR). At the same time, these rights are also anchored in several core treaties of the United Nations Human Rights System, such as the 1979 *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW), the 1989 *Convention on the Rights of the Child* (CRC), the 1990 *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* (CMW), as well as the youngest human rights instrument, the 2006 *Convention on the Rights of Persons with Disabilities* (CRPD, OHCHR 2009, 8-14). Cultural rights are also affected by climate change. Human rights arguments in this area are raised to strengthen international cooperation programs for adaptation and mitigation strategies, which will protect world heritage from changed weather conditions, temperature increases, floods, heavy rain, storms and droughts (Maus 2014).

The implications of climate change, however, are not only a matter of individual entitlements, they also affect collective rights. A relevant binding collective right is the right to self-determination which is a fundamental principle of international law. The right to self-determination is the first article in both, the 1966 ICESCR and the 1966 *International Covenant on Civil and Political Rights* (ICCPR). It states that people(s) should be able to freely determine their political status and their economic, social and cultural development (ICCPR 1966, Art.1; ICESCR 1966, Art.1). The right to self-determination is at risk for people who are forced to leave their state territories due to environmental challenges and who become environmental refugees. Moreover, the right to self-determination is threatened by rising sea levels and extreme weather events endangering the territorial existence of low-lying island states. It can also be threatened when indigenous peoples or pastoral communities lose their traditional habitat as source of subsistence due to environmental challenges. In all cases in which human beings have to abandon their state territory, their legal status and protection in the international system is unsettled (OHCHR 2009, 14-15).

Moreover, climate impacts like sea level rise, temperature increase, extreme weather events and changes in precipitation adversely affect the collective right to a healthy environment. Such a right is not yet binding in the international human rights system of the United Nations but has been discussed in the 2021 Human Rights Council Sessions. Furthermore, it has found entrance into regional conventions, such as the 1981 *African Charter on Human and Peoples' Rights*, the 2003 *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa*, the 2004 *Arab Charter on Human Rights* or the 1988 *Additional Protocol to the American Convention on Human Rights*. Thus, it can be considered to be a binding human right in several world regions like Africa, several Arab states and the Americas. In Europe, there is no collective human right to a healthy environment. The 1998 Aarhus Convention, however, emphasizes that appropriate information, participation in decision-making and access to justice in environmental matters must be guaranteed (Aarhus Convention 1998: Art.1). Regional bodies including the European Committee on Social Rights (ECSR), the Inter-American Commission on Human Rights (IACHR) and the African Commission on Human and Peoples' Rights (ACHPR) have concluded that environmental challenges can lead to infringements of economic, social and cultural rights like the right to health, water and food (Knox 2009, 177-8). There are also several cases, in which the European Court of Human Rights (ECHR) has enforced social rights with respect to environmental matters and demanded compensation even by private polluters (Humphreys 2012, 35-38). In addition, there is a global trend to adopt environmental

rights into national or federal constitutions in order to guarantee healthy air, water and land (Boyd 2012; May and Daly 2014).

Table one summarizes the adverse effects climate change can have on the enjoyment of human rights.

Table 1: The Adverse Effects of Climate Change on the Enjoyment of Human Rights

Climate Impact	Human Impact	Rights Affected*	Regions Concerned**
Sea Level Rise • Flooding • Sea surges • Erosion • Salination of land and water	• Loss of land • Drowning, injury • Lack of clean water, disease • Damage to coastal infrastructure, homes and property • Loss of agricultural lands • Threat to tourism, lost beaches	• Life (ICCPR, 6) • Self-determination (ICCPR, ICESCR, 1) • Health (ICESCR, 12) • Water (ICESCR 11,12) • Means of subsistence (ICESCR, 11) • Adequate housing (ICESCR, 11) • Culture (ICCPR, 27) • Property (UDHR, 17)	Coastal (Low-lying) Areas Low-lying Island States Arctic Region
Temperature Increase • Change in disease vectors • Coral bleaching • Impact on fisheries • Impact on agriculture	• Spread of disease • Change in fisheries • Change in agriculture • Lost diversity • Threat to tourism	• Life (ICCPR, 6) • Health (ICESCR, 12) • Means of subsistence (ICESCR, 11) • Adequate standard of living, food (ICESCR, 11)	Sub-Saharan Africa Northern Africa South-Asia Latin America Middle East
Extreme Weather Events • Higher intensity storms • Sea surges	• Dislocation of populations • Contamination of water supply • Damage to agriculture (food crisis) • Psychological distress • Increased transmission of disease • Disruption of education • Damage to tourism • Property damage	• Life (ICCPR, 6) • Health (ICESCR, 12) • Water (ICESCR, 11,12) • Means of subsistence (ICESCR, 11) • Adequate standard of living (ICESCR, 11) • Adequate housing (ICESCR, 11) • Education (ICESCR, 13) • Property (UDHR, 13)	South-East Asia South Asia Caribbean Coastal Zones Island States
Changes in Precipitation • Change in disease vectors • Erosion	• Outbreak of disease • Depletion of agricultural soils	• Life (ICCPR, 6) • Health (ICESCR, 12) • Means of subsistence (ICESCR, 11)	Sub-Saharan Africa South-East Asia South Asia Latin America

*These rights are additionally anchored in more specialized targeted treaties of the UN Human Rights Edifice.

**Most vulnerable regions.

Source: Own Compilation (based on data from Orellana and Johl 2013 & supplemented with data from OHCHR 2009)

On the other hand, there are initial, systematic empirical studies demonstrating that climate policy programs, i.e. political answers to address and reduce the climate impacts

outlined above, have led to severe human rights violations (Schapper and Lederer 2014; Human Rights Watch 2015; Schapper 2021a). This particularly concerns mitigation measures, such as *Reducing Emissions from Deforestation and Forest Degradation* (REDD+) programs (Faustino and Furtado 2014), *Clean Development Mechanism* (CDM) projects (Schade and Obergassel 2014) and activities under the umbrella of *Green Economy* (GE) strategies (Human Rights Watch 2012, Schapper 2021a). This strand of research highlights that, in particular, the transition process to alternative energy and consumption patterns and to a low-carbon economy can lead to human rights violations of local communities, indigenous peoples and pastoral groups (Bratman 2015).

Rights infringements resulting from climate policy implementation often occur in the context of conflicts around property, land and resources. This means that in very extreme cases, violations to the right to life have been reported, particularly when violent relocations were undertaken (Human Rights Watch 2012). Furthermore, the right to property specified in Article 17 of the *Universal Declaration of Human Rights* (UDHR), and the right to development, stipulated in the *Declaration on the Right to Development* (Orellana 2010, 5-6), are non-binding human rights that are often neglected when it comes to implementing climate policies (Human Rights Watch 2012, 2-4). Similarly affected is the right to self-determination set forth in the *International Covenant on Economic, Social and Cultural Rights* (ICESCR 1966, Art.1.2), as well as social rights, among them, the right to adequate housing, the right to food, the right to water and the right to health. Thus, human rights are at risk as a result of climate change itself and as a consequence of how climate policies are implemented. Hence, these two perspectives cannot be treated in isolation. From a human rights point of view, those people who are the least responsible for greenhouse gas emissions are also the ones most negatively affected by, and most vulnerable to, climate change consequences and climate policy impacts and, simultaneously, have the fewest resources to adapt (Robinson 2014). This situation of injustice is championed by transnational human rights advocacy networks at the international climate conferences.

Civil Society and Human Rights Advocacy at the Climate Conferences

The 1992 Rio Conference on Environment and Development marked, among other substantive themes, the strengthening of civil society participation in decision-making processes within the UN system. Civil society participants can bring expertise and credibility to international organizations (IOs) and negotiations within their fora (Brühl 2003, 186). In open and transparent negotiation processes, states increasingly take up non-state demands (Steffek and Nanz 2008). Environmental and climate politics can be regarded as unique policy fields facilitating advanced institutional mechanisms for access and participation of civil society actors (Bäckstrand 2012).

In climate politics, the focus of CSOs in negotiations is on addressing justice concerns or employing a climate justice frame (della Porta and Parks 2013). Climate justice is a fluid framework that is diversely utilized, but it broadly embraces the observation that those people who have contributed the least to climate change are those who are most affected by it (Görg and Bedall 2013, 88-89). The climate justice movement is characterized by a dominant antagonism between a moderate wing, accepting capitalism and lobbying for change within established institutions and a radical wing demanding change to capitalism as a root cause for climate challenges (della Porta and Parks 2013, 47). This results in cooperative and conflictive activities of TANs within and outside of the UNFCCC process (Brunnengräber 2013, 366).

At the international level, shaping climate policies can be best realized through CSOs' participation in international climate conferences (Bernauer and Betzold 2012, 63). CSOs can become part of the official UNFCCC process by acting as accredited organizations (Görg and Bedall 2013, 94-95). In some cases, civil society actors even become members of national delegations and are "formally granted a 'seat at the table'" (Bernauer and Betzold 2012, 63). This increases their opportunities to influence governmental decisions since it provides them with access to closed sessions, official state documents and the possibility to present their own proposals (Böhmelt, Koubi and Bernauer 2014, 19). Governmental delegations are interested in including CSOs because they provide expertise (Betsill and Corell 2008) and can enhance the legitimacy of their decisions (Bernauer and Betzold 2012, 63). CSOs, in contrast, use their close interaction with governments to exert pressure for negotiating, ratifying and complying with international environmental agreements (Bernauer, Böhmelt and Koubi 2013). Hence, relations between IOs and CSOs are changing; state and society are no longer entirely separate entities; they are in flux; and their specific interactions are evolving.

One important concept that helps to understand how justice and human rights claims are transported from civil society to state negotiators is that of transnational advocacy networks. CSOs are core members of and organize themselves within TANs together with other actors, like representatives of international organizations, foundations, churches, academics, etc. There are some particulars about TANs active at the international climate conferences: their networks are characterized by a particular hybridity – actors may only join for a short period of time – and participating organizations can be quite diverse (Reitan 2011, 52). Although groups of the global south are usually underrepresented in these networks (Brunnengräber 2013), local CSOs from developing countries are increasingly funded by foundations and international CSOs to present their case studies and voice the concerns of local people adversely affected by climate policies at international venues (Atapattu and Schapper 2019). Consequently, actors work at various scales: they differ in their degree of institutionalization and in their positioning toward the UNFCCC process (inside/outside). Newer (and still evolving) network structures engage very closely with the UNFCCC and sometimes even invite governmental delegates to bring information from closed (intergovernmental) sessions, or to introduce draft texts prepared by CSOs in inter-governmental sessions (Görg and Bedall 2013, 94-95).

The Human Rights and Climate Change Working Group

Network Building and First Successes

One important example of a transnational advocacy network promoting human rights within the UNFCCC is the *Human Rights and Climate Change Working Group* (HRCCWG). The group first participated in COP 15 in 2009 in Copenhagen, Denmark (Interview Coordinator HRCCWG 2013). The HRCCWG can be described as a hybrid link of predominantly civil society and some state actors operating at various scales – from the local to the global (Interview Indigenous Rights Organization 2013) – with the common objective of institutionalizing human rights in the climate regime. Among the networks' members are prominent international CSOs, such as the Center for International Environmental Law (CIEL), Earthjustice, Friends of the Earth and Carbon Market Watch, Human Rights Watch, Amnesty International, but also local CSOs from various developing countries, gender advocates, indigenous peoples' representatives, academics, representatives from IOs, like the Office of the High Commissioner for Human Rights (OHCHR) and UNICEF, as well as single

actors from state delegations (Interview Human Rights Watch 2015). Membership in the network is rather informal; participants can be present at one negotiation meeting joining the group's activities there, and then miss out on the next one (Interview HRCCWG Activist 2015). Simultaneously, they can be part of another TAN active at the international climate conferences, including Climate Action Now (CAN), the REDD+ Safeguards Working Group or the Indigenous Caucus (Ibid.).

At COP 16 in Cancun (Mexico) and at COP 21 in Paris (France), the (so far) most significant successes in institutionalizing human rights in the climate regime were achieved. The Human Rights and Climate Change Working Group, among other TANs, was strongly involved in both. The most important successes in rights institutionalization until today are the following. *First*, in the preambulatory clauses of the Cancun Agreement, the UNFCCC member states emphasized Human Rights Council Resolution (HRC 10/4) on 'human rights and climate change' stating that:

> […] the adverse effects of climate change have a range of direct and indirect implications for the effective enjoyment of human rights and that the effects of climate change will be felt most acutely by those segments of the population that are already vulnerable owing to geography, gender, age, indigenous or minority status, or disability (UNFCCC/CP 2010, 2).

This means that there is a consensus that rights are adversely affected by climate change impacts. *Second*, in the operative part of the Cancun Agreement, member states announced that: "[…] parties should, in all climate-change related actions, fully respect human rights" (UNFCCC/CP 2010, 4). These actions, of course, refer to all climate policy initiatives introduced under the legal framework of the UNFCCC and the Kyoto Protocol. *Third*, the first procedural rights, also known as safeguards, were institutionalized as a requirement for the implementation of REDD+ programs in Annex one of the Cancun Agreement. This means that the rights to participation, information, transparency and free prior and informed consent need to be respected for local communities affected by the realization of REDD+ programs. The rights, knowledge and (land) ownership of indigenous peoples are particularly emphasized here (UNFCCC/AWG-LCA 2010, 52-59). *Fourth*, a review of the modalities and procedures of the CDM is underway. During COP 19 in 2013 in Warsaw and during the Intersessional Negotiations in 2014 and 2015 in Bonn, states (and CSOs) discussed stronger stakeholder consultation requirements and several references stating that activities under the CDM have to be carried out in accordance with human rights (Filzmoser 2013, 2). *And finally*, human rights have again been anchored in the preambulatory clauses of the Paris climate treaty in 2015. It stipulates that state parties should:

> (…) when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity (…). (UNFCCC 2015).

Following up on the Paris agreement, rights-based social and environmental safeguards will be negotiated to regulate global carbon markets as part of the Paris implementation guidelines. These negotiations center around Article 6 of the Paris Rule Book and will take place at COP 26 in Glasgow, Scotland in 2021.

Members of the HRCCWG consider these developments as progressively evolving success in their effort to institutionalize human rights norms in the climate regime (Interview UNICEF 2016). Thus, one can argue that CSOs and their networks play an important role when it comes to advancing human rights in the climate regime.

Network Strategies

The most successful strategy the HRCCWG has employed for achieving its objectives was to build friendly relations with the decision-makers at the climate negotiations, i.e. with the state representatives. Making use of these receptive relations, the network receives access to negotiating texts and attempts to include human rights language in respective drafts by asking state parties to introduce these in closed negotiation sessions as explained by a representative of a women's rights organization:

> Most of the actual negotiating meetings have been closed to me because I'm civil society but a lot of times I'll go and network with parties […] and we're staying outside the door and if we have position papers on different things, we'll ask parties to introduce an item […]. One of our […] points is actually looking at the text, examining it, seeing places that we think could be improved to better support the issues that we want them to support and then actually suggesting language. And parties actually take it up and are really excited about it. […] I know several parties that I can just ask for: 'What happens in that meeting?' or 'could you possibly pass on to me the text?' […] so that part is really through the relationship that you have with the parties (Interview Women's Rights Organization 2013).

Relations with state parties of the UNFCCC are particularly well-established if the negotiators are open to human rights arguments due to their own liberal democratic state identity, increased pressure by domestic CSOs, or if they rely on the network's expertise and capacities which is done by a number of developing countries with limited capacities. If the latter is the case, network members provide their expert knowledge and attend sessions on behalf of small delegations that cannot afford to travel to the negotiations with many staff members. This means that civil society actors become officially registered as a member of a respective state delegation and they can introduce draft texts in meetings that are officially closed for non-state observers, as pointed out by a women's rights advocate:

> Many parties have so little capacities to follow half of the issues that it's actually very helpful to them if there is something drafted, and they can either redraft it, interpret it or be able to kind of introduce it as it is. Their country position goes well with the language, they just didn't know, and so we are advocates but at the same time […] technical experts on gender issues, this has helped to influencing the agenda (Ibid.).

To justify the use of human rights language in climate agreements, the HRCCWG frequently works with case studies emphasizing the adverse effects of climate change and climate policies on local people from Asia, Latin America, and Africa (Interview Environmental Think Tank 2013). At the climate negotiations, case studies are usually presented during so-called side events (Interview Indigenous Rights Organization 2013) that run parallel to the meetings of state parties and are accessible to all governmental delegations, as well as non-state observer groups. Cases on problematic rights situations are sometimes presented by locally affected people, e.g. representatives from indigenous or pastoralist groups. The international partners of the HRCCWG sponsor representatives of affected

groups so that they are able to join these international meetings and voice their experiences, arguments, and corresponding demands. TANs help to process these cases demonstrating that there are severe drawbacks in the body of rules and regulations of climate policies, such as REDD+ and the CDM, leading to rights infringements in the implementation process. They use local experiences to voice their demands for change in the modalities and procedures of climate instruments in order to support the pleas of the affected populations for more information, transparency, and participation opportunities. In this way, local claims are fed into the international negotiation process. A representative from Human Rights Watch summarized its objective of transporting local claims to the international negotiation table:

> The way we do our research is really go into the field and speak with the people on the ground, do many interviews, speak with everyone, not only the communities that are affected but of course also, you know, government and, […] especially in a context where not everyone is able or, financially able or just generally can participate in these kind of high-level discussions. Of course, in a COP like here there are many groups from different countries but still if you think about representation, these won't be the most disadvantaged people that will make it to these international negotiations. So I think this is also what we are trying to do with our work generally but also in this context is kind of bringing the voices of those that are not usually being heard to the international negotiations (Interview Human Rights Watch 2015).

The initial focus of the HRCCWG was on framing emission reductions as a human rights obligation. Later, this TAN placed a clear emphasis on response measures and their impacts on local populations in developing countries (Interview HRCCWG Activist 2013). Thus, procedural human rights, and especially the right to participation in developing and implementing climate policies, lie at the heart of the network's activities (Interview Coordinator HRCCWG). Altogether, we can find a two-way-process here. Local advocates inform the policy-making process of states within the forum of an IO and their decisions can, in return, change climate policy implementation at the local level.

The "Super-Network"

At COP 21 in Paris, the two coordinators of the HRCCWG initiated an inter-constituency alliance in order to combine the strengths of several civil society networks at the negotiations of a new climate treaty. This inter-constituency alliance can be understood as a "super-network" (Schapper 2020, 2021b), i.e. a network above several networks, sharing the same objectives in shaping the Paris agreement. The constituencies at the UNFCCC negotiations are clustered groups of officially registered CSOs sharing certain interests and acting as observers in the process. As of 2015, the UNFCCC Secretariat reports more than 8,000 admitted CSOs (UNFCCC 2021) are organized in nine constituencies, among them environmental CSOs (ENGO), business and industry CSOs (BINGO), indigenous peoples' organizations (IPOs), youth CSOs (YOUNGO), women and gender (WOMEN AND GENDER), trade union CSOs (TUNGO) and research and independent CSOs (RINGO). Participation in a constituency comes with several advantages: it allows observers to make interventions at certain points in the state negotiation process, it facilitates the use of focal points for better coordination with the UNFCCC Secretariat, and it enhances flexible information-sharing (UNFCCC 2014).

Prior to the Paris negotiations, the inter-constituency alliance was established because most observer organizations shared some common concerns. Among them were the protection

of human rights, indigenous peoples' rights and sustainable development; a just transition of the workforce; and the creation of decent jobs, equal participation of women as well as inter-generational equity. During the Intersessional Negotiations in Bonn in June 2015, the alliance managed to place all of these aspects in the operative part of the negotiation text in Article two determining the objective of the ultimate Paris Agreement. Thus, including human rights there would have meant acknowledging that the purpose of the agreement is the protection of basic rights in the face of a changing climate. However, the entire Article two was still in brackets after Bonn and almost during the entire Paris conference. This means that this part of the text was still subject to further negotiations. Two days before the Paris Agreement was adopted, human rights were removed from the operative part of the text and only remained in the pre-ambulatory clauses. This happened despite strong advocacy by the super-network. Nevertheless, human rights and all the other related aspects the inter-constituency alliance advocated for remained part of the Preamble. This success resulted from the super-network coordinating its activities and harmonizing its strategies among the sub-networks to lobby specific state partners (Schapper 2021b).

Several legal experts of the inter-constituency alliance as well as the former UN Special Rapporteur on Human Rights and the Environment, John Knox, underscored that all climate-relevant action has to be in accordance with existing human rights obligations (Interview AIDA 2016). Additionally, the institutionalization of human rights in the legally binding Paris agreement can be understood as advancement compared to previous accords.

Enhanced Outreach on the Road to Paris

Besides initiating and coordinating the inter-constituency alliance, there were also other changes to the HRCCWG strengthening its advocacy efforts. After it had commenced working mainly with environmental law organizations, representatives from indigenous peoples' and women's rights CSOs, the big non-governmental human rights players, Human Rights Watch (HRW) and Amnesty International (AI), came on board at the COP in Lima in 2014. A common Greenpeace-Amnesty statement as well as a widely spread common press release by HRW and AI marked the arrival of the big human rights CSOs in the network. An active collaborator in the group commented this with the following words:

> To get that bridging and to see for example the Amnesty-Greenpeace statement, which talked about zero emissions and 100% renewable energy as a human rights issue, for me this was like a real turning point. For me […] this is great in terms of new steps going forward (Interview UNICEF 2016).

In addition to these new non-governmental partners from the human rights regime, state actors also joined the working group. Among them were mainly international organizations, like the OHCHR and UNICEF. Both took an active part in the network, further developed its strategy at the coordination meetings, and engaged in awareness-raising of state delegates. A representative of the OHCHR summarized their objectives at the COP and in relation to establishing the link between the human rights and climate regime, as the following:

> We think this is an issue of consistency and policy coherence that it is important that these two legal frameworks are brought together and in fact should complement each other. So the international human rights framework is a legally binding commitment made by the states and we think that commitment should be recognized in the context of environmental laws and we are pushing hard to see that be the case. […] I have been in contact with many, many states by email, by speaking to delegates on

> the floor, in the plenary, by walking to the different offices they have here […]. We are here to really make sure that the Office of the High Commissioner for Human Rights has a clearly articulated position that human rights is important in these negotiations, that climate change is a human rights issue and that everyone here is aware that that is the position of the UN Office of the High Commissioner for Human Rights (Interview OHCHR 2015).

Besides IOs, there were also some states taking an active part in the promotion of human rights in the climate agreement. Prior to the negotiations, eighteen governments took action and initiated the Geneva Pledge for Climate Action calling for enhanced institutional interaction between the UNFCCC and the OHCHR and emphasizing that human rights obligations need to be observed in all climate-relevant actions. The most committed states were Latin American countries (e.g. Mexico, Peru, and Costa Rica), many small island states (e.g. Maldives, Kiribati and Samoa), and some European countries (e.g. France, Sweden and Ireland).

Another great push for human rights in the climate regime came from increased media attention and a successful Twitter campaign. Under *#Stand4Rights* the HRCCWG and several of their partners disseminated information regarding new versions of the negotiating text, spread the word on further awareness-raising actions and pressured governments arguing against rights protection. An interesting example for the latter is the use of the #Stand4Rights to tweet a joint press release by Amnesty International and Human Rights Watch that attempted to name and shame those countries that were severely blocking human rights language in the climate accord at that point, notably the USA, Saudi Arabia and Norway. The press release quoted Ashfaq Khalfan, Law and Policy Programme Director at Amnesty International, with the following sentences:

> Norway, Saudi Arabia, United States are at risk of being labelled 'human rights deniers' in addressing climate change. […] Norway is claiming to be a bridge builder on the issue of human rights, but rather seems intent on blowing up an essential bridge between environmental protection and human rights (Amnesty International and Human Rights Watch 2015).

The wide public attention around this, lead to immediate reactions of the opponents. Norway, for instance, released an official statement emphasizing that it supports human rights in the operative part but not in Article two, which sets out the purpose of the agreement.

Thus, prior to and in Paris, the network was profiting from an enhanced outreach including combined strengths in the inter-constituency alliance, active participation of IOs as well as increased press and social media coverage. All these efforts led to an at least partial success – an institutionalization of human rights in the Preamble of the new climate agreement.

A Boomerang Effect in Climate Negotiations?

What representatives of the HRCCWG have described as first successes in institutionalizing human rights in the climate regime can best be explained by the research program on institutional interaction or regime interplay (Young 2002; Oberthür and Stokke 2011). Institutional interaction means that the institutional development or effectiveness of one institution becomes affected by another institution (Gehring and Oberthür 2006, 6). Interaction can also occur across policy fields leading to both, conflict and synergy. So far, the literature has predominantly focused on investigating cases of inter-institutional conflict

(Andersen 2002; Zelli 2011). Instances of interaction with synergetic effects have received less attention. One focus in the research program on institutional interaction is to identify causal mechanisms of influence exerted from one source institution to a specific target institution (Gehring and Oberthür 2006, 6-7). These comprise, *first of all*, cognitive interaction, or learning. Here, the source institution provides insights that it feeds into the decision-making process of the target institution (Gehring and Oberthür 2009, 133). *Second*, interaction through commitment, meaning that the member states of a source institution have agreed upon commitments that are relevant for the members of the target institution as well. If there is an overlap of membership, the commitments made in the source institution can lead to differing decision-making in the target institution (ibid: 136). *Third*, behavioral interaction comes into play if the source institution has obtained an output initiating behavioral changes that is meaningful for the target institution. In these cases, the initiated changes in behavior can foster further behavioral changes (ibid: 141-142). *Fourth*, impact-level interaction is based on a situation of interdependence, in which a "functional linkage" (Young 2002) between the governance objectives of the institutions can be observed. If the source institution obtains an output that has an effect on its objectives, this impact can also influence the objectives (and effectiveness) of the target institution (Gehring and Oberthür 2009, 143-144).

To develop a better understanding of institutional interaction between the human rights and the climate regime, the micro-macro link (Buzan, Jones and Little 1993) - the mechanisms at play between the micro-level of actors and the macro-level of institutions - needs to be further established. Here, constructivist International Relations scholarship, like insights on TANs and the boomerang pattern, highlighting the mutually constitutive character of actors and structures might be able to enrich rational choice-oriented institutionalist theories, i.e. scholarship on institutional interplay. Research on TANs provides useful insights that help understand how CSOs use information and established frames in one policy field to motivate (more powerful) IOs and their member states in a different policy field to change their actions.

The boomerang pattern describes a situation in a repressive state, in which channels between domestic CSOs and the norm-violating state are blocked and these CSOs decide to bypass the state government and provide information on rights violations to a TAN. Thereupon, the network mobilizes the human rights regime, including democratic states and IOs, using persuasion mechanisms. The regime, eventually, exerts pressure on the respective state to initiate a human rights change. Hence, what has departed from within a state, i.e. pressure and rights infringements by the government, comes back like a boomerang from outside, i.e. TANs and the human rights regime, and motivates the state government to institutionalize rights (Risse, Ropp and Sikkink 1999).

Keck and Sikkink have developed a typology of tactics TANs use when employing persuasion, socialization and pressure mechanisms. In this context, they highlight information politics understood as strategically using information, symbolic politics as to draw on symbols and stories to highlight a situation to a target audience that might be geographically distant, leverage politics as network actors being able to gain moral or material leverage over state actors and IOs, and accountability politics referring to formerly adopted norms and policies of governmental actors and obligations to comply with them (Keck and Sikkink 1998, 16-25).

At the climate conferences, a pattern which is similar to Keck and Sikkink's boomerang effect can be observed. Local CSOs provide information on rights infringements in climate policy implementation in certain states to advocacy networks. TANs, like the HRCCWG, use this information to mobilize other actors of the human rights regime (*information politics*). At

side events, for example, TANs encourage local actors to share their cases and stories from home countries to raise awareness about adverse human rights effects of both climate change and climate policies (*symbolic politics*). These cases are presented as instances of climate injustice in which local population groups, who have contributed little to greenhouse gas emissions and have few resources to adapt, cannot fully enjoy their human rights due to climate impacts, or experience severe rights infringements due to climate policies. This creates moral leverage over states that have historically contributed to emissions and that are implementing climate policies in developing countries (*leverage politics*). Moreover, TANs persuade states to vote for an incorporation of human rights into climate agreements, and more particularly procedural rights into climate policies. Mechanisms of persuasion (and discourse) function according to a logic of appropriateness (or a logic of arguing) and are particularly successful with (often liberal democratic) states' governments (Risse and Ropp 2013, 16-17) that have already legally committed to human rights, understanding them as part of their state identity, e.g. European states like France, Sweden and Ireland (*accountability politics*). Actively engaged and in favor of rights institutionalization are also those states that are pressured from above through TANs and from below through domestic civil society organizations. These often are Latin American countries with strong CSO movements representing local community's and indigenous peoples' concerns. Among them are Mexico, Peru, Costa Rica, Guatemala and Uruguay. Especially in those countries, a boomerang pattern can be observed as domestic CSOs pressure the government to change the modalities and procedures of climate policy implementation from inside, while TANs and the human rights regime exert pressure on the government from outside the country. Also, small states, such as the Maldives, Kiribati, Samoa, or the Philippines, are in favor of rights institutionalization, fearing severe climate change consequences for the citizens living on their territory. Some states (together with CSOs, IOs and other actors of the human rights regime) also try to pressure less democratic states to vote in favor of rights institutionalization claiming that they will not fund climate policies with adverse right effects anymore, such as REDD+ and CDM programs. Thus, they use negative incentives or sanction mechanisms that function according to a logic of consequences (Risse and Ropp 2013, 14).

At least three aspects in this scenario are completely new to International Relations research emphasizing the boomerang pattern. *First*, the COP is a transnational arena, in which states closely interact with CSOs. This might accelerate the boomerang pattern since information can be quickly and informally exchanged and strategically used. *Second*, due to very close interaction between TANs and states, civil society actors can offer important text passages in final agreements that are being negotiated. This means boundaries between states and civil society at the international negotiations become increasingly blurred contributing to further transformation of state practices in this context. And *third*, in contrast to what empirical analyses on the boomerang pattern suggest so far, an institution can adopt these rights (and not the state itself). This could slow down the process because a consensus between different state actors has to be found. However, it could also lead to a transfer of, for instance, procedural rights to states that would not adopt them otherwise. Thus, integrating procedural rights into climate policies might also become a booster for improving the human rights situation of a particular state or it can lead to "democratic empowerment" (Kaswan 2013, 161) and foster further democratization processes in certain states (May and Daly 2014).

Cost-benefit calculations of state actors are an important mechanism explaining why states refrain from supporting human rights in the climate regime. Governments like the United States, for instance, have remained opposed to rights institutionalization in the operative part of the Paris Agreement[i] (and in previous negotiations) because they fear costly obligations and demands for compensation:

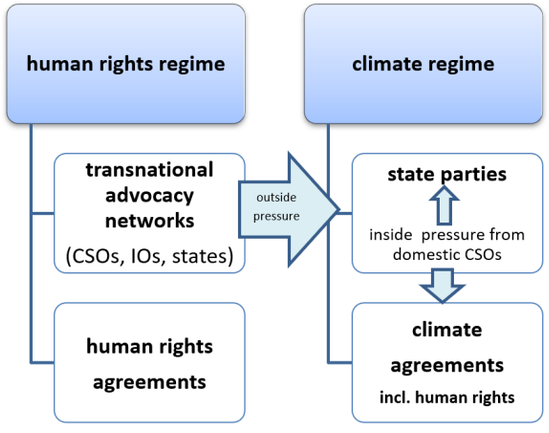
> And the US, for example, it's like they refuse to talk about human rights. Refuse. It's a non-starter. It's like a totally toxic kind of issue to bring to them. […] If you follow the Human Rights Council discussions and dialogues, the US refuses to talk about climate change in the human rights regime as well. For exactly the same reason. It's like the loss and damage negotiations are playing out here for a reason, they won't talk about climate change in a human rights context because they don't want to be held liable for historic contributions to climate change (Interview Coordinator HRCCWG 2013).

The strong emphasis on economic, social and cultural rights in the context of climate change impacts also leads to the United States remaining highly skeptical regarding rights institutionalization in the climate regime (see also Alston 2008). African countries rather fear that conditionalities are being imposed on them when implementing climate policies funded by Annex I parties (i.e. developed states). They emphasize their state sovereignty and are concerned that deficiencies in their domestic rights situation could be exposed, and that the international community would interfere in their domestic affairs with the help of procedural rights in climate policies (Wallbott and Schapper 2017). These opposing states prevented the inclusion of human rights in the operative part of the Paris Agreement.

In sum, actors like TANs, and mechanisms, such as information delivery, the boomerang pattern and persuasion, help us understand institutional interaction between the human rights and the climate regime. They explain how cognitive interaction and interaction through commitment can be initiated. Behavioral interaction and impact-level interaction can probably be observed at later stages such as when the Paris Agreement with its commitment to human rights is being implemented. And here, compliant state action will be most necessary.

Figure one displays the boomerang pattern fostering institutional interaction between the human rights and the climate regime.

Figure 1: The Boomerang Pattern Fostering Institutional Interaction



Conclusions

The objective of this article was to demonstrate how close state-society interaction can foster human rights institutionalization in the international climate regime. Those civil society actors and transnational advocacy networks collaborating intensively with state actors are much more likely to make at least moderate human rights changes in climate politics. With the help of information dissemination, persuasion as well as inside and outside pressure mechanisms, they have convinced state representatives to recognize human rights in the climate regime. The empirical evidence gathered mainly from expert interviews at the international climate negotiations in Warsaw 2013 and in Paris 2015, follow-up personal correspondence and primary documents, suggests that in particular constellations, a boomerang pattern can be observed. This is the case when information about local rights infringements in climate policy implementation is released by domestic civil society groups and pressure comes back like a boomerang to the norm-violating government at the international conferences. To date, this has led states at these conferences to assert that human rights should be protected in any effort to reduce climate change. The preambulatory clauses of the Cancun Agreements in 2010, for example, led to unanimous commitment that all climate-related actions need to be carried out in accordance with human rights norms and an inclusion of procedural rights in REDD+ policies (UNFCCC/CP 2010). In Paris 2015, participating states agreed to respect, promote and consider human rights in climate-relevant action in the Preamble (UNFCCC 2015). This article has revealed new insights on the mechanisms and tactics employed by TANs, including information politics, symbolic politics, leverage politics and accountability politics, to foster institutional interaction between the human rights and the climate change regime.

The focus on procedural rights upheld by many CSOs and TANs – compared to earlier attempts that have framed emission reductions as a human rights obligation – demonstrates that civil society operating within the UNFCCC process has become pragmatic aiming at moderate changes and reforms in climate policies. The fact that civil society representatives even become registered as parts of state delegations shows that demarcations between state and non-state activities at the climate conferences become blurry and that state-society relations are in flux.

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ENDNOTE

i. At the Paris negotiations, the US actually spoke in favor of human rights but did not agree to them being included in Article two outlining the purpose of the agreement.

INTERVIEWS

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Expert Interview, Representative of an Indigenous Rights Organization, 16 November 2013, COP 19 in Warsaw.
Expert Interview, Representative from Human Rights Watch, 8 December 2015, COP 21 in Paris.
Expert Interview, Academic and Activist, 17th November 2013, COP 19 in Warsaw.
Expert Interview, Representative from UNICEF, via Skype after COP 21 in Paris, 4 February 2016.
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Position in the Organizational Field Matters: Analyzing International Organizations' Perceptions and Responses in Global Food Security Governance

by Angela Heucher [i]

International organizations (IOs) are affected by developments taking place within their environment. This article posits that an IO's position (core vs. periphery) within an organizational field, as a specification of the IO environment, affects how an IO perceives developments such as proliferation and overlap. Following the notion that if situations are defined as real, they are real in their consequences, the article contends that these perceptions influence how IOs respond. Accordingly, the research question is: Given different positions in the organizational field of food security governance, how do IOs perceive and respond to developments in the field? Theoretically, the article builds on sociological institutionalism and field theoretical approaches. Empirically, it concentrates on the organizational field of global food security governance and analyzes the perceptions and responses of three IOs, namely the United Nations Food and Agriculture Organization (FAO) and the World Food Programme (WFP) as core IOs, and the United Nations Industrial Development Organization (UNIDO) as a peripheral IO. Building on a qualitative content analysis of a wide range of organizational documents, the article finds that as organizational perceptions differ, so do organizational responses. While the core IOs respond by attempting to strengthen coherence, delineate roles and establish a division of labor, the peripheral IO focuses on mobilizing resources and defining a niche.

Introduction[ii]

International organizations (IOs)[iii] are part of an environment and are affected by developments taking place within that environment. Global food security governance serves as an illustrative example,[iv] in which developments such as proliferation of actors, fragmentation and incoherence, as well as overlap between IOs' mandates and activities have historical origins and are also indicative of the current governance architecture (Candel 2014; Clapp 2014; Clapp and Cohen 2010; Gaus and Steets 2012; McKeon, 2015). These developments have an effect on IOs in the field. For instance, the creation of new bodies in the aftermath of the 1974 World Food Conference was seen as a "dismantling" of functions which had been entrusted to the United Nations Food and Agriculture Organization (FAO) and as part of a contestation of FAO's governance authority (McKeon 2015, 16, 98-99). Adopting an understanding of IOs as "agentive and autonomous actors" (Ellis 2010, 14) and which responses IOs develop to deal with developments in their environment becomes an important question. This is especially the case as many of these developments, such as overlap and fragmentation, are seen as alarming and as detrimental to the effective provision of food security (e.g., Clapp 2014, 649–651).

Against this background, the approach of this article is two-fold. First, the article draws on field theory, which, in essence, contends that a field and its elements interact and that elements are shaped by forces in the field (Martin 2003). Specifically, the article builds on two directions of field theory, one inspired by DiMaggio and Powell (1983) focusing on the organizational field, referring to "those organizations that, in the aggregate, constitute a recognized area of institutional life" (DiMaggio and Powell 1983, 148), and the other inspired by Bourdieu (1992), emphasizing the struggles between actors in a field for influence and the role of an actor's position in the field. The article conceptualizes IOs as being part of an organizational field, a specification of the organizational environment often used in sociological approaches to study IOs (Franke and Koch 2017, 178). For instance, Vetterlein and Moschella (2014) use an organizational field approach to explain varieties of organizational change and argue that the position of an IO within an organizational field influences speed and scope of policy change. The organizational field positions IOs within a web of ties to other actors or inter-organizational structures. Which position an actor has within this organizational field depends on "the resources available and relevant to the field" (Vetterlein and Moschella 2014, 150). Two types of position based on (the level of) resources an IO holds may be distinguished: core and periphery.[v] In reality, the position of an IO within an organizational field may more plausibly be approached as being more at the core or more at the periphery with many variations in between; however, for the purposes of this article the core-periphery categorization offers analytical leverage and the opportunity to more clearly work out the importance of positions as such.

Second, the article follows the notion that IO perceptions matter for how an organization acts (Broome and Seabrooke 2012). Illustrated by the "seeing like" metaphor, previous research has established the role of perceptions, how actors seek to make their environments legible and the consequences this has for ensuing action, be it with regard to states (Scott, 1998) or IOs (Broome and Seabrooke 2012; Vetterlein 2012). Given that IOs are embedded within an organizational environment "filled with opportunities, resources, threats and constraints, both material and nonmaterial and at various scales" (Brechin and Ness 2013, 22), perceptions are decisive. Whether a situation emanating from the environment is understood as an opportunity or as a threat depends to a certain degree on the perceptions within the IO.[vi] Perceptions thus encompass the ways in which an IO sees the organizational field; they are shared interpretations of the environment within the IO.

Given that previous research has identified the importance of the (position within an) organizational field (Vetterlein and Moschella 2014) and of perception (Broome and Seabrooke 2012) for organizational action, the objective of this article is to combine them in the argument that an IO's position in a field shapes, via organizational perceptions, the IOs' responses to field developments such as proliferation and overlap. Responses are, in a broad sense, the strategies IOs develop to deal with field-level developments. The article's research question is as follows: Given different positions in the organizational field of food security governance, how do IOs perceive and respond to developments in the field?

Hence the article empirically investigates, firstly, whether and how different IO positions in the field are associated with different perceptions of overlap and proliferation and secondly, how IOs respond to these field developments. To establish IOs' position within the organizational field of food security governance, indicators for different kinds of capital are utilized to classify an IO as being either (more) at the core of the field or (more) at its periphery. "Core" and "periphery" as used here are not based on dependency theory, but

rather on the idea that some IOs play a central role for particular issues while others are involved with issues but secondarily. This study identifies the United Nations Food and Agriculture Organization (FAO) and the World Food Programme (WFP) as core IOs because food security is their main focus, and the United Nations Industrial Development Organization (UNIDO) as a peripheral IO since it works with food security but it is not its primary focus. Then, IO perceptions and responses are inductively approached through a qualitative content analysis of a range of organizational documents. This approach allows for staying close to and concentrating on the organizational perspective. On the one hand, these documents serve as written manifestations which reflect how IOs see the field. On the other, they constitute a "symbolic representation of social action" (Mochmann 2003, 2161) and as such convey information on responses and IO actions. Therein, documents may constitute an IO action in and of itself (e.g. a signed Memorandum of Understanding (MoU) which establishes an inter-organizational partnership).

The article is structured as follows: First, literature on global food security governance is briefly discussed to set the stage for the empirical analysis. Then, the article's theoretical framework is developed by building on field theory, sociological institutionalism and Bourdieu's work on fields, positions and capital. Next, case selection and methods are elaborated upon, before turning to the article's empirical section, where the perceptions and responses of IOs with different positions in the organizational field of global food security governance are analyzed. Importantly, core and peripheral IOs have different perceptions of and responses to overlap in global food security governance. Finally, a conclusion and an outlook on future research directions are provided.

The field of Food Security Governance - an empirical prelude

What is food security, and what is global food security governance? According to a commonly used definition, food security exists "when all people, at all times, have physical and economic access to sufficient, safe and nutritious food that meets their dietary needs and food preferences for an active and healthy life" (FAO 1996, § 1). The definition encompasses the four pillars of food security: food availability food access (including physical, economic and social access), food utilization, and the stability of all three dimensions over time (Barrett, 2013).

While the literature on global food security governance is abundant (Clapp 2010, 2012, 2014; Duncan 2015; Margulis 2013, 2017; McKeon 2015; Shaw 2007, 2009) and offers insightful conceptualizations of food security governance (e.g., food security as a regime complex, c.p. Margulis 2013), a literature review nonetheless notes that "it is not very clear yet what food security governance entails, what its essential characteristics or features are, and how it could be enhanced" (Candel 2014, 586). Given that food security is a highly complex issue, even a "wicked problem" (Peters and Pierre 2014), with multiple drivers across various levels and with linkages to numerous other issue areas (Candel 2014), this is not necessarily surprising. While uncertainties and ambiguities do exist, there are also recurring themes in the literature that can be organized around the notions of divergence and convergence. Literature on divergence points out the complexity of food security (Duncan 2015; McKeon 2011; Peters and Pierre 2014). Global food security governance is "highly fragmented in practice" and "characterized by a poor coordination of tasks" (Clapp 2014, 645). Fragmentation has also been observed with regard to global political authority and called out as a "most harmful and outrageous deficiency of the current food governance regime" (McKeon 2015, 103), given

that economic power in global food security governance has been increasingly concentrated within a limited number of multinational enterprises (McKeon 2015). Furthermore, overlap (multiple IOs doing the same work) is seen as a pervasive feature of food security governance: regarding IOs' mandates (Clapp and Cohen 2010), regarding operational activities and instruments (Candel 2014; Gaus and Steets 2012), and regarding rules and policies (McKeon 2015). The underlying and often implicit assumption is that these features, or developments, in global food security governance are problematic and lead to a disintegration of the field. Thus, it becomes more difficult for IOs or other actors to engage in food security governance.

Negative effects of overlap, proliferation and density (multiple IOs working in the same issue area) have also been discussed for other issues areas besides food security, e.g., economic governance. One example is the overlap between the World Bank and the International Monetary Fund (IMF), which led to ambiguity regarding each organization's responsibilities and, ultimately, decreased efficiency and effectiveness, and a deteriorating performance (Freytag and Kirton 2017). A further example comes from the NGO sector, where Cooley and Ron (2002) argued that uncertainty, competition and insecurity given organizational proliferation led to dysfunctional outcomes. Finally, on a theoretical level, Drezner (2009) identified three problems which result from proliferation and international regime complexity: focal points lose power as their number increases, the degree to which actors feel compelled to comply with rules may weaken, and transaction costs can rise. Proliferation and regime complexity would thus make it more difficult and costly for actors to negotiate issues of common concern.

However, complexity, fragmentation and overlap are not necessarily undesirable and "bad", as some of the language around these concepts suggest (Heucher 2019). Rather, the question of the effects of complexity, fragmentation and overlap is an empirical one and needs to be studied as such rather than answered a priori. For instance, overlap could also lead to a kind of competition between IOs, which leads to innovations in project design and implementation, rather than to all-consuming turf wars.

A second strand in the literature on global food security governance, but also on global governance in general, discusses processes of convergence, or of integrative developments that bring the field back together. In the field of food security governance, this often comprises the creation or reform of mechanisms aiming at coordination among governance actors. Examples include the establishment of the World Food Council (WFC) in the aftermath of the 1974 World Food Summit (Shaw, 2010), the reform of the Committee of World Food Security (CFS) into a multi-stakeholder governance mechanism (Duncan 2015), the 2008 High Level Task Force on the Global Food Security Crisis (HTLF) (Stewart and Manaker Bell 2015), or the creation of the cluster system, which aims to coordinate food security responses in emergencies (Maxwell & Parker 2012). Underlying these efforts at improved coordination and cooperation are meta-governance norms of harmonization which may induce convergence among IOs. This constitutes a centripetal movement in global governance, and has been argued with regard to the global governance of health (Holzscheiter 2014). Overall, global food security governance is characterized by both, centrifugal and centripetal forces, which influence IOs' actions.

Theoretical Framework

The section begins by situating this article within institutionalist approaches, which are applied to study IOs. It then elaborates upon IOs as semi-autonomous actors embedded within an organizational environment, before developing a theoretical framework by drawing on two directions of field theory (Martin 2003): sociological institutionalist approaches focusing on inter-organizational relations (DiMaggio and Powell 1983; W. Scott 2014; W. Scott and Meyer 1994) and the work of Pierre Bourdieu, therein integrating the concepts of position and capital (Adler-Nissen 2013; Bourdieu 1993; Bourdieu and Wacquant 1992).

Institutionalist Approaches to the Study of IOs

Institutionalist approaches share the starting point that "institutions matter" (Schieder 2017).[vii] This places them in contrast to (neo-)realist approaches that are not concerned with the role of institutions in world politics. Institutionalist approaches pose similar, fundamental questions, e.g., why and how international institutions come into being (i.e., their origins and institutional design); how international institutions shape the behavior, interests, and identities of actors (i.e., their effects); and why and how institutions develop over time (i.e., institutional change). Commonly, three different analytical approaches to the study of these questions are grouped under the umbrella term "new institutionalism", namely rational choice institutionalism, sociological institutionalism, and historical institutionalism (Hall and Taylor 1996). Whereas rational choice institutionalism concentrates on IOs' micro-foundations and is often concerned with individual IOs (e.g., relations between principals and agents, see Hawkins, Lake, Nielson & Tierney 2006), historical and sociological institutionalism, both argue that the creation and development of IOs does not take place on a "clean institutional slate," but, rather, that there is an existing, socially constructed world already "out there" that influences subsequent developments. Sociological institutionalism, in particular, emphasizes that IOs are not in a vacuum, but, rather, that there is an embeddedness in and interlinkages to a broader environment. Historical institutionalism goes back in time to provide a richer, deeper account of the development of an individual IO (e.g., Hanrieder 2015); whereas sociological institutionalism provides more nuance by widening the picture to include environmental phenomena and other actors in the environment (e.g. Koch and Stetter 2013).

Sociological institutionalism accordingly emphasizes the study of IOs as actors embedded within and interacting with a wider environment and is thus one of the main theoretical foundations for this article. Importantly, analyzing IOs within a field rather than as an isolated entity has the advantage of providing a more holistic understanding of organizational action. For instance, Barnett and Coleman (2005) argue that IOs as strategic actors are embedded within an environment that places specific, even conflicting demands on them. Their analysis of Interpol demonstrates that investigating IOs and the environmental pressures they are confronted with allows for a more holistic account of organizational change than would otherwise be possible.

Only because IOs are partially autonomous and agentive actors[viii] embedded within a broader environment (Ellis 2010; Koch 2014; Koch and Stetter 2013), do their perceptions matter. As Broome and Seabrooke (2012) argued, IOs identify and establish policy issues through their own internal entities and in inner-organizational processes. These perceptions of the social environment and of member states then influences how IOs act, for instance when developing policy solutions and interacting with states to persuade them to follow their policy advice (Broome and Seabrooke 2012). Accordingly, organizational behavior cannot be explained only in terms of member states' interests or organizational mandate. Rather, IO perceptions of environmental developments and the IO's own role within the environment have an effect on organizational action. This does not entail discounting material factors or

power considerations; to the contrary, material factors such as an IO's economic capital and its budget are important to understand an IO's position within a field. However, the article argues that by introducing perceptions as a factor linking an IO's position in a field and its responses to environmental developments allows for a better understanding of IO strategies and inter-organizational relations.

International Organizations and Their Environment - Combining Two Directions of Field Theory

IOs are embedded within an organizational environment, which is "filled with opportunities, resources, threats and constraints, both material and nonmaterial and at various scales" (Brechin and Ness 2013, 22). IOs, as do other actors who share the same space and are shaped by the same normative requirements (e.g., meta-governance norms), perceive developments and changes within their environment. Whether a situation emanating from the environment is understood as an opportunity or as a threat depends to a certain degree on the understandings within the IO itself. Thus, the environment can have both enabling and limiting effects on organizational action, depending on intra-organizational processes of sense-making (Weick 1995). While IOs are shaped by the environment, their behavior can also feed back into the environment indirectly, or IOs may directly aim to change the context within which they act. Accordingly, the environment is not solely exogenous, rather, it is also socially constructed by organizations themselves (Greenwood, Raynard, Kodeih, Micelotta and Lounsbury 2011).

While the concept of an (organizational) environment allows one to capture a broad spectrum of organizational interaction and behavior, I posit that by applying the concept of a field one can more adequately analyze inter-organizational relations as well as organizational responses. Accordingly, the article draws on two main directions of field theory (Martin, 2003). On the one hand, this encompasses the Bourdieu-inspired direction of field theory focusing on stratification or domination (Bourdieu 1993; Bourdieu and Wacquant 1992). On the other, this includes the field theory of inter-organization relations (or, sociological institutionalism, DiMaggio and Powell 1983).

To think in terms of fields, as Bourdieu stated, is to think relationally (Bourdieu and Wacquant 1992). Fields are about the relations or linkages among actors, be they individuals or institutions, and in particular about struggles for power and influence (Bourdieu 1993). A field, according to Bourdieu, "defines itself by (…) defining specific stakes and interests" (Bourdieu 1993, 72). Agents engage in a specific field to pursue their interests. To do so, they draw on different types of capital at their disposal (see also section 3.2), wherein capital is always specific to a particular field. The field is structured in a way that it reflects the power relations among those struggling with one another; actors are engaged in competition and employ certain strategies (Bourdieu 1993). Fields are established around concrete objects or stakes, and there are numerous fields with different logics of functioning. Also, fields are dynamic: as they are objects of struggle and contestation, they constantly change. Thus, every attempt to map or visualize a field only provides a snapshot of a specific moment in time, as the field is constantly evolving.

This Bourdieusian notion of the field is closely linked to the direction of field theory which DiMaggio and Powell (1983) developed. Notably, DiMaggio and Powell established the concept of an organizational field, in which different organizations engage with each other. In their seminal definition, an organizational field is understood as "those organizations, that,

in the aggregate, constitute a recognized area of institutional life: key suppliers, resource and product consumers, regulatory agencies, and other organizations that produce similar services or products", thus, "the totality of relevant actors" (1983, 148). An organizational field emerges through the activities of those actors within it. In a process of structuration, the field evolves and is defined (DiMaggio and Powell 1983). Organizations that join the organizational field at a later point in time are then substantively shaped by what is already established in the field – the homogenizing effect of the field. Like Bourdieu, DiMaggio and Powell understood the organizational field in terms of the relations among the field's members. In contrast to Bourdieu, who focused on the struggles and contestations in the field, DiMaggio and Powell placed more emphasis on the effects of the field on its participants, in particular by distinguishing three mechanisms through which isomorphic change occurs (coercive, mimetic and normative, cp. 1983, 150–156).

Overall, organizational fields encompass (power) relations and interactions among organizations around a specific object or issue which is at stake and in which the organizations have an interest. The organizational field is structured by norms and rules which have a taken-for-granted quality for the actors involved in the field. For its participants, the organizational field is about struggle and contestation, but it may also be about collaboration. In general, the field is about inter-organizational relations and interaction among actors, here, IOs, who perceive themselves to be a part of a "recognized area of institutional life" (DiMaggio and Powell 1983, 148).

Positions Within (Organizational) Fields

Within an organizational field, each organization occupies a specific position, which depends upon the capital with which it is endowed (Bourdieu and Wacquant 1992). This position can be defined as "the status granted to an organization in solving a collective problem at a specific point in time based on the capital an actor holds" (Vetterlein and Moschella 2014, 150). Bourdieu differentiated several kinds of capital, e.g., economic, social, and symbolic capital. An actor's capital can be further analyzed as it pertains to its volume and structure, what Bourdieu compares to the numbers and types of "tokens" an entity has (Bourdieu and Wacquant 1992). For instance, one organization may have several green tokens (economic capital), but only some blue tokens (cultural capital), while it is the opposite for another organization. Thus, both the number and the composition of an actor's capital matters when thinking about capital and accordingly the position of an actor within a field. This notion of "tokens" fits nicely with Bourdieu's understanding of field dynamics as "games" in which actors engage and in which they use their capital to make specific moves and to defend or even further advance their own position.

Positions are not static; organizations do not have one position permanently. Rather, organizations employ strategic moves and stances ("position-takings"; Bourdieu and Wacquant 1992) in order to improve their standing in the field. The strategies organizations employ aim at different objectives: First, they can attempt to acquire more "tokens", i.e., more capital. Second, they can strive to diversify their "portfolio" of tokens. For instance, if one organization has a high level of economic capital, it may seek to diversify and attempt to increase symbolic capital. Third, organizations can try to change the value accorded to different types of capital within a specific field, e.g., attempt to discredit one type of capital over another. In addition, they can also try to modify the "exchange rates", meaning at which rate one type of capital is converted into another type of capital. Capital, therein, is field-

specific: As Bourdieu and Wacquant underline "a capital does not exist and function except in relation to a field" (1992, 101).

By applying these strategies, organizations typically seek to conserve or improve their position within the organizational field, individually or collectively. What their strategy is aimed at tends to depend on the position they occupy within the field at a certain point in time: If organizations have a core position, they apply conservatory strategies to maintain and defend this position against others. If, on the other hand, organizations are newcomers or peripheral to the field, they seek to improve their position within the field. Organizations can even aim to establish a monopoly over a specific sub-part of the field to achieve a secure and unique position. This can be understood as an attempt to reduce competition and to distinguish oneself from one's competitors (Bourdieu and Wacquant 1992). While this can be characterized as an attempt of "niche-building", organizations can also seek to establish a status as a "linking-pin" organization, meaning to be that organization which connects other organizations to each other and thus establishing oneself as a broker within a network or field of organizations (Jönssen 1986). Importantly, position and perception are connected. As Bourdieu and Wacquant put it "the point of view they [the actors] take on the field [can be understood as] a view taken from a point in the field" (1992, 101).

Overall, organizations occupy specific positions within their organizational field depending on the type and composition of capital with which they are endowed. Organizations strive to reach or maintain a central position as it accords them the opportunity to shape the field in terms favorable for them. Positions in the organizational field matter: They shape how organizations perceive developments in the field and other actors within it, which then informs how they respond and which strategies they apply. While the position an organization occupies is to some degree defined by the resources it has, organizations may also attempt to discursively create, sustain, and defend their positions vis-à-vis other actors within the organizational field. Organizations are constantly engaged in struggles and in (re-)negotiations of their positions in, and thus their influence on, the organizational field.

Case Selection and Method

Global food security governance as an organizational field encompasses a variety of different actors, including IOs, non-governmental organizations (NGOs), states, bilateral development agencies, firms and research institutions. Among this plethora of actors, IOs assume a central role: as member state organizations, they are tasked by the international community to tackle an issue of common concern, namely, that of food insecurity and hunger in the world. Thus, they are mandated to work towards securing a global public good – freedom from hunger. While others are part of the organizational field or the "totality of relevant actors" (DiMaggio and Powell, 1983, 148) as well, not all other actors are exposed to the same (normative) demands: IOs, in particular within the UN-system, are confronted with meta-governance norms on harmonization and on better coordination. Consequently, IOs are attributed a special responsibility to contribute to a coherent and ordered global architecture in response to allegations of fragmentation and overlap within the field, more so than NGOs or other actors. Furthermore, the focus on one type of actor allows for analyzing those who perceive each other as alike or similar (Dingwerth and Pattberg 2009), and thus those actors who are likely to engage in struggles with each other more so than with others.

There are numerous IOs whose work falls within the realm of food security. A 1990 World Food Council document noted that the activities of "well over 30 multilateral

institutions are in a significant way related to hunger and malnutrition issues" (World Food Council 1990, 2). This has not changed significantly: the High Level Task Force on Global Food and Nutrition Security (HLTF), which was established in the context of the 2007/08 global food crisis, has over 25 members (UN HLTF 2015).

Those IOs that are HLTF-members constitute the "pool" from which to select cases. To be able to analyze whether the position of an IO within an organizational field matters for how it perceives and responds to fragmentation and overlap, the issue of core or periphery is central. Accordingly, the Food and Agriculture Organization of the United Nations (FAO) and the World Food Programme (WFP) are selected as core IOs, while the United Nations Industrial Development Organization (UNIDO) qualifies as a peripheral actor in the field of food security governance. First, pertaining to FAO and WFP, IOs at the core of the organizational field had to exhibit the following characteristics: membership in the HLTF, a mandate specifically mentioning food security and/or hunger, long-standing presence or organizational seniority in the field, a sizable share of the financial budget dedicated to food-security related interventions, and a primus-inter-pares role, e.g., the lead of food security working groups or clusters. All these criteria hold for FAO and WFP. Second, pertaining to UNIDO, IOs at the periphery of the organizational field are classified as follows: membership in the HLTF, a mandate mentioning food security and/or hunger at the margins and/or activities dedicated to/with implications for food security and hunger, and a short presence/newcomer status in the field. While these criteria hold for several IOs in the HLTF, UNIDO, having joined in 2015, stands out as the most recent member of the HLTF.

A brief introduction of each IO substantiates these choices. FAO is the first IO to have received a mandate in global food security governance (Gaus & Steets 2012). Founded in October 1945 (Liese 2012), it is the most senior IO in this field. The organization's overarching goal is "a world without hunger" (FAO 2016a). FAO is most commonly known for its role as an agricultural knowledge agency and a provider of policy advice, as a norms and standards setter and for its emphasis on technical assistance. FAO enjoys symbolic capital, in particular through its flagship publications, The State of the World, and its prestige as a knowledge agency.

WFP is a second IO at the core of the organizational field of food security governance. WFP's mandate also focuses specifically on food security as "the mission of WFP is to end global hunger" (WFP 2013b, 3). WFP is especially known for its role in delivering food assistance during emergencies and as a provider of last resort. While WFP as a food aid organization had little competition from other agencies for the same kind of resources, WFP's transition to food assistance has led to an increasing demand for financial resources, which is why a shortage of cash resources is characterized as the organization's "Achilles heel" (Shaw 2009, 81). As "the world's largest humanitarian agency" (Shaw 2011), WFP enjoys respect for its prominent role in emergencies, and thus has symbolic capital. At the same time, WFP has a large partnership network with ties to numerous NGOs, businesses, foundations and other IOs (Shaw 2011), pointing to the organization's social capital.

UNIDO is "the specialized agency of the United Nations that promotes industrial development for poverty reduction, inclusive globalization and environmental sustainability" (UNIDO 2016). Some of UNIDO activities may be located within the field of food security governance, in particular regarding the food availability dimension. For instance, UNIDO implements projects on agribusiness that aim at enhancing food security. To do so, UNIDO engages in partnerships that promote agricultural business development to achieve food

security. One example is the 3ADI (Agribusiness Development for Food Security and Poverty Reduction), a project which UNIDO conducts in collaboration with other IOs, e.g., the International Fund for Agricultural Development (IFAD). In comparison to FAO and WFP, UNIDO has neither a high degree of symbolic or social capital, nor is it endowed with substantial economic capital. Thus, UNIDO is at the periphery of the field.

As it pertains to methods, a computer-assisted qualitative content analysis was conducted (Früh 2011; Mayring 2010; Schreier 2012, 2014). The core of the empirical material are organizational documents, documents produced by IOs or authored by IO-staff. These documents, covering a time frame from the beginning of the 2000s to 2019, include strategic plans, mission statements, evaluation reports, corporate strategies, Memoranda of Understanding (MoUs) among two or more organizations, flagship or other publications, and reports on collaboration prepared for the IOs' governing bodies. With these different documents it is possible to investigate IO perceptions of the organizational field of food security governance, IO inter-organizational relations, as well as IO claims regarding their own role and position within the field of food security governance. Analyzing these documents thus allows for shedding light on organizational understandings of the organizational field as well as on organizational responses.

Empirical Analysis

This section begins with FAO and WFP, analyzing both how they perceive the field and how they respond to developments in the field. Then, the section turns to UNIDO, a focusing on perceptions and responses.

FAO and WFP – IOs "At the Core"

FAO and WFP are confronted with a dynamic and changing organizational field. WFP used a single word in its 2013 Strategic Plan to describe its environment: crowded. The organization observed a proliferation of different actors whose diversity and sheer number may "increase the risk of fragmentation, duplication, and competition" (WFP 2013b, 7). FAO shared WFP's assessment that the field is dense with a number of different actors competing "in the same areas of work and, to some extent, for the same resources" (FAO 2013, 3), thus specifying that competition is about resources. Although the observation is similar, there is a difference between FAO and WFP: According to FAO, the competition is not only due to a proliferating actor landscape, as WFP states, but can also be traced back to IOs extending their mandates or spheres of activity so that they overlapped with those of FAO (FAO 2013). Thus, FAO goes a step further and locates the responsibility for organizational overlap with other IOs: because they went beyond their own mandate, we now have a situation of overlap within global food security governance. In this understanding, the actions of other IOs are undermining FAO in its mandate and authority as the premier IO in global food security governance.

This hints at one of the debates within global food security governance, namely that on the causes of overlap. On the one hand, overlap can be located at the level of IO activities, meaning the sphere of work of an IO. In that case, the approach to deal with overlap could be in ensuring that every IO "stick to" its mandate. On the other, overlap can be seen a problem on the level of mandates, with member states having given IOs overlapping mandates and not ensuring clear responsibilities and roles for each IO at the moment of their founding. If mandates are seen as documents that are negotiated at a particular moment in time and reflect contested opinions on a respective IO's role, the mandates become open for a certain degree

of interpretation. In that case, the question of whether or not IOs have expanded on their mandate and thereby encroached on that of FAO is not solely a technical question, but a political one. Even FAO's own mandate is ambiguous; it reflects different options of how the organization could best carry out its objective, which go back to disagreements among the founding members. These roles ranged from FAO as a "technical clearinghouse" to a more active "technical assistance organization" (Staples 2006, 79).

While FAO and WFP both perceived the field of food security governance to be characterized by organizational density which comes with risks such as duplication or competition (in part with each other, but also with other organizations and actors), both IOs simultaneously engaged in numerous collaborative activities. First, FAO and WFP engaged in information sharing. The two organizations are the co-leads of the global and national food security clusters, which have the objective of enhancing coordination and partnership in emergencies. One of the core tasks is constituting a forum for exchange and providing information on which organizations are conducting which projects in which country. Second, FAO and WFP, together with IFAD[ix], were involved in sharing resources, for example by sharing office premises at the country level. Third, FAO and WFP collaborated in joint action and conducted assessments together, be it joint baseline surveys in Niger (FAO, IFAD & WFP, 2015) or emergency food security assessments in Western Côte d'Ivoire (WFP 2013a).

How did FAO and WFP respond, given that they perceived their environment to be fragmented, complex and characterized by overlap? One strategy stands out in particular; together with IFAD, FAO and WFP are in a process of delineating their specific roles. The RBAs together invested significantly in their collaboration and attempt to increase their joint efforts, while at the same time individual RBAs often named other IOs as their most important partners, e.g., with FAO listing the World Bank and WHO as "top partners" before IFAD and WFP (FAO 2006, 18). Nonetheless, FAO, IFAD and WFP were engaged in a time- and resource-intensive process since 2009, when the Executive Boards of all three IOs approved a document on "Directions for Collaboration among the Rome-based Agencies". There had been earlier efforts, for example in the form of a regular publication titled "Working Together" – starting in 1999 – which presented examples of RBA-cooperation (e.g. FAO, IFAD and WFP 1999). However, ever since the governing bodies of the three organizations called for increased collaboration (FAO, IFAD and WFP 2009) efforts have increased and become more systematic. There are attempts at mapping operational collaboration at different geographical levels, for different sectors, and in different regions. In addition, the organizations regularly report on their progress, in the form of updates to the governing bodies (e.g. WFP 2016a).

In the 2009 document, the three organizations strove to lay the foundation for their joint work in combating hunger and food insecurity. Therein, FAO, IFAD and WFP drew on the concept of "comparative advantages" whereby they sought to define the features which make each agency unique and which distinguish it from the others, i.e., what are unique competencies of each agency. Accordingly, FAO's comparative advantage is that it is the "world's agricultural knowledge agency for policy development", while IFAD has "knowledge of rural poverty", an "exclusive focus on rural poor people" and "experience in financing", and WFP's strong suits are its "extensive field presence" and its "strong logistics in the delivery and distribution of food" (FAO et al. 2009, 7).

Despite of these joint attempts at delineating spheres and defining comparative advantages, it seems that at least FAO saw an issue of overlapping mandates and in particular activities overlapping in practice. According to the organization: "although they [IFAD, WFP,

ah] were created for very different objectives and should work in close collaboration, taking advantage of clear complementarities, in reality their work has progressively overlapped that of FAO" (FAO 2013, 3). Accordingly, even if agencies try to jointly determine their comparative advantages and to define specific roles, it is still possible that overlap and duplication of mandates lead to competition for funding – a development which is usually seen as problematic by IOs themselves. In reacting to WFP's new Strategic Plan (2017-2021), FAO therefore voiced concern regarding "actual and potential duplication or overlapping with WFP" and took care to note "that WFP does not intend to expand its mandate and that response to food security related emergencies and provision of direct humanitarian assistance shall remain WFP's primary focus" (FAO 2016b). Thus, FAO described a particular role for WFP, with a focus on the delivery of assistance in emergency or humanitarian settings. At the same time, WFP (2016b) explored whether its stakeholders see a larger role for itself in development, specifically in advocacy and as a "thought leader", which comes closer to FAO's role. Furthermore, cooperation does not seem to be straightforward. While earlier updates appeared to be jointly developed reports, 2016 updates carried subtitles such as "IFAD perspective-position paper" (IFAD 2015) or "a WFP perspective" (WFP 2016a). IFAD in particular raised concerns about RBA collaboration, criticizing that "[c]alls for more RBA collaboration from our membership have also suffered from the casual nature of the requests made" and that "too much attention may have been given to collaboration through areas of overlap" (IFAD 2015, 3–4). IFAD then proposed to focus less on joint action and more on "coordinated complementary approaches" with each agency focusing on its own specialization and specific means of intervention (ibid.).

To sum up, FAO and WFP as two core IOs in the organizational field of food security governance collaborated in numerous ways with each other ranging from information sharing to joint action. At the same time, they perceived themselves to be embedded within an organizational field characterized by organizational proliferation and the overlap of mandates and activities, leading to a situation where they have to compete for resources and where they strive to ensure their continuous relevance. This led to attempts by the two organizations to delineate specific spheres of responsibilities and roles for each organization, in particular drawing on the notion of "comparative advantages". Therein, FAO and WFP did not only try to define and defend their own position as central actors within the field but also to assign a certain role to the respective other. Their response encompasses several layers. First, FAO and WFP, together with IFAD, engaged in time- and resource-intensive processes of structuring and defining their collaboration as the Rome-based agencies – those at the core of food security governance. Through this collaborative endeavor, they sought to signal their member states – who called for closer cooperation through the IOs' governing boards – that they are responsive and adaptive organizations who harmonize their activities through a process of inter-organizational coordination. Importantly, FAO and WFP began by attempting to increase order and coherence at the core of the field. Second, while there were joint attempts to define roles and responsibilities, IOs simultaneously also tried to delineate their sphere of influence individually and by drawing on different channels. For instance, FAO used its albeit limited position and influence as one of WFP's "parent" institutions (together with the UN), to voice concerns regarding WFP's 2017-2021 strategic plan to define a role for WFP which can be delimited from that of FAO and does not encroach on what FAO perceived to be its sphere of work.

UNIDO – An IO "at the Periphery"

Within the field of industrial development, UNIDO, comparing itself to the World Bank and overall private sector flows, described itself as a "comparatively small agency" (UNIDO 2013, 5) According to UNIDO, within this field there is an "increasingly complex array of actors, strategies and means of intervention" (UNIDO 2011, 10), as complexity and organizational proliferation lead to an increased need for coordination among actors. The organization saw itself especially well placed to enable such partnerships, in particular along the public-private divide. UNIDO posited that it has a comparative advantage in being an inter-governmental organization – thus having relations to public sector authorities – while at the same time being in a constant exchange with the private sector, due to its focus on industrial development. Accordingly, UNIDO perceived itself as having a "strategic position at the interface of government, industry, science and technology" and a "unique role in addressing coordination failures and fostering convergence of action" (UNIDO 2014, 5).

UNIDO's attempt to define itself as occupying this strategic position became evident in the introduction of a new instrument, the Programme for Country Partnership (PCP) (UNIDO 2011). With the PCP, UNIDO strove to map existing projects by partners within the realm of a specific priority sector or industry. Therein, UNIDO's strategy was to bring together all development partners under the leadership of the respective national government and to define a common approach. In Ethiopia, for instance, UNIDO planned to support the establishment of so-called "agro-poles", thereby placing emphasis on the development of the agribusiness-sector for different food products by linking industry more closely with agriculture – a project that relates to the food availability dimension. Importantly, UNIDO tried to put itself in a steering role for a closely defined sub-sector within the field of food security governance.

As most other IOs, UNIDO described partnerships as a way to heighten the impact of its projects and programmes. In particular, partnerships are expected to "optimize the contribution of each" (UNIDO 2011, 10) and as a means to "enhance synergies (…) while maximizing the development impact" (UNIDO 2015, 5). Although UNIDO oftentimes referred to different types of partners with which they want to engage – ranging from governments, other IOs, development agencies and civil society to the private sector – UNIDO focused in particular on financing actors. UNIDO explained this emphasis by pointing out that financial needs in the sector of industrial development are particularly high; even if UNIDO were to receive more funding from its member states this would not suffice to make a tangible impact for inclusive and sustainable industrial development (ISID) (UNIDO 2013). Therefore, UNIDO had a partnership strategy dedicated specifically to development finance institutions (DFIs). In that, UNIDO differed from other IOs who have either general partnership strategies (e.g. IFAD) or several partnership strategies for different types of partners (e.g. WFP). In that sense, UNIDO sought partnerships to supplement areas where it lacked resources.

How did UNIDO respond to an organizational field characterized by complexity and organizational density, especially given that the organization's financial resources are limited and that it is comparatively small actor? First, UNIDO strove to mobilize resources to be able to implement technical assistance projects. However, within the scope of such projects UNIDO also worked with other IOs, such as the FAO, which did not contribute to financing. In the already mentioned 3ADI grant scheme which is aimed at enhancing investment in the agribusiness sector, the project is managed jointly by the African Development Bank (AfDB), FAO and UNIDO, while funding is provided by development institutions, both bilateral (e.g.,

AFD) or regional (e.g., the West African Development Bank, or BOAD). Given developments in and features of the organizational field - which are associated with an increasing competitive pressure - one of UNIDO's responses can thus be seen in the creation of a strategy aimed at securing adequate financial resources by explicitly targeting development finance institutions. Second, and relatedly, UNIDO sought to create itself as a service provider for other IOs. In its partnership strategy on international finance institutions the organization repeatedly referred to a number of supporting functions it can fulfil, e.g., managing and coordinating processes or providing expertise for the formulation of finance institutions' programs. Third, another one of UNIDO's responses can be identified in the organization's attempts at role and niche definitions. UNIDO tried to define a steering and coordination role for itself at the country level under the label of "inclusive and sustainable industrial development", thus interpreting industrial development in a broader, more holistic way. At the same time, the organization constrained its area of work by explicitly referring to the linkages between industry and agriculture through references to agribusiness development, thus teasing out the connections to industrial development, which is at the core of UNIDO's mandate. Overall, UNIDO as a peripheral actor saw its environment to be characterized by complexity and proliferation and responded by employing a range of responses, such as resource mobilization.

Conclusion

All actors within an organizational field have a specific position, be it (more) at the core or (more) at the periphery. These positions are subject to dynamic changes over time and require constant justification and self-ascertainment by IOs. While the position an IO occupies is to some degree defined by the resources it has, positions are also discursively created, sustained and defended vis-à-vis other actors within the environment. As IOs risk losing relevance in the eyes of their member states and their wider environment, they are quite aware of their position within the organizational field and of developments and changes within it. Against this background, this article addressed the following research question: Given different positions in the organizational field of food security governance, how do IOs perceive and respond to developments in the field?

The analysis provided the following findings: there is some similarity in how core and peripheral organizations perceive the organizational field of global food security governance, in particular pertaining to complexity and organizational density, even overlap. All IOs see the field as extremely complex and crowded due to a proliferation in the number of actors, not just IOs, but also other actors such as NGOs. From the IO perspective, this leads to certain risks, such as duplication of activities or competition. However, there are two relevant differences: While FAO and WFP, both core organizations, perceived these developments to be a problem mainly for those organizations at the core and consequently, they responded by engaging in delineation processes at the core, UNIDO's outlook on the field appears broader. As an organization at the periphery, UNIDO was located at the intersection of the field of food security governance and the field of industrial development. Furthermore, "the core" does not appear to be unitary. FAO viewed that other actors encroaching on its mandate caused overlap. As the most senior member of the organizational field of global food security governance, FAO apparently needs to defend its core position against other IOs and newcomers. WFP, in comparison, does not seem to make similar cause-effect assumptions and does not appear to be preoccupied with defending its position. Interestingly, although all IOs observed the field to be crowded and dense, they only rarely mention competition between IOs directly.

Turning to organizational responses, the analysis demonstrated that FAO and WFP, as core organizations, were engaged in a process (together with IFAD) of jointly delineating roles and responsibilities in response to complexity, fragmentation and overlap. Thus, they aimed to enhance coherence and a division of labor at the core of the field. Although the three RBAs now revolve more closely around each other – even though there may be challenges when implementing the strategy for more cooperative engagement among them – it may be that the RBAs engage less with other actors. IFAD, for instance, already cautioned that "RBA collaboration should not be exclusive" (IFAD 2015, p. iii) and should rather draw on the extensive partnerships and networks of each individual agency. While the inter-organizational relations among the three RBAs at first tightened, a broadening and an increasing inclusion of other actors seems to be occurring. At first, however, the IOs at the core of the organizational field of global food security governance were occupied with ordering relations among themselves.

UNIDO, on the other hand, occupies a rather peripheral position in the organizational field of food security governance. The organization showed a range of different responses with which it reacted to a complex and dense organizational field. These included developing a strategy on resource mobilization, defining itself as a service provider for other IOs, especially DFIs, and establishing itself within specific niches (e.g., agribusiness development) and with specific roles at the country level (e.g., steering and coordination). UNIDO, therefore, sought to define a unique role for itself.

Overall, this article compared the perceptions and responses of core (FAO and WFP) and peripheral (UNIDO) IOs in the organizational field of food security governance. The article's strength is that it combined two strains of field theory, emphasizing the embeddedness and interaction of IOs with a wider environment, the organizational field, and focusing on the role of positions for organizational responses to developments in that field. Importantly, the article demonstrated the importance of perceptions as a factor for understanding and linking an IO's position to organizational action. The role of both positions and perceptions have previously been understudied. However, the theoretical framework developed here cannot yet account for competing explanations of organizational action and, thus, requires further refinement. Also, the focus on organizational documents may a limitation of the article. While documents are a central source for investigating IOs, they may carry a potential bias. They may reflect organizational "talk" more so than IOs' "real" perceptions. Even if this were the case, the documents would still be valuable because they allow us to draw conclusions about how the IOs think they should see the world.

To conclude, three additional future research directions are identified. First, competition seems somewhat absent in the organizational perceptions as they are reflected in IO documents. It could be that competition is infrequently referred to because cooperation norms are so strong that IOs find it inappropriate to mention competition "publicly", even though it is taking place. This would warrant further investigation. Second, if IOs at the core of the field of food security governance are revolving more closely around each other, the question arises as to how this effects peripheral IOs and other actors. Finally, the "success" of the organizational responses identified (and criteria to measure the presence or absence of this success) also constitutes a fruitful pathway for further inquiry. In particular, it is important to study the effects of these responses on field-level developments such as overlap,

fragmentation and other changes taking place within the environment. IOs are inherently located in this environment, they are influenced by it and likewise shape the environment through their actions. Consequently, the organizational field will continue to change and evolve, as will the IOs within them.

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ENDNOTES

i. The content of this article is unrelated to evaluation activities of the German Institute for Development Evaluation (DEval).
ii. This article was first presented at the 33rd EGOS Colloquium in July 2017. I thank the

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iii. Following Archer (1988), I understand IOs as permanent, structured entities established through a formal agreement between members for the purpose of realizing a shared objective. I focus on IOs whose membership is restricted to states, and thus on international *governmental* organizations. IOs are further understood to be agentive and autonomous actors; there actorness, here, assumes a taken-for-granted quality (Ellis, 2010). In the following, I use the terms "IO" and "organization" interchangeably.

iv. As an organizational field, global food security governance is constituted around food security as the central issue at stake (cp. Vetterlein and Moschella, 2014, p. 149). The organizational field includes actors ranging from IOs to NGOs to states and multinational corporations, to name just a few, all directly or indirectly working on or whose work has implications for food security. While the field includes these many different types of actors, the emphasis in this article is on IOs.

v. The language of "core" and "periphery" may remind the reader of Immanuel Wallerstein's world system theory. The article relates to Wallerstein's work in the central notion that the behavior of one element within a system can only be understood in reference to the elements' position within said system and its relations to other elements. Wallerstein has a holistic perspective that emphasizes the interdependencies between elements in the world system (Nölke, 2010). That being said, there are three notable differences: First, whereas Wallerstein focuses on states as central actors, I concentrate on IOs. Second, Wallerstein's work is situated at a macro level with its emphasis on the world system and the capitalist world system. In contrast, the article focuses on IOs located within the meso-level structure of the organizational field. Third, Wallerstein is specifically interested in the role of capitalism and dominant classes within the world system, which the article is not.

vi. With that, I do not claim that every member of the IO bureaucracy needs to share these perceptions; some members of staff or communities within the IO may have fundamentally different understandings of the environment. Rather, a perception should be widespread enough to have a certain taken-for-granted quality within the organization.

vii. The terms "institution" and "organization" are often referred to interchangeably; they should, however, be kept apart. Whereas an institution "can be understood broadly as a relatively stable collection of social practices consisting of easily recognized *roles* coupled with underlying *norms* and a set of rules or conventions defining appropriate behavior for, and governing relations among, occupants of these roles" (Jönsson 2017, 54, emphasis in original), an organization is defined as an entity "that normally possess physical locations, offices, personnel, equipment, and budgets" (Jönsson 2017, 55). Centrally, organizations are understood to possess actor quality, whereas institutions do not.

viii. Following this conceptualization, IOs are neither *instruments* of their (powerful) member states, nor are they neutral *arenas* used by member states to negotiate issues of common concern. Rather, IOs are *actors* in their own right with a certain degree of agency, in particular through their bureaucracies or secretariats (Barnett and Finnemore, 2004).

ix. The International Fund for Agricultural Development is the third so-called Rome-Based Agency (RBA) next to WFP and FAO. IFAD was founded in the aftermath of the 1974 World Food Conference. The organization's objective is to advance rural development and enhance the rural poor's food security situation by providing loans to member states.

George Oakley Totten, Jr., the International Association of Architects and Copyright

Susan Siggelakis

This article examines the role of American architect George Oakley Totten, Jr., who served as a key representative of the profession to the International Association of Architects during the first several decades of the 20th century. He worked to promote more interaction between architects in the United States, particularly through his membership in the American Association of Architects, and those in other nations. His approach was dual-pronged, as he urged more international exhibitions and competitions as well as more uniform laws and policies affecting the profession within and among nations. The latter, he believed, could be accomplished, at least in part, by all nations signing onto the Berne Convention and amending their domestic legislation to align with the Berne standards for the regulation of architectural, intellectual property. Totten's advocacy of Berne-conforming legislation failed to stimulate a supportive effort on the part of American architects during his lifetime for a variety of reasons. However, he played a unique role in connecting the two organizations, one international and one domestic, during his professional lifetime.

Introduction

Successful completion of international agreements among nations almost always requires supportive domestic constituencies. The education and cultivation of political parties, elites both inside and outside of government, nongovernmental organizations, and the public writ large, may, at various points, be crucial to successfully reaching global solutions to common problems. During the 1920's and 1930's in the United States, one such constituent group was the American Institute of Architects (AIA), headquartered in Washington, D.C. As producers of material culture, in a time of eroding national boundaries and easier transmission of artistic styles, methods and ideas, this organization might have been expected to have an intense interest in the protection of the intellectual property of its members under international rules. However, available evidence reveals only a lukewarm concern with domestic legislation that would make the United States copyright policy regarding architectural creations consistent with heightened international standards, specifically under the International Copyright Union, formed by the Berne Treaty of 1866. One prominent member of the AIA, George Oakley Totten, Jr., tried to highlight the issue to his American peers, particularly after his attendance at the 12th International Congress of Architects in Budapest in 1930. Totten was involved to an unparalleled extent with this international body of architects, particularly through its leadership, the Permanent Committee of the International Association of Architects (CPIA), which had long advocated Berne membership for all nations. Nevertheless, for a variety of reasons, neither Totten nor the AIA lobbied actively for its preferences to the United States Congress.

While the architectural profession's lack of visible support for these so-called 'Berne-adherence' bills was but one of many reasons for their failure, the examination of the

organization during this period does help to extend into the United States an inquiry posed by scholar Isabella Lohr (Lohr 2009). She explores the ways in which European cultural industries responded to the movement advocating the internationalization of authors' rights. Further, she examines the effect of the economic, social and political disruptions of the period on the globalization of intellectual property rights. In her research, she points out the key role played by national and international interest groups in the shaping of intellectual property protections, particularly as they sought actively to influence (and nation-states to include them in) the processes of information gathering and dissemination, negotiation and, ultimately, legislation. This inquiry adopts implicitly the neoliberal approach as described by Keohane (2005), Nye (Nye and Keohane 1977), Goldstein (Goldstein et al. 2003) and Milner (2009) who see within it four main elements. These include "an emphasis on non-state actors, including international institutions, on forms of power besides force and threats, on the role of interdependence in addition to anarchy in the international system, and on the importance of cooperation as well as conflict in international politics" (Milner 2009, 4).

The CPIA

During the first half of the 20th century, the permanent seat of the international body governing the profession of architecture was in Paris. The international body, the Comité Permanent International des Architects (CPIA), was formed in Paris in July 1867. Its stated role was to

> "safeguard the great common interests of architects during the period between congresses, control competitions and follow with keen attention the development of the law in respect of mental property and of authorship, and is endeavoring to promote these at the various diplomatic conferences… so as to obtain the perfect protection of the rights of architects as possible" (League of Nations).

The CPIA leadership was composed of a president, eight vice presidents, a secretary general, eight secretaries, a Treasurer and twelve members. The CPIA's member structure consisted of 'sections'; each section having from 1 to 15 members from each country, depending on population. England, France and the United States each had 15 members. The CPIA's leadership had charge of the organization: selecting the countries in which the congresses were to be held, determining the topics to be discussed and making the arrangements for the international meetings with the host delegation. It always held an organizational meeting the day before the opening of a congress and the day immediately following its close. The purpose of these congresses was to "reestablish the friendly intercourse and comradeship between architects of the various nations divided by the dissensions of the war" (Bierbauer et al. 1931, 4), but there was also a more targeted, political purpose. As Hungarian member Virgil Bierbauer explains, part of the Congress's mission was "to discuss the common difficulties which beset architects, in order to come to mutual understandings and to pass resolutions which they might ask their governments to put into execution" (Bierbauer et al. 1931, 4). An American Institute of Architects' editorial in 1927 hailed this organization and its congresses as "another step in the process of moral preparation which leads to a true international mind" (AIA Journal 1927, 279). Congresses were located in the grand capitals of the world, like Brussels, Rome and Madrid, no doubt so that delegates could study the architectural treasures of each, even as they discussed more theoretical topics. Each member country sent its delegation. Dues to belong to the CPIA were not steep—only 100 francs per year per member. The CPIA also solicited donations. Because congresses were held all over Europe with delegates from many countries, no official language existed. Hence, the 1930 proceedings, held in Budapest, were in German, English, French, Hungarian and Italian. Congresses were held somewhat irregularly during the 20th century, generally every two or so years, beginning in 1897. During the period from 1911 to 1927, due to WWI and its aftermath, no Congresses were held until the 1927 Hague conference. These congresses continued to be held until 1937. The 13th (1933) Congress, as was decided at the 12th, was to be held in Washington D.C., but cancelled due to the Depression, then rescheduled in Rome for 1935. In 1948, the CPIA ceased to exist as an independent entity, merging with another architectural organization, the International Meetings of Architects, to form the International Union of Architects.

Major Totten

George Oakley Totten, Jr. was one of the premier American architects of the Gilded Age. He is known most for his work on crafting elegant, spacious homes in Washington, D.C. for the very rich as well as for the design of embassies, leaving a legacy that still distinguishes many of the parts of the city (Beauchamp n.d.; Mueller 2012). Born in 1866, he was descended from one of the early Dutch families of New York. Totten obtained bachelor's (1891) and master's degrees (1892) at Columbia University. He received a McKim Traveling Scholarship which enabled him to journey widely in Europe, including to Italy and Greece. It was during this period of travel that he claimed to have been one of the last people to stand on the roof of the Parthenon before it collapsed completely (Totten III 2002). Fluent in French, he studied at L'Ecole des Beaux Arts in Paris. Back in the United States, he became the Supervising Architect of the Department of the Treasury in 1895-98, an enormously influential and taxing position as he was responsible, along with his staff, for the designs of all federal buildings. Beginning in 1897 he collaborated on projects with the wife of Missouri Senator John B. Henderson, Margaret Foote Henderson, a relationship that continued until 1918. The wealthy Henderson bought parcels of land in the District and commissioned him to do the architectural design work for many opulent structures, many done in what was termed the "Renaissance Revival" style. Some of these were designed as, or later became, embassies. His embassy work includes the Greek Embassy (1907), the Embassy of Pakistan (1909), the Turkish Embassy (1915), and the Ecuadorian Embassy (1922). He also designed the Congressional Club in 1914, the place for Congressional wives to socialize and host events. His work can be seen today in many areas of the city, including Dupont Circle, Embassy Row, The Kalorama Triangle, Columbia Heights, Meridian Hill and Mt. Pleasant. After he left the Treasury Department in 1898 and, until 1907, he and Laussat Richter Rogers, a fellow Columbia graduate, had a firm in Philadelphia, Totten and Rogers, although Rogers left the partnership due to an advantageous inheritance. Working in Turkey during the beginning of the century, he designed the American Chancery as well as the Prime Minister's residence. This work so impressed the Sultan of Turkey, Abdulhamid II, that he appointed him his official architect. Unfortunately, revolutionaries deposed the Sultan in 1908 before Totten could take up the position.

During World War One, Totten served as a major in the Army Corps of Engineers and, until his death, was often referred to as 'Major' Totten. He and his wife, the Swedish sculptress Vicken von Post, were ensconced in the highest social circles in the nation's capital. At his wedding in 1921, The Washington Herald headline read "Maj. Totten Takes a Bride, Society Wedding in Capital attended by high official persons" (1921, 5), included the Secretary of

State Charles Evans Hughes and his wife, ambassadors, ministers and other diplomats. He and his wife both attended many balls as well as many receptions and dinners with top diplomats and government officials, including Presidents. One of his main foci in the 20th century, like that of so many other architects and artists in Washington, was to help invigorate Pierre L'Enfant's vision of the nation's capital, which had been developed initially under President George Washington. As such, he was involved in many of the capital's civic organizations, including The Committee of One Hundred, which was founded explicitly to promote development along the lines of the L'Enfant Plan.He also served as an adviser for the remodeling of the United States Capitol building. In the 1920's he became enamored of Mayan architecture, traveling to Central America and completing a book, Maya Architecture, which was published in 1926 (Totten 1926). It was from one of his travels there that he brought back a specimen of the Yucatan goldfinch which he donated to the Smithsonian Museum (Smithsonian Institution 1921, 193).

Totten was a long standing, active member of the American Institute of Architects, from 1899 to 1939, the year of his death. The AIA, founded in 1857 by 13 architects, was and continues to be the premier organization of the profession and was headquartered in Washington, D.C. in the interwar period, as it is today. Over its 162 years, it counts among its esteemed membership such notables as Cass Gilbert, the architect of the United States Supreme Court building, Daniel Burnham, who designed the Flatiron Building in New York City, and Charles McKim, architect of the Boston Public Library. The organization influenced many of the laws and policies which have helped to shape and preserve the American building culture, from the Macmillan Plan for the redesign of the nation's capital, to urban planning and the development of low-cost housing. The organization took the lead in carrying out the Historic American Buildings Survey, a New Deal program founded under the auspices of the National Parks Service to document examples of early architecture and historic structures by means of photographs and measured drawings. Over the decades it has advocated for the interests of the profession, for example, by developing standard architectural contracts and model legislation for the state-by-state registration of architects. During the 1920's and 1930's, among its presidents were Robert O. Kohn, Milton Medary, and Ernest John Russell.

Despite much of his work in and around the nation's capital. Totten was internationalist in his outlook. He desired more and frequent interaction with architects across the world, rather than the hardening of national boundaries and styles. Totten was well-acquainted with these International Architectural Congresses, having attended as a member of the United States delegations a total of eight times and becoming increasingly engaged in successive congresses. In 1897, at the age of 31, he attended his first Congress in Brussels, although doubts were expressed that someone so young could ably represent the profession "in such a distinguished gathering" (United States Department of the Interior 1988, 5). While there, he lamented the lack of American works at the accompanying exhibition. "No American architecture either of a public or private nature was represented. This is much to be regretted, especially in view of the fact that so little is known in Europe of the progress we are making in architecture. I would respectfully suggest as a duty we owe to other countries in the great problem of architectural development, that a large and complete exhibition of our public buildings be sent to the next International Congress in Paris" (Comte-rendu 1897, 4). In 1900 his only role at the Congress was to deliver a lecture by Columbia University architecture professor A.D. Hamlin on exterior facades of large buildings in the United States. (Comte-rendu 1900, 228) Yet, at that time, he had already been a CPIA American section officer since

1897, a position he would hold until his death. At the 5th Congress, he was appointed honorary Secretary General of the Congress. At the 6th Congress in Madrid in 1904, he served as the President (section leader) for the discussion of one of the core themes of the conference, "The Character of Scientific Education in the general training of architects," (Comte-rendu 1904, 167). The 8th Congress saw him presenting the Austrian Society of Engineers and Architects with a collection of photographs of public buildings in Washington, D.C. At the 10th Congress in Brussels in 1922, Totten was presented with the Diploma and the Medal of the Societe Centrale d'architecture de Belgique. In announcing Totten's official role in the upcoming 1930 Congress, editor Robert Craik McLean of The Western Architect wrote:

> "[Totten] is the head of his class and the only member of it. The memory of this writer goeth not back to the contrary when George Oakley Totten, Jr. did not head, as often solely comprise, the committee on international architectural relations when they took the form of a Congress and in some foreign country. Therefore to him belongs the palm of merit for carrying America's architectural flag abroad and year by year representing the profession on foreign lands" (1930, 71).

Totten once expressed his views about the value to him personally of these congresses. As he put it, the congresses allowed him to visit new countries, to discuss international issues and, finally, "to make the acquaintance of the men in the same profession in all parts of the world" (Comte-rendu 1904, 472).

The Budapest Congress

In March 23, 1929, a gathering of the American Section of the Permanent Committee of the International Association of Architects was held at the New York City home of the Chairman of the organization, Cass Gilbert, the designer of the United States Supreme Court building (Los Angeles Times 1930, D5). The members present were Professor William A. Boring, Dr. C. Howard Walker, Dr. Warren P. Laird, Mr. John Russell Pope, Mr. J. Otis Post, Mr. J. Monroe Hewlett and Mr. George Oakley Totten, Jr., Secretary of the American Section. At this meeting a letter was read from the Hungarian Society of Architects, inviting the Americans to participate in the upcoming congress to be held in Budapest in September 1930. The invitation was accepted. Shortly after that, Secretary of State of the United States under President Hoover, Henry Lewis Stimson, appointed Totten to chair the American delegation to the Budapest congress. Others appointed included Cass Gilbert, William Boring, Warren Laird and C. Howard Walker. However, of these official delegates, only John Mead Howells chose to attend, the others declining either due to lack of funds or prior work commitments. Totten chose to go by way of Stockholm where he visited his wife and their two sons who were summering in Sweden (Washington Post 1930, 7).

The September 6th official opening of the congressional session began with a greeting and address by CPIA president Joseph Cuypers (XII Nemzetkozi Epiteszkongresszus, Programm 1930). Royal Hungarian Minister of Culture and Education Count Kuno Klebensberg and Budapest Mayor Dr. Ference Ripka also welcomed the delegates. CPIA officers gave several reports on internal matters.

Each day's schedule was packed with official lectures and events, spread out across several venues in the city, including the Hungarian Academy of Sciences, the Hall of the Association of Hungarian Engineers and Architects, the Technical University, and Ferenc Liszt Academy of Music (XII Nemzetkozi Epiteszkongresszus, Programm 1930). In addition, the host delegation planned many outings and visits to cultural, architectural and historical

sites both in and out of the city for the architects and their families. As Totten later pointed out, due to the receptions at different locales across the city, the participants were able to see the interiors of halls to which they might not have otherwise been able to gain access (The Octagon 1930). The Hungarians made sure that official trips had expert leaders. For example, on a trip to the national library/archives at Buda Castle, the national Chief Archivist Desiderius Csanky led the group, presenting relevant information. An excursion by train to the Hungarian General Colliery Ltd. at Felsogalla, was organized by the company and led by its director. This tour allowed the visitors to view the industrial architecture of the enterprise, connecting the coal works building to one of the core themes of the conference. A walk around the mid-Danube Margaret Island to view the baths and medieval ruins, was led by Dr. Coloman Lux, a lecturer at The Technical University. The delegates and their guests were treated to an insiders' look at the impressive neo-Gothic Parliament building on the Pest side of the river, completed only 28 years earlier. This was led by the technical chief director of the Parliament, Oscar Fritz de Laczay. During the evening of September 12 the delegates and their families attended a gala performance in honor of the 12th Congress, a performance of "Carnival Wedding," by the Hungarian composer Ede Poldini at the Royal Opera House. Topics of lectures ranged from modernist architecture in Budapest and Germany to the preservation of ancient buildings in Greece. Totten himself spoke about "The Future Development of Washington (D.C.)," most likely inspired by the recent passage of the 1926 Public Buildings Act. In it the U.S. Congress had committed $50 million for the construction of federal buildings, including money for the so-called 'Federal Triangle,' the most fulsome appropriation for federal buildings in history.

Totten, and the Swedish architect Ivar Tengbom, played key roles in overseeing the debates on the various 'themes' that had been distilled from the suggestions solicited from members by the CPIA. At the Congress, Totten was appointed the President of the Commission on Debates, his vice president, Tengbom.

The debates in this 12th Congress were a series of discussions intended to produce an official consensus of the attendees on a number of topics. Each of these themed sessions, in turn, had a different set of presidents, vice presidents, reporters (Rapporteurs General) and secretaries. For each of these panels, Hungarians occupied all the offices except that of President. For Theme I, Prof. Dr. Ing. W. Kreis of Dresden, Germany presided. Theme II: Prof. Calzo Bini from Milan, Italy; Theme III: Prof. Prof. E. Pontremolli; Theme IV: Dr. Ir. D.F. Slowthouwer from Amsterdam, Holland; Theme V: G.A. Sutherland from Manchester, England.

The themes of this particular conference to be discussed by sub-groups of the attendees were applicable to most members of the profession, whatever their preferred style of architecture or country of origin. These were: the practical training of architects, the licensing/regulation of the profession of architects in each country, copyright protection for architectural products, the role of architects in modern, industrial construction, and architectural acoustics of concert halls (XII Nemzetkozi Epiteszkongresszus, Resolutions 1930). Totten, as Secretary of the American Section of the CPIA, had a hand in selecting these specific themes in pre-congress planning in Paris, not only for their broad appeal to European architects, but also for Americans, the concerns of which he was well-acquainted. In the United States, for example, the official AIA journal of the time, The Octagon, reveals the profession's desire to increase the number of American states which required architects to be registered, after submitting evidence of their qualifications and training to a state board. It is clear that contractors, engineers and others in the construction field were passing themselves off as architects or at least performing the same functions. As one author put it, without the unification of the profession through registration and other means, "it can only be a question of time until one of the oldest and greatest profession becomes the prey of all manner of unscrupulous 'gyps' to the lasting detriment of the people of America" (The Octagon 1931a, 10, 19). The acoustics of performance halls was also relevant personally to Totten and Tengbom, both of whom had recently designed opera halls.

Strict rules governed the discussions in each of the themed sessions. At least 20 members had to be present in order to assure adequate deliberation. Decisions took place by majority vote within each section. No one could speak for more than a maximum of five minutes, nor speak more than one time on anyone subject unless given special permission by the President of the Debates. A summary of the discussion was provided by the reporter in duplicate copies and signed. At the conclusion of these debates and a vote, resolutions were adopted in the committees and reported out. They were then voted upon by the entire membership. At the final plenary meeting the resolutions would be announced.

Resolutions

A number of resolutions resulted from these themed sessions. One of these dealt with the common desire of architects to continue to distinguish themselves as members of a unique profession, based on their training and experience, and to prevent others from masquerading as architects or performing their functions. It read in part: "The Congress finds it desirable that organizations of architects be constituted in each nation, under the foundation of the laws and be charged with the registering all architects and safeguarding the general interests of the body of architects" (XII Nemzetkozi Epiteszkongresszus, Resolutions 1930). The resolution recommended that this particular demand be transmitted by the Secretariat General of the CPIA to all national governments as well as to The League of Nations. Others recommended that architectural training should include more practical subjects such as construction materials and finance, and that architects should be registered in each nation. Another, reflecting the interwar boom of industrialization and urbanization, urged architects in all countries to "begin a campaign of propaganda, both in word and in writing, to influence industrial associations to welcome the participation of architects in planning new installations and factories" (XII Nemzetkozi Epiteszkongresszus, Resolutions 1930). The last theme's resolutions concerned the importance of the study of architectural acoustics. Deliberations had been aided by representatives of the International Congress of Organists who, as acoustical experts, had been invited to participate. It was recommended that, in each country, a scientific laboratory should be set up for the purpose of facilitating advances in acoustics. Again, reflecting the contemporary phenomena of industrialization and urbanization, the resolution stressed the importance of good acoustics 'for efficacy in work and for sleep,' (XII Nemzetkozi Epiteszkongresszus, Resolutions 1930).

Theme III Intellectual Property

One of the sets of resolutions that emerged from the themed discussions called for more widespread and better protection for the intellectual property of architects. This was not a startlingly new development at the congress. The topic of intellectual property of architects had surfaced at several earlier conferences. It was one with which Totten, due to his regular attendance both at the planning sessions and congresses themselves, had become familiar. At

the 1900 Paris Congress, one of the resolutions called for the same protection for works of architecture as for other artistic works (Comte-rendu, 1900, XXXVI). In 1904 at the 6th Congress in Madrid, one of the themes was again the artistic property of works of architecture (Comte-rendu 1904, 138, 199). A resolution at the 8th Congress in Vienna read:

> "The 8th International Congress of Architects, Vienna 1908, remembering on the one hand the resolutions on copyright during the last thirty years… that the architectural design and all the drawings which compose it, together or separately, be protected by all governments and by all International Conventions in exactly the same fashion as is the case with other artistic work" (Comte-rendu 1908, 193).

In his review of the events at that particular conference, Totten mused later, "[Architectural copyright] is a subject of apparently greater importance in Europe than with us, or is it that we have not awakened to its importance?" (Comte-rendu 1908, 192).

The relevant 1930 resolutions are as follows:

Theme III. The protection of artistic property in architectures from the international perspective

1. The Congress expresses the view/wish that the rights of authors be extended in all the nations which have signed onto the Berne Convention and in uniform measure, in the case of transformations, additions and demolitions of parts of the buildings, that the complete demolition of a structure will not be authorized if it results in an indisputable, artistic loss.
2. That the special characteristics of either ideas or projects cannot be appropriated; but each nation, city or other authorities have the right of expropriation in the case where expropriation is rendered indispensable by the consideration of the community/public interest, of a social or national character. In that case, at least the author ought to be paid, as agreed upon by both parties, an amount decided upon by an independent tribunal, and the idea of a project can be used only for the purpose of the expropriation.
1. The protection of the right of authorship constituted by the Berne Convention should be placed under the protection and surveillance of the League of Nations (XII Nemzetkozi Epiteszkongresszus, Resolutions 1930).

The main significance of this 1866 Berne Convention was its creation of the Internal Copyright Union. Membership in this organization meant that that author-citizens of one country in the Union, even if they had not obtained a copyright in their own country, would be protected. In the event that the work was copied in any other Union country, they would be able to appear in courts of any other signatory nation to claim redress against the piracy (Solberg 1926, 88). Thorvald Solberg, the United States Registrar of Copyrights during the 1920's, described the significance of the new entity.

> "[T]he great advance secured among its signatories was that international copyright relations were no longer based upon a reciprocity which implied an exchange of exactly equal rights and privileges for the same term of protection, but that an author of one country of the Union was to be protected in all of the other countries of the Union by the copyright laws in force in each country" (Solberg 1926, 88).

A series of 'Berne-revision' conferences in Europe followed in the next several decades. Their purpose was to adjust the rules for replicating and transmitting cultural goods in light of newly-identified issues and problems. In Berlin 1908, architectural works were included explicitly under the Berne Copyright Union rules. A 1914 protocol held that the Union could refuse protection to citizens of nonmembers, such as those from the U.S., where the laws of

the home nation did not protect in sufficient manner the works of foreign artists. In Rome 1928, the union reaffirmed the 1914 protocol, but perhaps more significantly, inserted into the text a 'moral rights' clause.

Moral rights are a feature of European civil law that emerged first in France in the 19th century. As described by legal scholar Elizabeth Schere, this concept embodies the idea that "the author has a right over his creation that goes beyond exploitative rights; these rights are personal, nonpecuniary and inseparable from human rights. …" (2018, 775). These rights are derived from natural law. From this natural law source flow two rights: the right of paternity and the right of integrity. From paternity flows the author's inalienable right of deciding whether to claim authorship under his/her own name or to publish it anonymously or under a pseudonym. Even if an employer hires someone to create a work, the employer cannot 'own' the creation because the creation is linked to the individual and his core persona. The right of integrity protects the author's work from modification, damage or destruction. Moral rights are fundamental.

By the mid 1920's, most of the European and Commonwealth countries had signed onto Berne and thus became members of the International Copyright Union, but the United States had not. However, the Union did attempt to encourage United States' agreement by setting an August 1931 date before which a nonmember could join under the rules set at Berlin in 1908. After that, the post-Berlin stipulations, including those adopted at the Rome convention, would apply to new joiners. All to no avail, as far as the Americans were concerned. The United States, jealous of its own prerogatives, preferred to maintain its own bilateral and multilateral treaties of reciprocity regarding copyright which, during that period, it already had with more than 40 countries. In those arrangements, the copyright law applied in foreign courts would be the same as the law in the country in which the copyright was obtained originally, a significant difference from the workings of the Copyright Union.

Copyright

Upon his return from Budapest in autumn of 1930, Totten met with the American Institute of Architects in December to share his Hungarian experience. He praised the congress and its achievements, lectures and the kind hospitality of his Hungarian hosts (The Octagon 1930a, 7). In some detail and with approbation, he recounted the resolutions taken there. However, in presenting the resolutions regarding intellectual property, his generally positive tone shifted to one of criticism. Less than two years prior to the Budapest Congress, the International Copyright Convention had been held in Rome in 1928, a meeting of which Totten would have been well aware. This, coupled with his recent experience at the Congress, most certainly put copyright in the forefront of Totten's mind at this time.

Before the Board of Directors, he castigated the United States Congress for its lack of action in passing copyright legislation that would align U.S. law with the Berne international standards and for not joining the International Copyright Union. Not surprisingly, during his professional life, Totten had become well-acquainted with the copyright strengths and weaknesses in the United States. By 1930, he had received copyrights for a proposed suspension bridge and a proposed opera house, both in 1920, as well as his book on Mayan architecture in 1926. He stated: "previous [Architectural] Congresses have advocated copyright laws that would protect the artist (architects, painters and sculptors) with the same protection as that accorded authors. Some countries have such laws and this is not true in America.We do not even belong to the International Copyrights[sic] Union" (The Octagon

1930a, 7). He expressed some slight optimism, though, in noting approvingly that there was a particular Berne-adherence bill, most probably the so-called Vestal Bill which, at that time, was being considered in the U.S. House of Representatives (Columbia Law Review 1931). In the meantime, he suggested that the AIA should create a commission to formulate a standard letter requesting owners of buildings to employ the original architects for any alterations or enlargements. This, he said, would result 'in justice' to the original architect, as well as "a point of economy and efficiency to the owner" (The Octagon 1930a, 7).

In presenting his criticism to the AIA, Totten was speaking to professionals who would logically seem to have an interest in controlling their intellectual property through legal rules, although views might differ as to their exact form and extent. Architects generally had at least two major concerns, which ownership of their intellectual property could help address. First, copyright helps limit their exposure to tort liability. Second, another person's reuse of the plans without permission means that the architects receive no financial benefit from their investment of time and effort.

During this interwar period in the United States, only written plans could be copyrighted, not the resulting buildings. Owners of architect-designed buildings were completely free to modify and even tear down such structures as they wished. A copyright in architectural plans did not prohibit the unauthorized construction of the building depicted therein, according to numerous state and federal court opinions. Generally, AIA standard contracts were the modal form of establishing legal rights and remedies. Any legal protections, such as there were, was divided between the state and the federal governments. Several alternatives to copyright existed under both state and federal law (Washington Lee Law Review 1990). These included design patent law, unfair competition common law, trademark law, and the 'separability test' of copyright law. The concept of separability meant that a copyright could be obtained if the work's nonfunctional aspects existed independently from its functional aspects. These were often difficult to distinguish. Thus, architects in the United States did not rely primarily on copyright because of the other available options as well as the limited nature of copyright protections.

This complex, diverse web of laws resulted in a different, lower level of protection for architectural works than was required for membership the Berne-created International Copyright Union. In order for the United States to join, the United States Congress would have had to pass at least one extremely comprehensive or possibly several Berne adherence bills. These proposed laws would not only affect the architectural profession, but artists and creators of cultural property of all types, from graphic artists to jukebox operators, dressmakers, filmmakers, composers, flower arrangers, and writers. Any such bills would have to be built upon a consensus among all these very disparate groups with distinct and sometimes conflicting interests. Significantly, such bills would have had to recognize and enshrine European-style 'moral rights' in an individual's creations, as was mandated in the Rome 1928 revision conference.

Such Congressional action, however, had also to conform to the United States Constitution's clause in Article I, Sec. 8… "Congress shall have the power… To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries" (U. S. Constitution, art.1, sec. 8, cl. 8). The Constitution mandates that the purpose of copyright is utilitarian, not moral. Its stated purpose is to stimulate progress and creativity among others for the benefit of the public, not to embed natural rights in an individual's creation. The United States, unlike

European nations, did not grant paternity or integrity rights in any artistic work, the right of the work's current owner always predominating.

The interwar growth of overseas markets for U.S. cultural producers, however, did spur some serious American congressional attempts at conforming legislation. During the 1920's and 30's, Congress considered a number of bills called 'design legislation' (Solberg 1926, 68-11; Solberg 1930). These bills were aimed at legislating 'Berne' standards of copyright domestically. Although these initiatives continued into the 1930s, United States' efforts to craft Berne-adherent, domestic legislation waned considerably after the 1928 Berne revision conference in Rome provided 'moral rights' protection (Washington Lee Law Review 1990).

Some of these bills may have been supported or opposed by American architectural interests. However, if they were, their views were not very visible. The Register of Copyrights later noted "During the 73rd (1933-35), 74th (1935-37), 75th (1937-39), 76th (1939-41) and 77th (1941-43) Congresses, new Berne adherence bills were introduced, which would also have protected works of architecture. Yet, "no witnesses on behalf of architectural interests appeared, nor does there appear to have been any reference to the issue in the numerous committee reports" (Oman 1989, 84). Issues of amplifying copyright protections hardly appear to have been a major concern of the profession in the late 1920's and 1930's, if one examines the official journal and the various reports of the state chapters of the profession in The Octagon. This, despite the fact that the United States had always fallen short of Berne standards with respect to architectural copyright.

In 1926, the AIA did commission a special committee to discuss and make recommendations for H.R. 10434, a Berne revision bill. This bill dealt with copyrights of works of art, sculpture, music, motion picture, plays photography, scenarios, dramatic compositions, lectures, maps as well as works of architecture, models, or designs for architectural work (U.S. House of Representatives1926). The Executive Committee of the AIA, acting for the Board of Directors, resolved 'in principle' to accept the changes suggested by the special committee and authorized it to convey endorsement of the Institute to Congress (AIA Journal 1927). However, this appears never to have been sent (Berenbak 2019).

According to AIA records, at a May 1931 meeting of the AIA Executive Committee Board of Directors, correspondence regarding and the report and text of pending, Congressional legislation HR 11852, another design bill, was presented. This legislation had been referred to the Committee on Allied Arts, chaired by J. Monroe Hewlett. His committee was charged with preparing a report, which it failed to do. Hewlett stated, "as a result of my investigation, it would seem that this is a most desirable measure—not so much in the interest of architects and other professional artists but in the interest of those engaged in commercial art and design, which is at present suffering greatly from the general practice of pirating" (The Octagon 1931b, 18). Primarily out of consideration for these fellow artists, he urged that the Institute put itself on record as supporting the measures in the bill. When President Robert Kohn informed the group that the bill in question had never made it through the legislative process, the group resolved nonetheless to approve only 'the principles' set forth in that particular bill, should similar provisions be present in future legislation.

It was not only architects, but other American cultural producers as well, who were wary about joining the union, due to the substantive differences between the Berne rules and existing American copyright law. These included shoe and clothing manufacturers, the American Authors League, the American Federation of the Arts, and pinball manufacturers, just to name a few. One size did not definitely fit all and agreement on the best approaches was

elusive. Indeed, a few years later, a promising 1935 bill failed due to the many divergent views about their interests among the many types of artists (Patry 1994).

Why was the American architectural community so diffident on the issue, even after the recommendations of multiple architectural congresses, as well as Totten's emphatic address to the AIA? One possible answer may have been identified by Totten himself; i.e. American architects' lack of interest in international perspectives and engagement. Stated Totten, "it's a pity that American architects have not grasped the importance, the pleasure and the profit to be gained from these international gatherings…" (The Octagon 1930a, 7). Another possible explanation is that, during the 1930's, the AIA simply lacked the resources to press its interests on Capitol Hill. In 1933, The Octagon reported that "the architectural profession is confronted with an economic crisis which with respect to the personal fortunes of architects has many similarities to the war crisis 16 years before. The Institute finds it must operate with drastically reduced incomes…" (Octagon 1933, 3). During the 1930's the institute's staff consisted of only an executive secretary, two stenographers and a junior clerk. Board of Directors as well as Executive Committee meetings were held more infrequently than in earlier years. At least one annual convention was cancelled, and others were held with reduced attendance and budgets. State chapters would have had even fewer resources for operating and lobbying in their state capitals and Washington, D.C.

Copyright scholar Raphael Winick attributes the reluctance of the United States to join the Berne Union to the "policy objective" of American copyright law which was of particular relevance to those in the architectural field (1992, 1602). As noted above, American intellectual property centers on the benefit to the public, not the artists. Its purpose is to spur creativity and innovation. Winick maintains that architects are right to be suspicious of copyright reforms such as the International Copyright Union required. Architects rarely come up with entirely novel designs, instead drawing upon the 'architectural vocabulary' of many centuries, both domestic and international. The key difficulty for lawmakers is "determining at what point the novel recombination of pre-existing ideas should constitute protectable artistic expression." (Winick 1992, 1605). AIA architect Hewlett's comments, asserting that the protection offered by one of the design bills was more relevant to those in the commercial art world than to architects, illustrates this unease about the proposed legislation. British-born, American architect Leon Victor Solon, commenting in 1926 on one of the Congressional design bills, expressed similar concerns. Despite acknowledging the commonplace 'filching' of architectural features, he wrote, "It is apparently impossible to define the constituent elements of an original architectural design, in such fashion that a protective boundary might be described around it by law… when technicalities and abstract quantities have been cleverly postulated by experts holding conflicting views [at trial], confusion of the court and lay jury is sure to result" (The Architectural Record 1926, 392-393). Instead, he recommended a 'hybrid' remedy: a panel of impartial architects should act as a jury to hear the dispute and, if the offender was 'convicted,' he should lose his practicing privileges under state charters.

Totten himself, like the American profession more generally, did not seem to focus on the problem of architectural copyright in the 1930s, despite his comments after returning from Budapest. However, he did propose one organizational change at the AIA, which seemed to indicate his desire to see the views of domestic and European architects draw more closely together. In December, shortly after returning from Budapest, Totten, still as head of the American section of the CPIA, approached the AIA leadership. He invited the Secretary and President of the AIA to take on the role of ex officio members of the Permanent Committee of

the CPIA. Such a resolution was passed by the Board of Directors, which subsequently requested that the President appoint a special committee to cooperate with the American Section of the CPIA (The Octagon 1930b, 19). This proposal reflected clearly Totten's desire to make the AIA more engaged with CPIA activities around the world through joint meetings of the two groups, as well as perhaps harmonize AIA's policy priorities with those of the international body which had long advocated Berne adhesion.

By the 1930's, Totten, despite his advancing age, was very much occupied professionally. In June of 1932, still as Secretary of the American Section, he attended the Permanent Committee meeting in Paris and, from there, travelled on to Scotland to study Gothic church architecture. Also in 1932, he became President of the Washington, D.C. chapter of the AIA which occupied much of his time. In 1935, he took on the even bigger role of the Secretary of the CPIA in Paris. During the thirties, he was also involved deeply in two huge architectural projects, designing the Newark, New Jersey federal building as well as the post office in Waterbury, Connecticut. In more unpleasant matters, he became engaged in an ongoing battle over the design of the Calvert Street Bridge (Evening Star 1933, A2). In 1904 he had created the design for an arched masonry bridge for the Committee on Fine Arts (CFA) which, as a result, owned the rights. However, the bridge was not built immediately. In the 1930's, the CFA, despite owning Totten's design, decided to hold a bridge design competition for the long-delayed project. Philadelphia Architect Paul Pret's design was chosen. This proved galling to Totten. He also became engaged in a dispute with the executor of Henderson's will, George Edelin. The District of Columbia's zoning board was considering raising the legal height of buildings. Totten claimed that Henderson, desirous of preserving the low-profile character of the area, would never have countenanced this in the areas that the two of them had developed together. The executor claimed the architect's opposition was driven by financial motives, which Totten denied strenuously (Evening Star 1933). Totten also travelled back and forth to the Midwest to help plan a structure for Chicago's "The Colony of Progress, International Exposition" in 1933-1934. There he superintended the erection of a special building in the form of an Egyptian Temple boasting early Egyptian colors. An intensive study of relevant works on Egypt at the Library of Congress helped prepare him for this project (Totten III 2002).

As busy and productive as Totten was in the 1930's, the depression eventually took its toll. According to his son, "As the depression went on and on, he lost tremendous money every year and the depression didn't get over…So he was losing money and he couldn't afford his office downtown" (Totten III 2002). In fact, in 1938, just a year before his father's death, his son recounts that the Tottens lost their own home as well as an attached apartment due to financial straits (Totten III 2002).

Either due to his many projects, lack of funds or advancing age, Totten, although appointed again, did not attend the 13th International Congress in Rome in September 1935, an absence that was noted by his many colleagues throughout the world. However, he did attend the pre-conference planning meeting in Paris where the themes for the congress were chosen. Again, universal adoption of the Berne standards was selected as one of the core topics to be discussed, most likely with Totten's support. Despite Totten's absence at the congress itself, this conference too resolved to continue to press the case for Berne adherence for all countries, even supporting a special committee within the CPIA for the study of this "vital subject in its application in all countries, with instructions to report to the next Congress a form of law for suggested adoption by all countries…" (The Octagon 1935, 3).

After the Rome convention, C.C. Zantzinger, an AIA fellow who had attended, corresponded with Totten. Wrote Zantziger "…[after returning from Rome] my first thought is to write you a report of all that transpired, knowing your personal interest and your great regret at being unable to attend for the first time in many years. You were indeed very much missed, not only by the American delegates but by your many friends amongst the foreigners from whom I bring you messages. Indeed, inquiries for you were continuous throughout the period of the Congress." (Zantziger, 1935, 3). He credited Totten with his "active work in keeping the International Congress in the minds of the profession in the United States…" (Zantziger 1935, 3).

Totten passed away in February 1939 after a 'six months illness' (Evening Star 1939, A14).

Ultimately neither Totten's efforts nor the CPIA's resolutions succeeded in spurring the American Institute of Architects' active involvement on Berne adherence during his lifetime, providing a case-specific answer to the broader inquiry posed by Lohr. (Indeed, the United States did not join the Berne Union until 1988). Even if the AIA had lobbied vigorously for Berne-conforming legislation, such legislation would have been unlikely to have been passed in the 1930's, given the diversity of interests among the many types of American cultural producers. Why Totten felt more strongly about this issue than most of his American peers is unknown. No evidence exists to show he was affected personally by any European architect or builder copying his designs or the buildings themselves. Neither did he express any definite interest in asserting the legal, 'moral rights' protection offered by Berne, although his suggestion that such protection be done through private arrangements might indicate such a view. Nevertheless, this energetic, multitalented American architect was a 'citizen of the world.' Perhaps he believed in a more globally-consistent system of regulation as symbolically important, one that would help to bind the profession more tightly together. Whatever his motivation, on this or any other architectural matter, during his professional career he stands out among all American members of the CPIA for his dedication to the organization, serving as an important link between it and the architectural profession in the United States.

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The UNODC and the Human Rights Approach to Human Trafficking: Explaining the Organizational (Mis)Fit

by Jean-Pierre Murray

There has been intensive debate about the framing of human trafficking with scholars such as Janie Chuang and Elizabeth Bruch arguing it was ill-conceived to treat a predominantly human rights issue in a Protocol to the Convention on Organized Crime, under the aegis of the United Nations Office on Drugs and Crime (UNODC). This paper explores the alleged organizational misfit and addresses whether it has been detrimental to the pursuit of a human rights frame. The paper uses a functionalist theoretical lens in conjunction with theories of IGO bureaucracies to examine the creation and evolution of functional organizations to respond to global transformations. The case study uses primary and secondary sources to trace the emergence of trafficking as an agenda item contextualized in broader developments in organized crime, as well as the creation of the UNODC to facilitate a coordinated response. It explores factors shaping the organization and its agenda, and assesses its suitability for addressing trafficking-related human rights issues. The UNODC is presented as an example of dynamic organizational changes indispensable to the ever-changing global governance sphere. An examination of its pursuit of a human rights frame for trafficking demonstrates how organizations shape their own agendas and adapt to suit new contexts and issues with which they deal.

Introduction

Human trafficking, long considered an issue falling under international human rights law, was dramatically framed as of the mid-1990s as a form of transnational organized crime requiring law enforcement and criminal justice responses. This frame is however contested, and critics ranging from scholars to Non-governmental Organizations (NGOs) and Inter-governmental Organizations (IGOs) have decried the lack of attention to the significant human rights abuses directly associated with human trafficking. Furthermore, there is well-founded concern that it was ill-conceived to treat a human rights issue in a Protocol to the Convention on Transnational Organized Crime, under the aegis of an office whose primary responsibilities are crime prevention and drug control – the United Nations Office on Drugs and Crime (UNODC).

This paper sets out to investigate the assumption that there is an organizational misfit which would be detrimental to the pursuit of a human rights frame. Starting with a functionalist theoretical framework, and engaging with theories of IGO agency – in particular, IGO bureaucracies – this paper demonstrates how the UNODC emerged as an actor almost simultaneously with the emergence of transnational crime as a salient issue on the international agenda. Firstly, the paper reviews the literature on functionalism, then seeks to place the framing of trafficking into the broader context of developments in organized crime in the late 1980s through to the 1990s. This is followed by an analysis of the agenda-setting and issue framing which ultimately brought human trafficking on the agenda of transnational

organized crime. It is argued that contrary to the assumption that trafficking was reframed as a criminal justice rather than human rights issue, there had always been a dual frame of trafficking with one or the other being emphasized depending on the context. The remaining sections of the paper explore the organizational development that led to the creation of the UNODC, and by focusing on the factors driving this organizational development, the paper ultimately assesses the appropriateness of the organization for the human rights approach to human trafficking.

Review of Functionalism

The literature on functionalism paints a picture of a theory that has already seen its apical days and has declined in relevance. Works largely coalesce around two key authors and two major processes of international organization in the 20th century. The work of David Mitrany serves as an illustration of traditional functionalism which has largely focused on the processes of international organization linked to the specialized agencies of the United Nations System and its predecessor, the League of Nations, and the pacifying effects they have on international relations. Neofunctionalism leans heavily on the writings of Ernst Haas and was closely linked to the unification of Western Europe. Consequently, it has dealt predominantly with questions of regional integration, proposing that through functional cooperation issue entanglements result in spill over into other domains leading to both wider and deeper integration. The linchpins of these two schools are the notions that international organizations are desired for their function, that their design flows organically from function, and that they will socialize states into cooperating in an increasing number of issue areas, which ultimately will lock them into peaceful interdependence.

However, although there seemed to have been a spike in the use of functionalism since the 1950s, interest in the theory has waned since the latter decade of the 20th century. In fact, whereas comprehensive texts on International Organizations argue that functionalism is a core theory, they dedicate very little space to exploring it and invariably focus on Mitrany and Haas without evoking other scholars who have contributed to this theory (Archer 2014; Barkin 2015; Karns, Mingst and Stiles 2015). This may be the result of a chronic dependence on these works in the literature in general.

Key Propositions of Functionalism and Neo-functionalism

There are two broad approaches which may be called traditional functionalism and neofunctionalism. Functional international organization is a process that arises from the growing incapacity of the state to respond to all the welfare demands of its population, as well as from the opportunities which technology presents for cooperation (Mitrany 1948, 1966; Goldmann 2002). Starting with economic and social issues and ignoring the political issues, functional organizations would be apolitical and would offer technical solutions to technical problems (Mitrany 1948, 1966; Goldmann 2002; Barkin 2015; Karns, Mingst and Stiles 2015). Ultimately, through the web of functional international organizations (peace by pieces) and through the bureaucratic spill overs (peace by planning), a ripple effect will result in ever widening cooperation, and increase peaceful relations (Kihl 1963; Mitrany 1966).

Traditional functionalism has at least four key propositions. Firstly, states create international organizations because there is a need for functional governance, which is a kind of deterritorialization of welfare-creating functions, linking authority to specific activities performed by specialized institutions rather than by national governments within sovereign

territories (Mitrany 1948, 1966; Taylor and Groom 1975). Functionalism followed a technical demand for international governance and proposed that technical institutions would become agenda centers for advancing functional integration (Barkin 2015). Secondly, there is the principle of action and performance, based on the idea that international organizations facilitate peace through coactivity of states rather than through coexistence. The organizations matter because they perform some well-needed action, and are supposedly effective because they use technical expertise to tackle specific technical problems (Mitrany 1948, 1966; Haas 1964; Taylor and Groom 1975; Kim 1984). Thirdly, there is the principle of natural selection of common interest whereby international organizations are developed around common interests rather than politically divisive issues, creating the proper means of attaining particular end goals. Thus, the mandate of the organization is dependent on the problem at hand (Mitrany 1948, 1966; Taylor and Groom 1975; Jacobson, Reisinger and Mathers 1986). Finally, there is the principle of technical self-determination – form follows function. Functional action will naturally lead to the formation of the kind of institutional machinery it requires – structure and procedure evolve from the function of the organization (Mitrany 1948, 1966; Taylor and Groom 1975; Kim 1984).

Neofunctionalism, however, is sceptical of the apolitical nature of traditional functionalism and suggests that functional organizations deal with both technical and political problems. Cooperation in areas of common interest spills over into other areas and ultimately leads to the formation of a political community (Haas 1964; Heathcote 1975; Moravcsik 2005). Functional integration is a product of interest politics – states construct an idea of "the common good" based on individual interests, and try to find convergences among these interests. Therefore, functional cooperation does not always arise in an easily identifiable technical area since issues are often contested and defining the problem is a political process of interacting and competing interests. Governance patterns can evolve within existing organizational structures without necessarily resulting in new organizations, and organizations can also take political leadership in shaping the process of integration and determining the areas for further cooperation (Haas 1964; Barkin 2015).

Recognizing that cooperation could still be a contested space, neo-functionalism suggests that integration should start with social and economic tasks first and it would gradually spill-over into the political. Incremental decision-making takes priority over grand designs, and as cooperation takes place in narrow issue areas, more controversial, system-transforming policies emerge, and may ultimately result in the emergence of a new central authority (Haas 1971). This was certainly the case with European integration which started with cooperation in the areas of coal and steel, and subsequently spilled over into areas such as agriculture and trade. Institutional structures such as those of the European Community and their decision-making processes provided frameworks for elite behavior, including both political actors and civil servants. Integration was centred around a procedural consensus which allowed states, civil society actors, and institutions to pursue their interests through commonly agreed upon frameworks. Another key point is that civil society actors could now pursue their interests at the international or supranational level through these organizations, rather than just lobbying their national governments (Haas 1964, 1971; Nye 1971; Heathcote 1975; Taylor 1983).

Functionalism in Practice

Whereas there was a systemic, constitutional dimension to the United Nations system (Onuf 1994; Ikenberry 1998), there was also more generally a clear functionalist logic in the development of IGOs in the 20th century. Most took on functionalist economic tasks, consistent with the logic of tackling the social and economic tasks first. There was also an increase in the number of special purpose organizations, as well as organizations emanating from already existing organizations, which suggested that there was functional intensification and specialization (Shanks, Jacobson and Kaplan 1996). Functional programmes within the UN experienced steady enlargement and diversification (Claude 1971; Luard 1983; Kim 1984). Furthermore, membership in IGOs seemed to have welfare increasing effects as well as pacifying effects on state interactions (Jacobson, Reisinger and Mathers 1986). In fact, not only does membership in IGOs result in a greater likelihood of peace, but also pacific relations encourage greater participation in IGOs (Russett, Oneal and Davis 1998). However, this has not been tested more recently since this latter work which was still largely focused on the late 1950s to the mid-1980s.

Functional organizations seemed to be more effective because of the attitudinal changes that they caused, the cooperation that they engendered, and the possibility they presented for avoiding political conflicts (Kim 1984; Malenfant 2001). It was the functional specialized agencies of the League of Nations which saved the reputation of the organization when it collapsed, supposedly because of their effectiveness in carrying out their functions, and they served as practical tests of the idea that form follows function (Claude 1971; Ghebali 1975). However, specialized agencies in the UN system, while staying true to their functional goals, have not significantly contributed to further integration because their functional tasks have become ends in themselves, rather than means to spill over into broader integration (Weiss and Siotis, 1975). Furthermore, there is concern about lack of coordination, as well as significant overlaps in some areas which result in an ineffective and inefficient distribution of resources in the UN system (Claude 1971; Luard 1983; Barkin 2015). This could be a potential drawback with regards to the touted effectiveness of functional cooperation. Furthermore, there may still be concerns about the concrete functions of these organizations which may have seen a relative increase in their authority, but remain "largely confined to helping governments to help themselves and encouraging governments to help each other" (Claude 1971, 395).

Criticisms of Functionalism and Gaps in the Literature

Functionalism appears to have several flaws, which may or may not explain the apparent decline in its usage since the 1990s. Firstly, the process of gradual integration through spill-over was not as automatic as anticipated and has not always translated into the kind of political cooperation that was seen as the end result (Luard 1983; Malenfant 2001; Karns, Mingst and Stiles 2015). In fact, seamless integration was not evident in the European case, contrary to the predictions of the theory. Rather there was a series of stops and starts, and pushbacks from states that feared deeper integration would lead to loss of autonomy to supranational institutions. This reality later led Haas to modify his theorizing on “spillover”, and coin terms such as “spill back” to explain this pushback from states that led to a reversal of integration in some cases; “and spill-around” to explain how cooperation didn’t automatically spillover into challenging areas such as a common defence policy in Europe, but that rather it bypassed these areas and continued in less controversial ones (Heathcote 1975; Moravcsik 2005). One author asked: “if economic and social organization is indeed the horse, can it in fact pull the political cart?” while arguing that a functional order cannot guarantee “that one thing leads to another inexorably and interminably in international relations” (Claude 1971, 389).

Furthermore, functional international organizations, particularly the UN specialized agencies, are increasingly politicized. Despite the assumption that they are apolitical, even proponents of functionalism such as Haas recognize that politics within them is inevitable (Haas 1971; Moravcsik 2005). In fact, the most widely held critique in the literature is that the supposed separability of human activity into the political and the functional does not hold true in international organization (Kihl 1963; Haas 1964; Malenfant 2001; Barkin 2015; Karns, Mingst and Stiles 2015). Politics is such an important feature that “functional activity is more dependent on the political weather than determinative of the political weather” (Claude 1971, 407).

Functionalism may have been intended to remedy virulent nationalism, however it has only somewhat mediated rather than bring an end to strong territorial links, sovereignty and nationalism, and how these play out in cooperation and integration. Although Mitrany (1948, 1966) proposes that functionalism will cause people to identify less and less with national identities and transfer their loyalties to the international organizations which provide welfare benefits, there is evidence to the contrary (Moravcsik 2005; Archer 2014; Karns, Mingst and Stiles 2015). In the case of the European Union, a response to deeper integration has been a strong sentiment of nationalism, and a renewal of revindications of national autonomy in policy-making. This runs parallel to the emergence of a shared – albeit weak – EU identity. In fact, Moravcsik (2005) argues that the major debate facing the EU is not how to foster deeper integration, but rather where to stop it, as there is fear of further deepening.

Finally, functionalism is relatively silent on organizational design, and while proposing that form follows function, it does not say much about the kinds of institutional structures that might be appropriate to particular functions. It is assumed that the specific functions of the organization will determine the form, but this is not sufficiently developed. Related to this question of institutional structure and mandates of the organizations, Karns (2000) highlights the need for exploring other factors such as how the ageing of organizations could affect their functions; or the impact that ballooning bureaucracies have on the effectiveness of organizations; or how agendas of organizations have broadened beyond their original functions.

Functionalism and Organizational Progeny – IO Bureaucracies and Emanations

Organizational theories are a useful complement to functionalism and offer insights into the behaviour of IOs from considering them as bureaucracies. Bureaucracies can be powerful actors to the extent that they shape the world by creating new categories of actors, forming new interests, providing common definitions for shared international tasks, and disseminating models of social organization. Power here is understood as the way social relations can shape the capabilities of actors to influence their own circumstances or the circumstances of others (Barnett and Finnemore 1999, 2004). Bureaucracies are influential at three levels – input where they shape policies and create norms, outcome in terms of concrete decisions and interventions, and impact, whether on state behavior or target populations (Biermann et al. 2009). They are also more influential depending on their level of autonomy or the level of discretion allowed by IO principals in delegating roles and functions to them (Johnson and Urpelainen 2014).

As IGO bureaucracies become more autonomous they develop generative power to create new actors, interests, and goals (Barnett and Finnemore 1999, 2004; Hawkins et al. 2006). IGO bureaucracies can and do create new organizations. These organizations born from other IGOs are called emanations (Shanks, Jacobson and Kaplan 1996) or progenies, and the whole process of producing new organizations is termed as organizational progeny (Johnson 2014). In fact, there has been a proliferation of IGOs since the second World War, most of which have been created by other IGOs rather than through treaties negotiated by states (Shanks, Jacobson and Kaplan 1996). This is consistent with functionalist ideas of international organizations having increasing influence in the issue areas in which they operate, but also spreading this influence by spilling over into other issue areas, thus creating new mechanisms, frameworks, fora, and institutions in which to cooperate in solving technical problems (Mitrany 1948; Haas 1964, 1971). Progenies, thereby created, seem to be more flexible – they are created at a much faster rate than traditional IGOs and they also die or change more rapidly. Bureaucrats in these organizations have much more influence in the design of emanations, actively participate in creating them, and may even put mechanisms in place to increase the organization's autonomy vis-à-vis states (Johnson 2014).

Driven by their functions, but also by self-preservation, and their own interests, bureaucracies shape agendas of the organizations they create and constitute, as well as of other organizations. In doing so, they provide definitions and classifications of problems. Bureaucracies can extend organizational mandates, and also often propose competing or contrasting frames to the dominant ones held by states. IO bureaucracies are also powerful because of the way they fix meanings and diffuse norms. They exercise power in classifying the world, creating new social categories and defining problems (Barnett and Finnemore 2004; Oestreich 2007).

Therefore, while exploring the continued utility of functionalism, organizational theories provide a useful complement for filling knowledge gaps about the context which drives the emergence and evolution of functional organizations; how issues arrive on their agendas; how they adapt to suit these changing issues; and the role bureaucracies play in shaping their functions. This combined theoretical frame will be used in assessing the UNODC's organizational (mis)fit for dealing with human rights related aspects of human trafficking.

Methodology

This paper uses a case study to test the suitability of the United Nations Office on Drugs and Crime for a human rights approach to human trafficking. Desk research was conducted, and the researcher consulted a combination of primary and secondary sources in order to trace both the emergence of human trafficking as an agenda item in the United Nations system, and the creation of the United Nations Office on Drugs and Crime under whose purview the issue of trafficking falls.

Having traced the emergence and framing of trafficking using secondary sources, this research examined how the UNODC was formed from functional commissions and their subsidiaries which were created to deal with issues of crime and criminal justice as well as drug control. A key component of the study was an examination of the factors driving organizational change. Document analysis was used, particularly of UN resolutions, reports, and accounts contained in UN Yearbooks to identify references needed for resources or for strengthening the relevant agencies.

Similarly, this research traced the presence of human rights in the work of the programmes which eventually formed the UNODC to identify whether a criminal approach to trafficking as contained in the Convention on Transnational Organized Crime precluded the organization from being sensitive to and responding to the need for a human rights frame.

The analysis derived from consulting these sources was compared with other factors such as the external pressures from other IGOs and NGOs, as well as competition from other IGOs in the issue area. This was used to explain whether the organization could adapt to suit the functions it was being called upon to execute, or whether it was ultimately unsuitable, and therefore a functional misfit.

Developments in Transnational Organized Crime and the Framing of Human Trafficking

The Dark Side of Globalization: Crime Across Borders

Globalization, trade liberalization, advances in technology and increased mobility have had fundamental effects on transnational flows. Parallel to the licit flows of goods and services in the formal economy, an informal economy emerged, fuelled by transnational actors capitalizing on the increased openness and facility of travel in order to move illicit goods across borders (Berdal and Serrano 2002). These actors operated through networks which sought profit to finance criminal activities including but not limited to terrorism and insurgency (Shelley 2010). This dark side of globalization and the networked operations of related actors were labelled as transnational organized crime and linked to drug trafficking, money laundering, and human trafficking (Miko 2007; Shelley 2010; Roth 2013).

The scale and scope of transnational organized crime expanded significantly in the latter decades of the twentieth century, totalling some $600 billion per year in revenue globally. The fall of the Soviet Union had a significant impact in Europe where massive immigration, the Balkan conflicts, and the resulting instability provided opportunities for narcotics, sex trafficking, arms smuggling and other forms of criminality. New markets in crime emerged, which threatened social order and social peace. From money laundering and corruption in the Middle East to the war on drugs in the Americas, to spikes in gun-related crimes linked to arms trafficking, there was widespread concern about organized crime. Furthermore, terrorist activities including the 1993 bombing of the World Trade Center and the federal building in Oklahoma City in 1995, raised international concerns of the growing transnational networks of criminal activity which posed unsettling new threats to states (Andreas 2002; Berdal and Serrano 2002; Köppel and Székely 2002; Taylor 2002).

The UN at the Core of International Concern about Organized Crime

The United Nations (UN) has played a pivotal role in shaping policy and discourse around transnational organized crime. Since 1955 it has organized quinquennial crime conferences, (United Nations Office on Drugs and Crime 2010), and provided the language and framework that have shaped thinking about crime and the corresponding norms and standards (Clark 1994). The Crime Prevention and Criminal Justice Branch in Vienna has primary responsibility for conducting Trends in Crime Surveys and disseminating reports (United Nations Office on Drugs and Crime 2017). Through these surveys and reports, the UN developed classifications of crime and shaped what was labelled as crime and what was excluded.

The term transnational organized crime was initially coined by the United Nations Crime Prevention and Criminal Justice Branch in 1974 to guide discussion at the United Nations Crime Congress of 1975 (Roth 2013). It was at this Congress that crime was first framed as a business, paving the way for further conceptualizing organized crime. Subsequently, at the 1985 Congress the Milan Plan of Action was developed, and it expressly included measures against organized crime and the need for strengthening international cooperation in this area (Vetere 1995). UN Secretary General Boutros Boutros-Ghali in his message to the Crime Congress of 1990 highlighted the need to examine key problems such as "terrorism, organized crime and corruption" (United Nations 1991, 698). The Congress proposed inter alia international cooperative arrangements to tackle the transnational dimensions of organized crime (United Nations 1991, 701). This was taken up by the UN General Assembly which underscored the increasingly transnational character and dimension of crime, and the resultant need for concerted international action (United Nations 1991, 704).

The year 1994 was a culminating moment for transnational organized crime on the international agenda, following the 1993 bombing of the World Trade Centre. The UN organized the International Conference on Prevention and Controlling Money Laundering and the Use of the Proceeds of Crime: A Global Approach; and the World Ministerial Conference on Organized Transnational Crime drafted the Global Action Plan Against Organized Transnational Crime. In addition, there were regional conferences in Europe, South Asia, and in the Americas where there was both a hemispheric conference and a conference in Central America, all focusing on drugs and organized crime (United Nations 1995). President Bill Clinton subsequently labelled transnational organized crime as a global security threat in 1995 with two major speeches at the United Nations, as well as at the G7 summit of 1995 where the label gained traction among European powers (National Research Council, Petrie and Reuter 1999; Charnysh, Lloyd and Simmons 2014). Organized crime accordingly became a highly salient issue and was an increasingly prominent reference in the UN system, especially in the General Assembly and Economic and Social Council (ECOSOC) (United Nations 1995, 1996, 1997, 1998).

Early definitions of transnational organized crime by the Crime Prevention and Criminal Justice Branch listed "criminality associated with migration" as one form of organized crime, without specific reference to human trafficking (National Research Council, Petrie and Reuter 1999, 7). Not surprisingly, there was an attempt to refine the definition of organized crime even as the variety of issues under consideration expanded significantly. The UN General Assembly provided an updated definition of transnational organized crime as: "offenses whose inception, prevention and/or direct effect or indirect effects involved more than one country" (United Nations Office on Drugs and Crime 2002, 2). This time, trafficking in persons was explicitly included on the list of transnational organized crimes, among others such as terrorist activities, sea piracy, and illicit arms trafficking.

Setting the Agenda – States, IGOs, and NGOs

Although there had been several international agreements about trafficking during the twentieth century, concern about human trafficking was not widespread and did not become a core issue on national and international agendas until the early 1990s (Gallagher 2010). The World Ministerial Conference on Transnational Organized Crime in 1994 marked a significant turning point in the antitrafficking regime. The issue came on the agenda because of efforts from a cross-section of state actors, NGOs, and IGO initiatives. NGOs such as Global

Alliance against Trafficking of Women, as well as states such as the United States (concerned about violence against women and girls) and Argentina (seeking to curb trafficking in minors) echoed the call for a focus on trafficking in persons. Feminist movements also played an instrumental role in this, primarily motivated by a moral desire to abolish prostitution, and somehow linked this to the increased feminization of migration. This resonated with puritan values in Western countries such as the United States and was stoked by fears of disease transmission through prostitution in the wake of the HIV/AIDS epidemic (Sharma 2005; Gallagher 2010; Shelley 2010; Charnysh, Lloyd and Simmons 2014).

IGO bureaucracies, through their influence in shaping conference agendas, also contributed to elevating human trafficking on the international agenda. The Commission on Crime Prevention and Criminal Justice which had primary responsibility for preparing the UN Crime Congresses, used this opportunity to highlight traffic in minors as a priority issue on the agenda of the 1995 Congress. The Commission justified this move by referring to the fact that states in the Americas had already been considering this as a problem area worthy of international attention, and had adopted, in 1994, the Inter-American Convention on International Trafficking of Minors (United Nations 1995, 1150). The Congress consequently adopted the agenda item and called for international cooperation and extensive research on organized crime and their links with drugs, arms trafficking, and international trafficking in minors (United Nations 1996, 1133).

Subsequently, human trafficking rose to the agenda of other IGOs including United Nations Children's Fund (UNICEF) and International Organization for Migration (IOM), and regional organizations in Europe and the Americas (Gallagher 2010). For example, the World Congress against Commercial Sexual Exploitation of Children was organized by Sweden in 1995, while Latin American and Caribbean States held a Regional Ministerial Workshop focusing specifically on international trafficking in children (United Nations 1997, 1034–35). These developments led to increasing linkages between trafficking in persons – not just minors – and organized crime. So much so that when the Expert Group on Transnational Organized Crime was set up to draft a framework convention, these linkages figured prominently. As an illustration of the decidedly salient space which trafficking came to occupy on the transnational organized crime agenda, Poland's proposal of the draft framework convention trafficking in persons. Furthermore, the United States' response to this framework convention also explicitly listed trafficking in persons as a form of transnational organized crime (United Nations 1998, 11325–35).

Framing: Human Rights Versus Criminal Justice Tension

Framing human trafficking as a criminal offense was not a new phenomenon in the 1990s. Since the early 20th century, multilateral agreements such as the 1904 Convention against White Slavery, the 1949 Convention for the Suppression of Traffic in Persons and Exploitation of the Prostitution of Others, and the 1979 Convention on the Elimination of Discrimination against Women and Children (CEDAW), had all emphasized the criminal side of human trafficking activities. Notwithstanding, these texts were all sources of international human rights law (Chuang 1998; Bruch 2004; Gallagher 2010). For example, although the United Nations established an ad hoc Advisory Committee of Experts to treat the issue of crime prevention in 1950, the 1949 convention was not addressed by this committee nor was it on the agenda at the corresponding quintennial Crime Congresses (Clark 1994). Thus, despite the strong focus on criminalizing the act of trafficking, the human rights frame enjoyed greater

traction, and therefore, trafficking was treated as primarily a subject for international human rights law. It was not until the 1994 Conference on Organized Transnational Crime that the emphasis shifted from the human rights frame, as trafficking became a more salient issue in the domain of international criminal law, especially after being listed as a form of transnational organized crime in the UN Crime Trends Survey in the previous decade (Gallagher 2010).

Human rights was the salient frame for human trafficking in international fora prior to the mid-1990s. There had been significant growth in human rights law since the 1970s. Advocacy groups had secured increasing influence on both the development of these laws and their implementation especially since this participation could, by some boomerang effect put pressure on states to act (Charnysh, Lloyd and Simmons 2014). Regarding human trafficking specifically, there was an overwhelming response from the NGO community, especially the Global Alliance Against Trafficking in Women (GAATW) and from a coalition of intergovernmental agencies (United Nations High Commissioner for Human Rights (UNHCHR), UNICEF, IOM, United Nations High Commissioner for Refugees (UNHCR)) known as the Inter-Agency Group. They were especially instrumental in lobbying for a strong human rights focus when examining the draft Protocols on Smuggling and Trafficking (Gallagher 2010; Gómez-Mera 2016).

The human rights frame was also a salient aspect of debates in the Third Committee of the UNGA – the Social, Humanitarian and Cultural Committee (SOCHUM) – as they elaborated resolutions on human trafficking. However, the criminal frame seemed to resonate more with member states concerned about the potential threat of trafficking to state authority and security (Charnysh, Lloyd and Simmons 2014). In a context of unbridled transnationalization of crime, states became more concerned about criminalizing trafficking than about protecting the victims. It certainly didn't help that the issue was raised in a forum on transnational organized crime which arguably narrowed the debate and provided a cognitive frame for those drafting the convention and protocols. Lloyd and Simmons (2014) demonstrate that there was acute convergence of norms regarding the legal response to trafficking. Linking human trafficking to transnational organized crime roused widespread support from governments who were more than willing to criminalize it, which explains how the criminal frame as opposed to the human rights frame came to be emphasized in creating a binding convention.

Therefore, human trafficking became an issue in international criminal law and was treated in the Protocol to Prevent, Suppress and Punish Trafficking in Persons (Palermo Protocol) which came into force in 2003, under the aegis of the United Nations Office on Drugs and Crime (UNODC) (Gallagher 2010). This was viewed as a defeat for the human rights frame particularly because the Protocol created legally binding obligations for states to prosecute perpetrators, while only using recommendatory, non-binding language with regards to protection of the victim (Bruch 2004; Gallagher 2010; Gómez-Mera 2016). It could be argued that non-binding language concerning victim protection may have been a reflection of disagreement about how best to protect victims, and may also have limited encroachment upon sovereignty by providing the spirit of victim protection in the text, and allowing states the freedom to elaborate the letter. Nonetheless, the underlying assumption of critics is that the criminal justice focus would overshadow human rights concerns and that ultimately there would be very little focus on the violated rights of the victim as well as his or her right to seek

recourse. Consequently, there is scepticism about the suitability of the UNODC as a forum in which to pursue a human rights approach to human trafficking.

Emergence of the UNODC as the UN's Focal Point for Crime Prevention

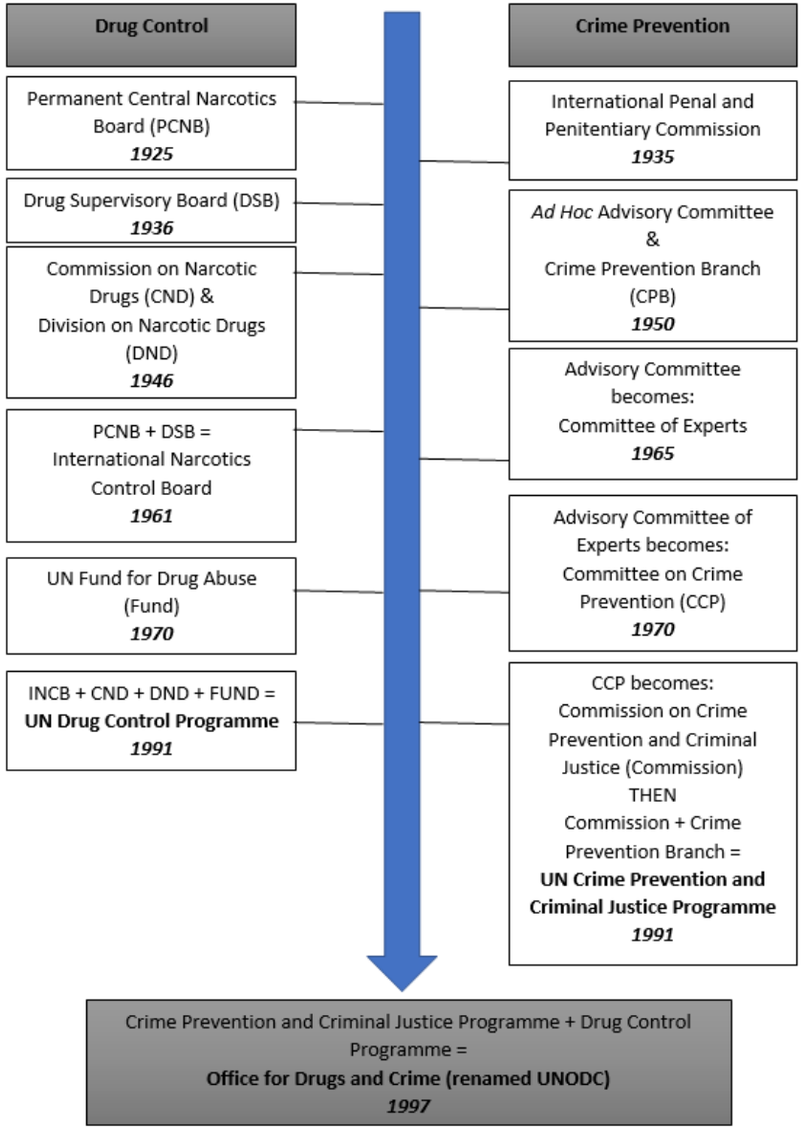
The United Nations has been particularly prolific at organizational progeny, and as Johnson (2014) points out, nascent UN bureaucracies have been creating new IGOs since the very founding of the organization. ECOSOC, for example, has created a host of functional commissions since its inception (Karns, Mingst and Stiles 2015). This is possible because the United Nations has broad prerogatives in engaging in structural innovation (Clark 1994). Article 22 of the UN Charter grants authority to the General Assembly to "establish such subsidiary organs as it deems necessary for the performance of its functions." Furthermore, ECOSOC, which has responsibility for the UN's work on crime and drugs, also has authority through Article 68 of the Charter, to "set up commissions in economic and social fields and for the promotion of human rights, and such other commissions as may be required for the performance of its functions."

The broad terms of these charter provisions leave ample room for the United Nations in general, and ECOSOC in particular to create functional mechanisms to deal with problems as they arise, and as the organization sees fit to achieve its mandates. Since the progeny which they create are products of resolutions and decisions taken within these bodies, states have less influence on their overall design and functions than if they were created by treaties negotiated, signed and ratified by governments. For the same reason, bureaucracies within the parent organizations play a major role in designing the progeny, in determining their prerogatives, and in ascribing their roles and functions. The UNODC is one such example of organizational progeny in the UN system. Its creation was the culmination of nearly half of a century of organizational creation and transformation by the Economic and Social Council as the United Nations system grappled with drugs and crimes with transnational reach and/or consequences.

Tracing the Functional Origins of the Office of Drugs and Crime Prevention

The Office of Drugs and Crime Prevention, predecessor to the UNODC, emerged from the fusion of two tracks of functional cooperation under the Economic and Social Council of the UN. On the one hand, there was cooperation to interdict narcotic drugs, and on the other hand there was cooperation in crime prevention and criminal justice. Figure 1 below gives a timeline of the organizational development and evolution related to this process which is then described in the subsections that follow.

Figure 1: Two Tracks in the Organizational Development of the UNODC (1925 – 1997)



Commission On Narcotic Drugs And The UN International Drug Control Programme

Functional cooperation in the area of drug control predates the United Nations, having started under the auspices of the League of Nations system which created the Permanent Central Narcotics Board and the Drug Supervisory Body. The United Nations continued and broadened this cooperation. In 1946, ECOSOC established a functional commission to oversee the implementation of the treaties on international drug control and to serve as the primary policy-making organ in the UN drug control efforts (United Nations Office on Drugs and Crime 2017). The Commission on Narcotic Drugs was created and served as the primary policy-making organ involved in UN efforts in drug control, with responsibility for creating drafts of treaties and presenting resolutions to ECOSOC. The Division of Narcotic Drugs was created to serve as the secretariat for this Commission (McAllister 1994; Fazey 2003).

A cluster of agencies emerged as the UN continued shaping policy in this area and created new norms through international conventions. In 1961 there was the Single Convention on Narcotic Drugs which resulted in the merger of the Permanent Central Narcotics Board, and the Drug Supervisory Body, to form the International Narcotics Control Board as an independent expert body that reports to ECOSOC (Fazey 2003; United Nations Office on Drugs and Crime 2017). In 1970, the United Nations Fund for Drug Abuse Control was created in accordance with growing concern about the deteriorating drug problem and the need to undertake urgent countermeasures. The fund would serve as a mechanism to facilitate research, foster technical cooperation, and increase personnel across the agencies of the United Nations system involved in drug control.

Concerns over effectiveness and efficiency led to calls for a coordinated, overarching structure in the area of drug control. As a result, three separate bureaucracies were combined to form a single programme – the United Nations Drug Control Programme – in 1991 (Clark 1994). These developments illustrate the foregoing arguments on the flexibility of emanations, and the possible agility they have in adapting and responding to changes in issue areas, in mandates, and functions. The preamble of United Nations General Assembly resolution 45/179, while underscoring the new developments in the drug problem and the need for a comprehensive approach, also pointed to the need for "a more efficient structure to ensure coordination, complementarity, and non-duplication of activities..." and a greater need for efficiency. Thus, even as critics of functionalism point to these problems of overlapping mandates and inefficiencies, organizations are concerned about these issues and respond to correct them. This is a recurrent theme in the design and creation of the UNODC.

Commission on Crime Prevention and Criminal Justice and the Crime Prevention and Criminal Justice Division

Similar to the issue area of Drug Control, Crime Prevention, and Criminal Justice were first treated as concerns requiring functional cooperation under the League of Nations System which established the International Penal and Penitentiary Commission, and organized the first conferences on the prevention of crime (Vetere 1995). The work of the UN in this area followed the precedence set by the League of Nations, and coalesced around quinquennial Congresses on the Prevention of Crime and the Treatment of Offenders, a committee of experts known as the Crime Prevention Committee, a small secretariat in Vienna known as the Crime Prevention and Criminal Justice Branch, and a set of institutes known as the Crime Prevention and Criminal Justice Program Network (Clark 1994).

In 1950, ECOSOC, created an ad hoc Advisory Committee to devise programmes and formulate policies on crime prevention and criminal justice. This Committee was enlarged in 1965 and renamed to Advisory Committee of Experts on Prevention of Crime and Treatment of Offenders. Responding to calls for a stronger programme on crime at the 1970 Crime Congress, ECOSOC once again increased the number of members on the Committee and renamed it to the Committee on Crime Prevention, while increasing its status to subsidiary organ. Its functions were also broadened to inter alia formulating standards and norms for

judging state behaviour in dealing with victims and perpetrators. Therefore, the organization did not just have a criminal law and justice perspective, it also had a human rights focus. In fact, the Crime Congress of 1990 set out an agenda to minimize crime and harmful consequences while increasing the fairness and effectiveness of the criminal justice system, with due protection of human rights (Clark 1989, 1994; Vetere 1995).

As transnational organized crime became an even more pressing item on the international agenda, ECOSOC once again responded by creating a new functional commission to incorporate the work of the committee on crime prevention in 1991. Part of this was the creation of a new Crime Prevention and Criminal Justice Programme. The programme was designed to "contribute to the...control of crime both nationally and internationally; strengthening of regional and international cooperation in crime prevention, criminal justice and the combating of transnational crime...with due respect for the rights of those affected by crime..." (United Nations 1992, 662). Once again, as the issues changed, the functional organizations were transformed to better suit them, and these new organizational developments were more sensitive to the linkages across issue areas. As an illustration, a key component of the Criminal Justice Programme was a strong focus on human rights. This was explicit in the founding resolution, General Assembly Resolution 46/152, which highlighted under programme priorities section D (e) "the protection of human rights in the administration of justice and the prevention and control of crime" (United Nations 1992, 665). This followed squarely in the vein of the Crime Congress of 1990 which had set out an agenda to minimize crime and harmful consequences while increasing the fairness and effectiveness of the criminal justice system, with due protection of human rights (Clark 1989, 1994).

Reform, Rationalization and Valorization – the Creation of the UNODC

Kofi Annan's Reform Agenda and Transnational Organized Crime as a Priority

Organizational progeny has produced pathological dysfunctions in the United Nations system where organs and agencies have significant overlaps in their functions, with a deficit in coordination, and ineffective distribution of resources (Claude 1971; Luard 1983; Barkin 2015). Such bureaucratic pathologies can lead to ineffectiveness, inefficiencies and lack of accountability (Barnett and Finnemore 1999, 2004). In fact, by the 1990s inefficiencies observed in the UN system stoked significant concerns about the organization becoming an unwieldy bureaucracy that had been unchecked in its expansion and self-reproduction.

Secretary General Kofi Annan came to office in a context of the need for imperative reforms and he formulated a plan within six months of taking office – Renewing the United Nations: A Program for Reform. As the first Secretary General from within the UN system, he had an intimate knowledge of the organizational structure and administration. His major focus was on better management and coordination across the UN system, as well as improving human rights promotion and peacekeeping operations. The UN had been experiencing severe fiscal challenges, compounded by the fact that a burgeoning international agenda had resulted in considerable expansion of its mandate. Kofi Annan, therefore, believed that the UN had to undertake comprehensive, rather than piecemeal reforms to respond more effectively. In his words, "the major source of institutional weakness in the United Nations is the fact that over the course of the past half century certain of its organizational features had become fragmented, duplicative, rigid, in some areas ineffective, in others superfluous" (Annan 1998, 128).

To tackle these weaknesses, the United Nations Secretary General (UNSG) proposed rationalizing and consolidating organizational structure to capitalize on synergies and to reduce overlap and inefficiencies. One of the highlights of the programme was the need to bolster efforts in combating crime, drugs, and terrorism. This was set as a priority of the medium-term plan for the period 1998-2001. Consistent with the increasing salience of transnational organized crime on the international agenda, Kofi Annan wanted the UN to play the central role in a coordinated international response (United Nations 1998).

The Economic and Social Council, coordinator of the UN's efforts on drugs and crime, was in need of urgent reform. It was suffering from crippling organizational overlaps and the accompanying inefficiencies. ECOSOC had previously been described as a "hodgepodge of subsidiary organizations created by the various principal organs of the United Nations" (Gordon 1994). Not surprisingly, it was part of the Secretary General's reform agenda. Among other initiatives targeting inefficiencies within ECOSOC, the pursued changes relevant to this discussion are the consolidation of the crime and drug programmes in Vienna through the creation of an overarching functional body, the Office for Drug Control and Crime Prevention which would serve as the focal point for the UN's efforts in the fight against crime, drugs, and terrorism (United Nations 1998).

This demonstrates evolving form following evolving functions and illustrates that as functions change and mandates expand, functional organizations can adapt and change to suit the requirements of the context. It can also be inferred that whereas the proliferation of functional organizations may result in overlaps and inefficiencies, organizations as actors consider these factors and will create and recreate emanations in order to improve their ability to carry out functional tasks. They will do so when they are faced with increasing demands from principals or from evolving issues which extend their mandates, and if they have broad prerogatives from principals to make decisions in organizational design.

Resources, Visibility and the Revitalization of the UNOV

IGOs are purposive actors which act as much in their own interest and according to their own logics as they act in the interest of their state principals and according to the logic of narrowly – or broadly – defined functions (Barnett and Finnemore 1999, 2004). Not only do they create new organizations, but they also have their own interests, and agendas, and are concerned about their own survival. Hall's (2015) study of why organizations engage with the Climate Change regime demonstrates that functional organizations, driven by a need for greater visibility and increased relevance as well as a desire to secure funding for their activities, are eager to engage with new regimes and adopt new issue areas. This means that they are not just focused on their functions and purpose, but also on preserving their raison d'etre and perpetuating their relevance.

The questions of resources and increased visibility within the UN system were at the forefront of discussions about both the International Drug Control Programme and the Criminal Justice and Crime Prevention Programme. There were repeated calls from ECOSOC and the General Assembly for strengthening the programmes, enhancing their role in the UN system, and providing them with adequate financial resources to effectively carry out their functions (United Nations 1995, 1996, 1998). The Drug Control Programme was, however, much more robust than the Crime Prevention and Criminal Justice Programme, with a much larger secretariat at the Vienna office. Clearly then, this would be a factor for the Crime

Prevention and Criminal Justice Programme as it sought not just to increase its absolute visibility, but also its visibility vis-à-vis the United Nations Drug Control Programme.

Clarke (1994) points out that in the creation of the Crime Prevention and Criminal Justice Programme, comparisons were being made with the Drug Control Programme, and that there were suggestions that they should either mimic the Drug Control Programme by having a Ministerial Commission, or create a Specialized Agency to increase visibility and reinforce its position within the United Nations system. A review of the UN Yearbooks from 1990, when the programmes were being formulated, shows that the General Assembly, ECOSOC, and the Congress on Crime consistently raised the issue of strengthening the presence of the Crime Prevention and Criminal Justice Programme within the UN system and boosting its financial resources. In 1990, the Crime Congress recommended increased human and financial resources and called for bolstering the Crime Prevention strategy of the UN. This was the rationale for creating the Programme. In 1996, the Secretary General, responding to requests from ECOSOC, took steps to transform the Crime Prevention and Criminal Justice Branch in the Vienna Office into a Division, although this was crippled by cost-saving measures which froze the creation of new posts. This was accompanied by calls from the UNSG for greater collaboration with the Drug Control Programme and other UN bodies. All this culminated in 1997 with the UNSG's reform programme seeking to place the Vienna office at the core of UN efforts against crime, drugs and terrorism, and transforming the Criminal Justice Division into the Centre for International Crime Prevention, as part of the new Office for Drug Control and Crime Prevention (United Nations 1991, 1993, 1994, 1995, 1996, 1997, 1998).

There had also been concerns about the location in Vienna. Prior to 1977, the secretariats dealing with drug control and crime prevention operated out of the New York headquarters of the United Nations. However, in 1977 the government of Austria gifted a new headquarters building to the United Nations, and it was decided that the UN drug control units, the Industrial Development Organization, and the International Atomic Energy Agency would be housed there. As an afterthought, it appears, "when some hundred rooms remained vacant," the General Assembly voted to move the Social Sector of ECOSOC there as well. This would include the Division for the Advancement of Women, the Crime Prevention and Criminal Justice Branch and The Social Development Division. New Zealand objected to this move arguing that it was a misguided decision to separate the Economic from the Social, but they were solitary objectors and the move to the United Nations Office in Vienna was finalized (Adler and Mueller 1995, 10).

Consequently, the location became a predominant concern because of the much broader pathology of poor coordination across UN agencies. For example, although the Crime Prevention Branch had a human rights focus, it had largely been on the side-lines of human rights issues in the UN system and was mostly overlooked (Clark 1989, 1994). According to Clark (1994), a former member of the Crime Prevention and Criminal Justice Committee, Vienna was far removed from the rest of the UN system, and there had been concerns that the Crime Prevention and Criminal Justice Programme and the corresponding branch in Vienna would consequently be marginalized. This concern was especially important since, in 1993, Boutros Boutros-Ghali moved the UN Centre for Social Development and Humanitarian Affairs from Vienna to New York, leaving the very small secretariat of the Crime Prevention and Criminal Justice Programme alongside the much more robust International Drug Control Programme in Vienna. In fact, there were also strong criticisms for having the Committee on the Elimination of Discrimination against Women serviced from Vienna for the very reason that it would be on the fringes of the UN system (Clark 1994).

Therefore, in addition to increasing the visibility of these programmes, and consolidating resources and efforts, creating an Office for Drug Control and Crime Prevention in Vienna also served to revitalize the UNOV and reinforce its position in the United Nations system. A functionary with the rank of Under-Secretary General was appointed as Executive Director of the new office, and would also serve as the Director General of the United Nations Office in Vienna (UNOV). This office was to become the locus for United Nations efforts against crime, drugs and terrorism. Transnational organized crime was set to be one of the major agenda items of the UN moving forward, which would bring the marginal agencies and offices involved closer to the core of principal UN activities. The Office for Drug Control and Crime Prevention was further concretized as being at the core of a coordinated international approach to tackling drugs, crime and international terrorism, with the signing and ratification of the single United Nations Convention on Transnational Organized Crime, and the protocols thereto on Smuggling and Human Trafficking (Gallagher 2010). It was subsequently renamed as the United Nations Office on Drugs and Crime.

The Persistence of the Human Rights Frame

As discussed earlier in this paper, the Palermo Protocol failed to establish a strong human rights focus, and instead gave primacy to a criminal justice approach especially since it was linked to a convention on organized crime (Gallagher 2001, 2010; Jordan 2002). Scholars note this intrinsic flaw of a regime that privileges prosecution of the perpetrator over the protection of the victim (Gallagher 2001, 2010; Bruch 2004; Gómez-Mera 2016). Law enforcement measures ignore structural determinants of trafficking and the human rights abuses involved in the exploitative social systems, which comprise trafficking. Brysk (2012) and Obokata (2010) argue, accordingly, that the best policy to combat trafficking is universal, indivisible human rights.

Global and Regional Human Rights Soft Law on Human Trafficking

The prominence of the criminal justice approach to human trafficking did not entirely overshadow the extant human rights frame even as new norms were being codified. While the Convention on Transnational Organized Crime and its Protocols were being negotiated, the Office of Drug Control and Crime Prevention (subsequently UNODC) sparked the interest of other IGOs as well as the NGO community. NGO networks such as the Global Alliance Against Traffic in Women (GAATW) continued to disseminate publications on the negative human rights effects of anti-trafficking laws and continued to lobby for greater focus on these concerns (Gómez-Mera 2016). Similarly, an ad hoc Inter-Agency Group which included the United Nations High Commissioner for Human Rights, the United Nations Children's Fund, the International Organization for Migration, and the United Nations High Commissioner for Refugees played a major role in lobbying for a human rights focus, and kept this advocacy going after the ratification of the treaties (Gallagher 2001, 2010; Jordan 2002).

From a functionalist perspective, one may argue that human rights institutions would be more suitable for pursuing a human rights approach to trafficking, although there is no clear empirical support for their effectiveness in securing compliance to human rights norms (Dai 2014). However, the enduring tensions between human rights and national sovereignty have made it such that in designing human rights institutions, states have restricted their

enforcement capacity (Moravcsik 2000; Hathaway 2002). It is this same concern about sovereignty which resulted in the primacy of the criminal justice frame because states were more likely to respond when trafficking was framed as an affront to their sovereignty (Charnysh, Lloyd and Simmons 2014). Nonetheless, international human rights institutions have been gaining greater support from states and their expertise, normative persuasion, and work in the general socialization of states have made states more inclined to participate in human rights conventions even if participation does not forcibly lead to compliance (Moravcsik 2000; Cole 2005; Hafner-Burton and Tsutsui 2005; Neumayer 2005; Hathaway 2007; Munro 2009; Hafner-Burton 2012; Dai 2014). Furthermore, human rights have become a cross-cutting issue which different entities in the UN system use as a justification for the pursuit of their own interests and activities (Barnett and Finnemore 1999; Gutner and Thompson 2010). It is not surprising, therefore, that traditional human rights institutions, as well as other related entities, would continue to protect their interests and issue areas, and pursue the human rights frame in the antitrafficking regime, especially with a mandate from the UN Secretary General to incorporate human rights in activities across the UN system, and the constant NGO activism.

Consequently, various UN agencies as well as regional organizations have played an instrumental role in developing and spreading human rights norms related to trafficking and have, therefore, emerged as competing fora for rule-making. The UN General Assembly between 2002 and 2006 passed at least six resolutions dealing specifically with human trafficking, each emphasizing the importance of victim protection and underscoring the human rights focus. In 2002, the UN High Commissioner for Human Rights through its Recommended Principles and Guidelines on Human Rights and Human Trafficking sought to establish the primacy of human rights by placing it at the centre of all efforts to combat trafficking. This was in response to what the High Commissioner considered "the clear need for practical, rights-based policy guidance on the trafficking issue"(OHCHR 2010, 15). This document most notably introduced the principle of non-criminalization of victims of human trafficking (Hoshi 2013; Gómez-Mera 2016).

This was followed by the appointment of a Special Rapporteur on Trafficking in Persons by the Human Rights Commission – subsequently the Human Rights Council – at its 60th session in 2004 (Gallagher and Ezeilo 2015). The appointment, which was initially for three years, has had successive extensions with the latest three-year extension starting in July 2017. Appointing a Special Rapporteur with specific focus on human rights and human trafficking, giving increased credence and visibility to the human rights frame, especially since the Special Rapporteur mechanism has been one of the more effective tools used by the UN Human Rights system. She was tasked with monitoring, undertaking advisory functions, and reporting on this thematic issue based on the different entities and countries where her work would be undertaken. In her initial report, she highlighted that "despite the overwhelming human rights dimension, trafficking continues to be treated as mainly a 'law and order' problem" and, therefore, firmly expressed that her goal would be to bring human rights back to the heart of all antitrafficking initiatives (Gallagher and Ezeilo 2015).

Subsequently, Special Rapporteurs have established relations with NGOs, IGOs and national human rights organizations as a way of promoting the human rights aspect of human trafficking. They have used consultations with a variety of stakeholders, as well as country visits to capture the extent of the issue of human trafficking and to better frame their recommendations for corrective action in terms of the national frameworks necessary to

protect victim rights. Unfortunately, the country visits have been limited by the fact that states have to authorize official visits which has proven to be a barrier in some cases (Gallagher and Ezeilo 2015). Nonetheless, there have been 27 official visits to countries including Lebanon, Argentina, Australia, Philippines, United States and Nigeria. At least 15 countries have not granted visit requests, some of which were made as early as 2005 (OHCHR 2019).

One strategy of the Rapporteur has been to emphasize, in the annual and country reports, the embeddedness of the human trafficking regime in a broader human rights regime. Therefore, the reports have highlighted provisions enshrined in various human rights instruments which are pertinent to human trafficking. These instruments include the Universal Declaration of Human Rights; The Convention on the Elimination of All Forms of Discrimination against Women; The Convention on the Rights of the Child; International Labour Organization Conventions on Forced or Compulsory Labour and Child Labour among others. Identifying these linkages gives further credence to the argument for a human rights approach (Gallagher and Ezeilo 2015). Similarly, the Special Rapporteur adopted the strategy of identifying linkages across issue areas including development. Eliminating human trafficking appeared in the Sustainable Development Goals (SDG) as targets under three different goals: SDG5 – Gender Equality (elimination of all forms of violence against women and girls); SDG8 – Decent Work and Economic Growth (eradication of forced and child labour); SDG16 – Peace, Justice and Strong Institutions (ending abuse, exploitation, trafficking and violence against children). The Special Rapporteur's mandate has also contributed to a broader understanding of human trafficking – extending it beyond sexual exploitation of women – and it has been working at providing clarity on the rights of victims, and the responsibilities that states have towards them (Ezeilo 2015; Gallagher and Ezeilo 2015).

Other similar efforts on human trafficking were pursued through inter-agency collaboration formalized by an ECOSOC resolution in 2006. The General Assembly in 2007 formally established the Inter-Agency Coordination Group against Trafficking in Persons (ICAT) to provide a "comprehensive, coordinated and holistic approach to human trafficking … grounded in a human rights based-approach." The ICAT working group includes: Council of Europe, International Centre for Migration Policy Development (ICMPD), International Labour Organization (ILO), International Organization for Migration (IOM), Office of the High Commissioner for Human Rights (OHCHR); Organization for Security and Cooperation in Europe (OSCE), United Nations Children's Fund (UNICEF), UNODC, and UN Women. The membership extends to over 20 UN and other agencies and entities. From 2007 to 2010, ICAT was chaired by the UNODC. The chairmanship has since rotated to different agencies (ICAT 2019). It is important to note that the core mechanisms which the UN system has been establishing on human trafficking have been taking markedly human-rights inspired approaches to human trafficking, at least discursively. This has perhaps been one of the most effective mechanisms to ensure that human trafficking, especially from a human rights perspective, remains high on the agenda for the organizations concerned and to thereby socialize the respective entities into framing the issue as a human rights one and responding accordingly.

Through this collaboration, the UN Global Initiative to Fight Human Trafficking (UN.GIFT) was launched in 2007 with the following organizations: ILO, OHCHR, UNICEF, UNODC, IOM and the OSCE. UN.GIFT is a multi-stakeholder initiative which seeks to foster synergistic relations among UN agencies, other international organizations, private interests,

civil society groups and other stakeholders. Their mission explicitly focuses on providing support for victims and pursuing rights-based responses to human trafficking. Through this avenue, best practices on human rights in the antitrafficking regime have been developed and disseminated. Furthermore, inter-agency collaboration gained greater support from the Global Plan of Action to Combat Trafficking in Persons, established by General Assembly Resolution in 2010. This plan reiterated the fundamental human rights focus of antitrafficking efforts and, while acknowledging the central role of the UNODC in the regime, also underscored the indispensable role of the Human Rights Council, the Office of the High Commissioner for Human Rights, the International Labour Organization and the International Organization for Migration. The General Assembly, therefore, called for strengthening of the inter-agency work towards preventing trafficking, protecting victims and ultimately prosecuting perpetrators. ICAT has consequently become the primary forum for coordinating antitrafficking policy, even though the UNODC, as guardian of the Palermo Protocol, plays an instrumental role in assisting states with implementation.

In addition to these global initiatives, regional bodies produced soft law instruments on trafficking in persons which explicitly addressed linkages with human rights. The Organization for Security and Cooperation in Europe (OSCE) with its special office for combating trafficking, and the Council of Europe with its Convention on Action against Trafficking in Human Beings, promoted human rights norms specifically targeting victim protection. The OSCE appointed a Special Representative and Coordinator for Combating Trafficking in Human beings in 2003, which has played a significant role in coordinating regional and global efforts, and in promoting a dual vision of human trafficking as a human rights and security issue (Gómez-Mera 2016). The European Union (EU) has also contributed to the human rights soft law particularly through the 2011 EU Anti-trafficking Directive followed by the launch of the EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016. Whereas early efforts for addressing trafficking in persons in Europe were described as inadequate in the human rights-based protection components (Friesendorf 2007), more recent assessments such as Gómez-Mera's (2016) study have credited European efforts for significant contributions to the human rights soft law in the antitrafficking regime. Other regional initiatives have been launched in Africa, Latin America and the Caribbean, Asia-Pacific, Central Asia and the Middle East. These include the Convention on Preventing and Combating Trafficking in Women and Children for Prostitution in South Asia; the Inter-American Convention on International Traffic in Minors and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women; a series of African Charters; Joint Plan of Action against Trafficking in Persons coming out of the Economic Community of West African States (ECOWAS). What becomes apparent is that there has been a diffusion of norm creation, in both global and regional fora, promoting a human rights approach. This, therefore, shifted antitrafficking norm creation away from the UNODC which was equated to a criminal justice forum (Gómez-Mera 2016).

How the UNODC Adopted a Human Rights Frame

As demonstrated in the preceding section, there has been a process of forum shopping whereby interested actors, including NGOs and IGOs, have sought to shift rule making on human trafficking to fora outside the UNODC that would embrace a human rights approach (Gómez-Mera 2016). As a result, there is an increasing body of soft human rights law being produced parallel to the Palermo Protocol (Gallagher 2010; Gómez-Mera 2016). It would

appear then that the UNODC has been crowded out of the human rights norm creation by other actors, which seem more functionally suitable for pursuing such an approach to human trafficking. However, the fact that the Palermo Protocol takes a criminal law approach does not doom the UNODC to being blind to human rights issues related to trafficking. As a purposive actor, it can adapt its functions to suit the complexity of the issues forming its mandate. While functionalism suggests that organizations are created for specific functions, a crucial observation is that organizations as creators themselves may change the content of these functions as well. Form and function mutually influence each other. Furthermore, organizational culture may play a role in how bureaucrats interpret and enact their mandates (Barnett and Finnemore 1999, 2004). Therefore, previous experience in dealing with human rights issues could mean that the bureaucracies which came together to form the UNODC could continue to pursue human rights approaches to trafficking. In addition, the organization may be persuaded to shift its focus because of added pressure from peer IGOs and/or from civil society.

Human rights as an issue area has long been a salient point for ECOSOC, and particularly its functional Commissions on Drugs and Crime. In fact, the Crime Congress of 1990 while calling for the intensification of efforts against organized crime, also highlighted the need for due regard for human rights. They also recommended that the UN set up a world foundation on crime control and assistance to victims (United Nations 1991, 699). Much of the work of the Committee on Crime Prevention and Control and its successor the Commission on Crime Prevention and Control, has been in creating human rights standards in criminal justice and seeking to implement those standards (Clark 1989, 1994). The Committee had contributed to the generation of several key human rights standards including: Standard Minimum Rules for the Treatment of Prisoners; 1975 Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; The code of Conduct for Law Enforcement Officials; Standards Guaranteeing Protection of the Rights of Those Facing the Death Penalty; The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (Clark 1989; Vetere 1995). Therefore, the bureaucracies in at least the Crime Prevention Programme had an established record of working with human rights issues.

An explicit part of the mandate of the UN's activities in crime prevention was directly related to human rights. Not only did the respective bureaucracies dealing with crime prevention facilitate coordination with the Centre for Human Rights in Geneva, but they also established human rights concerns as one of the pillars of technical assistance that they provided. They developed policies, procedures and model laws designed to protect victims. Also, they ensured that the linkages between crime prevention and human rights were a recurrent theme on the agenda of the Crime Congresses. As an example, the 1975 Crime Congress issued a Declaration on the Protection of All Persons from being Tortured…," mentioned supra, was subsequently developed by the Commission on Human Rights into a convention (Vetere 1995).

Furthermore, when the Crime Prevention and Criminal Justice Programme was created, Article 16(e) of the Statement of Principles and Programme of Action of the United Nations Crime Prevention and Criminal Justice Programme called for "due respect for the human rights of all those affected by crime..." The document underscored the need for focusing on human rights by placing it prominently under the Programme Priorities section, where Article 21(e) calls for protection of human rights not just in the administration of justice, but also in

the prevention and control of crime. This concern about human rights was supported by the General Assembly and ECOSOC and was a prominent part of Kofi Annan's reform agenda, which sought to enhance the human rights efforts of the UN and engender system-wide integration of human rights in its principal programmes and activities.

In addition to these internal considerations, exogenous factors in the constellation of multilateral and regional efforts to combat trafficking have also influenced the direction of the UNODC's agenda. The shift of rule making to fora outside the UNODC has impacted its control over this issue area (Gallagher 2010; Gómez-Mera 2016). This means that as the UN's focal point for crime and by extension, human trafficking, the UNODC would have seen a tendential erosion of its centrality in the human trafficking regime. A narrow focus on criminal justice would also leave it on the sidelines of emergent human rights norms. Consequently, it sought to affirm this central role through its participation in the inter-agency collaborative initiative, ICAT, which it chaired for the first four years of its existence. Although it is a rotating Chair, the UNODC continues to assert its coordinating role in this Inter-Agency group, while also serving as the financial adminstrator, host and member of the Steering Committee for the UN.GIFT multistakeholder mechanism (United Nations Office on Drugs and Crime 2019b). While the rule making shifted to other organizations and entities, therefore, the UNODC remained integrated in these processes through the consultative and coordinating activities of ICAT.

The preceding factors seem to have collectively influenced the work of the UNODC in promoting a human rights complement to the criminal law approach. On the one hand, the Crime Prevention and Criminal Justice Branch – now Centre for Criminal Justice and Crime Prevention – and its predecessors have had a history of contributing to the development of human rights norms and standards. On the other hand, other IGOs as well as NGOs , through their advocacy, have kept the human rights focus high on the agenda. Furthermore, forum shifting could threaten the central role it plays in the anti-trafficking regime. Consequently, as a purposive actor, not only carrying out its functional tasks but also seeking to preserve its interests, the UNODC has adopted a soft law human rights approach to human trafficking.

Since the Palermo Protocol was ratified, and especially since the establishment of ICAT, the UNODC has collaborated extensively with other multilateral and regional stakeholders. This collaboration has resulted in the publication of a series of human rights-based documents on human trafficking, incorporating new norms which were developed by these actors in different fora. These documents and norms are summarized below in Box 1. The first major initiative came in 2008 with the publication of the Toolkit to Combat Trafficking in Persons: Global Programme against Trafficking in Human Beings, which outlines measures to prevent trafficking, prosecute perpetrators and protect victims. It gave significant attention to victim identification and victim assistance. The UNODC also produced documents aimed specifically at helping legislators translate treaty and soft law provisions into national legislations to facilitate the implementation requirements. In this regard, in 2009, they published three major documents: Combating Trafficking in Persons: A Handbook for Parliamentarians; International Framework for Action to Implement the Trafficking in Persons Protocol; UNODC Model Law against Trafficking in Persons. These documents further developed provisions, standards, norms, and frameworks for preventing trafficking and protecting victims, and contributed to the diffusion of the norm of non-criminalization of victims.

That the UNODC chose an approach, which focuses on providing concrete tools for implementation, illustrates the argument that bureaucratic culture is an underlying determinant of the way an organization shapes its agenda and adjusts its functions. As discussed above, an important aspect of the work of the functional bodies on crime prevention within the UN system had been providing technical and legal assistance to member states to help them translate international norms and principles into domestic legislation and practice (Clark 1994; Vetere 1995). This, therefore, seemed to inspire not only the organization's inclination to pursue a human rights approach but also the practical approach which it employed in so doing.

Box 1: Human Rights Norms Promoted by the UNODC

Human Rights Norms Promoted by UNODC

Norms in the *Palermo Protocol* (2001)

- Protection of victims from harm (*Art. 6*)
- Temporary or permanent residency for victims (*Art. 7*)
- Right to repatriation (*Art. 8*)

Norms in Subsequent Documents

(2008) - Trafficking Toolkit: Sections 5, 6 and 8
(2009) - Combating Trafficking in Persons: Chapter 4; ***Framework for Action:*** Table 2; ***UNODC Model Law:*** Chapters 7 and 8

Victim Identification, Protection, and Support

- Non-coercion in provision of support; Legal assistance as victims and as witnesses
- Temporary residence permits; No detention of trafficked persons
- ***Non-criminalization of trafficked persons***

Return of Trafficked persons

- Due process and non-refoulement; Safe and voluntary return
- Right to remain during legal proceedings; Repatriation and Reintegration

Remedies for Trafficking

- Restitution; Compensation; Rehabilitation

More recently, the UNODC partnered with the European Union to launch the Global Action to Prevent and Address Trafficking in Persons and the Smuggling of Migrants (GLO.ACT). This four-year joint initiative is being implemented in partnership with the International Organization for Migration and the United Nations Children's Fund and will run through the end of 2019. The project adopts a dual prevention and protection approach which clearly outlines the need to protect the rights of vulnerable victims (United Nations Office on Drugs and Crime 2019a). Here again the UNODC aligns itself not only with the criminal justice frame but also with promoting human rights norms in antitrafficking work.

This promotion of human rights based soft law could have significant effects on the propensity of states to protect victims, and therefore, to adopt a human rights approach in dealing with trafficking despite their apparent preference for a criminal justice frame. Simmons (2009) submits that legalization of human rights has influenced the propensity of states to comply even in the absence of effective enforcement mechanisms. This is because ratification of the treaties may nudge states into action, or because advocates may better couch

their demands in the principles contained in international treaties, or because of the opportunity it creates for victims of human rights abuses to pursue their interests through litigation. It further suggests that these treaties may have an existential effect; that is, their very existence could provide cognitive frames for policy makers and shape conceptions of appropriate or inappropriate behaviour.

Whereas soft law texts may not carry the same level of legalization and binding obligations as treaty law, this latter existential effect may be quite applicable to the human trafficking related human rights norms promoted by the UNODC. The very existence of these norms in the form of model laws and guidelines may prompt states to implement them. Although it is not yet clear the extent to which these norms are being respected, what is clear is that states are more likely to apply them if they are adopted into domestic law. Derenčinović (2014) demonstrates that the inclusion of a clause of non-punishment or non-criminalization of victims in state legislation in the European context saw a greater likelihood of states applying this norm in dealing with victims of trafficking. Therefore, the practical guidelines developed by the UNODC to facilitate the translation of international anti-trafficking rules and norms, both from the criminal justice and human rights perspectives, represent a significant step towards encouraging compliance.

Conclusion

The UNODC appeared to be a misfit for pursuing a human rights approach to human trafficking. However, this study has demonstrated that there are several factors which may ultimately determine whether an organization can and will pursue desired functions: salience of the issue; organizational culture; self-preservation and prestige; external pressure from other organizations (NGOs and/or IGOs). Prior experience working with human rights issues, combined with a need to carve out a prominent space in the UN system, as well as competition and pressure from other organizations, together have resulted in assiduous human rights norm creation from the UNODC. Here functionalist theory is enhanced by a perspective which views organizations as actors in their own right – as bureaucracies affected and driven by multiple factors including survival, and not just concerned with narrow functions for which they were created.

Assessing an organization's suitability for a specific function requires moving beyond a static vision of functional organizations. Global governance is a dynamic sphere in which problems are constantly emerging and transforming. International organizations must be nimble enough to respond to these rapid changes. Therefore, if the technical issues that an organization should deal with keep shifting, then the organization is called to adapt. As seen in the case of the UN's efforts to combat crime and control drugs, organizations use their authority to create emanations that they deem to be best suited to carry out specific functions. These functions may evolve, may overlap with others, and may create inefficiencies. However, the possibilities for evolution create opportunities for restructuring and collaborating to create synergistic responses to complex and cross-cutting issues.

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Support for International Law and the Impact of Political Norms

James Meernik

Who are the supporters of international courts and laws to ensure these institutions have the legitimacy they need to be effective? Public support for international courts and tribunals is and will be critical in determining whether these institutions will become legitimate and effective conflict resolution tools in international relations. I develop an explanation of public opinion concerning international humanitarian law and international Courts that highlights the roles of both individual and national characteristics. At the national level, I suggest that support should increase as exposure to democratic and human rights norms grows. Human rights and the democratic rule of law are the core mission of international justice and to the extent these norms are prevalent in the education and political socialization people experience in their country of residence, we should find that they are as supportive of these ideals internationally as they are nationally. However, these ideals are in fierce competition with another set of norms centered around sovereignty, national security and national interests. I also hypothesize that individuals residing in states that have significant external or internal security concerns will be less likely to support international laws and courts. I analyze the preferences of publics throughout the world using data from the International Committee for the Red Cross's People on War survey regarding international law and the role of international courts in ameliorating the impact of conflict violence and find staunch support for most of the hypotheses.

Introduction

International courts and laws that concern the protection of individuals from war crimes, crimes against humanity and genocide have become increasingly prominent since the end of the Cold War. While their short and long-term success depends on many factors, among the most important is public acceptance and support. Like domestic judicial systems that are designed to protect the public from harm, international tribunals are also created to provide justice and deter future violations of international laws. But where domestic courts provide a public good for their constituents who are served by the judicial system, do international courts have stakeholders and constituents whose support is crucial for their functioning? International courts and tribunals are created to realize aspirational goals of ending impunity for war criminals, protecting human rights and fostering an international environment guided by the rule of law. They seek to regulate the behavior of states and non-state actors alike to elevate if not prioritize the protection of civilians in national security policy. Yet, when states ratify international laws, oversee international courts, and participate in their functioning, the benefits they receive (e.g., a more rules-based international system) are more intangible and remote than practical and contemporary. Furthermore, because the measurable benefits resulting from the work of these tribunals are relatively infrequent and invisible, there are few natural constituencies for international law that can powerfully advocate on its behalf. Without natural and powerful pressure groups in civil societies to advocate on behalf of international law, support for tribunals and their missions must be won among publics who

must be convinced to support one ideal—international law—over another—state sovereignty and security. Hence, public support for international courts and tribunals is and will be critical in determining whether these institutions will become a legitimate and effective conflict resolution tool in international relations. As deGuzman (2012, 268) writes, "The globalization of communications increasingly means that an institution's legitimacy depends on the opinions of ordinary citizens around the world."

Scholars are increasingly turning their attention to understanding public opinion on transitional justice more generally and international courts in particular (Dancy et al. 2019; Meernik and King 2019). I am interested in the extent of public support for international laws and courts that seek to protect civilians against war crimes, crimes against humanity and genocide and demonstrate that there is no impunity for international crimes. Is there a public constituency that supports these institutions and believes in the principles they seek to uphold? Are publics around the world supportive of international laws and courts? Popular impressions of the major remaining tribunal, the International Criminal Court (ICC), have been hurt by recent controversies involving problematic cases in Africa, but also for its inability to provide justice in other conflict situations, such as Syria. Therefore, I analyze the preferences of publics throughout the world using data from the International Committee for the Red Cross's People on War survey regarding international humanitarian law and the role of international courts in ameliorating the impact of conflict violence.

I develop an explanation of public opinion concerning international courts and the core crimes they address—war crimes, crimes against humanity and genocide—that highlights the roles of both individual and national characteristics. At the national level, I suggest that support for international courts should be greater in nations whose political systems practice democracy and protect human rights, which are typically key values and practices among adherents to international laws and courts. However, these ideals are in fierce competition with another set of norms centered around sovereignty, national security and national interests. When the pursuit of international justice leads to the pursuit of one's own fellow citizens as would-be war criminals, I expect support for this justice will be eclipsed by concern for one's country and fellow citizens (Chapman and Chaudoin 2013; Chaudoin 2016). Thus, while individuals may profess support for the general principles of international law, especially when it pertains to other countries' war criminals, when its application threatens their own state's sovereignty, we are likely to see a shift in support. "International justice for thee, but not for me", to paraphrase. Hence, I also evaluate the salience of national security concerns in support for international courts and the international laws over which they exercise jurisdiction. These competing norms ultimately play out in the values and preferences of individuals.

First, I review the emerging research on public opinion and transitional justice. The extant literature has mostly and understandably focused on the beliefs and preferences of people in those societies that have undergone some type of transitional justice process (e.g., the former Yugoslavia, Rwanda). I seek to draw out the broader lessons this research conveys regarding how personal experience with conflict and transitional justice affects individuals' support for the often-difficult march to justice. I next outline my expectations regarding the relative impact of exposure to human rights norms and national security concerns. I provide a brief overview of the key descriptive statistics and test a multivariate regression and ordered probit analyses to assess the validity of these hypotheses. I conclude by discussing what the future might hold for international justice in an era of rising nationalism.

Background and Literature Review

The prevalence of international courts and tribunals grew rapidly during the "justice cascade" (Sikkink 2011) of the 1990's. In response to the ongoing tragedy of ethnic massacres in the former Yugoslavia in the early 1990's, the United Nations Security Council created the first international tribunal—the International Criminal Tribunal for the former Yugoslavia (ICTY)—in 1993. And although there were significant problems at the outset regarding international cooperation, funding, the rather inchoate nature of international human rights jurisprudence, and the apprehension of suspects, eventually the ICTY discharged all of the cases it initiated. All indicted individuals were either captured, died, or had their case transferred to lower courts, and the ICTY closed its doors in 2017-2018. Its sister tribunal—the International Criminal Tribunal for Rwanda (ICTR)—was created in 1994 to address the Rwandan genocide, and the ICTR to shut its doors in 2017-2018 after addressing nearly all of its cases. The Special Court for Sierra Leone (SCSL) similarly concluded its business after prosecuting those who took part in that civil war and committed crimes against humanity, including one of the ringleaders of the conflict—Liberian President Charles Taylor. For a period of time numerous courts were created to deal with specific conflicts—including the Extraordinary Chambers in the Courts of Cambodia to address the Khmer Rouge killing fields of the 1970's; the Special Panels for Serious Crimes in East Timor to deal with the aftermath of East Timor's breakaway from Indonesia; the Special Tribunal for Lebanon to investigate the assassination of Lebanese Prime Minister, Rafik Hariri, and the Kosovo Specialist Chambers and Specialist Prosecutor's Office to confront crimes committed by Kosovar Liberation Army in the late 1990's and early 2000's. None of these courts, however, have succeeded in the same manner as the ICTY, ICTR, and SCSL. While the Cambodian courts have issued a handful of judgments that provided some long-delayed justice for the people of that country, there have been problems with gaining the necessary national and international support these tribunals need to succeed.

In part as a way to overcome the challenges of continually creating temporary and specific tribunals to handle particular conflicts, the international community came together in Rome in the summer of 1998 to create the International Criminal Court. With its permanency, global mission and with the benefit of the substantial jurisprudence developed by the ad hoc tribunals, the ICC is intended to institutionalize the norms and processes of international justice to end impunity for international crimes, advance the rule of law and deter future violations. Established in 2002, located in the capital of international justice, The Hague Netherlands, and theoretically enjoying the support of the 123 members of the States Parties Assembly (those countries that have signed and ratified the ICC treaty) the ICC should be in an ideal position to advance these ideals. Nonetheless, the ICC has struggled to obtain the support of the international community in general, its member states in particular and the UN Security Council, which referred two situations to the ICC (Sudan, 2005 and Libya, 2011), but did not provide significant assistance to the ICC. While states have talked the talk of human rights and international justice, their willingness to walk the walk to call out noncompliant states and demand their assistance in the apprehension of suspects and the acquisition of evidence has been notably lacking. Indicted war criminals like Sudan's former president, Omar al-Bashir, have been allowed to travel the globe with little fear of consequence. To be sure, these tensions are to be expected as conflict situations engage national security interests as well as human rights concerns. Nonetheless, the Assembly of States Parties and the UN

Security Council have struggled to muster the level of collaboration and international muscle needed to vigorously enforce the law as happened with the ad hoc tribunals.

There are many reasons for these shortcomings, such as a perception of anti-African bias, the lack of leadership from key major powers like the United States, the difficulties of addressing so many conflict situations, and a lack of cooperation from many states that have not complied with ICC requests. When state support for international justice is already precarious, the role of public opinion in either encouraging or discouraging regime leaders from supporting the ICC is even more important. Whether leaders tap a wellspring of suspicion of international organizations more generally as is found in the United States with the hostility of the Republican party to the ICC, or they stoke such fears as in Kenya (Dancy et al., 1999), international courts must contend with a growing resistance to their mission from many states. If public opinion is becoming less supportive of international justice because of these forces, it suggests that the relevance of international justice may diminish without the staunch support it requires to conduct its complex and controversial work. Therefore, there is a strong need to investigate and identify which factors explain public opinion regarding international justice and the international courts that confront war crimes, crimes against humanity and genocide. Public opinion will play a powerful role taken together of granting these institutions the support and legitimacy they need to function properly.

There is a growing body of knowledge on public preferences for different types of transitional justice (Kim and Hong 2019); the impact of exposure to violence on support for retributive versus restorative types of justice (Elcheroth 2006; Spini et al., 2008; Elcheroth and Spini 2009) and opinion formation in nations that have been the focus of international tribunals (Clark 2009; Dancy et al., 2019; Ivokovic 2006; King and Meernik 2017; Klarin 2009; Meernik 2015; Meernik and King 2019; Orentlicher 2008; Subotic 2009). More generally, scholars have found that individuals are motivated to support international justice, or prefer its competence over the corruption, incompetence and bias of local courts. Elcheroth and Spini (2009, 190) find in their research that when communities experience violence, they often, "become more critical toward local authorities and more supportive of international institutions that prosecute human rights violations". On the other hand, there is also research to suggest that many individuals who experience human rights violations are less likely to seek the retributive justice of the courts (Elcheroth 2006). Many individuals may simply wish to forget the events of the past because of the severe traumas they experienced; because they view contentious trials as threats to a fragile peace (Kim and Lee 2014; Samii 2013); or may simply believe that justice, no matter who delivers it, will privilege the rich and powerful. In short, there are ample reasons to believe individuals who have experienced human rights violations may support or oppose efforts to prosecute perpetrators (Dancy et al., 2019).

Perhaps the most analyzed populations are those from the former Yugoslavia who have been surveyed over many years regarding their opinions of the ICTY. For example, research has shown that public support for the International Criminal Tribunal for the Former Yugoslavia (ICTY) heavily depends on whether the ICTY was perceived as prosecuting members of one's own ethnic group or the "other" ethnic groups (Hagan and Ivkovic 2006; Clark 2009; Klarin 2009; Orentlicher 2008; Subotic 2009). Serbs more often perceived the ICTY as inherently biased against their ethnic brethren as most of those who were prosecuted for war crimes, crimes against humanity and genocide were Bosnian Serbs, or Serbs from Yugoslavia/Serbia. Croatian support tended to be more conditional. When Croatians viewed the indicted individual as a war hero (e.g., General Ante Gotovina) there was little support and

even less cooperation with the ICTY. On the other hand, Croats were naturally supportive of efforts to prosecute Croatian Serbs who perpetrated human rights atrocities when they sought to ethnically cleanse Croatians from their Serbian microstates. Bosnian Muslims and Kosovar Albanians typically evinced the greatest level of support as they were generally the victims in the conflict. However, cooperation with the ICTY and support for the punishment meted out to war criminals also varied when the accused was one of their own. This was particularly the case with the Kosovar Albanian leadership that sought to undermine trials of their own leaders so much that ultimately a separate tribunal had to be created to prosecute these individuals. More than anything the experience of the ICTY demonstrates the heavily conditional support for international justice in nations that have become the wards of the international justice system. Indeed, as "constituents" of these courts we should expect that people will have strong opinions about and vested interests in their work.

More generally, we have learned that in states that were subject to international tribunals (e.g., the former Yugoslavia, Kenya), popular impressions of these courts hinge considerably on one's identity and experiences during the conflict (Dancy et al., 2019; Meernik 2015). Dancy et al., (2019) argue, however, that this type of support is conditional on the type of regime from which individuals must seek justice. They write:

> Those skeptical of home governments will support outside intervention. This is not true in developed countries, where a negative valuation of domestic governing institutions correlates with a negative orientation toward international institutions like the United Nations (Torgler 2008) and European courts (Voeten 2013). However, communities that have lived amid social breakdown distrust domestic institutions, which have repeatedly failed to solve internal crises. As a result, they evince greater hope in international involvement because it may alter course, or reform what is broken (Elcheroth and Spini 2009; Meernik and King 2014).

Much of the research on public opinion and international courts has centered on public opinion in states affected by international justice where these publics naturally have strong, a priori opinions about justice filtered through their own personal, community and national contexts (Ford 2012). My focus, however, is on public support more generally across the international community. What do we know about public preferences when individuals do not have such vested interests in the outcomes of international justice? Mostly because of a lack of cross-national, public opinion data, research in this area has been scant. Meernik (2015) finds that when individuals share characteristics with those accused of international crimes, such as religion or the region in which they reside, they are less desirous of ICC involvement (see also Chaudoin 2016), while Meernik and King (2014) find in their cross-national study of opinions on the appropriateness of prosecution that individuals' perceptions of the legitimacy of the institution and their views regarding morality are critical factors. It is especially important to develop models of cross-national research. To this end, I next describe how I will blend together the extant research findings on public opinion and international justice to hypothesize how both normative values and national interests influence individual attitudes as well as secondary expectations regarding the impact of knowledge and information.

Competing Norms and Public Support for International Justice

There are two core values that are at the heart of international courts and jurisprudence that concern war crimes, crimes against humanity and genocide—devotion to human rights and the

rule of law. As Robert Jackson, the Chief US Prosecutor at Nuremberg so famously said in his opening remarks, "The wrongs which we seek to condemn and punish have been so calculated, so malignant, and so devastating, that civilization cannot tolerate their being ignored, because it cannot survive their being repeated". International tribunals are founded on this principle that human rights must be protected through the rule of law because without those guarantees of justice and security, humanity will suffer the consequences of unconstrained leaders who prioritize power over people. In effect, the international rule of law to protect the rights of innocents protects us all. As scholars have noted, there are many elements to the rule of law. There are thin definitions that emphasize the adherence to the black letter of the law and thick definitions where the content of the law matters as much as adherence to law (Skanning 2010). I define rule of law more generally according to the core or "thin" elements and consider adhering to the law as more indicative of the rule of law than the nature of the law itself. In that vein, the definition by the United Nations is appropriate: "the rule of law is a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards"[i]. To believe in these values of human rights and the justice delivered through the rule of law is to also believe in two of the core values of democracy. Therefore, my first expectation is that individuals who reside in states with a demonstrated commitment to the democratic rule of law and the protection of human rights will be more likely to support their expression at the international level.

To be sure, there is not an exact correspondence between rule of law and democracy. There are many nations that practice a form of rule of law that are not necessarily democratic. Some democratic states can have somewhat messy legal systems which are in a state of flux or subject to the wishes of the powerful, such Ukraine and other former Soviet republics. Generally, however, democratic states are more likely than not to provide some degree of rule of law. Indeed, many such states may be seeking to improve their rule of law (Moravcsik 2000). Thus, I will talk about rule of law and democracy as referring to those states where both are practiced.

I make a fairly basic assumption regarding exposure to such norms at the domestic level, which is that individuals who reside in countries that practice the democratic rule of law and uphold human rights will learn the value and universality of these norms, even if there are divisions over whether to promote such values actively or passively. Individuals learn these values through political socialization in education, civil society, and through the practice of politics as leaders, government employees, and voters (Inglehart 1981; Maoz and Russett 1992). To be sure, some states more actively express these ideals and promote human rights and democracy than others. Some governments may emphasize democratic principles more so than human rights. Citizens living in democratic, open and rules-based societies are also more likely to be exposed to new ideas and information about developments like the International Criminal Court. Individuals residing in more repressive countries would likely find such information embargoed for its potential in undermining an anti-democratic order (see also Meernik and Guerrero 2014; Snyder and Vinjamuri 2003; Zvobgo 2019).

There is, however, an alternative explanation for the relationship between exposure to normative values and support for international jurisprudence and international tribunals. Some individuals, who have experienced socialization and exposure to democratic norms, may exhibit frustration and disillusionment with these ideals if they do not believe such

principles have meaning in their lives (see Kotzian 2010; Van Ham, Thomassen, Aarts and Andeweg 2017 on public beliefs in democracy). They may look longingly at more authoritarian leaders like Vladimir Putin of Russia for inspiration. Hence, instead of enthusiasm and engagement with democratic norms and human rights practices, some individuals may become inured to their benefits as a result of this long-term exposure. Their exposure to norms of human rights and the democratic rule of law may not necessarily have a negative impact, but it may dampen ardor for externalizing and advancing these ideals. On the other hand, those who have not had either the exposure to democratic and human rights norms, or any kind of disillusionment with these ideals may see these norms in a very different light as aspirational goals they wish for their country to achieve. The repression they experience may lead some individuals to place their hopes in values that elevate the individual over the state, and governance by a body of law rather than the will of one person. I suggest an alternative hypothesis that individuals from states that experienced less democracy and fewer human rights protections will offer greater support for international law.

I make two basic arguments regarding the impact of human rights and the democratic rule of law. First, for hypothesis 1, I contend that individuals living in democratic states will be more likely to support key principles of international protections against war crimes. Second, and analogously, I predict that individuals from states that enjoy better human rights protections will be more likely to support these key principles of international law and the relevant international tribunals. However, I also suggest that these same two factors may exercise the opposite effect. I discuss the measurement of the dependent variables later.

Hypothesis 1a: Individuals residing in states with higher levels of democracy will be more likely to agree with the principles of international humanitarian laws.
Hypothesis 1b: Individuals residing in states with lower levels of democracy will be more likely to agree with the principles of international humanitarian law.
Hypothesis 2a: Individuals residing in states with higher levels of democracy will be more likely to believe that international courts are effective.
Hypothesis 2b: Individuals residing in states with lower levels of democracy will be more likely to believe that international courts are effective.
Hypothesis 3a: Individuals residing in states with higher levels of human rights protections will be more likely to agree with the principles of international humanitarian law.
Hypothesis 3b: Individuals residing in states with lower levels of human rights protections will be more likely to agree with the principles of international humanitarian law.
Hypothesis 4a: Individuals residing in states with higher levels of human rights protections will be more likely to believe that international courts are effective.
Hypothesis 4b: Individuals residing in states with lower levels of human rights protections will be more likely to believe that international courts are effective.

Ideals must always be balanced against risk and the realities of the international environment. States that support the international rule of law, especially through signature and ratification of the ICC treaty, must consider how their regime will respond to allegations of violations of these laws (Goodliffe and Hawkins 2006, 2009; Hathaway 2002, 2007; Kelley 2007; Zvobgo 2019; Zvobgo and Chaudoin 2020). Some states may assume that through a

commitment to such norms, extensive training and aversion to international military excursions they can avoid being placed in such situations. Other states may believe that whatever violations of international law their forces might be accused of committing, their national courts will be able to properly settle such allegations, in which case intervention by an international court would be unlikely. For regimes that support international justice and belong to the ICC, the risks inherent in either scenario 1 or 2 for engendering detrimental foreign policy consequences are quite small. Hence, such states generally work with and support international courts. On the other hand, some regimes with activist and more militarily-oriented foreign policies may perceive much greater risk in international justice in general and membership in the ICC in particular because of the possibility that somewhere, some of their troops, or perhaps some of their allies may commit violations of international law (Hathaway 2002, 2005; Helfer and Slaughter 1997; Kocs 1994). Their risk aversion may lead to a greater reluctance to join the ICC, or support its intrusive investigations and trials. The United States, China, Russia, India, Israel and other large countries with powerful militaries have not joined the ICC and sought to tamp down if not prevent its exercise of authority.

It is not just the powerful states that have reason to be concerned about international courts. States that are experiencing internal conflicts may also run the risk that their strategies and those utilized by non-state armed actors could attract the attention of the international prosecutors (Gilligan 2006; Jo and Simons 2016; Rudolph 200; Simons and Danner 2010). In fact, nearly all of the conflicts investigated by the international tribunals have concerned internal conflicts, albeit with international involvement (e.g., Bosnia, Sierra Leone, the Democratic Republic of the Congo, Uganda, Libya, Sudan). Many of the protections afforded by the Geneva Conventions are relevant during internal conflicts, as well as protections against genocide and crimes against humanity. Regime leadership in such states can be expected to elevate discourse focusing on national security and threat when such conflicts arise. When one's society is under threat from within, individuals may become more likely to think in terms of personal security and safety, which are directly implicated by the threats to national, internal security (see Dancy et al., 2019; Voeten 2013; Zvobgo 2019). When individuals live in nations experiencing such threats, I suggest that they privilege concerns pertaining to security rather than international law. While rebels may use the language of rights, the rule of law and victimization to win over potential constituents, governments can be expected to focus on fear-based responses to internal threats and thus dampen enthusiasm for international justice. We should find that individuals who reside in such states have been exposed to such concerns and the risks that might befall their heroic armed forces should they fall into the clutches of an activist and intrusive international court. Therefore, I suggest the following:

Hypothesis 5: Individuals residing in states that engage in more militarized interstate disputes will be less likely to agree with the principles of international humanitarian law.

Hypothesis 6: Individuals residing in states that engage in more militarized interstate disputes will be less likely to believe that international courts are effective.

Hypothesis 7: Individuals residing in states involved in an internal conflict will be less likely to agree with the principles of international humanitarian law.

Hypothesis 8: Individuals residing in states involved in an internal conflict will be less likely to believe that international courts are effective.

The People on War Survey

To assess these hypotheses, I utilize data from the People on War survey carried out at the behest of the International Committee of the Red Cross in 2016.[ii] This is a global survey of over 17,000 individuals in 16 countries. While relatively brief and specific regarding the range of questions on international humanitarian law and the role of the Red Cross, it contains a great deal of data on individuals' beliefs regarding the permissibility of certain actions during wartime as well as their attitudes regarding international courts. I create two dependent variables from these data. First, I look at support for the principles of international humanitarian laws relevant to the international courts through a series of questions asking individuals' views about actions that are considered to violate the Geneva Conventions on War Crimes. I utilize six such questions to create an additive scale of support for international law. These questions are:

Q2. What about attacking enemy combatants in populated villages or towns in order to weaken the enemy, knowing that many civilians would be killed? Is that wrong or just part of war?
Q3. What about depriving the civilian population of food, medicine or water in order to weaken the enemy. Is that wrong or just part of war?
Q4. What about attacking religious and historical monuments in order to weaken the enemy. Is that wrong or just part of war?
Q5. What about attacking hospitals, ambulances and health care workers in order to weaken the enemy. Is that wrong or just a part of war?
Q9. Humanitarian workers are sometimes injured or killed as they are delivering aid in conflict zones. Is that wrong or is that just part of war?
Q10. What about torture. Is that wrong or just part of war?

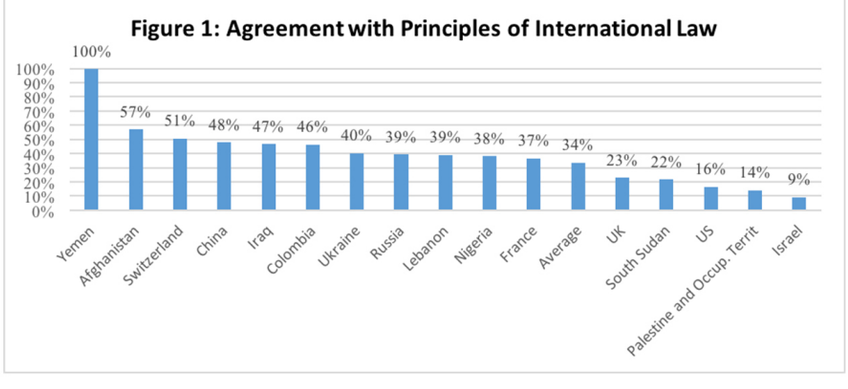
The possible answers are "Wrong"; "Part of War"; "I don't know"; and "I prefer not to answer". I sum the number of times an individual identifies these actions as "Wrong". One could make the argument that these questions tap into people's knowledge more than values. However, individuals are clearly asked to give their opinions as they are advised that in answering these questions that they should, "…give your opinion, even if you have little knowledge of the subject".[iii] Further, they are simply asked if these actions are "wrong" or "part of war", not whether they are, in fact, illegal.

I utilize a second dependent variable that measures individuals' views regarding the effectiveness of international courts. The survey questions read, "Here is a list of some separate ways to reduce the number of victims of war. Rate each option below on the scale of not very important, a little important, somewhat important and extremely important". Respondents are then given a series of options for reducing the number of victims, one of which is, "increasing accountability for atrocities through international courts"[iv]. Individuals could indicate that such courts were "not very important"; "a little important"; "somewhat important" and "extremely important". While the ICC is not specifically cited, it is the most prominent of all the international courts at present and so we would expect that the ICC will loom large, if not dominate such responses. Regardless, this measure will help us better

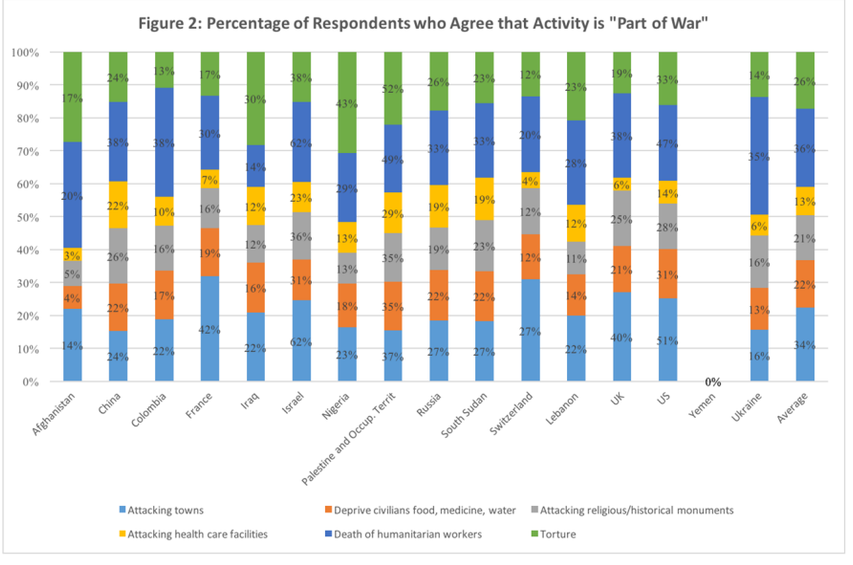
understand how individuals perceive the impact of international tribunals. For these analyses I use an ordered probit model.

I use the standard Polity data to measure democracy ("-10" – "10") and the Political Terror Scale data to measure human rights in states.[v] I take the average of the State Department derived and Amnesty International derived measurements from these data to create one, composite measure. For both the democracy and human rights variables I use their average scores in the five years prior to the ICRC survey (i.e., 2011-2015) from 2016. I use the number of militarized interstate disputes in which a state was involved for the years 1990-2010 (to coincide with the end of the Cold War and the last year for which these data are available at the time of writing).[vi] Data on internal conflicts are derived from the Correlates of War data base on civil wars and include all states that were involved in internal conflict between 2000 and 2016. I also include controls for age, education, awareness of international law and gender using data from the survey. I also tested for the impact of economic development as measured by gross domestic product per capita, a key indicator of state strength, on support for international law. We found the variable to be highly correlated with all of the other state-level measures and could not be used.

We will look first to individuals' agreement with the principles of international law relevant to the international courts. Figure 1 ranks states according to the percentage of the population that agrees with all six of the principles described above. The results are surprising and fascinating.



Respondents in Yemen, a country that has been wracked by civil war for years, attained the highest support score by far of any nation—100%. Since one rarely finds 100% agreement on anything involving public opinion, I checked the items individually, and while the 100% is rounded up from 99.75% (only two individuals in Yemen did not agree with every one of the principles of international humanitarian law), I found unanimous agreement (with the noted exceptions) on all of these items. No country comes anywhere close to this level of agreement. We see the second most agreement in Afghanistan (57%), which is another nation that has been afflicted with war for decades. People in Iraq (47%), Colombia (46%) and Ukraine (40%), also countries that have experienced war in recent years, provide high levels of support (although not South Sudan, which exhibits only 22% support of all the principles). Among the democratic states, not surprisingly the home of the ICRC—Switzerland—scores highest (51%). Other democratic states do not fare so well. In fact, the United Kingdom, the United States and Israel are three of the five lowest scoring countries in the survey. These three states are also among the most active militarily among the survey nations. Hence, we see an interesting paradox. Support for international law is greatest where people have suffered the most from the effects of war, while lack of support is highest in countries that are most likely to be involved in military conflicts.



To investigate this issue further, I looked to see if there were particular principles of international law that elicited more opposition. Figure 2 shows each country's respondents' views on which wartime activities, which are all barred under international law, they believe are an expected "part of war". Respondents could have also chosen to indicate if they believe these activities were wrong. Very few individuals chose either "I don't know" or "I prefer not to answer". Respondents were most likely to indicate that attacking towns and villages, despite the prevalence of civilians, was just a "part of war" and that the death of humanitarian workers was also to be expected in wartime. To be clear, however, the question wording on healthcare workers does not necessarily imply the agency of military forces as the question is worded, "Humanitarian workers are sometimes injured or killed as they are delivering aid in conflict zones. Is that wrong or is that just part of war?". The average percentage agreement that the death of healthcare workers is part of war is 36%, while the percentage of respondents agreeing that attacking towns is just part of war is 34%. Among the noticeable outliers are the respondents from Israel and the US, and to a lesser extent the Palestinian authority. The majority of Israelis (62%) believe attacking towns and the death of humanitarian aid workers are a part of war, while 51% of US respondents believe the former is part of war. Among the Palestinians, 51% believe that torture is just part of war.

Table 1: Explaining Support for Principles of International Humanitarian Law - Regression Analysis

Variable	Coeff.	Std. Error	T Statistic	P value	Std. Beta Coeff.
Polity 2 Rating	-0.092	0.004	-21.310	0.000	-0.229
Political Terror Scale	-0.242	0.023	-10.730	0.000	-0.130
Militarized Interstate Disputes	-0.010	0.001	-14.700	0.000	-0.145
Internal Conflict	0.908	0.048	19.070	0.000	0.216
International Law Awareness	0.073	0.016	4.500	0.000	0.036
Education	0.014	0.016	0.870	0.385	0.007
Age	0.008	0.009	0.850	0.393	0.007
Female	0.210	0.029	7.260	0.000	0.054
constant	5.262	0.116	45.270	0.000	.

N = 15,919

R^2 = .142

The model I developed in the previous section is presented in Table 1. I use regression analysis to estimate the model. The coefficients for all of the exogenous factors entered into the model are statistically significant, except for age. First, we see that those respondents living in more democratic states are less likely to support the principles of international humanitarian law. In fact, according to the beta coefficient, which provides a standardized measure of the impact of the independent variables based on a one standard deviation change in the independent variable, individuals living in more democratic states are less likely to support the principals of international law. For every standard deviation change in the democracy score, support for humanitarian law drops by .23 units. While we anticipated this finding in hypothesis 1b, it is rather striking to see that individuals who enjoy the benefits of democracy and rule of law are unwilling to extend such protections to innocent civilians in other countries. Certainly some part of this finding is being driven by the USA, which is heavily sampled in the survey and whose government has been especially hostile to these principles at times. To assess how much influence the USA respondents might be exercising in the analyses, I dropped those observations and reran the model. The democracy rating is still highly significant, although it is no longer the most powerful variable in the model (internal conflict is, results not shown). Simply put, individuals living in the democratic states surveyed by the ICRC are among the least supportive individuals in the sample.

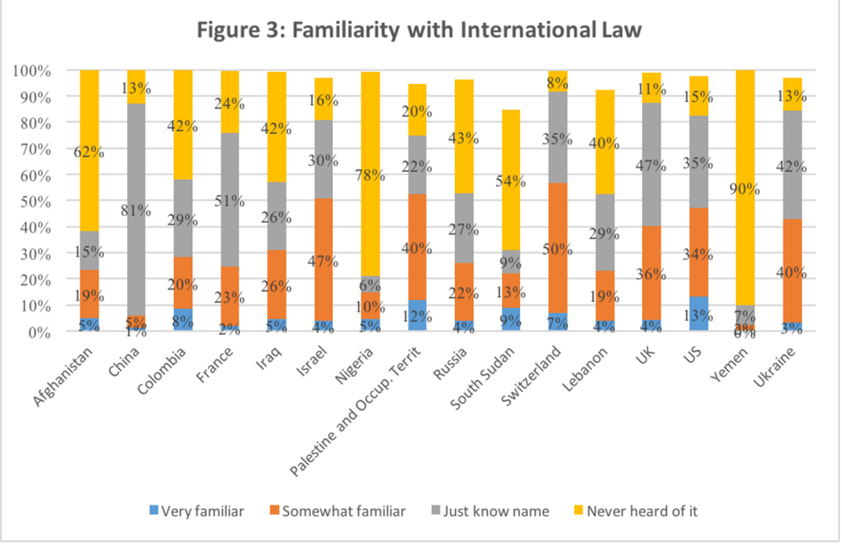
I also separated out the components of the Polity 2 scale to determine if there were clusters of democratic features, such as restraints on the executive and degree of party competition that might exercise a stronger relationship on individuals' attitudes. I reran the model using the three principal components of the Polity 2 measure, executive recruitment, executive constraints and degree of political competition. The results are provided in the Appendix, and indicate there are some crucial distinctions in the impact of various democratic features on support for international law. Specifically, individuals in states that are more democratic in terms of executive recruitment and executive restraints are less likely to be supportive of international law, while persons in states that provide for greater political competition are more likely to support international law. This finding should be investigated to identify the impacts of all the various components of democracy more precisely on public support for international justice.

On the other hand, individuals living in states that provide better levels of human rights protection are more likely to support the principles of international law. The coefficient for the variable is statistically significant and powerful. It is important to remind the reader that the PTS ranges from "1" to "5" with higher values indicating more human rights violations. Thus, a negative relationship indicates that people residing in countries with more human rights abuses are less likely to support principles of international law. According to the standardized coefficient, average individual support for the principles of international humanitarian law decreases by .13 units as human rights protections diminish. We have an interesting and somewhat paradoxical relationship among democracy, human rights and support for international law. On the one hand, individuals living in countries that utilize democratic processes—we might think of democracy in this case as the structure of government—are less willing to support these principles. On the other hand, respondents residing in those states that respect human rights—what we might refer to as the substance of democracy—are more supportive of international humanitarian law. Given that we are analyzing relationships between constructs like democracy and human rights that are measured at one level of analysis (state level) and constructs like individual beliefs that are measured at a different level of analysis, we would not wish to make any strong inferences based on these data. Nonetheless, it would appear that simply living in a country that is, on paper, a democracy (e.g., USA, Israel), does not necessarily translate into greater individual belief in some of the underlying principles of democracy, especially as they pertain to individual rights. It may also be that a belief in democracy and individual rights may be confined to one's fellow citizens, and that support for democracy does not translate into a belief in the rights of those living outside one's polity. I also evaluated the impact of ICC membership on support for international humanitarian law, but the variable was highly and negatively correlated with involvement in militarized disputes, and did not improve the overall performance of the model.

We also see a fascinating difference in support for principles of international law settled in international tribunals between those who live in states that take part in more militarized interstate disputes and those who live in states that have or are experiencing internal conflict. The former are distinctly unlikely to support these international principles, while the latter are strongly inclined to support these laws. The coefficients for both variables are statistically significant, both make a great deal of sense. Those states that project power abroad—principally the major powers in the sample (the USA, France and the United Kingdom) as well as regional powers, like Israel, participate in numerous armed conflicts in other countries, and hence have cause for concern regarding international oversight of their behaviors. And while the UK and France are members of the International Criminal Court, their citizens do not appear to be as supportive of the Court's guiding principles. These may be the same individuals living in the more democratic countries in the sample who are also less inclined to support these principles.

Individuals living in states that have recently experienced internal conflict see the world in a vastly different way. They are much more supportive of principles of international humanitarian law. For everyone, standard deviation increases in this variable (.46), which is dichotomous, individuals living in civil war states increase their support for international law by .21 units. We might reasonably assume that many of these individuals or their family

members have experienced or witnessed the types of international law violations referenced in the survey, such as the destruction of towns and villages, attacks on historical and religious monuments, and torture. We might surmise that exposure to the violation of these laws and their devastating consequences would make many people inclined to believe such actions should be illegal. While their government leaders may well take a vastly different stance and argue that they should be allowed to do whatever is necessary to preserve the state in the face of rebellion or civil war, their positions may not carry much weight with the average person. Indeed, it may well be the government that is violating their rights as we have seen in Yemen, Afghanistan and Colombia, and making individuals more supportive of these rights at the international level.



We find that greater awareness of the purposes of the Geneva Conventions correlates positively with support for its principles. While not exactly an earth-shattering revelation, it does demonstrate that awareness of the Geneva Conventions is critical if it is to have an impact on individual opinions. Further, we see in Figure 3 that awareness of the Conventions is quite limited. The percentage of individuals who are aware of it is quite small in all countries. Ironically it is highest in the United States at 13%, just ahead of the Palestinian and Occupied Territories at 12%. Even in Switzerland, home of the ICRC, just 7% of those surveyed were remarkably familiar with it. The coefficient for the education variable is statistically insignificant, and also correlates strongly with the democracy and human rights variables. Some of its impact is likely registered there. Age is not related to support for these key international law principles, but gender is. Women are somewhat more likely than men to support these principles.

I next examine the determinants of individuals' beliefs in the prospects for increasing accountability for atrocities through international courts as a method of reducing the number of civilian casualties during war. There are some key differences in the results in this model as compared to the measure of support for the principles of international law. First, we see that a state's democracy rating is no longer related to its citizens' opinions regarding international

courts. However, individuals living in states that provide higher levels of human rights protections are more likely to believe that international courts are a better way to "increase accountability for atrocities". Again, it would appear the actions taken by states that provide more robust human rights protections may have more of an impact on respondents' opinions than the "talk" of states that are democratic in structure. A little less talk and a lot more action would seem to change attitudes.

Table 2: Explaining Individual Opinions on the Effectiveness of the ICC - Ordinal Probit Model

Variable	Coeff.	Std. Error	T Statistic	P value
Polity 2 Rating	0.002204	0.002675	0.82	0.41
Political Terror Scale	-0.11987	0.014475	-8.28	0
Militarized Interstate Disputes	0.002003	0.000458	4.37	0
Internal Conflict	0.381434	0.030846	12.37	0
International Law Awareness	0.054007	0.011	4.91	0
Education	0.041363	0.010442	3.96	0
Age	0.019969	0.006119	3.26	0.001
Female	0.176257	0.019021	9.27	0
/cut1	-1.29225	0.077527		
/cut2	-0.60973	0.076629		
/cut3	0.27045	0.07657		

N = 14,589

We see in Table 2 that the relationship between the number of militarized interstates disputes a state has been involved in over the last couple of decades has changed. Where before we saw that such militarily active states tended to dampen enthusiasm among their citizen respondents for the principles of international law, now we see the relationship has changed. Respondents living in states that were involved in more of these military activities, are more likely to believe that international courts can help to reduce the number of civilian casualties during war. While an explanation of the reasoning behind this apparent change of attitudes regarding international laws and courts must remain speculative at this point, let me offer one potential account. Among individuals who are citizens of militarily active states, there may well be a greater concern that the constraints international humanitarian law places on governments may "interfere" with the realization of the state's national security interests, when they are asked to comment on specific war-fighting strategies. When asked to estimate the impact of these international humanitarian laws more generally, they may in fact be more charitable in their estimation of the power of these courts. That is, their apprehension regarding international humanitarian law we see evident in the former question may be explained in part by their concomitant belief that these courts are, in fact, quite effective at reducing violence. They fear the ICC will be effective and thus interfere with their country's national interests, and thus their fear of the ICC plays an outsized role in their beliefs. In effect,

their belief/fear in the (potential) effectiveness of these courts leads to a concern that these effective courts may unduly constrain the actions of their government.

As hypothesized, I also find that individuals who show greater awareness of the principles of international humanitarian law are more likely to believe in the potential impact of international courts in reducing the number of civilian casualties during war. Finally, we see in these estimates that the coefficients for both the gender and age variables are positive and statistically significant. Women are more likely than men to believe that international courts have a key role to play in reducing casualties from international law. The percentage of women who take the most positive view of international courts is only slightly different than the opinions of the men—52% of women believe that international courts are especially important in reducing casualties, while 47% of the men feel the same way (results not shown).

Conclusion

This review of public opinion on international humanitarian law and international tribunals has illuminated new insights that will be of significant use in developing our theoretical understandings of this topic as well as the more practical implications of this research. As hypothesized we find that individuals residing in states with better human rights records were more likely to express greater support for the principles of international law, but we also found that there was a negative relationship between a government's democracy rating and its people's support for these key principles. More in-depth exploration of this apparent paradox is needed to understand why human rights practices seem have more of an impact on opinion formation that the type of government. As discussed earlier, it may be that actual human rights practices are more visible and salient to individuals as cues to a government's true preferences rather than the institutional guarantees of freedoms and responsibilities one finds on paper in laws and constitutions. The action of upholding human rights seems to mean more than the talk of democracy in shaping people's attitudes on international justice.

As hypothesized, a state's security situation can also shape individuals' views of international laws and tribunals. Respondents living in states that embarked on a high number of militarized interstate disputes were less likely to support key principles of international humanitarian law. As I hypothesized, individuals are more likely to respond to the national security concerns of regime leaders in states that project military force on a frequent basis (Kim and Hong 2019) and express less of a concern for individual human rights and instead place more emphasis on ensuring national security objectives can be met, regardless of the consequences. While our capacity to draw such conclusions when linking individual attitudes to state level actions is limited, this finding does demonstrate that in those states that are the most at risk of becoming subject to international laws and courts, the citizens are more risk averse than those living in states where such force projection is not a foreign policy option. These are the same states the ICC has always had trouble working with, including the USA, Israel, Russia, Iran and others. I also found, however, that individuals living in states that had experienced an internal conflict were more likely to support the principles of international law and believe that international courts can help reduce the deaths of innocents during war. Those who have experienced conflict violence have the most to gain from its cessation and would seemingly have a better understanding of the consequences of war and what is gained by adhering to the Geneva Conventions. Thus, even if regime leaders in these states are not supportive of international laws or international courts, there is a constituency in these countries for international justice that can be expanded. Indeed, the country whose citizens

were more supportive of international humanitarian law than any other—Yemen—has experienced one of the most brutal wars in the Middle East in recent years.

Support for the principles of international law exists even though there is often little awareness of what the Geneva Conventions do. In Yemen, for example, 90% of the population surveyed had never heard of the Conventions, although as pointed out above, this did not prevent nearly every person surveyed from agreeing with every principle of international law about which they were asked. Thus, while education and awareness of the Geneva Conventions are generally associated with more support for international law and international courts, it is clear that there is a ready constituency of individuals who believe in these legal principles, even if they are not quite aware of where these international principles reside. There may well be a great deal of latent support for international justice in these populations who wish to see international principles upheld in their lands.

Future theoretical development to understand the nature of public preferences regarding international laws and courts should begin by exploring the conditional relevance of various cues. Why are respondents from states with better human rights records more likely to support international laws and courts while those from democratic states do not appear to be as supportive? How do citizens differentiate among these possible cues and form opinions? How exactly do national security cues influence citizens preferences? How do individuals come to understand that abiding by certain principles of international humanitarian law may interfere with the achievement of national security objectives? How do citizens differentiate the relevance of external threats to national security that would seem to demand force projection? When the threats to security are internal to the state and stem from a rebel group or militia, how do individuals determine that respecting principles of these international laws is a higher good than defeating threats to their government? In other words, why would an individual in a state that projects force outward see threats embodied in international law, while an individual in a state that uses force internally would see opportunities for protection? The nature and immediacy of the threats facing the individual might help us explain this bifurcated response, but much more research on individual attitude formation across a variety of states and contexts is necessary.

The potential relevance of these findings for the International Criminal Court are particularly interesting. In the last several years the ICC has lost support among many states for what seems to be a focus on African conflict situations; a lack of verdicts, and a series of problems in cases from Libya, Sudan and Kenya in particular. These findings would seem to indicate that there is a respectable level of support among the surveyed individuals for the Court and that it does fairly well in these polls across a wide variety of regime types. But while the ICC seems to have a decent reputation overall, its more specific failures have kept it from capitalizing on public concern for humanitarian principles. The perception of the ICC may well be defined by its controversial involvement in certain cases rather than its overall mission. The data shows, however, that there is a foundation of support for international principles among many publics. The most effective strategy the ICC could pursue might be to publicize the values and principles that are the basis of these laws and institutions. The dedicated support the ICC enjoys from nations with good human rights records is a further indication that its values are the most universal and appealing part of the ICC mission. Coalescing around common values rather than controversial interventions might be one effective strategy for ensuring the ICC remains relevant in the coming decades.

Finally, I note that given the lack of awareness of international law among people in all the nations surveyed, the ICC might work in conjunction with the ICRC to raise awareness of these principles and values. Ensuring the bedrock of support necessary for the ICC to function effectively in a world with many hostile powers looking to clip its wings will be key to its relevance and longevity. Given that many people already agree with the principles of the relevant international laws at issue in these tribunals, without even necessarily understanding that these are settled principles of international law, there is fertile ground on which to work. Publicizing these values and the widespread agreement with them among individuals from around the world would seem to be a critical part of the public outreach international courts must engage in. If the ICC and the ICRC do not define themselves, they risk being defined by those nations that are indifferent at best and hostile at worst to its purposes.

APPENDIX

Table A.1. Regression Analysis - Explaining Support for International Law with key Democratic Elements

Variable	Coeff.	Std. Error	T Statistic	P value
Executive recruitmemt	-0.081	0.030	-2.690	0.007
Executive constraints	-0.404	0.025	-15.940	0.000
Political competition	0.173	0.017	10.110	0.000
Political Terror Scale	-0.134	0.021	-6.280	0.000
Militarized Interstate Disputes	-0.009	0.001	-12.420	0.000
International conflict	0.854	0.055	15.500	0.000
Awareness of international law	0.148	0.017	8.570	0.000
Age	-0.001	0.010	-0.100	0.918
Education	0.038	0.017	2.180	0.029
Female	0.251	0.031	8.120	0.000
constant	5.914	0.161	36.720	0.000

N = 14,317

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ENDNOTES

i. As found at https://www.un.org/ruleoflaw/what-is-the-rule-of-law/ March 24, 2021.
ii. The People on War data are hosted at https://forsbase.unil.ch/.
iii. From the People on War Survey list of questions (2016), page 1.
iv. The other options respondents were given were: "increasing the effectiveness of laws and rules that limit what combatants can do in war"; "increasing the accuracy of weapons to reduce the unintended casualties"; "increasing the news coverage of these wars so that atrocities are exposed"; and "Decreasing the number of weapons available to soldiers and fighters in the world".
v. Polity data can be found at https://www.systemicpeace.org/inscrdata.html while the Political Terror Scale is located at http://www.politicalterrorscale.org/Data/.
vi. Data can be found at https://correlatesofwar.org/data-sets/MIDs.

Reforming the United Nations Security Council by Ignoring It

By Jed Lea-Henry

The United Nations Security Council (UNSC), as the only legitimate dispenser of humanitarian intervention, has limited effectiveness due to the veto powers of the Permanent Five (P5) members. Various reform agendas have been attempted over the years, and all have failed: for the most part because any such reform would limit the current level of international control that the veto affords the P5, and yet those reforms would also require P5 approval before they could be enacted. A potential solution to this PS veto roadblocking could be to utilize the regional peacekeeping solutions envisioned in the UN Charter, which do not merely seek to execute resolutions by themselves, but actually bypass United Nations (UN) approval and processes altogether in possible violation of UN Charter Article 53. This could take away the control over international actions that the P5 members currently hold with their veto power. By simply ignoring the UNSC, regional peacekeeping solutions would force the UNSC to accept the complete loss of power associated with that behaviour or choose to reform itself to retain a diminished share of its original powers. Ignoring the UNSC might just be the best means to reforming it.

Introduction and the UNSC

At the turn of the century, then Secretary General of the United Nations (UN), Kofi Annan, was becoming despondent, and during his Millennium Report to the General Assembly he emptied his conscience onto the international stage. According to Annan, international law would have to undergo huge structural changes, or either of two unpleasant scenarios would become reality. First, mass atrocities would continue to take place, and the world would do nothing to stop them. Alternately, countries would stop seeking United Nations' approval for intervention and would simply go it alone – "If the conscience of humanity… cannot find in the United Nations its greatest tribune, there is a grave danger that it will look elsewhere for peace and justice" (ICISS 2001, 6.22). For Kofi Annan, both were horrifying propositions. Annan was responding to the mass atrocities and corresponding humanitarian crises that came to define the 1990's. During this time, civilian populations became the primary targets of conflict, more so than ever before (Holt and Berkman 2006, 16). More alarming was the disjointed, and often entirely absent, response of international actors in terms of humanitarian intervention and aid (Bellamy 2011, 1).

The UN, specifically the United Nations Security Council (UNSC), as the international "dispenser of legitimacy" (Tsagourias 2013, 138) (Thakur 2006, 245), was designed toward paralysis due to the veto powers granted to the Permanent Five members (P5). In the aftermath of the Second World War, the United Nations was formed with the hope of becoming the facilitator of international cooperation and peace. This was an appealing prospect to smaller, less secure nations; but the 'great powers' would need more convincing. They, after all, were already in an enviable position in the ungoverned space of international relations – for them, the United Nations represented a relinquishing of power and control. The Security Council was the hook needed to reel them in.

By offering the United States, Great Britain, France, Russia (then the USSR) and China (then Taiwan) permanent seats on the Security Council and a unique power to veto any resolution with a single vote, they were guaranteed a means to maintain positions of unequal international influence and protect their own national self-interest (Tsagourias 2013, 143; ICISS 2001, 6:13). Through the structure and function of the UNSC, the UN, on matters of international peace and security, has become a substantial impediment to humanitarian ideals; an intrinsically intractable organization (Pogge 2010, 167). As such, countless attempts have been made over the years to try and reform the UNSC to allow a more determinate, substantial, and morally concordant organisation, specifically when it comes to authorising and supporting humanitarian interventions to address mass atrocities and human suffering. All such attempts have failed!

In recognition of this fact, as he was sworn in as the secretary-general of the UN on December 12, 2016, Antonio Guterres, focussing on the ongoing humanitarian crisis in Syria, eerily echoed Annan from over a decade earlier: "this organization is the cornerstone of multilateralism, and has contributed to decades of relative peace, but the challenges are now surpassing our ability to respond". The UN must "recognize its shortcomings and reform the way it works" and "must be ready to change" (United Nations 2016). The need to reform the UNSC is now more pressing than ever. Yet the hopes of achieving reform are just as unlikely as ever, because they will, by definition, work to limit the existing powers of the P5, yet will require P5 approval. This leaves very few options available: either accept the status quo whereby mass atrocities more often than not will continue unaddressed and unmitigated, or find a way to force through UNSC reform; that is to find a way to tilt the cost-benefit-analysis so that the P5 members will come to see UNSC reform as being in their interest.

This could be achieved through a normative rise in regional peacekeeping solutions envisioned in the UN Charter, which do not merely seek to execute resolutions by themselves, but actually bypasses UN approval and UN processes altogether in a possible violation of the UN Charter Article 53. This would, in effect, remove the P5 members' control over international actions currently exercise through the veto power. By simply ignoring the UNSC, regional peacekeeping solution could force the UNSC to accept the complete loss of its power or choose to reform themselves in order to retain a diminished share of that original power. Ignoring the United Nations Security Council might just be the only means to reforming it.

The Legal Right to Humanitarian Intervention

There is a long moral and legal tradition that supports the right to humanitarian intervention, particularly in response to the existence of mass atrocity crimes. This legal tradition for humanitarian intervention can be separated into four key categories. The first category is based on the fundamental and basic language of the UN Charter. A second category is based on an understanding the UN Charter as a document that incorporates, and applies to, developments in human rights law; that is, as an "organic document" (Chomsky 2012, 149). The third category is based on the legal foundation of the Paquete Habana Case (1900) (Hehir 2008, 23), by valuing the rise of normative and customary law as a legal grounding for state behaviour (Heinze 2009, 58). The final category uses codified universal human rights standards, across various conventions and covenants (Weiss 2007, 21), conceptualised as broadly as possible; that is, a protection of negative liberties and human agency, as a "tool kit against oppression" (Ignatieff 2003). Furthermore, humanitarian intervention is justified and

governed by the principle of universal jurisdiction, making international crimes the responsibility of foreign states (Heinze 2009, 85-86).

That being said, the absence of an explicit "humanitarian exception" in the UN Charter outlining international humanitarian obligations and the 'right to intervention' presents a degree of ambiguity (ICISS 2001, 6.13). The Doctrine of the Responsibility to Protect (R2P) was developed as a legal fix, as well as a moral clarification, for this problem. Previously, by virtue of the legal precedents inherent within Common Article 1 of the Geneva Conventions (1949), the Draft Articles on the Responsibility of States for Internationally Wrongful Acts, the International Court of Justice (ICJ) report on Bosnia vs. Serbia, the UN inquiry on the genocide in Rwanda (Bellamy 2010, 161), and International Law Commission, an international 'obligation' to assist populations in need was shown to exist.

R2P stepped further. The Doctrine redefined the principle of state sovereignty to mean 'functional sovereignty', based on three "non-sequential" and "equally weighted" foundational pillars. First, sovereignty is forfeited if civilian populations are not protected. Second, the international community is obliged to assist countries in this protection. Third, the international community is obliged to intervene militarily in any situation where this standard cannot be met (genocide, crimes against humanity, systemic war crimes, ethnic cleansing) (Bellamy 2010, 143). These core obligations were then framed around three categories: the Responsibility to Prevent (R2Prevent), the Responsibility to React (R2React), and the Responsibility to Rebuild (R2Rebuild) (ICISS 2001).

First conceptualised in a 2001 report by the International Commission on Intervention and State Sovereignty (ICISS), R2P moved from idea to legal principle after being adopted by the 2005 UN World Summit, and then legal consensus (Hehir 2012, 19; Weiss 2007, 1). This was reaffirmed in 2009 and also in 2012 by the UN General Assembly (UNGA) and quickly became the normative and "obligatory reference point in academic discourse on the issue of humanitarian intervention" (Hehir 2012, 4). Independently, R2P has been referenced in declarations concerning the control of light weapons, children in conflict zones, and the protection of civilian populations; referenced in UN resolutions concerning Cote d'Ivoire, Burundi, Central African Republic, Democratic Republic of Congo (DRC), Mali, Yemen, Sudan and Libya; as well as in UNSC presidential statements dealing with peace and security in Africa, children in conflict zones, civilian populations in conflict, international peace resolution, peace promotion, Central Africa, and the Middle-East; and also operating toward the creation of new institutional architecture, such as the Peacebuilding Commission (Evans 2006, 714; Bellamy 2011, 110).

Kofi Annan saw R2P as the change he had long desired: "I believe we must embrace the responsibility to protect, and, when necessary, we must act on it" (Evans 2006, 714). Co-chairman of the ICISS report, Gareth Evans, commented that with R2P "Maybe, just maybe, we'll be able to say 'never again' in the future without having to periodically look back, as has so often been the case in the past, asking ourselves, with a mixture of anger, incomprehension and shame, how did it happen again" (Stark 2011). A sentiment championed by British Foreign Minister, Jack Straw: "if this new responsibility had been in place a decade ago, thousands in Srebrenica and Rwanda would have been saved" (Hehir 2012, 127). The moral and legal commitment to humanitarian intervention was elevated to new heights following the implementation of R2P, however the sole legitimator of international intervention, both in authorisation, operational objectives and operational guidelines remained the UNSC, a reality that was reaffirmed in the World Summit document itself.

United Nations' Failures in Practice

The 1990's and early 2000's, a period of heightened cooperation following the end of the Cold War, saw a rise in large-scale humanitarian emergences (Holt and Berkman 2006, 16) (Barnett 2011, 6) and an increased focus on the strength of international laws and norms to enforce humanitarian intervention. The encumbering role of the United Nations also came to the fore.

In the case of Somalia, the term 'humanitarian' appeared on 18 occasions on a single resolution authorizing intervention, United Nations Security Council (UNSC) resolution 794. However, the language had no backing in reality. Once the UNSC mandate was provided, it became apparent that no UNSC member had any intention of fulfilling it. Accordingly, the resulting intervention was both "underfunded and weakly staffed" (Laitan 2004, 44) and enacted with an overt strategy of "quick exit" (Ignatieff 1999, 91-94). Moreover, the intervention itself was hopelessly belated: Special Representative to the Secretary General, Mohamed Sahnoun, was predicting societal collapse and mass atrocities even before the 1991 fall of President Maxamad Siyaad Barre (Laitin 2004, 36). In January 1991, UN Secretary-General Javier Perez de Cuellar, described Somalia as "the most serious humanitarian crisis of our day". However, it was not until December 1992 that resolution 794 was authorised humanitarian intervention. The deaths of 18 US servicemen in October 1993 caused US withdrawal, and the UNSC followed suit with resolution 954 ordering complete withdrawal, despite the continued presence of tribal warfare, mass atrocities and widespread human suffering (Weiss 2007, 7). The continuing humanitarian suffering has failed to attract even the language of R2P (Bellamy 2011, 89).

In Yugoslavia, following the 1991 Croat and Slovak declarations of independence, the spiral into state collapse and communal violence began with force. As early as 1992, at risk populations were openly calling on the international community for protection (Ignatieff 1999, 100), yet substantial intervention did not materialise until November 1995. Prior to this, UNSC resolution 743, authorizing a peacekeeping mandate for Croatia was passed in February 1992, yet considerably less than half of the resources and funding were ever delivered. Of the 35,000 troops designated for the protection of Bosnia, only 7000 arrived, leaving designated 'safe-zones' largely undefended with only 'several hundred' soldiers (Ignatieff 1999, 137). The resulting massacre in the safe zone of Srebrenica, happened in the presence of UN observers and facilitated the atrocities by keeping the targeted victims grouped together. The "West's vacillation over the use of force" (Weiss and Collins 2000, 91) empowered Serbian forces to violate UN safe zones and take hostages of UN Peacekeepers (Weiss 2007, 62).

With the memory of the Yugoslav disintegration still in the minds of the international community (Chomsky 2012, 37), the intervention into Kosovo was occurred with little hesitation and with the required resources to put an effective halt to what was an escalating cycle of violence (ICISS 2001, 1). However, the intervention was undertaken by the North Atlantic Treaty Organization (NATO) without the approval of the UNSC. The NATO-led bombing campaign forced the Serbian parliament to agree to an approved peace plan, and persuaded the UNSC to pass resolution 1244 in 1999, thereby assuming administrative control over Kosovo (Weiss and Collins 2000, 93-100). Yet despite this, prior to the NATO intervention, UNSC members were divided over authorising intervention and failed to provide any explicit authorisation prior to the intervention. The intervention was approved retroactively, but at the time, it was technically illegal (Thakur 2006, 216).

In the years leading up to the genocide in Rwanda, communal violence and the presence of 'death squads' were widely reported. Indeed, the CIA, in January 1994, had modelled that 500,000 Tutsi's would likely be killed if the violence erupted across the country. Estimates based on even a minimal military intervention after the genocide was underway, indicated that at least 25 percent of the total death toll would have been avoided (Kuperman 2001, 102-109). Yet despite these warnings, as the genocide was unfolding, UNSC resolution 912 was passed authorising a UN troop withdrawal from 2558 peacekeepers to 270; and those remaining only existed in a 'monitoring' capacity'. The UNSC, in ts deliberations at the time, desperately avoided using the label "genocide" to describe the violence, to avoid international obligations as defined under the Genocide Convention (Weiss and Collins 2000, 101). When UNSC resolution 918 was finally adopted, thereby increasing troop numbers on the ground, it took a further three months until any of this additional troops actually arrived in Rwanda (a time when nearly 10,000 people were being killed each day) (Thakur 2006, 293).

In 1999, the latent violence that had been simmering since the 1975 Indonesian invasion, erupted again in East Timor. As 750,000 to 880,000 Timorese were forced from their homes under the constant terror of death squads and Indonesian supported militias, the international response was almost entirely absent, until Australia, operating in some ways from geopolitical pressures, undertook the intervention nearly singlehandedly. Yet "delays…meant that although Australia did intervene, intervention came only after the worst of the violence was over" (Bellamy 2006, 150).

'Operation Restore Democracy' was undertaken in Haiti after Chapter VII of the UN Charter was invoked claiming that the internal crisis in the country represented a "threat to international peace and stability" (Hehir 2008, 20). However, the intervention was explicitly undertaken with the intention of displacing the government and installing a democratic alternative, thereby stepping outside the boundaries of what is justified under humanitarian intervention (Weiss 2007, 49). Even then, the intervention was delayed continuously, thus it took almost three years following the original coup, a period of near constant political violence and human rights abuses (Weiss 2005, 122) for restorative military intervention to occur.

A rare occasion when near universal political consensus was achieved, was the 1991 intervention in Iraq. This condemnation of Saddam Hussein's invasion of Kuwait brought about UNSC resolution 678 in 1990, authorizing "all necessary means" to halt Iraqi aggression (Ignatieff 1999, 100). Several months later, in April 1991, as 2.5 million Kurds were fleeing revenge attacks, UNSC resolution 688 demanded "immediate access by international humanitarian organisations to all those in need of assistance in all parts of Iraq", a mandate that came to incorporate a 'no-fly zone' being imposed over Iraqi-Kurdistan (Weiss and Collins 2000, 77-80). Yet the language of resolution 688 did not explicitly authorise intervention, thereby casting the legality of the Kurdish 'protected zone' into doubt (Weiss 2005, 46).

The intervention into Liberia by the Economic Community of West African States (ECOWAS) to halt what was a long-running civil war and politically motivated violence, predominantly by Charles Taylor backed rebels, happened without UN approval. Despite the obvious levels of human suffering, neither prior to the intervention, nor in retrospect, did the UNSC agree to authorise military action (Weiss 2007, 9)

A long-standing humanitarian crisis in the Democratic Republic of Congo (DRC) (approx. 1998 to 2007) consistently drew the attention of the UN. The international

community openly condemned the violence, and military intervention was debated resulting in the UNSC adopting numerous resolutions. However, a reluctance to staff, supply and fund various UN peacekeeping missions (Chomsky 2012, 28; Weiss 2007, 52) meant that "humanitarian intervention melted into air" (Adelman 2002, 17). After the introduction of R2P, the UNSC has not authorised a single intervention under its guise for the DRC. In other words, the doctrine has had no noticeable impact on the conflict in DRC (Bellamy 2011, 89).

Described as a "slow-motion genocide" (Weiss 2007, 52), the conflict in Darfur failed to attract any meaningful response from the UNSC, or any action capable of addressing the rolling violence or protecting at-risk populations (Weiss 2007, 53-55). Strangely the international community seemed obsessed with getting prior approval for any intervention from Sudanese President Omar al-Bashir (Schulz 2009, 150). For example, UNSC resolution 1706 asked for "the consent of the Government of National Unity" (Hehir 2008, 67). Post-R2P, the British Parliament announced, "if the responsibility to protect means anything, it ought to mean something in Darfur" (Bellamy 2011, 52-54). Similarly, R2P was referenced in a UNSC resolution criticising the government in Sudan. However, the international community proved unwilling to support intervention, and particularly unwilling to supply the 12,000-20,000 troops required (Weiss 2007, 55).

In Libya, often seen as a peak of humanitarianism, UNSC resolution 1973, despite authorising intervention, seemed to deliberately avoid making explicit reference to R2P, by avoiding any mention of the responsibility of the international community to protect the Libyan people. Rather, once again the emphasis was placed on the need of the Libyan state to protect its own population (Hehir 2012, 13). Inside the UNSC, China and Russia were intent on vetoing Resolution 1973 until regional support in the form of the Arab League, the Organisation of Islamic Conference and the Gulf Cooperation Council assuaged their reluctance and diminished their direct responsibility (Hehir 2012, 14). Even then, Russia, China, India and Brazil abstained from voting rather than actively supporting the resolution from within the UNSC, and the BRICS nations (Brazil, Russia, India, China and South Africa) openly questioned both the applicability of R2P and expressed doubts about the intervention itself (Garwood-Gowers 2013, 82-88).

Concerning the state collapse and running humanitarian crisis in Syria, the UNSC has been extremely vocal in condemning the violence and has passed resolutions authorising limited observer missions, including resolution 2118 demanding the destruction of Syria's chemical weapon arsenal, and even went so far as to offer an outline of the transition of power. However, this allowed the Syrian government to continue targeting its own citizens, as long as it did not involve the use of chemical weapons: chemical weapons would later be used by the Syrian regime without any corresponding humanitarian intervention. When it came to authorizing military intervention and peacekeeping protection for civilians, the UNSC was consistently deadlocked. The UNSC failed to achieve any substantial coercive measures in relation to Syria, let alone any consensus on appropriate responses to the rumbling crisis. Moreover, resolution 2118 was enacted via the Chemical Weapons Convention, not under the auspices of R2P (Garwood-Gowers 2013, 82 & 94).

After Islamic militants launched an armed invasion of the northern regions of Mali imposing strict religious law, extrajudicial killings, torture, rape and force population displacement, three separate UNSC resolutions were passed authorising international intervention. In support of this, the Economic Community of West African States (ECOWAS) offered their backing to the Malian government. Yet despite this, it took a unilateral intervention (Operation Serval) by France to answer the needs of the Malian nation.

In similar fashion, violence in Uganda (Weiss 2007, 52-53), Sierra Leone (Chomsky 2012, 28), North Korea (Bellamy 2011, 67-68), Guinea (Bellamy 2011, 88), Zimbabwe (Garwood-Gowers 2013, 85-86), and Sri Lanka (Crawshaw 2009) failed to be met by a significant protective humanitarian intervention, because the missions were undersupplied, understaffed, underfunded, because the conflicts themselves were simply ignored, or because resolutions could not be reached. Effectively, no action was taken because the UNSC failed in its capacity as the sole international arbiter of military force and humanitarian intervention.

Institutional Failure of R2P

This history of failure is also written into the structure of R2P. A series of institutional failings on behalf of the international community and the UN were present from the outset of the doctrine. Despite the universal acceptance of the World Summit outcome, the language of the document represented a clear "watering down" of the original ICISS article (Weiss 2007, 57). The world Summit outcome put prominence on the need for states to take responsibility for mass atrocities within their jurisdiction, thereby weakening the international responsibility for outside states to intervene when necessary. The term "obligation" was itself removed from early drafts of the R2P document after various states objected to its implications (Holt and Berkman 2006, 32; Weiss 2007, 57; Hehir 2012, 19). The original threshold for intervention – "large scale loss of life" – was replaced by the higher threshold categories of 'war crimes, genocide, ethnic cleansing and/or crimes against humanity' ('the four crimes'). And the justifying principle of "manifestly failing" to protect citizens from these crimes, was reduced from the original, and considerably lower benchmark of "unwilling or unable" to protect (Garwood-Gowers 2013, 84).

Beyond this, significant disagreements came to the fore after the World Summit outcome over the exact meaning of R2P. What R2P actually meant in terms of functionality, reach, application and capacity remained lost in indeterminacy as states began immediately debating their commitments regarding R2P (Bellamy 2010, 144). Even the wording was openly questioned; some states claimed that by accepting the World Summit outcome they were also accepting the ICISS report (Chomsky 2012, 60), whilst other countries claimed that they had not agreed to, nor authorised R2P as a doctrine in any capacity, even after signing on to the World Summit outcome (Evans 2009, 52). R2P became little more than a "political catchword that gained quick acceptance because it could be interpreted by different actors in different ways" (Stahn 2007, 99-102).

At the 2009 UNGA debate, four core concerns were raised by member states, indicating that R2P was never actually accepted by the international community. The first, the R2P call for an effective early warning system, and required information gathering, was considered to be an unacceptable intrusion into state sovereignty. Second, concerns were raised regarding thresholds for intervention and clarity of evidence. Third, it was argued that without UNSC expansion, R2P would be unacceptable in practice. Fourth, it was questioned as to whether R2P, in its entirety, added anything of value to the institutional architecture of the UN (Bellamy 2010, 148). This final point was certainly justified, with the heavily diluted World Summit outcome doing nothing more than reiterating already accepted, but often ignored, principles of the international order (Chomsky 2012, 160-161; Hehir 2012, 52).

But the most significant institutional failure of R2P was with the World Summit's failures to address the barrier that the UNSC has presented to effective humanitarian intervention. Alternative routes to authorisation for humanitarian intervention, beyond that of the UNSC, were proposed in the ICISS document but removed at the World Summit (ICISS 2001, 3.31 & 3.35). Additionally, an ICISS proposed code of conduct for the use of veto powers by the P5 members in matters of humanitarian concerns was abolished in the World Summit document (Hehir 2008, 71). Finally, as if to clarify these backtracks, the UNSC was reaffirmed as the sole arbiter of international military force, and as holding absolute discretion over humanitarian missions (Hehir 2012, 19).

Previous Reform Agendas for the UNSC

On matters of humanitarian intervention, the UNSC remains the sole arbiter and dispenser of international justice. Any such force, in the absence of a UNSC authorising resolution is considered illegal (Thakur 2006, 245). This is a system of humanitarian legitimacy that places an unnatural amount of control and power onto a single, unrepresentative body, and particularly so into the hands of the P5 members by virtue of their veto power. At the expense of balance-of-power considerations, the needs of the suffering, and the at-risk, are simply not considered in the institutional architecture of the UN. This is a system designed toward gridlock, paralysis and inaction; a system where the political motivations of a few powerful states override and, more often than not undermine, what would otherwise be considered best ethical practice (Tsagourias 2013, 135-138). With the UN, and particularly the UNSC, presenting a significant barrier to the timely, regular and decisive application of humanitarian intervention to address mass atrocities, a long and persistent history of attempts to reform the UNSC, focussing on various key areas, have come and passed over the years, all of which have failed to achieve substantial change (Von Freiesleben 2008; Voeten 2007). Some of the more significant and well-constructed attempts to improve the organisation are discussed below.

The R2P Code of Conduct

The original ICISS report outlining the doctrine of R2P included a recommendation to the P5 members that they impose upon themselves a 'code of conduct'. This code would essentially require P5 members to make a commitment to refrain from exercising their veto powers under three key conditions: if the situation in question is a serious humanitarian crisis, if the resolution in question achieves majority approval within the UNSC, or if the national interest of the potential vetoing nation is not being directly impacted by the resolution. Rather than veto resolutions pertaining to humanitarian crises, P5 members would simply 'constructively abstain'. To support this change, the ICISS report recommends an expanded role for the UNGA. Although a UNGA mandate can be only of a "recommendatory" nature, the two-thirds vote it requires undoubtedly carries "powerful moral and political support" (ICISS 2001, 6-7). Despite the limited scope of UNGA, by virtue of article 10, and article 11 of the UN Charter the UNGA does hold a certain nascent power over issues that are within UNSC jurisdiction. Thus, the ICISS recommendation involved a wider use of UNGA "Emergency Special Sessions" under the "Uniting for Peace" provisions and under UNGA 'Rule of Procedure 65', in order to encourage deliberations over humanitarian crises, prior to or post, UNSC deliberation and decisions. This offers an added, and significant form of moral, and normative leverage on UNSC decision-making. However, the World Summit document on R2P removed this 'code of conduct' provision from its language (ICISS 2001, 6:21-6:30).

A United Nations Constitution

The creation of a UN constitution has been proposed on numerous occasions. Indeed, calls for such a constitution can be traced back to the League of Nations and the belief that the organisation, just as the UN afterwards, suffered from a lack of common understanding due to the lack of an encompassing constitution. A UN constitution would, in principle, be a step toward creating confidence in both the behaviours and intentions of member states, and it would be a binding document of international unity across states that at a glance have little in common (Tsagourias 2013, 152). It would define the rules, tools and structures of international cooperation, but also be the embodiment of a "common mindset": a common understanding of what constitutes peace and security, the recognition of a cosmopolitan ideal, a means to ensuring that future claims to human security do not remain in the abstract. Considering that there is no forum, either internal or external to the UN, where UN reform can be debated or discussed, nor any internal mechanisms that govern and rule the internal processes of the organisation, constitutionality is often considered an avenue toward better marrying the 'UN in practice' to the 'UN as an ideal' (Tsagourias 2013, 151-153).

The Jurying Process

Thomas Franck proposed the 'Jurying Process' under the assumption that grand scale reformations of the UN and the UNSC, as with the previous two proposals, are unlikely to ever be accepted and therefore doomed to failure. The Jurying Process is a means around the need for foundational reconstruction by instead building a forum for dealing with humanitarian crises within the existing institutional architecture of the UN. This would mean the creation of a new open forum for the discussion and debate of humanitarian concerns; a forum where equal weight is provided to both legal and moral considerations, thereby offering a means to remarry common and normative values with international law. Such an embedded consultative process would offer a means around the excessively "strict constraints" that govern the UNSC. In moments when the UN Charter and the UNSC become barriers to international peace and justice, or when humanitarianism is undermined by obfuscation, delay or non-compliance, such legal structures could fairly be derogated. This would produce considered moral outcomes, rather than dogmatic restatements of legal procedure. In essence, the Jurying Process would operate in a similar fashion to a Grand Jury; where the application of morality and legality are judged by a transparent and accessible forum and its decisions would hold the UNSC accountable for their symmetrical decisions (Pogge 2010, 165-177).

The International Court

Similar to the Jurying Process, but with more judicial weight, is the formation of a fully empowered 'International Court', as proposed by Thomas Pogge. The Court would address the need that Pogge described as an "effective judicial organ for the authoritative interpretation and adjudication of international law – in real time" (Pogge 2010, 180). The Court would be comprised of a panel of legal experts (judges) with a deep and proven history in the field of international law and the UN, with the role of delivering verdicts and offering legal clarity on humanitarian crises, and the power dynamics and existing mechanisms that allow such issues to avoid international redress. The creation of such a body, though non-

intrusive in its set-up and would have the ability to influence down-stream reforms and the behaviour of powerful states in a disproportionate manner. This would be achieved by separating powerful states and their influence from the judicial process governing international law and UN functioning. The Court would rule definitively over whether international or domestic obligations violated and whether international conventions breached. The spill-over effect of this would be a more robust legal system and clearer avenues to humanitarian interventions, as well as clearer guidelines for the delivery of such interventions. The important advantage that the Court has to the Jury Process is in its complete independence from the influence of UN member states. Most important of all though, would be in the Court's capacity to legalise intervention, if only normatively. This would shift the emphasis of UNSC resolutions. No longer would the body be 'authorising' intervention, but rather passing 'forbidding resolutions' on decisions of the Court that they disagree with, thereby almost entirely nullifying the power of the P5 veto (Pogge 2010, 180-182).

The UN Standing Army

One of the key failures of the UNSC in practice has been in the application of peacekeeping missions. Such missions, once authorised, tended to fail, at least in part, due to UN member states not adequately funding the operations not supplying the stipulated levels of equipment and troop numbers (Tsagourias 2013, 137-145), and by inadequate training and preparation for the troops that are provided considering the often unique and specialised nature of humanitarian missions (ICISS 2001, 7:1-7:51). A solution to this challenge could be the creation of a permanent, United Nations commanded, military force. Requiring between 15,000 to 20,000 troops, on two-year rotations from member states, and ready for fast deployment of only a matter of days, the force would train together exclusively for the sole purpose of future use in UNSC authorised humanitarian missions. Once the Army has been formed, and has operated over a number of years, the costs of it would likely reduce to a level that is considerably cheaper than ad hoc interventions and an even financial dispersal across member states (Pattison 2008, 129). Though still limited in its deployment by the passing of UNSC resolutions, the UN Standing Army would reduce the ability of P5 member states to obfuscate their international obligations by passing resolutions as a means of passing-the-buck. No longer would such states be able to agree to resolutions with the sole intention of calming public outrage, yet without having any intention of funding or supplying already agreed to missions. Military engagement would flow autonomously following the passing of humanitarian resolutions: moral commitments would always be guaranteed material backing. Such a force would also help address the problem of differing interpretations of the meaning of resolutions, would ensure universal UNGA engagement in all UNSC resolutions, would reduce instances of mission creep and mandate abuse by removing the mission control of member states, and would help to ensure that the humanitarian principles of intervention are not lost during the conflict (Tsagourias 2013, 137-145; Pattison 2008, 126-132; ICISS 2001, 7:1-7:51).

Other reform attempts that would have undoubtedly improved the effectiveness of the UNSC in regards to humanitarian intervention, have tended to focus upon: further democratising the UN expanding UNGA powers, expanding UNSC membership ,limiting the power of the veto, abolishing the veto altogether, expanding the number of vetoes needed to block resolutions, creating subject areas where the veto cannot be used, and streamlining the operational effectiveness of the UNSC. All such reform proposals, regardless of how mild, intelligently targeted, or limited in its reach, have failed to achieve even the most minimal levels of traction (Tsagourias 2013, 135-144).

The landscape of literature on the prospects of reform for the UN varies considerably. Joseph Schwartzberg argues that the voting structure of the UNSC and the UNGA needs to be the key target for any designs on reform. His solution is to include an accounting of each member states' population, the amount that they contribute to the UN budget, and the totality of their legal membership (Schwartzberg 2003). Jonathan Strand and David Rapkin follow this line of reasoning down into 'weighted voting', seeing this as the fundamental stumbling block for the work of the UNSC, and importantly its ability to act decisively. They gameplay scenarios and show that under such changes the performance of the UNSC will improve (Strand and Rapkin 2010). On the other side of this, Adam Roberts and Benedict Kingsbury champion the UN largely because of its central significance in the global order, think that the importance of the organization overweighs its failings, and do not see the challenges building before it as existential (Roberts and Kingsbury 2008). Ilyana Kuziemko and Eric Werker highlight the avenues for corruption and bribery associated with rotating seats on the UNSC, showing that powerful nations increase their foreign aid commitments to states once they rotate into membership. This offers a means to greater control the organization by a few powerful states - generally the P5 (Kuziemko and Werker 2006).

Ruben Mendez touches on the chronic failure of funding, and the inevitable downstream impacts this has on the international functions of the organization (Mendez 1997). Thomas Franck paints a picture of UN morass based on the failure of any single legal principle to control state behaviour. For Franck, the normative nature of the UN Charter is diminished by this, allowing for member states to resort – at will – to all manner of unlawful international violations (Franck 2003). David Tolbert and Andrew Solomon see the UN as in desperate need of reform, and that this is understood by both the organization itself and the member states. This often produces a situation where the organization actively squanders its ability to instil the rule of law in member states (Tolbert and Solomon 2000). From this line of reasoning, a range of authors, such as Ronald Meltzer, have talked about the failure of the UN to deal with challenges that are faced primarily by the underdeveloped or developing world, in a global defining organization that is so heavily leaning toward the interests of a few powerful nations (Meltzer 2009).

Ignoring the UNSC and Regional Peacekeeping

A certain truth is unavoidable at this stage: no matter the nature, purpose or need of any given reform, the UNSC, and particularly the P5, will resist the change in question out of a desire to maintain the level of control and influence that privileges them under the current system. Consequently, and considering the prominent position that the UNSC holds with regards to the authorisation of humanitarian intervention, as well as UNSC's long history of institutional failure for protecting at-risk populations around the world, a new approach to reform must be formulated. Kofi Annan, though clearly offering the statement as a warning, touched upon the only conceivable option for forcing UNSC reform into the near future: "If the conscience of humanity… cannot find in the United Nations its greatest tribune, there is a grave danger that it will look elsewhere for peace and justice" (ICISS 2001, 6.22). Ignoring UNSC processes altogether in seeking authorisation for humanitarian intervention comes with certain dangers, as Annan was alluding to. However, when weighed against the danger of allowing things to continue as they are now, a situation whereby the UNSC is forcing us all into being "complicit

bystanders in massacre, ethnic cleansing, and even genocide" (ICISS 2001, 1.22), it might just be the best-worst-option. From a moral and legal standpoint, UNSC reform is required if international justice is to mean anything... and there are just no conceivable options left.

There is a useful and largely supported – though still embryonic – test case for such an institutional divorce: the International Monetary Fund (IMF) and the World Bank are the primary international financial institutions on the global stage. However, since implementation they have suffered under a steady stream of criticism, largely directed at an institutional architecture that many consider to be anti-democratic and American controlled. Both institutions resisted change, largely due to American intransigence – not wanting to relinquish any of the power and influence it holds over the world order via these institutions. Notably, the U.S. Congress has consistently blocked attempts to even bring discussions of reforms of the Bretton Woods order. However, the functions provided by the institutions – namely allowing nations to continue trading despite balance of payment problems – is widely considered to be a general good for the world economy. Therefore, needing an international investment bank but stifled by the intransigence of the current system, the China-led Asia Infrastructure Investment Bank (AIIB) (US$50 billion) and the BRICS Bank (US$100 billion) are being pursued as alternative institutions with new democratic values built into their foundations. The BRICS Bank and/or the AIIB offer two mutually beneficial outcomes they immediately provide what the IMF and World Bank have been unable to in terms of institutional reform, and they start a process by which the IMF and the World Bank will be forced to reform or become largely redundant once the new banks begin meeting a long-denied desire. By bypassing them, by ignoring them, there is a pathway to reforming them.

It is obvious that the P5 members, countries that dominate the global scene and maintain a large degree of that control via their veto provision within the UNSC, are unwilling to do anything that might degrade that power in any way. If, however, that power was already being stripped away by an alternative avenue to humanitarian intervention, and the institution faced a choice between reformation and permanent obscurity, it would almost certainly choose the former. A rise in regional peacekeeping and normative legitimacy in such operations might just be the means of achieving this. By ignoring the UN, and particularly the UNSC, in favour of regional solutions to humanitarian crises, the institutions might just be forced into reform.

A rise in regional peacekeeping would be building upon an extant desire and practical foundation that would make such interventions more palatable and more effective than UN directed missions. At a time when Western powers are showing an increasing aversion to engage in humanitarian intervention (Cottey 2008), the opposite is often true of regional actors. Indeed, states have been shown to be statistically more willing to engage in peacekeeping operations as the physical distance between themselves and the mission location decreases (Perkins and Neumayer 2008). Regional peacekeeping simply tends to be more politically and morally appealing than broader international missions.

Similarly, joint membership of regional associations helps to increase the likelihood of both supporting and participating in humanitarian intervention due to increases in variables such as joint strategic interests (Bellamy 2009), economic interconnectivity (Kernic and Karlborg 2010), and the chance of cross-border spill-over effects (ICISS 2001, 6:31-6:35). In terms of operation, regional states and organisation simply are better situated for rapid responses, tend to have cheaper implementation and running costs for the missions in question, are likely to have a more nuanced understanding of the challenges inherent in the intervention, should hold greater cultural sensitivity for local communities, tend to possess

increased legitimacy from both the state and population targeted by the intervention (Bellamy 2009b; ICISS 2001, 6:31-6:35), and are better able to structure and impose relevant sanction regimes (Vines 2013).

Regional organisations are explicitly recognised in the UN Charter under Chapter VIII: Regional Arrangements specifically regarding dispute resolution, and have long been involved in UNSC responsibilities in 'assisting capacities'. The UNSC passed resolution 1631 supporting greater peacekeeping cooperation between regional and UN bodies, and resolution 1674 (reaffirming the World Summit Outcome) explicitly recognised the valid role of regional organisations in protecting populations in armed conflict (Paliwal 2010). Normatively, such regional organisations have been moving steadily toward autonomous operations.

The African Union (AU) offers a useful test case: from its establishment in 2001, the AU (replacing the Organisation of African Unity (OAU)) has moved quickly from an organisation focussed on economic growth and development to be incorporated within the African Peace and Security Architecture (APSA) as the key organ for achieving peace and security in Africa. Currently, the AU is at the decision making heart of the African Common Defence Policy, the African Peace Fund (APF), the Continental Early Warning System, the Military Staff Committee, the Panel of the Wise, and the Peace and Security Council and the African Standby Force (ASF) (Vines 2013). The AU is an organisation that has adapted, and is still doing so, to deal specifically with the disproportionately high instances of mass atrocities, coups, civil wars, violence conflict and human suffering that afflict the African continent (Enuka 2012, 52) (Vines 2013); an organisation recognising that, as an African solution, it and not the UNSC, offers the best means to address such crises.

The AU Constitutive Act, authorises the enforcement of "peace, security, and stability on the continent", "the right of the [AU] to intervene in a Member State pursuant to a decision of the Assembly [the Assembly of African Unity] in respect of grave circumstances, namely, war crimes, genocide, and crimes against humanity", and "the right of Member States to request intervention from the [AU] in order to restore peace and security". Therefore, despite running contradictorily to the UN Charter, particularly article 2(4), regional peacekeeping has been endorsed by the African states (51 in total) along with the AU's right to exercise it on their behalf. Recognising this trend, and the sentiment embodied in it, the UN has been pressured into making an exception concerning the absolute power of the Security Council over interventions. The AU can now 'legally' authorise regional humanitarian interventions "in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity" without deferring to the UNSC (Tsagourias 2013, 149) , provisions that had been normatively in place since they were applied in relation to apartheid South Africa (Chomsky 2012, 160-161). However, this is an exemption that has not yet been extended to other regional bodies. Supporting this trend, the AU Commission Chairperson, Jean Ping, at the African Union summit in Addis Ababa in July 2012, declared: "the solutions to African problems are found on the continent and nowhere else" (Vines 2013, 89).

Following suit, regional organisations such as the European Union (EU), pseudo-regional organisation such as the North Atlantic Treaty Organisation (NATO) and sub-regional organisations such as the Economic Community of West African States (ECOWAS) and the South African Development Community (SADC) are all constitutionally empowered with ensuring peace and security, have a proven history of successful missions, have broad regional support, have been steadily increasing the scope of their peacekeeping responsibilities, and have been questioning (if only implicitly) whether they owe deference to the UNSC at all

regarding those responsibilities. As such regional organisations grow, integrate other sub-organisations, and develop significant soft power, it becomes only natural that they begin to take more meaningful responsibility for humanitarian interventions. In fact, such a step is representative of the maturity of such organisations (Sola 2012), as well as a vital step toward the process of state-building with has shown to have a flow on effect to the decreased likelihood of mass atrocities affecting a community (Thakur 2006, 266; Ulfelder 2012).

Early warning mechanisms and early response times are essential in all humanitarian interventions, with violence and conflict becoming harder to address as it spreads and becomes normalised within communities. Early-stage intervention tends to be, in both theory and practice, a universally cheaper, simpler, easier to effect, more successful (judged by outcomes), and potentially more morally defensible option, as opposed to a traditional after-the-fact responses to extant mass atrocities (Stamnes 2009; ICISS 2001, 3.7; Kuperman 2001, 100). In this regard, regional control over humanitarian intervention represents a chance for significant improvement. However, such early warning mechanisms require the nuanced analysis of data that might otherwise seem superficial, representing only subtle changes within populations centres, communities and governments, but that potentially indicate dangerous emergent realities on the ground (ICISS 2001, 3.10). Both acquiring and analysing the inherent risk in such information, involves a deep local understanding, working relationships with sub-state groups and non-governmental organizations (NGOs) (Kuperman 2001, 101), and the ability to actually deliver fairly immediate responses when such local indicators are going in the wrong direction (ICISS 2001, 3.6-3.12). For example, approximately 250,000 Tutsi's were killed in Rwanda in the first two weeks following the death of President Habyarimana (Kuperman 2001, 15-16). Only a regional organisation, or collection of regional actors, could realistically deploy in time to make an impact on such a fast rate of killing; such organisations are just in a better position to act (Bellamy 2009; ICISS 2001, 3.17; Vines 2013). Beyond this, regional interventions would likely reduce the material costs of any operation, thereby making them much more likely to be undertaken.

Differing proposals for the creation of a UN Standing Army have consistently failed to attract international support, particularly from the P5 members and other powerful countries. This is an intransigence built upon fears from states that such a force might be employed against them in the future, that it represents a degradation of state power, the embryonic stages of a 'World State', and only secondary, operational concerns regarding the capacity and effectiveness of such a force (Pattison 2008, 126-130). The creation of regional standing armies might be less troubling to member states of those organisations due to notions of shared values and common identity. A reasonable test case could be the realisation of the proposed African Standby Force (ASF). The ASF, operating under the directive of the AU (as well as selected sub-regional bodies) would be a collection of ready-for-action troops, supplied by all member states, and structured into sub-regional divisions so as to be quickly deployable (ideally 5,000-10,000 troops in each of Africa's five regions and sub-regional organisations; North African Regional Capability (NARC), ECOWAS Standby Force (ESF), ECCAS Standby Force (ECCAS), Eastern African Standby Force (EASF) and SADC Standby Force (SSF)). With major Western powers, such as America, France and Britain, already indicating that they would help fund, resource, and train such a regional initiative, the creation of the ASF would, if properly implemented, funnel what has so far been divergent funding by such nations – with the American launched Global Peace Operations Initiative (GPOI) and the French Reinforcement of African Peacekeeping Capabilities (RECAMP) program – away from

splintered initiatives and into a single, capable body. This would help focus resources, improve capacity, help develop impartiality mechanisms, and help to administer uniformity when it comes to operational standards (Bellamy 2009; Vines 2013, 97-98; Coleman 2011).

Furthermore, with such a standing force in place, the scope of intervention could be increased at the approval of individual member states via selectively chosen 'Intervention Agreements'. For example, reversals in democracy, break-downs in central power structures, forcible regime change, authoritarian government, or just the lack of representative government, dramatically increases the likelihood that a society will suffer from mass atrocity crimes (Bellamy 2011, 108; Bellamy 2011, 97; Ulfelder 2012; Pogge 2010, 41). Considering such risk, new democratic states, or even democratic states that consider themselves at-risk, might choose to sign an Intervention Agreement with the ASF stating that if its government becomes undemocratic, or if it is removed by violence or coup, the intervention in order to restore democracy is 'pre-authorized', something that is otherwise prohibited under international law (Pogge 2008, 159).

Conclusion

By opening a legitimate space for regional humanitarian intervention, both in authorisation and in application, certain risks become apparent. First, due to regional politics/strategic considerations, certain humanitarian emergencies might be allowed to continue unabated. However, this is substantially no different to the claim that international strategic considerations and politics might cause conflicts and suffering today to rumble on indefinitely. In fact, this is exactly what has tended to happen; Syria is a good example. Second, there is an argument that on a regional platform nations will seek to support their local allies as a primary concern, and therefore regional peacekeeping will simply become an easily misappropriated means of protecting the existing regimes of states rather than their populations. However, this sort of misappropriation of humanitarian principles and mission objectives is what has already been used by Russia in South Ossetia and Crimea (Bellamy 2011, 55-56), by France in Myanmar following cyclone Nargis (Bellamy 2010, 151-152), and by the United Kingdom's Tony Blair in trying to retrospectively justify the 2003 invasion of Iraq (Weiss 2007, 124; Byers 2005, 107; Evans 2006, 717). Finally, a move towards regional peacekeeping could represent a first step towards a splintering into global anarchy; a return to a world without rules. However, this is an overly gloomy picture of what existed pre-UN, as well as an overly optimistic view of what exists now. The world has always been governed by principles, if only moral, but always explicable and understood. Currently, there may be a new institutional architecture in the form of international humanitarian law, but it is so often ignored, so selectively applied, so widely abused, so poorly enforced, and so regularly stifled by the very structure that is meant to be enforcing it – namely the UNSC – that the very idea of 'humanitarian law' is collapsing through this process of failed application.

We are faced with a reality that needs addressing: the failure of the UNSC, and particularly the P5 veto power, means that we are unable to adequately provide humanitarian protection for at-risk populations of the world. Considering our inability to reform these institutions, despite numerous attempts, there are very few options available. One is to accept the status quo whereby mass atrocities more often than not will continue unaddressed and unmitigated. The other is to find a way to force through UNSC reform; that is to find a way to tilt the cost-benefit-analysis so that the P5 members come to see UNSC reform as being in their interest. This can be achieved through a normative rise in regional peacekeeping

solutions that do not merely seek to execute resolutions by themselves, but that actually bypass UN approval and UN processes altogether. This would, in effect, take away the control over international actions that the P5 members currently hold with the veto power. By simply ignoring the UNSC, the UNSC will be forced to accept the complete loss of power associated with it, which would likely have its benefits in the form of a greater willingness to approve intervention, as well as improved mission capabilities, as a result of their new regional control bases, or choose to reform themselves in order to retain a diminished share of their original power. Either way, ignoring the United Nations Security Council might just be the only means to reforming it.

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Book Summaries

Stacey Mitchell, James Lenzer

Consent and Trade: Trading freely in a global market, by Frank J. Garcia, Cambridge University Press (2019)

In *Consent and Trade: Trading freely in a global market*, Frank J. Garcia (2019) examines the historical contexts of exchange as a series of personal and collective contracts and how these underpinnings of free trade convey the vitality of open governance. His development of the practical legal application of volition delineates how much this necessary precondition occurs for individuals, organizations, and nations. Garcia concludes that in many settings, the tenuous nature of consent leads to imbalances, exploitation, and dysfunction, especially in terms of Adam Smith's 18th Century descriptions of ethics and efficiency in both human nature and economic systems. Although primarily a legal analysis, the research draws from detailed etymologies and classical literature references in order to evaluate historical and current examples with the benchmark of balanced free trade as a bulwark against authoritarianism. With this diverse range of sources, he draws into question the validity of all formal agreements, contracts, treaties, and other implicitly binding negotiations. Garcia describes the mandate for relatively equivalent bargaining leverage as establishing free exchange as a premise for multiple levels of social stability. Enforcing equitable contracts keeps people, companies, and states investing in democratic traditions through sustainable market exchanges rather than seeking last resorts in the desperation of autocracies in interpersonal settings, corporate monopolies, institutional hegemons, and illiberal governments. Investment in the primacy of balanced consent staves off inefficiency, oppression, instability, and totalitarianism.

Garcia highlights how much of global trade reflects coercion and predation despite the appearance of bargaining and ratifying during the formation of various contracts and treaties. Paradoxically, the goal of rising above environmental limitations by streamlining international exchange systems winds up causing more subjugation. He cites Simone Weil's analyses in asserting that "then one can see why a global system of production can become the ultimate form of human domination, even as it seeks to become the ultimate form of human economic productivity and therefore liberation from the constraints of nature" (page 214). He notes that the solution of promoting mutual consent in transactions dates back to Plato's definition of justice. Asymmetric negotiating positions unravel the sustainability of small and large-scale trade systems despite the appearance of mutuality, and exploitation leads into unsustainable power dynamics that threaten the stated purpose of global trade itself. Specific cases include bilateral and multilateral agreements such as ones with Colombia (CTPA) and Central America (CAFTA). The U.S. trade policy with South Korea (KORUS) offers an example of a modest role reversal. China operates as the imbalanced power in the region, and the treaty with the Americans helps the Koreans wield some outsized influence for a smaller economy because of the U.S. desire to slow the spread of Chinese dominance in that part of Asia. However, in all three, the power imbalance emboldened the larger economy to eventually dictate conditions requiring the other countries to submit to unfavorable conditions. Garcia concludes that this practice "is an exercise beyond trade liberalization and toward asymmetric

economic integration, in which one country's regulatory scheme for legitimate public policy objectives had to be abandoned to satisfy the interests of its trading partner" (page 93). Efficiency and growth remain out of reach when voluntary participation and contractual oversight favor one side from negotiation through domestic ratification and ongoing enforcement of treaties and agreements in global trade.

This research strikes at the heart of the myth of post-World War II sustainable development through interdependent exchange among nations. In theory, yes, these principles hold true that workers, industries, and countries all benefit from power sharing through trade. However, the mere formalities and trappings of negotiation ring hollow when overwhelming power disparities leave disadvantaged parties susceptible to exploitation in what Garcia calls "the something else other than free trade" of "take it or leave it" dynamics at the bargaining table. By building his case through classical Greek, Shakespeare, Adam Smith, and a range of ethical and legal scholars, he inspires the reader to pull back the layers of cosmetic volition covering up the coercion below the surface of free exchange. The digitization of work and the entrenchment of multinational corporations and wealthier nations signal the imperative of his conclusions about re-establishing choice and balance in all levels of trade, from the field worker to the economic foreign policy negotiator. However, problems persist in terms of defining ownership of natural resources and other personal property, something that arises in contract discussions. It seems difficult to maintain the multigenerational birthright to preserved land in impoverished countries, for example, when government officials retain the right redefine the potential of the resources there for the benefit of a limited number of workers, companies, and officials who agree to convert it into commodities. A balanced process and legal framework prevent some coercion and exploitation. Without firewalls defending ecological infrastructure, public spaces and public good, in general, then abuses in global free trade likely continue relatively unabated. Garcia sounds the alarm that symmetry and consent in all types of exchanges prevent the disaster of reinforced autocracies.

The Justice of Visual Art: Creative State Building in Times of Political Transition, by Eliza Garnsey, Cambridge University Press (2020) from the Law in Context series

In *The Justice of Visual Art: Creative State-Building in Times of Political Transition*, Eliza Garnsey (2020) examines how the state sponsored art of South Africa impacts the post-Apartheid progress of the nation She conducts over one hundred interviews as a participant observer in delineating the role of visual art in the Constitutional Court of South Africa and the Biennale of Venice. This novel form of aesthetic analysis aims to demarcate the potential for this specific type of creative expression to serve a function in the traditional mechanisms of transitional justice. As art establishes a space, in this case in the former prison converted into a court building and in the international exhibition in Venice, then the country incrementally heals and gains a footing as a sustainable state actor in terms of reckoning with its internal legacy of misconduct while also marketing itself globally as a viable government in the process of redemption. This distillation of voices, artifacts, and other remnants of incalculable suffering ends up forging the past into a curated visual aesthetic of the present, a self-actualized realization of current conditions. Then a burgeoning, hopeful future emerges as the multifaceted systems of transitional justice entrench a belief in the government and culture to validate the memories of loss while simultaneously constructing institutions that safeguard against future transgressions. Visual aesthetics create justice.

This incipient way of valuing the wherewithal of art differs from other legal scholarship. Garnsey labels them as visual jurisprudence and cultural diplomacy. Previous research focuses mainly on performative arts such as films or predominantly on visual displays such as statues. Plus, the aesthetic usually connects with other aspects of post-conflict resolution such as restorative justice and transformative justice. Beyond therapy and peacebuilding, her depiction of art rises to the mobilized level of political participation and a conduit for interpersonal understanding that operates as a bulwark against the long-term causes of the original mass conflict. Both local and global interactions factor into how effectively the visual art represents a complete narrative of pain and loss for countless individuals, and this dynamic mirrors the steps toward acceptance within the larger international community. In this example, difficulties surface if South Africa attempts to distance itself too much from its identity as part of a regional pan-African community or if the distinguishing trait for the entire culture remains anchored to the misery of Apartheid. Packaging a new version of the country risks trivializing, compartmentalizing, or even forgetting the past, but the other end of the spectrum eliminates the possibility for the positive effects of adopting the rule of law and institutions of justice.

Garnsey deconstructs the specific elements of several works of art in order to demonstrate how they contribute to the formation of sustainable justice and international relations. She contends that "When establishing the most significant institution to emerge out of South Africa's transition, judges were not on the sidelines as mere inhabitants of future courtrooms; rather, they were on the front line pushing and prioritizing art to be at the heart of this justice institution....Art is fundamental to the appearance, understanding, and provision of justice in South Africa and of South African justice at the highest judicial level." The audio-visual installations in the courthouse with monitors and headsets display letter bombs, news reports, and family archives that retrace the horrors of state sponsored violence and converts it into state sponsored art that memorialize the significance of suffering and proving how to shield against advancing forward. The solemnity of public spaces also manifests itself in Venice with stark admissions of atrocities validating the improvements in South Africa and ushering in a new era of full inclusion in the permanent exhibits at the Biennale, in contrast to its exclusion as a pariah state for a quarter century and its temporary footing in the Arsenale, apart from the national pavilions. Tens of thousands of visitors view these works of art, and South Africa benefits from raising general awareness about its culture while also issuing a mea culpa for widespread misdeeds.

The processes for inclusion in the Biennale reveal some of the limitations of its structure. In 1995, South Africa changed its submissions from an independent art group. Garnsey explains, "Shifting responsibility to the government increased the political, public, and national sense of ownership It also arguably weakened an important part of cultural diplomacy, the 'arm's length' of government." Since each country must fund its own pavilion space, then the choice for each exhibit stands out as more of a representation of the current leadership and to some extent the culture at large. Yet artists frequently demur from labels such as nationalism for the sake of the universal, or they intensively elevate the unique qualities of individual elements or qualities that resist categorization by culture. Some of those objections surfaced in previous decades of involvement at the Biennale during the apartheid era. In addition, the author conveys the problematic aspects of the curatorial veneer in arguing that "This emphasis on officialdom and invitations portrays the Biennale as having the final word, whereas in reality its decision-making is heavily circumscribed by power,

politics, and diplomacy." Her premise asserts that the visual arts collaborate with other mechanisms and institutions to help create justice. Yet, the principles of aesthetics defy some of the preconditions. Encapsulating nuanced complexities and packaging countless experiences of trauma and loss into works of art also create another quandary in terms of whether it motivates further exploration of original, unfiltered first-person accounts or accelerates the relegation of that source material into obscure archives with the rationalization of already understanding their depth through visual displays. Increasing the stakes from art as therapeutic toward a heightened capacity for transformative justice adds solemn responsibilities to the artists, curators, and exhibitors beyond aesthetics and into balancing creative freedom with politics, diplomacy, education, policy-making, mediation, and peace building.

The Persistence of Reciprocity in International Humanitarian Law, by Bryan Peeler, Cambridge University press (2019)

In *The Persistence of Reciprocity in International Humanitarian Law*, Bryan Peeler (2019) conducts a qualitative case study that investigates the decision-making processes in how U.S. government officials determine whether or not to abide by standards for treatment of prisoners during armed conflicts. He asserts that the framework for handling detainees traces back to the Geneva Conventions and Protocols of 1949 and 1977 and that positive and negative reciprocity factor in from the Vietnam War era forward into the Global War on Terror. The increasing influence of neoliberal institutions and the prevailing weight of sovereignty over adherence to international law both contribute to the reasoning behind changes in military procedures for observance of humanitarian expectations for individuals in American custody regardless of the equivalent considerations that captured Americans soldiers receive. This break from the past observances and this new line of thinking both create a tremendous impact on the justification for negative reciprocity as a hammer for leverage in order to compel the enemy to follow proscriptions of the Geneva Convention III (relative to the Treatment of Prisoners of War). Civilians suffer more from wider scale bombing, and enemy combatants face the long-term effects of enhanced interrogation. Moreover, the U.S. military relinquishes its well-established tradition of measured and honorable handling of prisoners. The country as a whole loses its place as an exemplar in international humanitarian law, thereby sabotaging the underpinnings of exceptionalism that the neoliberal arguments wield in justifying unilateral foreign policy.

His methodology includes half a dozen interviews with the lead prosecutors from Guantanamo Bay Military Commissions and the My Lai War Crimes Cases, two State Department officials, an undersecretary in the Defense Department, and a senior counsel from Human Rights Watch. In addition, he researches records from "histories, archival documents, interview transcripts, and other sources" in compiling a multilayered depiction of how leaders in the American government and military institutions first established and then altered precedents for reciprocity. Peeler recounts the stages of development in these categories of international humanitarian law at the beginning of the Twentieth Century and in the post-World War II era with the acceptance of the Geneva Conventions, and later the Protocols, with an emphasis on the Vietnam War and the Global War on Terror. The author expands on the ramifications of the classic Prisoner Dilemma as a way of highlighting the cost-benefit estimations of leaders in handling an enemy's non-compliance with international humanitarian law, especially without an enforcement mechanism in place. During the Cold War era, some of the communist countries objected to sections of these treaties, and the U.S. calculated that abiding by them served the country's long-term interests as a way to distinguish its values from the Eastern Bloc and its short-term interests of pushing their enemies to reverse course and treat captured American military personnel better. Peeler cautions against the tendency to explain this dynamic as the "humanization of humanitarian law," and he sets out to demonstrate how the causes of rejection of reciprocity during the major armed conflicts of the last half century involve numerous underlying conditions.

During the Vietnam War, the U.S. military regarded captured Vietcong soldiers as prisoners of war and deserving of the protections of that classification, despite objections from the South Vietnamese government. Partially because of dangerous conditions in camps during the Korean War, the U.S. military opted to remove itself from the role of jailer and remanded their prisoners to the South Vietnamese Army, whose commanders kept insufficient records for International Committee of the Red Cross inspections and also practiced various forms of illegality in terms of deprivation, torture, and execution. As a way of distancing itself from this breach of lawful handling of prisoners, the American commanders publicly offered up investigations into possible war crimes and various other violations as overt messages to the North Vietnamese leadership holding American prisoners, their other Cold War adversaries, and the international community as a whole. President Johnson utilized negative reciprocity in expansion and acceleration of bombing targets in the North when Hanoi's leadership threatened to hold war crimes trials for captured Americans and as retaliation for other non-compliance with humanitarian requirements for prisoners. The escalation of reprisals happened simultaneously with positive reciprocity in terms of the further codification of rules of engagement and handling of detainees. Military procedures evolved to include more training for combat personnel on capture techniques that comply with international humanitarian law and the issuance of cards that explaining that soldiers carried with them as a checklist. The author's analysis of documents and official communications among American government and armed forces leadership delineates the reasoning. It produces better results in the field with the facilitation of surrender, increases the likelihood of better treatment of American POWs, and upholds the discipline and honor of military institutions.

According to Peeler, the Global War on Terror marks the beginning of variations in defining when and how to adhere to past norms in the treatment of detainees. The smaller number of combat forces meant lower numbers of American prisoners and, unlike in the Vietnam War, fewer chances to inflict reprisals against them even with troop surges in Afghanistan and Iraq. In addition, at least some of the Taliban, al Qaeda, and other militant groups lacked internal governing authority and international recognition as states, thereby complicating their legal status. Enhanced interrogation techniques and combat targeting reflect an accumulation of frustration within the American leadership that the stringency and caution of international humanitarian law restricted the fighting capacity of the military to protect service personnel in the short run and to succeed in achieving the overall goal of eliminating the threats from the proliferation of terrorism and the countries that sponsor it. The author includes information from interviews and contemporary documents to parse out the legal wrangling that re-classified captured fighters and introduced previously prohibited wartime conduct in the context of American neoliberal leadership's application of positive and negative reciprocity. One poignant account of this shift involves the torture of the CIA station chief in Tehran during the hostage crisis and how the Iranian interrogator decided to stop

because of his personal values and Islamic beliefs and asked the American to inflict the same physical abuse on him as retribution. Tom Ahern replied "We don't do stuff like that." Decades later, questions arise as to how Americans participate in premediated mistreatment. In the realm of asymmetrical fighting, outsized adversaries follow what the author depicts as Muhammad Ali's "rope-a-dope" strategy against George Foreman by waiting for the Americans to punch themselves out militarily instead of balancing an approach with diplomacy and other policies for confronting threats.

Peeler's documents from the Vietnam War era focus mainly on the Johnson administration's response to the abuse of American prisoners. A potential for future research adds in the retaliatory bombing and expansion into civilian targets during President Nixon's leadership. Both utilized Christmas bombing and moratoriums as leverage against the North. Late in the war, Hanoi's leadership decided to make limited improvements in the conditions for captured Americans. Re-tracing the causes of that shift holds the potential to reveal more about the author's premises surrounding the nuances of reciprocity. In addition, the American military in Vietnam actively recruited converts from the Vietcong as full-fledged soldiers, not just limited sources of information during interrogation. That incentivized them to set up procedures for capture that left open the possibility for future collaboration. In comparison, during the Global War on Terror, that sort of battlefield conversion happens very infrequently. Similarly, during World War II, persuasive methods to convince hundreds of thousands of German and Italian conscripted soldiers to surrender succeeded in reducing American casualties in contrast to the Bushido code fight to the death Japanese soldiers with very few prisoners in the Pacific theater of operations. Also, unlike the Vietnam War, by the start of the Global War on Terror, the influence of World War II direct combat experience diminished substantially. A sizable number of influential leaders and architects of enhanced interrogation, for example, lacked any first-hand knowledge of battle. That facilitated the dismissal of customs and practices that adhere to international humanitarian law. The added belief that the U.S. itself faced the peril of another 9/11 style of attack emboldened them to toss aside established principles, especially against a leaderless and stateless enemy that neoliberals characterized as acting outside the bounds of the very rationality and decency necessary for negotiation and diplomacy. Although partially regretful for underestimating the lingering effects of torture beyond the immediate physical and psychological trauma short of "organ failure," CIA lawyer John Rizzo stood by his sanctioning of waterboarding. This practice proved ineffectual and fraught with unintended consequences at least as far back as Japanese prisoners during World War II. In his August 2021 obituary in the New York Times, Sam Roberts quotes him as predicting that "I know what the first paragraph of my obituary is going to read. John Rizzo, lead counsel, approved the torture programs...I could have stopped them if I wanted to." Removing the risk averse barriers to this level of what Peeler recounts in his documentation of negative reciprocity leaves future American military and civilian leadership susceptible to faster erosions of other aspects of international humanitarian law that helped to shape the stability of the second half of the last century.

New Developments in International Norms and Governance

edited by Henry Carey and Anais Mayo

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1. Convention on The Rights of Persons with Disabilities
Published: 8 September 2020
Document Number: CRPD/C/SR.523
Author: Committee on the Rights of Persons with Disabilities

Adoption of the report on the twenty-third session
1. **Ms. Gamio Ríos** (Rapporteur), summarizing the draft report on the twenty-third session, subsequently to be issued as document CRPD/C/23/2, said that the Committee had taken decisions on seven individual communications submitted under the Optional Protocol to the Convention and had adopted a follow-up report on communications…
2. The Committee had taken note of information provided by organizations of persons with disabilities and human rights bodies regarding violations of the rights of persons with disabilities, particularly older persons and persons with intellectual and psychosocial disabilities in institutions, in the context of the coronavirus disease (COVID-19) pandemic. It had decided to bring to the attention of the Secretary-General, the President of the General Assembly and all relevant entities the challenges its members had faced with regard to accessibility, universal design and reasonable accommodation while performing their work remotely as a result of the pandemic. Two members had been designated to represent the Committee on the Inter-Committee Working Group on COVID-19…
4. During the session, the Committee had also set up a working group on deinstitutionalization and had continued its work on the draft general comment on article 27 of the Convention, on the right to work and employment. It had decided to organize a day of general discussion on the subject at the twenty-fourth session…

Future meetings
Ms. Gamio Ríos (Rapporteur) said that the twenty-fourth session of the Committee would be held between 8 and 26 March 2021 in Geneva, subject to confirmation of the viability of an in-person session. The Committee intended to consider the initial reports of Bangladesh, the Bolivarian Republic of Venezuela, Djibouti, Estonia, France and Jamaica. If the session could not take place in Geneva, the Chair and the secretariat would decide on an alternative course of action…
11. **Ms. Lange** (United Nations Children's Fund (UNICEF)) said that her organization wished to commend the Committee's remarkable work to promote the rights of persons with disabilities, particularly persons with disabilities subject to multiple and intersectional forms of discrimination. In the light of the COVID-19 pandemic, the Committee's mandate to protect the rights of persons with disabilities to health services, information, hygiene and support services was more critical than ever…
13. "The transformation and closure of residential care institutions continued to be a priority for UNICEF. In Armenia, for example, its advocacy and support efforts had led to a reduction of more than 40 per cent in the number of children in State-run residential care and educational institutions between 2018 and 2019…
15. In 2019, UNICEF had reached more than 1.7 children with disabilities in 142 countries. More than one third of UNICEF humanitarian responses were systematically inclusive of persons with disabilities…
21.**Mr. Pérez Bello** (International Disability Alliance) said that his organization wished to congratulate the Committee on concluding the twenty-third session in spite of the challenges caused by the COVID-19 pandemic. Despite having to rely on an inaccessible platform for online meetings, the Committee members had shown resilience and flexibility in working remotely…
22. In a challenging year for the treaty bodies, marked by both the pandemic and the liquidity crisis in the United Nations, his organization encouraged the Committee to continue to engage with the treaty body strengthening process and to be vigilant and vocal in order to protect the proper functioning, resourcing and independence of the treaty bodies…

Closure of the session
24. The Chair said that he wished to dedicate his closing remarks to persons with disabilities, who were among those who were suffering most amid COVID-19 and the pandemic response…
25. The pandemic had exacerbated the pre-existing exclusion and discrimination experienced by persons with disabilities, whether they lived in their communities or in institutions. Measures taken to contain the pandemic had curtailed access to basic services for persons with disabilities. Support mechanisms had been disrupted, and in many instances persons with disabilities were not benefiting from COVID-19 relief measures, financial aid or cash transfers. Their right to work in the open labour market and to obtain assistance from social protection systems had also been affected. Accessibility issues with remote learning and teleworking technologies had led to the exclusion of children and adults with disabilities from education and work. Persons with disabilities had also reported being subjected to violence, including gender-based violence and violence perpetrated by law enforcement officers…
26. "The Committee was seriously concerned about the situation of persons with disabilities, including older persons with disabilities, still living in institutions, psychiatric hospitals, care facilities, nursing homes and special schools. It was appalled by accounts indicating the lack or ineffectiveness of measures to safeguard the right to life of persons with disabilities during the pandemic…

2. General comment No. 37 (2020) on the right of peaceful assembly (article 21)
Published: 17 September 2020
Document Number: CRPD/C/SR.523
Author: Human Rights Committee

1. Peaceful assemblies can play a critical role in allowing participants to advance ideas and aspirational goals in the public domain and to establish the extent of support for or opposition to those ideas and goals. Where they are used to air grievances, peaceful assemblies may create opportunities for the inclusive, participatory and peaceful resolution of differences…
4. The right of peaceful assembly protects the non-violent gathering by persons for specific purposes, principally expressive ones[5]. It constitutes an individual right that is exercised collectively. Inherent to the right is thus an associative element…
15. A "peaceful" assembly stands in contradistinction to one characterized by widespread and serious violence. The terms "peaceful" and "non-violent" are thus used interchangeably in this context. The right of peaceful assembly may, by definition, not be exercised using violence…
23. The obligation to respect and ensure peaceful assemblies imposes negative and positive duties on States before, during and after assemblies. The negative duty entails that there be no unwarranted interference with peaceful assemblies. States are obliged, for example, not to

prohibit, restrict, block, disperse or disrupt peaceful assemblies without compelling justification, nor to sanction participants or organizers without legitimate cause…
24. States must thus promote an enabling environment for the exercise of the right of peaceful assembly without discrimination, and put in place a legal and institutional framework within which the right can be exercised effectively…
The right of peaceful assembly does not exempt participants from challenges by other members of society. States must respect and ensure counterdemonstrations as assemblies in their own right, while preventing undue disruption of the assemblies to which they are opposed…
28. Domestic law must recognize the right of peaceful assembly, clearly set out the duties and responsibilities of all public officials involved, be aligned with the relevant international standards and be publicly accessible…
29. States parties must ensure independent and transparent oversight of all bodies involved with peaceful assemblies, including through timely access to effective remedies, including judicial remedies, or to national human rights institutions, with a view to upholding the right before, during and after an assembly…
43. For the protection of "public safety" to be invoked as a ground for restrictions on the right of peaceful assembly, it must be established that the assembly creates a real and significant risk to the safety of persons (to life or security of person) or a similar risk of serious damage to property…
assemblies are a legitimate use of public and other spaces, and since they may entail by their very nature a certain level of disruption to ordinary life, such disruptions must be accommodated, unless they impose a disproportionate burden, in which case the authorities must be able to provide detailed justification for any restrictions…
50. In accordance with article 20 of the Covenant, peaceful assemblies may not be used for propaganda for war (art. 20 (1)), or for advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (art. 20 (2))…
52. The fact that an assembly provokes or may provoke a hostile reaction from members of the public against participants, as a general rule, does not justify restriction; the assembly must be allowed to go ahead, and its participants must be protected (see para. 18 above). However, in the exceptional case where the State is manifestly unable to protect the participants from a severe threat to their safety, restrictions on participation in the assembly may be imposed. Any such restrictions must be able to withstand strict scrutiny. An unspecified risk of violence, or the mere possibility that the authorities will not have the capacity to prevent or neutralize the violence emanating from those opposed to the assembly, is not enough…
57. While gatherings in private spaces fall within the scope of the right of peaceful assembly,[74] the interests of others with rights in the property must be given due weight. The extent to which restrictions may be imposed on such a gathering depends on considerations such as whether the space is routinely publicly accessible, the nature and extent of the potential interference caused by the gathering with the interests of others with rights in the property, whether those holding rights in the property approve of such use, whether the ownership of the space is contested through the gathering and whether participants have other reasonable means to achieve the purpose of the assembly, in accordance with the sight and sound principle.Access to private property may not be denied on a discriminatory basis…
59. In general, States parties should not limit the number of participants in assemblies. Any such restriction can be accepted only if there is a clear connection with a legitimate ground for

restrictions as set out in article 21, for example where public safety considerations dictate a maximum crowd capacity for a stadium or a bridge, or where public health considerations dictate physical distancing…
62. The mere fact that a particular assembly takes place in public does not mean that participants' privacy cannot be violated. The right to privacy may be infringed, for example, by facial recognition and other technologies that can identify individual participants in a crowd…
71. A failure to notify the authorities of an upcoming assembly, where required, does not render the act of participation in the assembly unlawful, and must not in itself be used as a basis for dispersing the assembly or arresting the participants or organizers, or for imposing undue sanctions, such as charging the participants or organizers with criminal offences…

3. Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
Published: 23 November 2020
Document Number: CAT/OP/42/SR.6/Add.1
Author: Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Closure of the session
1. **The Chair** said that much of the session, which had been held entirely online, had been devoted to discussions with other interested bodies of experiences of working during the coronavirus disease (COVID-19) pandemic. While the pandemic presented challenges for all bodies working to prevent torture, it created even greater difficulties for persons deprived of their liberty and at risk of torture. In considering such persons and the risks that they faced, the Subcommittee was mindful of the fact that both financial constraints and pandemic-related restrictions had prevented it from conducting visits to places of deprivation of liberty in 2020. However, the Subcommittee hoped to be able to resume such visits in the near future and it had spent a great deal of time discussing the practicalities of doing so under the current circumstances…
3. The Subcommittee had learned that many States parties had taken steps to mitigate the effect of the pandemic by reducing overcrowding in places of detention. Moreover, in many places of detention, greater use had been made of technology to enable detainees to communicate with friends and family members. It was interesting to note that the Subcommittee, along with many other bodies, had been calling for such measures for many years but had always been told that they were not possible. The difference now appeared to be a greater willingness on the part of the authorities to implement them. It was to be hoped that such changes would remain in place after the pandemic had ended in order to bring about long-term improvements in the lives of persons deprived of their liberty…
5. **Mr. Kvaratskhelia**, speaking on behalf of Ms. Lopez, head of the regional team on Asia and the Pacific, said that, despite the challenges associated with working online, the team had made progress in its work. Three countries from the region were currently on the Subcommittee's public list of States parties whose compliance with their obligation under article 17 of the Optional Protocol to designate or establish a national preventive mechanism was at least three years overdue. The Subcommittee had, however, received credible information that those States parties were taking steps to implement that obligation. It was

hoped that they could soon be removed from the article 17 list.

8. **Ms. Comas-Mata Mira**, speaking on behalf of Mr. Fehér Pérez, head of the regional team on the Americas, said that the team was concerned about the adverse effects of the pandemic, and some of the protection measures taken in response to it, on detainees in many countries in the region. It had likewise received reports of attacks against members of national preventive mechanisms as they sought to carry out their mandates and of a further deterioration in detention conditions in certain places of deprivation of liberty. The detention of migrants, especially those travelling through Central America, was also a cause for concern. She hoped that the Subcommittee would be able to examine that issue in greater detail at a future session…

11. **Mr. Ounnir**, speaking as head of the regional team on Africa, said it was regrettable that the Subcommittee had not been able to conduct any visits since the beginning of 2020 owing to the travel restrictions related to the pandemic. He hoped that those visits could be rescheduled as soon as circumstances allowed. In the interim, the team had continued to guide States parties and national preventive mechanisms in the region following the publication of the advice of the Subcommittee to States parties and national preventive mechanisms relating to the COVID-19 pandemic (CAT/OP/10) in April 2020…

12. the Niger had recently established a national preventive mechanism and that the team had started to foster a constructive working relationship with its members. Not long after having ratified the Optional Protocol, South Africa was making rapid progress towards setting up and operationalizing a national preventive mechanism. The team was working closely with the South African Human Rights Commission to support that process…

14. **Mr. Fink**, speaking as head of the regional team on Europe, said that, during the pandemic, the team had devoted much of its time to providing support and advice to States parties and national preventive mechanisms in the region. However, the sheer number of States parties and the diversity of their mechanisms made it difficult to closely monitor the situation in each country. The team had therefore decided to hold a webinar with national preventive mechanisms at the Subcommittee's next session to review States parties' responses to the pandemic. It also planned to contact States parties to request information on the good practices that they had adopted in that connection…

17. **The Chair** said that eight members, including himself, would be leaving the Subcommittee when their terms of office expired on 31 December 2020. The other members were: Mr. Abdel Malick, Ms. Gómez, Ms. Lopez, Mr. Michaelides, Mr. Mitrovic, Ms. Vidali and Mr. Zaharia. He wished to thank them for their service and the many ways in which they had contributed to the Subcommittee. While it was hoped that the Subcommittee would be able to hold its February 2021 session in person so as to allow the new members to meet their colleagues, the possibility of the session having to be held online could not be ruled out at the current stage…

18. **Ms. Jabbour**, Vice-Chair, said that those members who would be leaving the Subcommittee had each brought a great deal of expertise to bear on its work. She wished to extend a special thanks to Sir Malcolm Evans for his professionalism, determination, diplomacy, leadership and wisdom during his tenure as Chair of the Subcommittee and for his significant contribution to the field of torture prevention. She trusted that the Subcommittee would continue to build on the solid foundations that he had laid since joining its ranks…

21. **The Chair** said that he was grateful to members and to the secretariat for the countless ways in which they had supported the work of the Subcommittee over the years. It was a huge

privilege to have worked alongside colleagues with such a wide range of expertise in the field of torture prevention and to have witnessed their devotion to a common cause. The life-changing experiences that members had shared while visiting places of deprivation of liberty had fostered a unique camaraderie that would last far beyond the term of their membership of the Subcommittee…

4. Report of the Committee on the Rights of Persons with Disabilities on its twenty-third session (17 August to 4 September 2020)

Published: 12 October 2020

Document Number: CRPD/C/23/2

Author: Committee on the Rights of Persons with Disabilities

1. As at 4 September 2020, the date on which the twenty-third session closed, there were 182 States parties to the Convention on the Rights of Persons with Disabilities and 97 States parties to the Optional Protocol thereto. The lists of States parties to these instruments are available on the website of the Office of Legal Affairs of the Secretariat…

7. The Committee examined seven communications. It found violations of the Convention in four of them: *J.M. v. Spain* (CRPD/C/23/D/37/2016), concerning the right to non-discrimination in the maintenance or continuance of employment in the public sector; *Calleja Loma and Calleja Lucas v. Spain* (CRPD/C/23/D/41/2017), regarding the right of a minor to inclusive education; *Sahlin v. Sweden* (CRPD/C/23/D/45/2018), regarding the provision of reasonable accommodation in the context of a recruitment process at a public university; and *N.L. v. Sweden* (CRPD/C/23/D/60/2019), regarding deportation of the author to Iraq where she would be at risk from ill-treatment. The Committee declared two communications inadmissible, for non-exhaustion of domestic remedies and lack of substantiation in *F.O.F. v. Brazil* (CRPD/C/23/D/40/2017) and for non-exhaustion of domestic remedies in *A.N.P. v. South Africa* (CRPD/C/23/D/73/2019). The Committee decided to discontinue the consideration of *N.N. and N.L. v. Germany* (CRPD/C/23/D/29/2015), as the subject matter of the communication had become moot…

17. On 19 August 2020, the Committee met in private with representatives of more than 20 organizations of persons with disabilities and other civil society organizations, national human rights institutions with A and B status, which were members of the Global Alliance of National Human Rights Institutions, independent monitoring frameworks under article 33 (2) of the Convention and equality bodies to discuss the impact of the coronavirus disease (COVID-19) pandemic on persons with disabilities…

ANNEX I Decisions adopted by the Committee at its twenty-third session

1. The Committee considered seven individual communications submitted for its consideration under the Optional Protocol to the Convention. It found violations of the Convention in four of them, declared two inadmissible and decided to discontinue the consideration of the other. The Views and decisions would be transmitted to the parties as soon as possible and would subsequently be made public…

12. The Committee decided that its twenty-fourth session would be held in Geneva from 8 to 26 March 2021, subject to confirmation by the Secretariat of the feasibility of an in-person session. At that session, the Committee would consider the initial reports of Bangladesh, Djibouti, Estonia, France, Jamaica and Venezuela (Bolivarian Republic of). In the event that

an in-person session was not possible, the Chair of the Committee, with the support of the Secretary, would decide on the appropriate course of action…
14. The Committee decided that the fifteenth session of the pre-sessional working group would be held from 29 March to 1 April 2021. The Chair of the Committee, with the support of the Secretary, would identify the lists of issues and lists of issues prior to reporting to be adopted by the pre-sessional working group at that session…

Annex II Summary of the Views and decisions adopted by the Committee regarding communications submitted under the Optional Protocol
1. The Committee examined the communication in the case of *Sahlin v. Sweden* (CRPD/C/23/D/45/2018). The author, who was deaf, claimed violations of his rights under articles 27 (1) (b), (g) and (i), 5 (2) and (3), 3 and 4 (2) of the Convention in the context of a recruitment process for a position as lecturer (associate professor) in public law at a public university. The author had been considered to be the most qualified candidate for the position by the recruiters, and had been given the opportunity to give a trial lecture as a step in the recruitment process. Despite his qualifications, the university had cancelled the recruitment process, claiming that it would be too expensive to finance sign language interpretation as a means of guaranteeing the author's right to employment on an equal basis with others…
3. The Committee further recalled that, under article 5 of the Convention, States parties were required to prohibit all forms of discrimination against persons with disabilities, an obligation that included the denial of reasonable accommodation and that was not subject to progressive realization. It noted that the duty bearer must enter into a dialogue with individuals with disabilities, for the purposes of including them in the process of finding solutions to better realize their rights and building their capacities…
5. The Committee examined the communication in the case of *J.M. v. Spain* (CRPD/C/23/D/37/2016). In 2008, the author had suffered a traffic accident that had left him with a permanent disability. Subsequently, the Ministry of Labour and Immigration had declared the author's status was one of permanent total disability for the performance of his occupation, and he had been granted a pension equivalent to 55 per cent of his salary. In 2009, the author had submitted an application to Figueras Municipal Council requesting it to assign him to "modified duty", which had been rejected, and he had been required to take mandatory retirement. The author had submitted an application for a review of the Council's decision. The application had been rejected on the basis that a declaration of "permanent total disability" was a ground for mandatory retirement, and that modified duty was not an option as it had enacted no regulations to that effect. The author had filed appeals before all the judicial bodies available at the national level and all his requests had been denied. The author claimed a violation of his rights under article 27 (a), (b), (e), (g), (i) and (k), read alone and in conjunction with articles 3 (a), (b), (c), (d) and (e); 4 (1) (a), (b) and (d) and (5); 5 (1), (2) and (3); and 13 (2) of the Convention. He claimed that the State party, in the absence of regulations at the local level, had discriminated against him by depriving him of the possibility of continuing to work under modified duty, on the grounds of his "permanent total disability for usual occupation…
6. In its Views, the Committee noted that the rules under which the author had been prevented from undertaking a modified-duty assignment or entering into a dialogue aimed at enabling him to carry out activities complementary to the usual tasks of police work contravened the rights enshrined in articles 5 and 27 of the Convention. The Committee noted that the State party must comply with its general obligations, under article 4 of the Convention, to modify and harmonize all local, autonomous-community and national provisions that barred individuals from being assigned to modified duty without providing for an assessment of the challenges and opportunities that persons with disabilities might have, and that thereby violated the right to work. The Committee found that the author's mandatory retirement as a result of a traffic accident that had left him with a permanent disability had constituted a violation of article 27 (a), (b), (e), (g), (i) and (k), read alone and in conjunction with articles 3 (a), (b), (c), (d) and (e); 4 (1) (a), (b) and (d) and (5); and 5 (1), (2) and (3) of the Convention…
9. The Committee examined the communication in the case of *N.L. v. Sweden* (CRPD/C/23/D/60/2019). The author of the communication was a national of Iraq whose application for asylum had been rejected by the State party. She claimed that, by deporting her to Iraq, the State party would violate her rights under articles 6, 10, 12 and 15 of the Convention…
12. The Committee therefore considered that the failure by the domestic authorities to assess the risk facing the author in the light of the information available to them concerning the author's state of health amounted to a violation of her rights under article 15 of the Convention. In the light of those findings, the Committee considered it unnecessary to separately consider the author's claims under article 10 of the Convention…
15. The Committee examined the communication in the case of *A.N.P. v. South Africa* (CRPD/C/23/D/73/2019). The author claimed to be the victim of a violation, by the State party, of his rights under articles 1, 3 (e), 4 (1) (d), 5 (1), 8 (1) (b), 12 (3) and (5), 13 (1), 15 (2), 17 and 28 (1) and (2) of the Convention. The author had multiple medical disabilities and chronic conditions, in connection with which he had received monthly payments from a permanent disability insurance claim…
16. The Committee considered that the author had not shown that bringing a complaint to the courts would objectively have no prospect of success. The author's comment that legal aid fees were steep was of a general nature, and he had not explained whether he had tried to obtain access to low-cost or free legal aid. Further, he had provided no substantiation demonstrating that his health situation inhibited him from submitting a court claim. Lastly, the contention that judicial proceedings would cost taxpayers' money was immaterial to the requirement of exhaustion of domestic remedies. The Committee therefore found that it was precluded from considering the communication under article 2 (d) of the Optional Protocol…
17. Regarding the communication in the case of *N.N. and N.L. v. Germany* (CRPD/C/23/D/29/2015), the State party had informed the Committee that the author had left its territory. That information had not been contested by the author, who had confirmed that she was no longer residing in the State party. In view of that information, the Committee concluded that the subject matter of the communication had become moot, and decided to discontinue the consideration of the communication…

5. International Convention for the Protection of All Persons from Enforced Disappearance
Published: 15 November 2018
Document Number: CED/C/SR.264
Author: Committee on Enforced Disappearances

2. **The Chair**, in opening the meeting to begin the Committee's consideration of the information received from Mexico on follow-up to the concluding observations under article 29 (4) of the Convention, recalled that the Committee had requested the State party to submit, by February 2018, updated information on the implementation of the Committee's recommendations and any further information regarding the fulfilment of its obligations under the Convention. The State party's cooperation in its timely submission of that information and its previous reports represented positive practice to be followed by other States parties. The dialogue, which was a new practice for the Committee, would be divided into two parts: the first would focus on the general implementation of the law on enforced disappearance and the State party's duty to search and investigate, and the second would cover the rights of victims, the right to reparation, the urgent action procedure and measures for the protection of victims, human rights defenders and journalists. Three cross-cutting issues would be considered throughout: data collection and disaggregation, effective participation by the victims and civil society, and the gender dimension of disappearances…

3. **Mr. Ruíz Cabañas** (Mexico) said that his delegation was pleased to represent the first State party to be invited by the Committee to hold a follow-up dialogue…

4. The disappearance of persons, whether through enforced disappearance or committed by individuals, had become the most serious challenge that the State party faced in terms of human rights…

5. There were three main aspects to the complex challenge of enforced disappearance in Mexico. First, the federal nature of the country — comprising 32 states, each with its own constitution and powers, and 2,459 municipalities — so that the distribution of competencies meant that coordination was indispensable to protect the rights of all 129 million inhabitants across the territory of 2 million square kilometres. Second, approximately 95 per cent of human rights violations came under local competency, and in the case of disappearance of persons, they were mainly concentrated in three states of the federation. To address the consequent problems of coordination and implementation, legislation had been harmonized and introduced at the federal and state levels, and institutional coordination mechanisms had been created and consolidated in which the federal and state governments worked together. Third, the location of Mexico between producers and consumers of drugs, including sharing a 3,000-kilometre border with the world's largest consumer market, along with an increase in demand for illegal drugs in the region, had led to an exponential increase in the flow of illicit resources, mainly as a result of organized crime…

8. **Ms. Herrerías Guerra** (Mexico) said that the priority in the work of all public officials was to help victims of both enforced disappearance of persons and disappearance perpetrated by individuals…

14. **Ms. Galvis Patiño** (Country Rapporteur) said that she would like to know whether the State party would consider granting the Committee the competence to receive individual and inter-State communications, in line with its recommendation, once the legal framework for such communications had been put in place…

19. According to data from the Mexican authorities, a total of 37,435 persons had been disappeared in the country…

20. In 2016, the National Human Rights Commission had reported that the judicial authorities had discovered 855 unmarked graves. According to information from the public prosecutor, over 1,600 unmarked graves had been discovered as of 2018, in which more than 3,000 bodies had been recovered…

27. **Mr. Teraya**, noting that each of the 32 states had its own constitution and powers, asked what rules at the state level posed a hindrance to the implementation of the General Act on Enforced Disappearance of Persons, Disappearance Perpetrated by Individuals and the National Search System. What procedure could the Government impose to ensure the implementation of the Act at the state level…

31. Mexico was open to other international mechanisms in the matter of enforced disappearance, namely the Inter-American Commission of Human Rights and Inter-American Court of Human Rights. The Government had accepted the jurisdiction of the Court since 1998 and was therefore bound by its judgments; some emblematic decisions had already been handed down. It also recognized the competence of the United Nations Human Rights Committee…

35. **Mr. Cabrera Alfaro** (Mexico) said that the National Search Commission had a budget of 169 million pesos in 2018 and a separate budget of 282 million pesos was available for local commissions to improve their technological infrastructure. The Commission had requested a budget of 609 million pesos for 2019. The Commission had disseminated a decree with a minimum organizational structure for local commissions, although only nine had been set up so far. A meeting had been held with federal ministers, calling for each federal ministry to draw up a road map for establishing the local state level commission…

46. **Mr. Ruíz Cabañas** (Mexico) said that the Government had decided to prioritize the development of national capacity, in the form of legislation and institutions, to deal with the problem of enforced disappearance, although the recognition of the Committee's competence remained under consideration…

54. **Mr. Cabrera Alfaro** (Mexico) said that on the basis of the information in the national register, it was not possible to distinguish between enforced disappearance and disappearances perpetrated by individuals…

55. **Ms. Herrerías Guerra** (Mexico) said that the General Office for the Coordination of Expert Witness Services had processed clandestine graves in a number of federal states. The prosecution service specialized in investigating cases of enforced disappearance by individuals had worked on 186 investigations. A protocol was being drafted with the help of families of disappeared persons in order to improve the manner in which prosecution services broke the news to families when a discovery was made…

6. International Convention for the Protection of All Persons from Enforced Disappearance

Published: 15 November 2018

Document Number: CED/C/SR.265

Author: **Committee on Enforced Disappearances**

1. *At the invitation of the Chair, the delegation of Mexico took places at the Committee table.*

2. **The Chair** said that she would be grateful if the delegation, upon resuming its dialogue with the Committee, would address all unanswered questions from the previous meeting and provide additional relevant information in respect of the issues raised…

3. **Mr. Cabrera Alfaro** (Mexico), referring to the possible feminization of enforced disappearance, said that according to the National Registry of Missing and Disappeared Persons, women currently accounted for about a quarter of missing persons. He noted that by creating digital records on missing persons, the National Search Commission would be able

to better identify the circumstances surrounding disappearances and thus be in a position to detect any worsening or changes in the nature of the problem…

4. **Mr. Rochín del Rincón** (Mexico) said that, according to the national records maintained by the Executive Commission for Victim Support, about 40 per cent of persons subjected to enforced disappearance in Mexico were women…

8. Given that the human rights situation in Mexico was a serious problem and that Mexicans in all 32 federative entities regarded security as their most pressing concern, all governmental authorities and institutions, including the Senate, recognized their obligation to do their utmost to address the problem. One priority was the prompt appointment of a new prosecutor general, meeting the demands of civil society for an independent prosecutor who would not be beholden to or intimidated by any other authority…

9. Mexico had made good progress towards gender parity in its elected legislative bodies — women now accounted for approximately 48 per cent of the representatives sitting in the Senate and the Chamber of Deputies…

13. Human rights had also been incorporated into the military education system and the evaluation process of personnel seeking promotion from intermediate to senior rank. In recent years, almost 2 million army, navy and air force personnel had attended a human rights promotion and training programme, while almost 200,000 had received specific training on the prevention of enforced disappearance. A human rights and gender training centre for military personnel had recently been inaugurated at a cost of approximately US$ 1.2 million…

14. the number of complaints of human rights violations by the military, recorded by the National Human Rights Commission, had fallen by over 78 per cent since 2012. Of the 3,166 complaints received by the Commission during the recent reporting period, only 82 had referred to enforced disappearance and the military had been found not responsible for 73 of those; the other 9 cases were still pending. Similarly, the number of recommendations issued by the Commission to the armed forces as a result of human rights violations had fallen sharply from 113 in the period 2006–2012 to 18 in 2013–2018, none of which referred to enforced disappearance. The military had heeded past recommendations and it remained committed to human rights training and instilling a culture of respect for human rights…

24. **Ms. Herrerías Guerra** (Mexico) said that, under the country's Constitution, the conduct of criminal investigations and prosecutions was the responsibility of the Office of the Attorney General. The Office had therefore challenged the unconstitutional court decision that would see responsibility for leading the probe in the Ayotzinapa case borne by a truth commission independent of the Attorney General. The Supreme Court was expected to rule on the Government's challenge shortly…

30. In 2016 the Mechanism had received 18 reports of missing persons from Honduras and 4 from El Salvador; in 2017 it had received 27 reports from El Salvador and 6 from Guatemala; and in 2018 it had received 22 from Honduras, 14 from El Salvador and 12 from Guatemala…

32. The Executive Commission was currently dealing with 80 files based on complaints concerning 59 men, 18 women and 3 children from El Salvador, Guatemala, Honduras and Mexico. The Commission had issued 20 resolutions concerning migrants who were indirect victims of enforced disappearance. The resolutions provided support for housing, food, funerals, child development and medical costs. Reparations totalling US$ 2.2 million had been provided to victims in the case of San Fernando, Tamaulipas.

36. The Executive Commission provided support for the implementation of local legislation. A model law had been adopted to support the enactment of 30 local laws, and 20 local commissions had been established, 15 of which had received funds totalling US$ 9.1 million. It was hoped that states would eventually allocate about 0.4 per cent of their budgets to a victims fund…

45. **Ms. Bonifaz Alfonzo** (Mexico) said that article 15 of the new *Amparo* Act contained a specific provision applicable to enforced disappearances. The 43 cases considered to date had led to 8 convictions and 17 acquittals. Decisions on 18 cases were still pending. *Amparo*, which was equivalent to habeas corpus, was being used to compel the authorities to fulfil their duties during search procedures. The judiciary should take action to raise public awareness of its existence…

46. **Mr. Sánchez Pérez del Pozo** (Mexico) said that 145 people had received financial compensation for human rights violations through the Trust Fund run by the Ministry of the Interior. The National Human Rights Commission had issued a recommendation concerning reparations for "dirty war" victims. A total of 74 million Mexican pesos had been paid to the 145 indirect victims of enforced disappearances, an amount that was in line with inter-American financial compensation norms. The Ministry had run a number of campaigns aimed at locating relatives of persons who had disappeared many years ago and at collecting documents to prove their kinship…

56. **Mr. Cabrera Alfaro** (Mexico) said that, as was the case with the register of disappeared persons, the data reflected in the register of unidentified deceased persons was often unreliable on account of the diverse sources from which it originated. The figure of 35,000 unidentified bodies was therefore impossible to verify. In contrast, the fingerprints of unidentified deceased persons delivered to forensic medical services were easily verifiable and were stored in a national database currently comprising 36,000 entries…

60. **Mr. Ravenna**, recalling the solidarity shown by Mexico in the 1970s when it had taken in refugees fleeing various Latin American dictatorships, said that present-day Mexico was a far cry from the Mexico of the past…

65. **The Chair** said that the Committee was grateful to the State party for having accepted the Committee's invitation to participate in the follow-up dialogue and for having sent a high-level, multidisciplinary delegation. Going forward, the Federal Government should ensure that the various legislative measures taken to prevent and combat enforced disappearance were effectively enforced and that they translated into tangible results for the victims of that phenomenon. While the State party had made progress in a number of areas, much remained to be done to eradicate the practice of enforced disappearance in its national territory…

7. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Published: 31 January 2019
Document Number: CAT/C/65/D/778/2016
Author: Committee Against Torture

Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 778/2016

1.1. The complainants are Ms. Estela Deolinda Yrusta and Ms. Alejandra del Valle Yrusta, sisters of Mr. Roberto Agustín Yrusta, an Argentine national born on 29 August 1980. The complainants claim to be victims of violations by the State party of articles 2, 6, 11, 12, 13 and 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or

Punishment. The complainants are represented by the Provincial Public Defender of Santa Fe, Gabriel Ganon…

1.2 Argentina declared that it recognized the competence of the Committee to receive and consider individual communications under article 22 of the Convention on 24 September 1986…

The facts as submitted by the complainants

2.1 In December 2005, Mr. Yrusta was sentenced to 8 years' imprisonment. He was deprived of his liberty in Bouwer Prison, in the Province of Córdoba, where he was subjected to torture and inhuman and degrading treatment by members of the Córdoba Prison Service. The ill-treatment included long periods in *buzones* (isolation or punishment cells), the use of the "dry submarine" treatment, involving suffocation using a plastic bag, beatings, threats, transfers and being shackled to a bed. The complainants assert that, after Mr. Yrusta complained publicly about these acts while being interviewed for a television programme, the ill-treatment and torture inflicted on him intensified…

The complaint

3.1 The complainants claim to be victims of violations by the State party of their rights under articles 2, 6, 11, 12, 13 and 14 of the Convention…

3.2 The complainants contend that the State party has breached its obligations under article 2 of the Convention by failing to adopt prompt measures to prevent the acts of torture committed against Mr. Yrusta. They submit that there is no record of the State party engaging in prevention activities or taking steps to protect their rights or those of Mr. Yrusta, and that their requests were ignored by the Argentine Prison Service. In addition, the lack of judicial oversight of transfers of persons deprived of their liberty between different prison facilities ended up being detrimental to Mr. Yrusta, who died as a result of a transfer carried out in retaliation for his public complaints…

3.3 The complainants consider that the State party has violated article 6 (2) of the Convention by failing to launch a formal and timely investigation into the allegations of torture made by Mr. Yrusta and by them…

State party's observations on admissibility and on the merits

4.2 The State party recalls that, under the Convention, domestic remedies must have been exhausted in order for a complaint to be declared admissible. It considers that, in the present case, the Committee's intervention would clearly be premature, since the judicial investigation initiated following the death of Mr. Yrusta is still ongoing, and it cannot be argued that the proceedings have exceeded a reasonable period of time. In this connection, the State party points out that judicial proceedings have been opened in the case entitled *Yrusta, Roberto Agustín re/his death* before the Sixth Bench of the Santa Fe Criminal Investigation Court. The Court is actively pursuing the case and has ordered a number of measures aimed at gathering evidence to establish the circumstances of Mr. Yrusta's death and any criminal responsibility arising therefrom. Consequently, until the judiciary issues a ruling, it is impossible for either the State party or the Committee to determine whether Mr. Yrusta was indeed subjected to torture, so it would be premature for the Committee to adopt any kind of decision on the matter…

4.4 On 3 December 2014, Mr. Ganon submitted a constitutional complaint to the Court of Appeal, alleging that the rights of Mr. Yrusta's sisters to access to justice and to be considered as victims had been violated through the denial of their request to be represented by the Provincial Public Criminal Defence Service, which was constitutionally empowered to provide legal representation to the victims of human rights violations committed by public officials, particularly bearing in mind the institutional inability of other legal aid services to offer assistance in that regard and the complete lack of progress in the investigation carried out by the Public Legal Service into the causes of Mr. Yrusta's death. On 24 June 2015, the Court of Appeal rejected the constitutional complaint on the grounds that it merely reiterated arguments put forward before lower-instance courts, that the decision being appealed was not constitutionally flawed and that the complaint was not an appropriate third-instance remedy for reviewing facts and questions of evidence analysed by lower-instance courts…

Complainants' comments on the State party's observations

5.4 The complainants note that, in accordance with the Brasilia Regulations Regarding Access to Justice for Vulnerable People and article 25 of the American Convention on Human Rights, everyone must have the right to simple and prompt recourse and that any law or measure that obstructs or prevents persons from availing themselves of such recourse is a violation of the right of access to the courts. They believe that the remedies that are available to them are not effective and that the corresponding proceedings have exceeded all reasonable time limits. They contend that they have been subjected to ongoing revictimization by those who should ensure that they have access to their rights. The complainants therefore request that the Committee find the present communication admissible…

Issues and proceedings before the Committee

6.7 The Committee therefore considers that reasonably available domestic remedies have been exhausted with respect to the complainants' allegations concerning the lack of a prompt and impartial investigation, given that the case has been closed by the provincial courts, and with respect to their claims concerning the right to redress, including access to the truth, the opportunity to participate in the investigation and any claim for fair and adequate compensation…

6.8 With regard to the complainants' allegations of a violation of article 6 of the Convention, the Committee notes that the complaint does not contain sufficient argumentation or information in this regard. However, the Committee considers that the complaint is sufficiently substantiated for the purposes of admissibility with respect to a violation of the complainants' rights guaranteed by articles 2, 11, 12, 13 and 14 of the Convention. Accordingly, the Committee finds the complaint admissible and proceeds to its consideration on the merits…

7.11 The Committee takes note of the provisions of article 93 of the Code of Criminal Procedure of the Province of Santa Fe, under which only persons alleging to be the victims of a publicly prosecutable offence or their compulsory heirs may participate in the proceedings as plaintiffs. The Committee also takes note of the State party's arguments that, in order to request investigative measures, there is no requirement for the complainants to be plaintiffs, since as victims they may participate in the investigation, in accordance with article 80 of the Code. However, in the information provided to the Committee, the State party does not explain how the complainants, as victims, have played a meaningful part in the investigations

carried out by the provincial courts. In the absence of a satisfactory explanation from the State party, the Committee considers that the facts before it disclose a violation of articles 12, 13 and 14 (1) of the Convention.

7.12 The Committee notes from the information provided to the Committee that the complainants' right to redress has not been guaranteed by the State party, in view of the amount of time that has passed and the difficulties encountered by the complainants in participating meaningfully as victims or complainants in the investigation into the allegations of torture…

Footnotes

3 Sixth Bench of the Criminal Investigation Court, Province of Santa Fe, case file No. 173-2013, pp. 62–64.

4 The State party refers to the decision of the Human Rights Committee in T.K. v. France (CCPR/C/37/D/220/1987), para. 8.3.

5 Committee on Enforced Disappearances, Yrusta v. Argentina (CED/C/10/D/1/2013).

6 Sixth Bench of the Criminal Investigation Court, Province of Santa Fe, case file No. 173-2013, pp. 569–571.

7 Committee on Enforced Disappearances, Yrusta v. Argentina (CED/C/10/D/1/2013), para. 8.4.

8 Committee against Torture, N.B. v. Russian Federation (CAT/C/56/D/577/2013), para. 8.2.

9 Committee against Torture, Guerrero Larez v. Bolivarian Republic of Venezuela (CAT/C/54/D/456/2011), para. 6.4.

10 Committee on Enforced Disappearances, Yrusta v. Argentina (CED/C/10/D/1/2013), para. 10.4.

11 General comment No. 3, para. 16.

12 Ibid., para. 17.

13 Ibid., para. 17.

14 Ibid., para. 17.

15 Ibid., para.

16 Ibid., para.

8. International Convention for the Protection of All Persons from Enforced Disappearance

Published: 27 April 2021

Document Number: CED/C/SR.346

Author: Committee on Enforced Disappearances

Consideration of additional information submitted by States parties

1. *At the invitation of the Chair, the delegation of Colombia joined the meeting.*

2. Ms. Mejía Hernández (Colombia) said that Colombia had strengthened its institutional capacity in order to promote and protect human rights and to implement a wide range of public policies in the area of enforced disappearance. Nevertheless, the State continued to face huge challenges in combating and dismantling organized armed groups and criminal groups while fully upholding international humanitarian law. In Colombia, the problem of illicit drugs and drug trafficking was a threat to the rule of law and to the exercise of the rights and freedoms of all Colombians. Against that background, the State had made considerable efforts to bring

perpetrators of the crime of enforced disappearance to justice…

3. Colombia recognized the right of all persons not to be subjected to enforced disappearance, which had been a source of tragedy for fathers, mothers, families and society as a whole. Her Government would continue to work to guarantee victims' rights, including their rights to full reparation and non-repetition. Since signing the peace agreement with the former Fuerzas Armadas Revolucionarias de Colombia – Ejército del Pueblo (Revolutionary Armed Forces of Colombia – People's Army) (FARC-EP), the Government had worked to create a comprehensive system of truth, justice, reparation and non-repetition, composed of the Commission on Truth, Coexistence and Non-Repetition, the unit for the search of persons presumed disappeared in the context and by reason of the armed conflict and the Special Jurisdiction for Peace. The institutional framework established under the peace agreement had been granted the resources and independence necessary to fulfil its mandate. The unit had an extrajudicial and humanitarian mandate that had enabled it to reduce suffering and help fulfil the rights to truth and reparation. It was supported by the Special Jurisdiction for Peace, which served as a transitional justice mechanism and was competent to deal with offences allegedly committed before 1 December 2016…

7. Article 44 of the Constitution stated that the rights of children were fundamental rights and that children were therefore the object of special protection. Article 20 of the Children and Adolescents Code provided specific protection against enforced disappearance. Article 166 of the Criminal Code established aggravating circumstances for the crime of enforced disappearance when it was committed against children, adolescents, older persons, persons with disabilities or pregnant women…

9. As at 28 February 2021, of the more than 170,000 persons deprived of their liberty, some 61,000 had been placed under house arrest and some 5,000 had been electronically tagged. Colombia had thus responded to the challenges posed by the coronavirus disease (COVID-19) pandemic in ensuring the rights of prisoners. Increased use had been made of virtual visits and hearings as a means of helping persons deprived of their liberty to keep in contact with their families and of upholding due process of law, respectively. More than 40,000 virtual hearings and visits had taken place…

12. **Mr. López Ortega** (Country Rapporteur), referring to the Committee's concluding observations on the report submitted by Colombia under article 29 (1) of the Convention (CED/C/COL/CO/1), said that he wished to know whether the State party had taken any steps towards recognizing the competence of the Committee to receive and consider individual and inter-State communications under articles 31 and 32 of the Convention, respectively. The recognition of the Committee's competence was a way of ensuring that the Convention was fully implemented in Colombia…

16. **Ms. Villa Quintana** (Country Rapporteur) said it bore repeating that search and investigation mechanisms played a key role in preventing enforced disappearance. Statistical information on enforced disappearance not only allowed victims to seek truth, justice and reparation but also allowed guarantees of non-repetition to be obtained. Unfortunately, despite the signing of the peace agreement, enforced disappearance was continuing to occur in Colombia, including during the COVID-19 pandemic, with several human rights defenders having been disappeared over the previous year. She would therefore be grateful to know whether the State party planned to adopt a comprehensive policy to prevent enforced disappearance and, if so, to receive details on that policy and to know whether it reflected the key guidelines on COVID-19 and enforced disappearance issued jointly by the Committee and

the Working Group on Enforced or Involuntary Disappearances…
17. It was her understanding that, in addition to the National Register of Disappeared Persons, there were other, separately maintained, databases containing information on disappeared persons in the State party. It would be helpful to receive additional information on any databases that contained information on persons allegedly subjected to enforced disappearance during the armed conflict or in other contexts. She wondered how the State party went about cross-checking the information contained in those databases against that contained in the main register. It would be useful to receive clear and accurate statistical data on the total number of persons who had disappeared in the State party, disaggregated by name, sex, age, ethnicity and date and place of disappearance, during the armed conflict and since the signing of the peace agreement in 2016, including disappearances associated with migration and trafficking in persons, even if they involved former combatants…
18. She would also like to receive data, disaggregated by sex, age, ethnic origin and date of disappearance, on the number of disappeared persons presumed to have been subjected to enforced disappearance within the meaning of the definition contained in article 2 of the Convention. It would be useful to know what progress had been made by the technical committee tasked with updating, cleansing and consolidating the data contained in the National Register of Disappeared Persons, and how such data were compared and contrasted with statistics contained in other databases…
24. **Ms. Cruz Zuluaga** (Colombia) said that the definition of enforced disappearance contained in article 165 of the Criminal Code went beyond that contained in article 2 of the Convention by including acts committed with the authorization or acquiescence of public servants or private individuals. Indeed, the Constitutional Court had concluded, in its constitutional ruling C-620 of 2011, that the implementing act for the Convention was in line with international standards and covered all the elements contained in article 2 of the Convention. The criminal liability of superiors was already covered by articles 28 and 29 of the Criminal Code, on perpetrators and participants, respectively. It was not therefore considered necessary to establish a specific provision on that subject…
25. **Mr. Arango Alzate** (Colombia), turning to the case involving the rape of a young girl by members of the armed forces mentioned by Mr. López Ortega, said that the soldiers concerned had been handed over to the Attorney General's Office, who had subsequently charged a number of them with violent carnal penetration of a child under 14 years of age. Various sets of proceedings were under way before the ordinary courts and disciplinary measures and penalties were being pursued by the Counsel General's Office. The soldiers' superior officers had also been charged with, and ultimately found guilty of, breaching international humanitarian law…
32. **Mr. Jiménez** (Colombia) said that the National Institute of Forensic Medicine and Science was in the process of cross-checking the information contained in the National Register of Disappeared Persons with that held by the Colombian Information System on Accidents and Violence and the Attorney General's Office, and carrying out the necessary updates.
43. **Ms. Rodríguez** (Colombia) said that 44,790 child victims of enforced disappearance had been entered in the National Register of Disappeared Persons. Under the National Plan on the Search for Disappeared Persons, the Attorney General's Office had determined that 56 per cent of those children were still registered as disappeared, 42 per cent had been found alive and 1.8 per cent had been found deceased. The National Institute of Forensic Medicine and Science had undertaken an analysis of the remains of deceased victims, which had subsequently been handed over to families in accordance with the Protocol on Dignified Handover. The Ombudsman's Office and the Disappeared Persons Investigative Commission had been responsible for providing support to the victims' families…

9. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
Published: 21 November 2018
Document Number: CAT/C/SR.1683
Author: Committee against Torture

Seventh periodic report of Peru (CAT/C/PER/7 and CAT/C/PER/QPR/7)
1. *At the invitation of the Chair, the delegation of Peru took places at the Committee table.*
2. **Mr. Sánchez Velásquez** (Peru) said that the Committee's preceding concluding observations had served to guide the Government in the design and implementation of concrete policies, including the National Human Rights Plan 2018–2021. The Plan contained a number of objectives, including the development of a strategic pathway for dealing with cases of torture, the establishment of a multisector platform for coordination in tackling such cases, and the implementation, planned for 2019, of a single registry for cases of torture and a protocol for preventing and addressing the torture of adolescents in youth assessment and rehabilitation centres…
6. Nine Youth Assessment and Rehabilitation Centres and 25 adolescent guidance services had been transferred from the Judiciary to the Ministry of Justice and Human Rights. The authorities intended to provide education to more than 3,800 adolescents in conflict with the law, enabling them to reintegrate into society…
7. In April 2018, by means of Ministerial Decision No. 487-2018-IN, the human rights handbook for police staff had entered into force. The handbook had been developed with the aim of providing human rights training for police officers, with a particular focus on the reasonable use of force. Every police officer had an obligation to treat persons deprived of their liberty with humanity and dignity…
8. In the area of violence against women, the President of Peru had used his 2018 annual address to the nation to urge the three branches of power and the general public to work to eradicate macho culture and all forms of violence against women. An emergency commission had been established to make proposals aimed at preventing violence against women and handling cases. The commission's work centred around 11 urgent areas of action, including the adoption of a protocol for dealing with cases of femicide, the establishment of a Safe Schools programme, and the development of a mapping tool to record cases of gender-based violence by region…
21. **Mr. Heller Rouassant** (Country Rapporteur) said that the inclusion of the element of discrimination of any kind in the domestic definition of torture was of fundamental importance given the ethnic make-up of the State party, the social inequalities found there and the problems of discrimination against women and the lesbian, gay, bisexual, transgender and intersex (LGBTI) communities. The current definition referred to the use of methods that obliterated the personality of the victim; the wording of the Inter-American Convention to Prevent and Punish Torture was broader in that it referred to "methods intended to obliterate…
22. He would appreciate the delegation's comments regarding the absence of provisions for the disbarring of civil servants or public officials involved in torture and for the prosecution of

judicial personnel implicated in such offences. The Committee was concerned that less serious offences, such as aggravated robbery, carried harsher penalties than offences relating to acts of torture…

36. According to Human Rights Watch, in 2016, the Ministry of Interior had announced an investigation into a group of 28 police officers, including a general, who had allegedly carried out at least 20 extrajudicial killings between 2009 and 2015, and had falsely reported the victims as criminals killed in combat. At the time, at least 11 of those officers had been awaiting trial…

42. On 24 December 2017, the President of Peru had pardoned one of his predecessors in office, Alberto Fujimori, who had been convicted of crimes against humanity. However, on 3 October 2018, Mr. Fujimori's pardon had been revoked by the Supreme Court and he had been ordered to return to prison, on the grounds that the pardon was incompatible with the country's international obligations. His understanding was that the matter remained pending, and that the possibility of house arrest was being explored. He would welcome updated information and comments from the delegation in that regard…

48. **Mr. Rodríguez-Pinzón** (Country Rapporteur) said that the assertion by the State party in its periodic report (CAT/C/PER/7) that the Ministry of Justice and Human Rights had provided legal aid to defendants and victims in numerous criminal proceedings for torture in a total of 113 cases between 2014 and 2016, of which 12 had concerned victims of torture and the rest had concerned defendants, seemed to suggest a marked imbalance between the services provided by the State to victims of torture and those provided to defendants. He asked whether the State party had analysed those figures to ascertain the cause of the discrepancy, and requested statistics from 2012 to the present year in order to provide a more complete picture…

50. **Mr. Rodríguez-Pinzón** welcomed the information provided by the State party in its report on cases of gender-based violence, including domestic violence and femicide, and on the adoption of relevant legislation. It was important to conduct detailed statistical monitoring on the administrative and legal response in individual cases in order to accurately evaluate the extent to which the State party was fulfilling its obligation to take measures against gender-based violence…

57. **Mr. Rodríguez-Pinzón** therefore requested the State party to provide information on specific measures taken to improve the conditions of prolonged pretrial detention, to explain the lack of specialized staff in prisons and to submit disaggregated information on vulnerable detainees in order to guarantee and monitor the special treatment that they required…

58. Noting the measures described in the report on electronic tagging, house arrest and productive prisons as alternatives to the deprivation of liberty, on gender mainstreaming in prison policy, on guidelines for supporting women deprived of liberty, and on the provision of appropriate care to minor children of incarcerated mothers to ensure their healthy, all-round development, he asked the State party to indicate what mechanisms were in place to monitor the practical implementation of those policies and measures and what results had been achieved since their introduction…

69. **Ms. Racu**, noting that first-time offenders were not separated from repeat offenders in prisons and that a climate of insecurity was created by the transfer of prisoners between facilities to curb extortion by prison-based gangs, asked what specific steps were being taken to reduce overcrowding, lower the incarceration rate and adopt non-custodial measures, including for juvenile offenders…

70. **Mr. Hani** said that he welcomed the State party's decision to make public the report of the Subcommittee on Prevention of Torture on its 2013 visit and, referring to paragraph 75 of that report, wished to know what steps had been taken to implement the Subcommittee's recommendations regarding due process and disciplinary sanctions. He would appreciate information on whether applications for refugee status and asylum were assessed individually and whether applicants were screened for signs of torture. Lastly, did the Government intend to increase its contribution to the Voluntary Fund…

71. **Ms. Zhang** said that, while various measures had been adopted to improve prison conditions, several issues remained of concern, such as inadequate sleeping and sanitation facilities, overcrowding, poor food quality, inmate violence, limited access to medical services, weapons smuggling and corruption among prison staff. Accordingly, she wished to know how the State party planned to address those issues, especially at Challapalca prison. Referring to annex 9 of the report, she would appreciate further details on the aspects of the Convention covered in training courses. It was regrettable that training programmes were not assessed…

72. **Mr. Landa Burgos** (Peru) said that the proceedings relating to the forced sterilization of indigent persons, which had been initiated in 2002, had been closed and reopened a number of times. Charges had very recently been laid again and the case now involved not only the doctors who had performed the procedures but also the health-care authorities…

The meeting rose at 12.50 p.m.

10. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Published: 26 November 2018
Document Number: CAT/C/SR.1689
Author: Committee against Torture

Consideration of reports submitted by States parties under article 19 of the Convention (continued)
Seventh periodic report of Guatemala (CAT/C/GTM/7 and CAT/C/GTM/QPR/7)

1. *At the invitation of the Chair, the delegation of Guatemala took places at the Committee table…*

2. **Mr. Borrayo Reyes** (Guatemala) said that a bill to be introduced in December 2018 would amend the definition of torture set forth in the Criminal Code to include the element of discrimination, thereby bringing it into line with the provisions of the Convention…

3. As at the end of September 2018, the prison population had totalled 24,320 individuals, some 50 per cent of whom were awaiting trial. Persons with disabilities accounted for around 1.5 per cent of those incarcerated, while less than 1 per cent belonged to the lesbian, gay, bisexual, transgender and intersex (LGBTI) community. Approximately 20 per cent of the prison population self-identified as indigenous or had not declared their ethnicity…

5. The rate of prison overcrowding stood at 270 per cent. In 2019, construction was due to begin on three new detention facilities, namely a pretrial detention centre, a regular prison and a maximum-security facility. More than 1,500 requests for alternatives to detention had been granted as part of efforts to reduce overcrowding…

7. In 2017, as part of plans to strengthen the National Civil Police, particularly with a view to replacing the army in functions involving the maintenance of public order, almost 3,000 new

officers had been trained and a further 3,100 were due to graduate in December 2018. There had been a slight increase in the number of private security firms that had met the requirements established in law…

8. **Mr. Rodríguez-Pinzón** (Country Rapporteur) said that the Committee would welcome details of the steps taken by the State party to move forward with the adoption of the draft legislation on the implementation of the Rome Statute of the International Criminal Court…

19. **Mr. Rodríguez-Pinzón** would be grateful for clarification regarding how many of the 59 disciplinary cases for human rights violations opened by the National Civil Police between 2012 and 2015 had related to torture or ill-treatment, and how many of the 308 complaints of torture registered by the Public Prosecution Service during the same period had implicated police officers. He wished to learn about any steps that had been taken to establish a central register of complaints of torture and ill-treatment. It was unclear whether the prison information analysis units would be responsible for maintaining the register…

30. The Committee was concerned about reports of migrants from Central America who set out for Mexico and the United States of America, often in so-called caravans of thousands of persons, and who returned home after suffering trauma during their attempted migration. Those who returned to Guatemala often found themselves lodged in shelters with deplorable living conditions. What measures was the Government adopting to provide them with minimum subsistence, lodging and health services?

34. The State party had unfortunately not provided the Committee with any information about reparation or compensation ordered by domestic courts. It was the national authorities that had the primary responsibility to protect human rights, which required a qualitative and statistical monitoring of the implementation of such rights by the domestic authorities and courts. A bill relating to missing persons had been proposed in the mid-2000s, but had evidently never been adopted. The Committee would like to learn more about the status of the bill…

37. **Ms. Racu** (Country Rapporteur) said that she had noted positive trends in the State party's implementation of the Convention, including the adoption of the National Prison Reform Policy 2014–2024, which had been applauded by various bodies. She requested more detailed information about the specifics of the policy, especially in respect of the budget, how many new prisons had been planned or built and whether the policy included changes to the criminal legislation and penalties…

41. The quality of medical care in places of deprivation of liberty was often poor, as there was a lack of qualified staff and access to medication was limited. There had been reports of delays in the transfer of inmates to hospitals, owing to inaction on the part of judges and the lack of an administrative protocol for hospital treatment, and the Committee had also heard of a disconcerting situation of prisoners living with HIV/AIDS. She asked the delegation about the current ratio of doctors to inmates at places of detention. The number of violent deaths and suicides registered in prisons, which had already been high, had recently increased still more; a number of particularly appalling incidents in 2015 had resulted in numerous deaths. The Office of the Human Rights Advocate had pointed out that there was no protocol or procedure for dealing with prison deaths…

60. **Mr. Heller Rouassant** asked whether the Government was implementing or planning any measures to deal with the precarious situation of insecurity suffered by the large number of migrants who had been leaving the country in recent weeks…

61. With regard to prison overcrowding, he asked how the Government would ensure that alternative measures to detention that had been introduced, such as remote monitoring

devices, could be applied to all members of the population in conflict with the law without discrimination, regardless of their ability to pay for such devices…

62. **Ms. Belmir** said that, although the State party had taken measures to limit army intervention in the maintenance of public order, private security companies, many of which had links with criminal groups and did not respect the rule of law, continued to play a role. She wondered what steps the State party was taking to deal with that problem…

63. **Mr. Hani**, noting reports that up to 95 per cent of persons in private rehabilitation centres for drug addicts had been admitted against their will and were routinely subjected to inhuman and degrading treatment, asked how the State party monitored those centres, whether the national preventive mechanism had visited them and whether the State party intended to close them…

66. **Ms. Gaer** asked whether the State party could comment on reports that the Committee had received in relation to the terrible fire at the Virgen de la Asunción children's home and the problems associated with the criminal proceedings in its aftermath, including the fact that the Government did not adequately recognize intimidation as a possible purpose of torture and therefore did not extend the legal charges in those criminal proceedings to include torture. Noting that the President had been reported as saying that lynchings occurred because of a lack of police officers, whereas there were some who believed that the real lack was one of trust in the police, she wondered whether a definitive view had been taken by the Government on why lynchings continued…

67. Was consideration being given to reactivating the Unit for the Analysis of Attacks on Human Rights Defenders

68. **Ms. Zhang**, referring to the alarming reports that thousands of Guatemalans were emigrating to the United States of America through Mexico to escape inequality and violence against marginalized groups, and that most of those apprehended at the border with the United States were unaccompanied children, asked what mechanisms were in place to help those people who had had to escape and to protect their rights. On impunity, and noting comments that measures to combat impunity risked being undermined by certain political actors, she asked what the State party was doing to address that situation…

70. **Mr. Rodríguez-Pinzón** (Country Rapporteur) asked what progress had been made with respect to the creation of a central registry for organizations providing humanitarian assistance in Guatemala, what the main aim of that exercise was and what criteria were used to identify the authorities and information to be included in the registry…

The meeting rose at 12.55 p.m.

11. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Published: 28 November 2018
Document Number: CAT/C/SR.1692
Author: Committee against Torture

Seventh periodic report of Guatemala (*continued*)

1. *At the invitation of the Chair, the delegation of Guatemala took places at the Committee table.*

2. **Mr. Borrayo Reyes** (Guatemala), replying to questions posed during the first part of the interactive dialogue, said that a national sex offenders register had been established in January

2018 and that persons wishing to work with children and/or adolescents had to certify that they had not been convicted of a sexual offence. The National Strategy for the Prevention of Violence and Crime 2017–2027 had likewise been adopted…

11.The Public Prosecution Service had reported that, between 2015 and February 2018, it had received 417 complaints of violence against human rights defenders and 421 complaints of violence against journalists. Of the 838 complaints received, 397 were under investigation and 225 had been dismissed. As at October 2018, the Presidential Human Rights Commission had implemented 46 protective measures ordered by the Inter-American Commission on Human Rights in respect of, inter alia, members of the judiciary, journalists and human rights defenders. The Public Prosecution Service had likewise adopted General Instruction No. 05-2018 which established a protocol with specific criteria and tools for the investigation of crimes committed against human rights defenders. Ministerial Agreement No. 23-2018 of 17 January 2018 had served to strengthen the Unit for the Analysis of Attacks against Human Rights Defenders and complaints could still be filed via the corresponding hotline…

15. **Mr. Pozuelos López** (Guatemala), replying to questions posed on the Guatemalan prison system, said that, in the absence of a unified complaints register, the information analysis unit of the national prison system kept a register of complaints of ill-treatment against persons deprived of their liberty. The complaints received via the confidential hotline 1533 concerned violence suffered and caused by those persons. The national prison system had a monitoring and video surveillance centre, which was equipped with 186 video surveillance cameras. A total of 20 video surveillance cameras were located in the Women's Orientation Centre. The new unit for mothers within the Women's Orientation Centre was now complete and housed 30 mothers deprived of their liberty and 31 children under 4 years of age…

22. The transfer of persons deprived of their liberty to hospitals was facilitated by an inter-institutional agreement. When a person was first admitted to a place of deprivation of liberty, the medical services unit of the national prison system conducted only superficial medical examinations and interviews to determine the type or types of illness from which that person might be suffering for the purpose of preparing his or her medical record and providing him or her with the necessary medical services. The unit had reported three cases of hepatitis among persons deprived of their liberty, two of which involved hepatitis B and one of which involved hepatitis C. The persons affected were following the appropriate course of medication. Congressional Decree No. 27-2000, which set out the General Act on Combating HIV and AIDS and the Promotion, Protection and Defence of Human Rights in the Context of HIV/AIDS, prohibited compulsory HIV testing…

23. **Ms. Contreras Mejía** (Guatemala) said that 723 adolescents were currently deprived of their liberty in Guatemala, considerably fewer than the number recorded in previous years. Consequently, the rate of overcrowding in places of deprivation of liberty was 76 per cent lower than in 2017. Adolescents in pretrial detention were held separately from convicts in the three centres reserved for adolescent boys and in the only centre reserved for adolescent girls, where young adult females were also held separately from female minors. The Specialized Reintegration Centre was being redesigned to facilitate the separation of adolescents deprived of their liberty by age group and legal situation and to put an end to overcrowding. The new Centre would be completed in 2019…

29. **Mr. Figueroa Álvarez** (Guatemala) said that prisoners requiring specialized or emergency medical care were transferred to national hospitals, when authorized by a judge. In 2017, 695 prisoners had been transferred to hospitals (441 men and 254 women), and in 2018 there had been 542 transfers (390 men and 152 women). The number of prisoners transferred to hospital had decreased since stricter transfer protocols had been introduced, from roughly 500 a month to between 25 and 40. While there was no mandatory testing on arrival in prison for HIV, tuberculosis or hepatitis, screening of inmates had resulted in the detection and treatment, in 2018, of 148 cases of HIV infection (129 men, 19 women)…

32. **Mr. García Morales** (Guatemala) said that the National Institute of Forensic Sciences was an independent body charged with carrying out scientific investigations to assist the judicial system, including into the probable causes of torture and cruel or degrading treatment. As part of its work it conducted a large number of health checks on adults and adolescents held in detention, and informed the courts if hospital treatment was required. In 2016 and 2017, for example, it had carried out close to 5,000 assessments a year, and as at 15 November 2018 it had carried out close to 7,000. To improve detainees' access to health care the Institute had signed protocols for inter-institutional action to assess the health of adult and adolescent detainees…

34. **Mr. Tzubán Gómez** (Guatemala) said that since 2012 the National Civil Police had received only three complaints of ill-treatment and torture — two in 2015 and one in 2018. The men involved had been acquitted by the courts. Investigations into domestic violence and femicide by police officers had been carried out; in proven cases administrative sanctions had been applied and victims had been advised to take their respective complaints to court…

41. **Mr. Arango** (Guatemala) said that, with regard to the question on the criminalization and punishment of torture in the Criminal Code in line with the Convention, a technical panel had been established — consisting of the National Congress human rights committee and the National Office for the Prevention of Torture — which was preparing draft legislation to that effect, to be presented to Congress in December 2018. In order to promote the bill governing the implementation of the Rome Statute of the International Criminal Court in Guatemala, a letter was to be sent to all deputies stressing the need for the bill to be scheduled for a third reading and finalized…

51. **Mr. Borrayo Reyes** (Guatemala) said that his Government intended, subject to approval from Congress and other relevant national bodies, to begin making contributions to the United Nations Voluntary Fund for Victims of Torture…

52. *Mr. Modvig took the Chair…*

53. **Mr. Rodríguez-Pinzón**, thanking the delegation for its detailed replies, said that it would be useful for the State party to establish an assessment and follow-up procedure, complete with statistical analysis, to evaluate the application in practice of fundamental legal safeguards…

67. **Ms. Racu** said that the Committee remained concerned that prisoners had no opportunities to appeal decisions made by the prison administration…

77. **Ms. Belmir** said that the Committee had been given to understand that the independence of judges in Guatemala was compromised by their being employees of the State, and that their requests for judicial reform had gone unheeded. She therefore wondered what steps the State party was taking to ensure the effective rule of law…

78. **Mr. Hani** said that he welcomed the intention of the State party to support the United Nations Voluntary Fund for Victims of Torture and hoped that it would also support non-governmental and civil society organizations involved in the rehabilitation of torture victims…

Ms. Contreras Mejía (Guatemala) said that Congress had met on several occasions with the institutions responsible for paying lifelong allowances to the survivors of the tragedy at the Virgen de la Asunción children's home. It was anticipated that the funds would be released by December 2018, with retroactive effect. The Social Welfare Secretariat had established a unit to issue monthly reports on the allowance and monitor its disbursement…

91. **Mr. Garcia Morales** (Guatemala) said that the National Institute of Forensic Sciences had conducted 158 autopsies between 2012 and 2018 on persons who had died within the prison system. The Minnesota Protocol had relatively recently been incorporated into the autopsy procedure for deaths in prison and as such was not systematically applied…

92. **Mr. Figueroa Álvarez** (Guatemala), referring to the question that had been raised about the death of a young person in a migrant caravan, said that the death had occurred in Mexico, so unfortunately the Government did not have any specific details on that case…

99. **Mr. Borrayo Reyes** (Guatemala) said that his Government was determined to meet its obligations under the Convention and was taking genuine steps to improve the human rights situation in Guatemala. He called on the international community to help foster the development of his country so that it could definitively move on from its war-torn past…

12. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Published: 5 December 2018
Document Number: CAT/C/64/2
Author: Committee against Torture

Introduction

1. The present report is a compilation of information received from States parties and complainants that has been processed since the sixty-third session of the Committee against Torture (23 April–18 May 2018), and is presented in the framework of the Committee's follow-up procedure on decisions relating to communications submitted under article 22 of the Convention…

Communication No. 327/2007
Boily v. Canada

2. On 18 July 2018, the complainant's counsel again requested the Committee to intervene in order to ensure that Canada abided by the decision rendered by the Committee in the complainant's favour. He reiterated that the decision had been ignored by both the previous and the current governments of the State party, notwithstanding several reminders. He claimed that the absence of remedies for the complainant, and of the necessary revision of the system of diplomatic assurances, undermined the reputation and credibility of the Committee…

Communication No. 477/2011
Aarrass v. Morocco

Remedy: The Committee urged the State party to inform it, within 90 days of the date of transmittal of the decision, of the measures that it had taken in accordance with the observations, including the initiation of an impartial and in-depth investigation into the complainant's allegations of torture. Such an investigation must include the conduct of medical examinations in line with the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol)…

Communication No. 500/2012
Ramírez Martínez et al. v. Mexico

Remedy: The Committee urged the State party to: (a) launch a thorough and effective investigation into the acts of torture; (b) prosecute, sentence and punish appropriately the persons found guilty of the violations; (c) order the immediate release of the complainants; and (d) award fair and adequate compensation to the complainants and their families and provide rehabilitation. The Committee also reiterated the need to repeal the provision concerning preventive custody in domestic legislation, and to ensure that military forces were not responsible for law and order…

Communication No. 531/2012
L.A. v. Algeria

Remedy: The Committee concluded that the State party had failed to fulfil its responsibility under article 13 of the Convention to guarantee the complainant's right to lodge a complaint about the alleged intimidation and threats against him as a judge carrying out his functions, and urged the State party to: (a) conduct an independent, transparent and effective investigation into the events in question; (b) take all necessary measures to prevent any threats or acts of violence to which the complainant and his family might be exposed, in particular as a result of having lodged the present complaint; and (c) inform the Committee, within 90 days of the date of transmittal of the decision, of the steps it had taken in response to the views expressed in the Committee's decision…

Communication No. 606/2014[7] Remedy: The Committee was of the view that the State party had an obligation to: (a) provide the complainant with a remedy, including fair and adequate compensation and the means for as full rehabilitation as possible; (b) initiate an impartial and thorough investigation of the alleged events, in full conformity with the requirements of the Istanbul Protocol, in order to establish accountability and bring those responsible for the complainant's treatment to justice; and (c) refrain from any pressure, intimidation or reprisals against the physical or moral integrity of the complainant or his family, which would otherwise violate the State party's obligations under the Convention to cooperate with the Committee in good faith, to facilitate the implementation of the provisions of the Convention and to allow family visits to the complainant in prison…

Communication No. 681/2015
M.K.M. v. Australia

Remedy: The Committee was of the view that the State party had an obligation, in accordance with article 3 of the Convention, to refrain from forcibly returning the complainant to Afghanistan or to any other country where he ran a real risk of being expelled or returned to Afghanistan…

Communication No. 682/2015

Remedy: The Committee concluded that the complainant had sufficiently demonstrated that he faced a foreseeable, real and personal risk of torture if extradited to Saudi Arabia, in

violation of article 3 of the Convention. Since the complainant had been in pretrial detention for almost two years, the Committee urged the State party to release him or to try him if charges were brought against him in Morocco…

13. International Covenant on Civil and Political Rights
Published: 15 March 2018
Document Number: CCPR/C/SR.3454
Author: Human Rights Committee

Fourth periodic report of Guatemala (CCPR/C/GTM/4; CCPR/C/GTM/QPR/4)
1. At the invitation of the Chair, the delegation of Guatemala took places at the Committee table.
2. **Mr. Borrayo Reyes** (Guatemala), introducing the fourth periodic report of Guatemala (CCPR/C/GTM/4), said that, since submission of the report, the State party had adopted the Act on the Genetic Databank for Forensic Purposes, the Act on School Meals and the Migration Code, and it had amended the Civil Code to prohibit persons under the age of 18 from marrying…
5. In the area of labour, judicial proceedings were under way in 223 of the 417 complaints of discrimination brought between 2015 and 2018, while the Inspectorate General for Labour had recovered over 1.5 billion quetzales on workers' behalf in the wake of over 70,000 inspections. There were currently 790,000 children and adolescents engaged in child labour, a drop from the previous figure of 850,000…
7. Nearly 120,000 complaints of violence against women had been received since 2016 and 3,621 convictions had been obtained in the 4,707 cases opened. Psychological treatment and financial compensation were provided to survivors in the event of a conviction. The National Coordination Agency for the Prevention of Domestic Violence and Violence against Women had been reactivated. An allocation of 20.5 million quetzales had been made to strengthen the Comprehensive Support Centres for Women Survivors of Violence, which had attended over 14,000 women and children in 2017. A special prosecutor's office for femicide had been created in accordance with the Act on Femicide and Other Forms of Violence against Women and in compliance with the Inter-American Court of Human Rights judgment in the *Veliz Franco* case. The special prosecutor had obtained 32 convictions…
9. Measures to combat impunity included the 2016–2018 National Plan for Open Government, which had facilitated access to public information. The Public Prosecution Service had received nearly 18,000 complaints of corruption between 2015 and 2018 and obtained 375 convictions. The Ríos Montt proceedings and other amnesty cases were still ongoing in the courts…
22. **Mr. Santos Pais** asked which body would be responsible for implementing the Committee's recommendations. He said that he would like to know whether civil society had been involved in the preparation of the report and whether it would be asked to help in following up on the Committee's recommendations. To date no Guatemalan citizen had brought a complaint before the Committee, or indeed before any other United Nations human rights treaty body…
25. Women faced labour inequality in a number of sectors in Guatemala. That inequality took various forms, such as wage discrimination, unpaid work and a lower employment rate…
27. **Ms. Cleveland** said that her first set of questions pertained to issue 4 of the list of issues prior to reporting (CCPR/C/GTM/QPR/4). She wished to know whether the State party planned to adopt legislation explicitly prohibiting discrimination on the basis of sexual orientation and gender identity, including in the areas of employment, health care, education, housing and access to public services, and legislation criminalizing hate crimes perpetrated on grounds of sexual orientation and gender identity. Furthermore, she was interested to know whether the State party planned to adopt legislation to protect the right to legal recognition of gender identity for transgender persons by allowing them to change their gender designation on official identity documents. The Committee had received reports of a pending bill, that explicitly proposed to prohibit same-sex marriage and civil partnership, certain versions of which implicitly condoned incitement to hatred on the basis of sexual orientation and gender identity. She would appreciate information on the bill's current status and an explanation as to how it was consistent with the principle of non-discrimination on grounds of sexual orientation and gender identity…
34. **Ms. Brands Kehris**, speaking in relation to issue 11 of the list of issues prior to reporting, said that the amount of money spent by the State party on its National Reparations Programme between 2012 and 2015 was significantly lower than the Programme's allocated budget for that same period. She was therefore interested to hear about any barriers to the implementation of the budget and wished to know why there had been such a large discrepancy…
35. **Mr. de Frouville** said that, as mentioned in the delegation's opening remarks, in 2012 the State party's Constitutional Court had declared that the definition of torture contained in the Criminal Code was unconstitutional by way of omission and that it would need to be amended to be brought in line with international instruments. He therefore wondered whether a bill had been submitted proposing such an amendment. The State party had indicated in its report that it had received 4 complaints of acts of torture between 2010 and 2015, but in its opening remarks, the delegation had indicated that only 10 complaints had been received between 2015 and 2017. He wondered whether that figure was correct. He would also appreciate clarification as to how only one of the four complaints of acts of torture registered between 2010 and 2005 had led to a conviction and whether that was a sign of widespread impunity. Furthermore, he would welcome information on any mechanisms in place to provide reparation for victims of acts of torture…
40. **Mr. Muhumuza** said that he would appreciate information on the political, economic and social participation of persons of African descent in Guatemala and on the efforts being made to promote their participation in those spheres…
41. **Mr. Borrayo Reyes** (Guatemala) said that his Government fully recognized that the successful operation of national human rights institutions depended on respect for the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles)…
44. **Ms. Teleguario Sincal** (Guatemala) said that the Ministry of Labour and Social Welfare had organized various initiatives to reduce the gender pay gap, including awareness-raising campaigns, advisory services and capacity-building exercises with a focus on the protection of labour rights. The Ministry had worked with the International Labour Organization (ILO) to launch and promote a campaign entitled "Yes to the ILO Domestic Workers Convention, 2011 (No. 189)". In 2015 and 2016, the General Labour Inspectorate had carried out 845 inspections and had reached over 100,000 workers in the process. Companies focused on the export market and maquila factories were also regularly inspected…
50. **Mr. García Morales** (Guatemala) said that the National Institute of Forensic Sciences

collected disaggregated data on sexual abuse. Over the period 2015–2017, the number of reported cases of sexual abuse had remained relatively stable at approximately 7,000 for women and 800 for men. Measures had been taken to encourage victims of sexual abuse to come forward, in particular in the interior of the country. Inter-agency agreements had been concluded, including with the Ministry of Health, to ensure that cases of sexual abuse identified in clinical settings were reported to the appropriate authorities. The National Institute of Forensic Sciences had made efforts to remove some of the barriers that caused victims to drop their claims. Those measures had caused the proportion of victims who did so to fall significantly between 2016 and late 2017…

69. **Ms. Ochoa Escribá** (Guatemala) said that the ruling which had declared the definition of torture in the Criminal Code unconstitutional on grounds of omission was based on the need to reflect the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and of the Inter-American Convention to Prevent and Punish Torture. The matter was currently before Congress…

70. The Chair reminded the delegation of the option to submit its responses in writing within 48 hours of its dialogue with the Committee…

The meeting rose at 6 p.m.

14. General Assembly: Opinions adopted by the Working Group on Arbitrary Detention at its eighty-first session, 17–26 April 2018

Published: 17 July 2018

Document Number: A/HRC/WGAD/2018/24

Author: Human Rights Council

Opinion No. 24/2018 concerning Lorent Gómez Saleh and Gabriel Vallés Sguerzi (Colombia and the Bolivarian Republic of Venezuela)

1.The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 33/30…

2. In accordance with its methods of work (A/HRC/36/38), on 24 January 2018, the Working Group transmitted to the Governments of Colombia and the Bolivarian Republic of Venezuela a communication concerning Lorent Gómez Saleh and Gabriel Vallés Sguerzi. The Government of Colombia requested additional time in order to respond to the communication and submitted its response on 6 April 2018. The Government of the Bolivarian Republic of Venezuela has not replied to the communication. Both States are parties to the International Covenant on Civil and Political Rights…

Submissions

Communication from the source

4. Lorent Gómez Saleh is a Venezuelan citizen, born in 1988. He is a student and human rights activist, and a founder and member of several non-governmental organizations in the Bolivarian Republic of Venezuela. He is usually resident in Valencia (Carabobo State)…

5. Gabriel Vallés Sguerzi is a Venezuelan citizen, born in 1987. He is a systems engineer and human rights activist and a member of several non-governmental organizations in the Bolivarian Republic of Venezuela. He is usually resident in Valencia (Carabobo State)…

21. In addition, the source reports that the prosecutor handling the case visited Mr. Gómez Saleh on several occasions to ask him if, in exchange for improved conditions of detention or even his release, he would sign a statement in which he admitted to the charges against him and accused well-known opposition leaders of crimes…

29. The source submits that access to the judicial case file has been unduly restricted. The file is kept by the judge in his office, under lock and key, which means that several rightful requests to review the file have been denied because the judge was not present in the court. Moreover, when Mr. Gómez Saleh's defence counsel has been permitted to review the case file, access has been granted only to certain sections and never to the file as a whole…

33. Lastly, the source claims that their detention is arbitrary under category V because Mr. Gómez Saleh and Mr. Vallés Sguerzi have been discriminated against in the exercise of their right to liberty for obviously political reasons. Both individuals are human rights activists and critics of the Venezuelan Government and they participate actively in public and political affairs. The source alleges that they have been persecuted because of their activities to the point of being deprived of their liberty…

40. On 4 September 2014, at 5 p.m., national police officers detained a Venezuelan citizen at the intersection of Carrera 15 and Calle 100 in Bogotá near the Military University and took him to the premises of the Special Administrative Unit for Migration of Colombia…

41.At 5.10 p.m., migration officials of the above-mentioned Unit, having identified the person concerned as Mr. Lorent Enrique Gómez Saleh, informed him that administrative expulsion proceedings had been opened against him in accordance with article 105 of Decree No. 4000 of 2004. A decision was taken to issue order No. 20147030029475, dated 4 September 2014, expelling him from the country under article 105 of Decree No. 4000 of 2004. He was therefore transferred to Bogotá El Dorado Airport in accordance with the resolution and the powers accorded under article 109 of the Decree…

47. Mr. Vallés Sguerzi was detained at the Ventura Plaza shopping centre in Cúcuta by national police and migration officials and informed that an administrative measure had been taken against him and that he was requested to present himself at the office of the Special Administrative Unit for Migration of Colombia…

48. The Government notes that, once he had arrived at the Unit's office, Mr. Vallés Sguerzi was notified of order No. 20147030029445, of 4 September 2014, expelling him from the country in accordance with article 105 of Decree No. 4000 of 2004. He was also informed of the nature and scope of the sanction and signed a certificate of good treatment…

61. The source notes that the decisions to expel Mr. Gómez Saleh and Mr. Vallés Sguerzi were taken following what the Government describes as a "procedure" that was initiated and completed on the same day. However, there was no procedure: Mr. Gómez Saleh and Mr. Vallés Sguerzi were simply notified of a special administrative act ordering their expulsion, without being duly informed of the facts that served as the basis of the "procedure" or being given the opportunity to obtain legal assistance or to present their case and evidence in connection with the serious acts referred to in article 105 of Decree No. 4000 of 2004…

Detention by Colombia

68. The Working Group welcomes the cooperation of the Government of Colombia, which replied to the communication from the source within the time limit and provided information

regarding the detention of Mr. Gómez Saleh and Mr. Vallés Sguerzi, the powers of the institutions involved and the legal framework applicable to the expulsion of foreign nationals…

69. The Working Group notes that, according to the information submitted by the parties, Mr. Gómez Saleh was arrested on 4 September 2014 in Bogotá by the national police and was transported to the border town of Cúcuta that same day, where he was expelled from the country and handed over to Venezuelan officers at the border by the Colombian authorities…

70. It further notes that Mr. Vallés Sguerzi was arrested by the police on 5 September 2014 in Cúcuta (Colombia) and was deported and handed over to the Venezuelan authorities at the border that same day…

92. The Working Group urges both Governments to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. Gómez Saleh and Mr. Vallés Sguerzi and to take appropriate measures against those responsible for the violation of their rights…

93. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment…

Footnotes:

1. See A/HRC/19/57, para. 68.
2. See opinions No. 37/2011, para. 15; No. 38/2011, para. 16; No. 39/2011, para. 17; No. 4/2012, para. 26; No. 47/2012, paras. 19 and 22; No. 34/2013, paras. 31, 33 and 35; No. 35/2013, paras. 33, 35 and 37; No. 36/2013, paras. 32, 34 and 36; No. 38/2012, para. 33; No. 48/2013, para. 14; No. 22/2014, para. 25; No. 27/2014, para. 32; No. 34/2014, para. 34; No. 35/2014, para. 19; No. 44/2016, para. 37; No. 32/2017, para. 40; No. 33/2017, para. 102; and No. 36/2017, para. 110.
3. Opinions No. 52/2017 (Gilbert Alexander Caro Alfonzo); No. 37/2017 (Braulio Jatar); No. 18/2017 (Yon Alexander Goicoechea Lara); No. 27/2015 (Antonio José Ledezma Díaz); No. 26/2015 (Gerardo Ernesto Carrero Delgado, Gerardo Rafael Resplandor Veracierta, Nixon Alfonzo Leal Toro, Carlos Pérez and Renzo David Prieto Ramírez); No. 7/2015 (Rosmit Mantilla); No. 1/2015 (Vincenzo Scarano Spisso); No. 51/2014 (Maikel Giovanni Rondón Romero and 316 others); No. 26/2014 (Leopoldo López); No. 29/2014 (Juan Carlos Nieto Quintero); No. 30/2014 (Daniel Omar Ceballos Morales); No. 47/2013 (Antonio José Rivero González); No. 56/2012 (César Daniel Camejo Blanco); No. 28/2012 (Raúl Leonardo Linares); No. 62/2011 (Sabino Romero Izarra); No. 65/2011 (Hernán José Sifontes Tovar, Ernesto Enrique Rangel Aguilera and Juan Carlos Carvallo Villegas); No. 27/2011 (Marcos Michel Siervo Sabarsky); No. 28/2011 (Miguel Eduardo Osío Zamora); No. 31/2010 (Santiago Giraldo Florez, Luis Carlos Cossio, Cruz Elba Giraldo Florez, Isabel Giraldo Celedón, Secundino Andrés Cadavid, Dimas Oreyanos Lizcano and Omar Alexander Rey Pérez); and No. 10/2009 (Eligio Cedeño).
4. See Human Rights Council resolution 33/30, paras. 3 and 7

15. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Published: 1 May 2019
Document Number: CAT/C/SR.1724
Author: Committee against Torture

Consideration of reports submitted by States parties under article 19 of the Convention
Seventh periodic report of Mexico (CAT/C/MEX/7 and CAT/C/MEX/QPR/7)

3. **Ms. Delgado Peralta** (Mexico) said that Mexico was in the midst of a profound transformation. The new Government had a new vision for the country and welcomed international scrutiny. It placed great importance on multilateral platforms, with a special focus on international cooperation aimed at ensuring that the country's legal framework gave effect to the full exercise of human rights…

10.The Government was aware of the concerns that had been expressed about the establishment of the National Guard. In that regard, the Office of the United Nations High Commissioner for Human Rights had recently agreed to provide the Mexican authorities with technical assistance to ensure that the National Guard operated in line with international standards…

11. Under the protection mechanism for human rights defenders and journalists, 1,144 individuals, including 22 who had allegedly been subjected to torture, had benefited from protective or preventive measures…

18. **Mr. Rodríguez-Pinzón** (Country Rapporteur), welcoming the adoption of the General Act on the Prevention, Investigation and Punishment of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, said that he wished to hear the delegation's comments on reports that as at August 2018, only the States of Chihuahua and Colima had taken steps to align their own legislation with the Act...

23. A further issue was the use of *arraigo* (precautionary detention without charge), which was allowed for a period of up to 40 days, extendable for up to 80 days, for persons involved in organized crime. The persons detained were not accused of any specific offence and did not enjoy fundamental legal safeguards. The Working Group on Arbitrary Detention and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment had defined *arraigo* as a form of arbitrary detention; as such, it could be used to facilitate torture and ill-treatment…

27. The data on gender-based violence submitted by the State party were not disaggregated by age, ethnic origin and nationality of the victims, did not include the number of complaints, convictions and sentences imposed for gender-based violence, including domestic violence and femicide, and did not specify the period covered. In addition to data updated to 2018 on those subjects, he would appreciate specific information on the measures adopted to combat femicide in Cuidad Juárez…

30. Measures taken to ensure that victims of trafficking in persons had access to effective remedies and redress included the adoption of various legal and administrative instruments, including specific protocols for the safe extraction and care of victims in the States of Guanajuato and Cohahuila. He would like to know whether similar protocols had been adopted in other states and what measures were in place to encourage states which currently lacked such protocols to adopt them. He wished to repeat the Committee's request for information on any identification and referral mechanisms for victims of human trafficking

who might be detained in migrant holding centres…
41. As the list of crimes that carried automatic pretrial detention in Mexico had reportedly tripled, the Committee was concerned that the already high proportion of pretrial detainees was set to increase. It would be helpful to hear about the extent to which pretrial detainees contributed to overcrowding in prisons, and the anticipated consequences of the change in the relevant legislation. The delegation should provide more information on the case of Mr. Daniel García, who had reportedly been detained for 16 years without a verdict. He would also be interested to hear the delegation's views on a study conducted by the Centre for Research and Advanced Studies in Social Anthropology that claimed that 40 per cent of people in pretrial detention in Mexico should be released…
46. Given that the 2016 study by the National Institute of Statistics and Geography had concluded that bribery in the Mexican prison system was widespread and chronic, and that the majority of inmates did not complain out of fear of reprisals, he wished to know what the authorities were doing to combat corruption in places of detention…
56. **Ms. Zhang** said that it was a matter of concern that the percentage of applicants that had been granted refugee status had dropped significantly between 2016 and 2017. Moreover, 98,741 migrants in an irregular situation had been detained during the first 11 months of 2017 and 74,604 had subsequently been expelled from the country, 20 per cent of them having been unaccompanied minors. She would be interested to hear more about the current situation on the ground and the measures being taken by the State party to protect the rights of refugees and migrants, particularly since the Committee had learned that the Office of the Special Prosecutor for Offences against Migrants was plagued by institutional problems…
57. A study that had been published the previous year alleged that foreigners held at places of deprivation of liberty administered by the National Institute of Migration were being subjected to torture and ill-treatment. Although the Government had rejected those allegations, the National Human Rights Commission confirmed that they had been supported by evidence. Further clarification on the matter would therefore be greatly appreciated.
Ms. Belmir said that she was concerned by the number of arrests being made by heavily armed members of the military who had not received appropriate training on arresting and interrogating individuals. Moreover, an alarming number of arrests took place in the State party without an arrest warrant and suspects were often secretly held in confinement…
60. With regard to the application of the National Code of Criminal Procedure that had come into effect in 2016, Ms. Zhang reminded the delegation that, in order to guarantee a fair trial, it was important to accord equal weight to all statements made before the judge during criminal investigations…
64. **Ms. Racu** said that, despite the progress made over the previous 10 years, there was still room for improvement concerning the State party's juvenile justice system. The Committee had learned that minors accused of serious offences were automatically remanded in pretrial detention. Since many of them were from disadvantaged families and were unable to gather the evidence and funds required to secure their release, they often ended up being detained for weeks or months. She would be interested to know how many minors were currently being held in detention, both on remand and following conviction, and whether those numbers had gone up since the previous reporting cycle…
68. **The Chair** said that the Committee had been informed that incidents of ill-treatment, sexual violence and torture took place in social institutions, psychiatric departments and migration detention centres, some of which were not officially registered. He would therefore like to know whether the State party intended to put in place a more robust mechanism for monitoring those facilities…
69. **Ms. Delgado Peralta** (Mexico) said that the Government, which had been in power for under six months, was firmly committed to overcoming the challenges that it faced to protect and promote human rights in her country. One of its first actions had been to draw up a multilateral plan with El Salvador, Honduras and Guatemala to address the causes of migratory flows and to develop a human-rights based system of migration management for the region. The Government had also taken action to protect the rights of migrants in Mexican territory, particularly unaccompanied minors, who were applying for asylum in the United States of America. It allowed migrants to stay in Mexico temporarily for humanitarian reasons, and they were entitled to leave and return to the country as they wished during their stay. While in the national territory, she confirmed that all migrants were guaranteed the rights and freedoms provided for under the Constitution, the international treaties to which Mexico was a party and the Migration Act…

16. International Covenant on Civil sand Political Rights: List of issues prior to submission of the third report of Guyana
Published: 31 August 2020
Document Number: CCPR/C/GUY/QPR/3
Author: Human Rights Committee

General information on the national human rights situation, including new measures and developments relating to the implementation of the Covenant
1. Please provide information on measures taken to implement the recommendations contained in the Committee's previous concluding observations (CCPR/C/79/Add.121). Please also report on any other significant developments in the legal and institutional framework within which human rights are promoted and protected that have taken place since the adoption of the previous concluding observations…

Anti-corruption measures (arts. 2 and 25)
5. Please report on the measures taken by the State party to ensure: (a) the full implementation of existing anti-corruption legislation; (b) prompt and thorough investigations, including by the State Assets Recovery Agency, into all allegations of corruption, as well as prosecution and punishment of perpetrators; and (c) transparent management of natural resources, particularly extractive resources such as oil, gold, diamonds and timber. Please comment on reports of corruption by public officials in the petroleum sector, including in relation to the granting of oil production licences in 2016…

Non-discrimination (arts. 2, 3, 23, 25 and 26)
6. Please report on measures adopted to develop dedicated anti-discrimination legislation that: (a) extends beyond discrimination in employment; (b) provides a clear definition of and criminalizes direct and indirect discrimination; (c) contains a comprehensive list of prohibited grounds of discrimination, including sexual orientation and gender identity; and (d) provides for effective judicial and administrative remedies for victims. Please include statistical information on complaints of discrimination received during the period under review, along with an indication of the basis of discrimination, the nature of investigations conducted and

their outcome, and any redress provided to victims…

Gender equality (arts. 3 and 26)
9. With reference to the previous concluding observations (para. 13), please report on the measures taken to achieve the equitable representation of women in public and political life, especially in decision-making positions. Please describe steps taken to introduce statutory quotas for women in national and local legislative assemblies and to review the current quota system for electoral lists, which does not ensure, in practice, equal representation of men and women…

Voluntary termination of pregnancy (arts. 6–8)
11. Please report on the steps taken by the State party to ensure the full implementation of the Medical Termination of Pregnancy Act of 1995 and to guarantee safe, prompt and effective access to abortion services throughout the country, particularly in rural and hinterland areas. In this respect, please include information on the availability and accessibility of facilities in the State party that provide abortion services…

Right to life (art. 6)
12. With reference to the previous concluding observations (para. 7), please report on the progress made towards abolishing the death penalty and on the current obstacles to abolition. Please update the Committee on the State party's plans to accede to the Second Optional Protocol to the Covenant, including on the status of the draft memorandum prepared by the Ministry of Foreign Affairs in this respect…

Prohibition of torture and other cruel, inhuman or degrading treatment or punishment (art. 7)
16. With respect to the previous concluding observations (para. 11), please provide detailed information about the Police Complaints Authority, including: (a) its role in investigating complaints of torture or ill-treatment and excessive use of force by the police; (b) its relationship with other police investigative bodies; and (c) steps taken to ensure its independence and impartiality. Please include statistical data on the number of complaints received by the Police Complaints Authority during the period under review, along with the content and outcomes thereof…

Treatment of persons deprived of liberty (art. 10)
17. With reference to the previous concluding observations (para. 17), please report on progress made in: (a) addressing overcrowding in places of detention; (b) improving the material conditions of prisons, particularly at the Lusignan Prison; (c) ensuring adequate access to water and food, clothing and bedding, and health and medical services; and (d) investigating cases of inter-prisoner violence and deaths in places of detention. Please provide statistical data, disaggregated by sex, age and ethnicity, on the number of deaths in places of detention over the reporting period, including the number of cases and causes of death, the number of cases investigated, prosecutions pursued, convictions secured, punishment imposed on offenders and reparations provided to the families of the victims. Please provide information on the existence and operation of an independent monitoring body mandated to regularly monitor and inspect all places of detention…

Elimination of slavery, servitude and trafficking in persons (arts. 2, 7, 8, 24 and 26)
20. Please provide information on the measures taken to combat trafficking in persons and child labour, particularly in rural and hinterland areas, including the investigation, prosecution and conviction of perpetrators and provision of remedy to victims. Please comment on reports of hazardous child labour, especially in mining, logging, farming, fishing and manufacturing industries, and among the Amerindian communities, and of the increasing number of children in street situations. Please also indicate the steps taken by the State party to ensure the birth registration of children and access to identity documents…

Treatment of aliens, including refugees and asylum seekers (arts. 7, 9, 13 and 24 (3))
24. Please clarify whether the State party intends to adopt comprehensive national refugee legislation and asylum procedures. Please provide information on the measures taken: (a) to provide adequate safeguards against refoulement, including in light of the absence of a national asylum system; (b) to ensure protection of refugees arriving from the Bolivarian Republic of Venezuela, who are in particularly vulnerable situations, including with regard to their acquisition of legal status and access to basic social services; and (c) to prevent and combat the trafficking of refugee women and girls, particularly those from the Bolivarian Republic of Venezuela, and to ensure the protection of victims…

17. Report on follow-up to the concluding observations of the Human Rights Committee
Published: 22 September 2020
Document Number: CCPR/C/128/3/Add.1
Author: Human Rights Committee

Paragraph 9: Internal armed conflict
The State party should continue and intensify its efforts to prevent violations of Covenant rights and to give effect to the rights of victims of the armed conflict to truth, justice and full reparation. It should, in particular, ensure that:
@ The appropriate authorities adopt effective preventive measures in response to early warnings issued by the Inter-Agency Early Warning Committee and that they monitor and take proper action on all risk reports and follow-up notes issued by the Ombudsman's Office under the Early Warning System even if they are not converted into early warnings.

Information from the Colombian Commission of Jurists
Despite the progress in investigations into and the prosecution and punishment of alleged perpetrators of killings of social leaders and human rights defenders, the State party has not fully clarified the root causes of the violations. Furthermore, the consistent lack of implementation of the Ombudsman's recommendations in its early warnings and follow-up notes contributes to violence and human rights violations…
In 2017, at least 348 people were victims of homicide. Of the 115 cases in which the alleged perpetrator was known, responsibility was attributed to the State in 94 cases, which shows the persistence of extrajudicial executions in Colombia. The Colombian Commission of Jurists also refers to other human rights violations, including enforced disappearance, arbitrary detention and torture, and provides information on violations affecting vulnerable persons, including children, older adults, and lesbian, gay, bisexual, transgender and intersex persons…

Committee's evaluation
The Committee notes the information provided by the State party on the measures taken in response to early warnings issued by the Inter-Agency Early Warning Committee. It requires further information on the measures taken by the State since the adoption of the concluding observations, particularly in relation to the action taken on risk reports and follow-up notes issued by the Ombudsman's Office under the early warning system even if they are not converted into early warnings…

Paragraph 29: Conditions of detention
The State party should redouble its efforts to reduce overcrowding by, inter alia, ensuring that use is made of non-custodial measures, and to improve prison conditions so as to ensure that the dignity of persons deprived of their liberty is respected in accordance with article 10 of the Covenant. It should also step up its efforts to prevent torture and ill-treatment in places of deprivation of liberty, to ensure that all reports of torture or ill-treatment are investigated promptly, thoroughly and impartially by an independent body that has no hierarchical or institutional tie to the suspected perpetrators and to ensure that the responsible parties are brought to justice and punished…

Information from the Colombian Commission of Jurists
Although the total percentage of overcrowding has been reduced, the problem persists. The current rate of overcrowding takes into account the total number of places of detention, not the real distribution of inmates. Similarly, places of detention designated for pretrial detention are also overcrowded…
In 2018, the Criminal Code and the Code of Criminal Procedure were amended, by Act No. 1908 of 9 July 2018. The maximum duration of pretrial detention was increased from two to four years for crimes relating to activity in organized armed groups…

Paragraph 39: Alleged acts of intimidation, threats or attacks targeting human rights defenders, journalists, trade unionists, judicial officials, lawyers or social or human rights activists…
The State party should redouble its efforts to provide timely, effective protection to human rights defenders, journalists, trade unionists, judicial officials, lawyers and social or human rights activists who are the target of acts of intimidation, threats and/or attacks because of the work that they perform. It should also step up its efforts to ensure that all allegations regarding acts of intimidation, threats or attacks are investigated promptly, thoroughly and impartially, and that the perpetrators stand trial and are held accountable for their acts.

Information from the Colombian Commission of Jurists
Since the signing of the Final Agreement, there has been a worrying increase in the number of attacks against human rights leaders and defenders, a situation that currently constitutes a major threat to peacebuilding in Colombia. The State party's response has not been effective, and impunity persists to a high degree…
The peace agreement contains a set of measures that can help to reduce violence against human rights defenders. The Government's refusal to implement these measures makes the situation even more difficult…
Recommended action: A letter should be sent informing the State party of the discontinuation of the follow-up procedure. The information requested should be included in the State party's next periodic report…

18. Summary record of the first part (public) of the 3736th meeting
Published: 16 October 2020
Document Number: CCPR/C/SR.3736
Author: Human Rights Committee

Opening of the session by the representative of the Secretary-General of the United Nations
1. **Mr. Walker** (Office of the United Nations High Commissioner for Human Rights) said that he was pleased to declare open the Committee's 130th session, which was being held online. Since the outbreak of the coronavirus disease (COVID-19) pandemic, the Committee had continued to show how the human rights treaty bodies could advance their crucial work through creative working methods. He welcomed its efforts to keep the treaty body system functioning in the face of exceptional challenges…
7. **Ms. Kran**, welcoming the words of encouragement offered by the representative of the Secretary-General, said that it was important not to underestimate the sacrifices that had been made by members in order to allow the Committee to continue its work despite the pandemic. She was concerned that the Committee could not fulfil all aspects of its mandate effectively through online meetings; for example, it was unable to hold constructive dialogues with States parties online. The Committee therefore needed to be able to resume its in-person meetings as soon as possible….

Organizational and other matters, including the adoption of the report of the Working Group on Communications
10. **Mr. Shany** said that the Working Group on Communications, which consisted of 10 members, had met via videoconference from 28 September to 9 October 2020. The process had been exceptional not only because it had lasted for two weeks instead of one but also because the Working Group had split into three subgroups, one for each of the Committee's working languages. The Working Group had considered 29 draft proposals; of those, 28 had been adopted and 1 was in the process of being adopted. In 9 of the proposals, the Working Group recommended findings of inadmissibility. In 1 of them, it recommended that the Committee should decide to discontinue its consideration of the case. In 17 of them, it recommended that the Committee should find a violation of the Covenant; in 2 of them, it recommended a finding of non-violation…
11. The report of the Working Group on Communications was adopted.
The public part of the meeting rose at 4.30 p.m…

19. List of issues in relation to the fourth periodic report of Panama
Published: 20 August 2020
Document Number: CCPR/C/PAN/Q/4
Author: Human Rights Committee
Constitutional and legal framework within which the Covenant is implemented (arts. 1 and 2)
1. In the light of the Committee's previous concluding observations (CCPR/C/PAN/CO/3), please provide information on the establishment of a specific mechanism or procedure for implementing the Committee's Views and give examples of cases in which the domestic

courts have invoked the provisions of the Covenant. Please provide information on the content of the training programmes run for justice officials and on activities carried out to raise public awareness of the Covenant rights and the fact that they are directly applicable under national law. Please also provide information on the rights affected by the measures taken to combat COVID-19 and whether the State party has taken the steps necessary to derogate from the application of any rights protected under the Covenant…

Human rights violations during the dictatorship era (arts. 2, 6 and 7)
3. Please provide information on steps taken, pursuant to the Committee's previous concluding observations (para. 7), to ensure that all cases of serious human rights violations, including those documented by the Truth Commission, are duly investigated, that the persons responsible are brought to justice and, where appropriate, punished and that the victims or their families receive fair and adequate compensation. Please also provide information on the legislation regulating the statute of limitations for serious human rights violations…

Non-discrimination (arts. 2, 3, 26 and 27)
5. Please provide statistical information on complaints of discrimination received during the period under review, specifying the grounds for discrimination, the investigations conducted and their outcome, and the redress granted to the victims. Please also comment on the measures taken to combat and prevent acts of discrimination, stigmatization and violence against HIV-positive persons…

Equality between men and women (arts. 2, 3, 25 and 26)
10. In the light of the Committee's previous concluding observations (para. 16), please provide information on measures taken to eliminate gender stereotypes. Notwithstanding the information provided by the State party in its periodic report (para. 93) that requesting women to undergo pregnancy tests is prohibited by law, please comment on the information received by the Committee according to which this practice is still included as a requirement for access to employment, and provide information on the penalties applied in such cases. With reference to the information provided by the State party in its periodic report (paras. 65–88), please provide information on the results of the measures taken to reduce the wage gap between men and women…

Violence against women, including domestic violence (arts. 2, 3, 6, 7, 14, 24 and 26)
11.With reference to the previous concluding observations (para. 18) and paragraphs 47 to 64 of the State party's report, please provide information on the impact of the measures described with respect to the implementation of Act No. 82 of 24 October 2013 and whether the State party has established the necessary regulations for its effective implementation. Based on the statistical data provided by the State party, please clarify the reason for the sharp decrease in the number of cases of femicide registered at the national level between 2014 and 2018 and the low number of convictions in the same period. In this respect, please provide information on the measures taken to: (a) ensure that victims of violence are informed about the procedures for lodging complaints; (b) ensure that victims and their families have access to protective services, including public shelters and counselling and assistance centres; and (c) ensure that all cases of violence against women are investigated, that perpetrators are prosecuted and held to account and that the victims or their family members obtain compensation…

Persons deprived of their liberty and conditions of detention (arts. 6, 7, 9, 10, 14 and 26)
16. In the light of the Committee's previous concluding observations (para. 12) and the 2008 amendments to the Code of Criminal Procedure limiting the use of pretrial detention, please provide statistical data on the use, and average duration, of pretrial detention over the last five years. Please also clarify the legal time limits for pretrial detention and describe the steps taken to ensure that remand prisoners are separated from convicted prisoners…

Migrants, asylum seekers and refugees (arts. 2, 9, 10, 12, 13 and 26)
25. In the light of the Committee's previous concluding observations (para. 14), please provide information on the implementation of Executive Decree No. 5 of 16 January 2018, which implements Act No. 5 of 26 October 1977 on the ratification of the Convention relating to the Status of Refugees and the Protocol relating to the Status of Refugees and sets out new provisions for the protection of refugees, including the mandate of the National Commission for the Protection of Refugees. Please provide updated statistical data, disaggregated by sex and age, on the number of asylum seekers and refugees in the State party and on the outcome of their applications. Please also provide information on the average waiting time for asylum applications and on the number of persons waiting for their applications to be processed. In this connection, please explain how the State party ensures access to the national system of asylum for persons, including minors, in need of international protection at borders and throughout the national territory...

Rights of the child (arts. 16, 23 and 24)
27. Please provide information on measures taken to prohibit, prevent and punish corporal punishment in all settings and to promote non-violent forms of discipline as an alternative to corporal punishment. In the light of the previous concluding observations (para. 20), please describe efforts made to ensure effective enforcement of the prohibition of child labour. Please also provide statistical information on the number of complaints received, investigations conducted, sentences handed down, penalties imposed, and protection and reparation measures granted, as well as prevention and awareness campaigns conducted…

20. Report on follow-up to the concluding observations of the Human Rights Committee
Published: 1 September 2020
Document Number: CCPR/C/128/3/Add.4
Author: Human Rights Committee

Summary of the State party's reply
Following the amendment of article 1 of the Constitution in 2015, a number of other laws and provisions were updated. Pursuant to Act No. 9456 of 2017 amending the National Planning Act and the Education Act, the National Planning Act now provides that the Ministry of Planning and Economic Policy is responsible for "ensuring that public investment programmes, including those of decentralized institutions and other bodies governed by public law …, respect the differences and specific needs of a multi-ethnic and multicultural society" (art. 9)…

With the adoption of Act No. 9358 of August 2016, Costa Rica became the first country in the Americas to ratify the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance…
The Government is currently reviewing the first action plan and designing the second action plan for the National Policy for a Society Free from Racism, Racial Discrimination and Xenophobia 2014–2025. File No. 19288, entitled "Prevention, elimination and punishment of racism and all forms of discrimination", and File No. 19299, entitled "Investigation of the human rights situation of persons of African descent", are now before the legislature…
Costa Rica is currently the only country in Central America that is accepting applications for asylum based on all of the various types of situations that are giving rise to large numbers of refugees in the region. Since 2018, the Government has been implementing the National Integration Plan, one of whose main focuses is on recognizing diversity…
The State party provided details regarding the activities and results of the National Plan for Persons of African Descent 2015–2018: Recognition, Justice and Development...
In 2018, a campaign was conducted to raise awareness in Costa Rican society of the rights and obligations of migrants and refugees…
The State party provided information regarding a mass media campaign on the rights of persons with disabilities…

Summary of the State party's reply
(a)Amendments to expand the grounds for voluntary termination of pregnancy must be made by the legislature in accordance with the appropriate amendment procedure.
(b)The Government has been developing a technical standard to regulate the scope of article 121 of the Criminal Code and to establish objective medical parameters for therapeutic terminations of pregnancy…

Information from Arraigo, State Distance Learning University Centre for Research in Culture and Development and the non-governmental organization Costa Rica Indígena
Although the General Mechanism for Consultation with Indigenous Peoples was established in 2018, in reality it is only binding on the central State authorities, that is, the ministries of the executive branch. It is not legally binding on autonomous institutions, the legislature, the judiciary or other institutions of the State party, let alone private entities such as corporations and businesses. A law that is binding on the entire government apparatus and on private enterprises is therefore needed…
There are currently no bills that would provide for the proper regulation of the security of land tenure and self-governance of the various indigenous territories. The bill on the autonomous development of indigenous peoples (File No. 14352) was withdrawn by the Legislative Assembly on 30 October 2018 after that bill had spent 24 years awaiting consideration by the legislature and despite extensive consultation with indigenous representatives…

Committee's evaluation
[B] (a) and (b): The Committee notes the adoption of Decree No. 40932 of 2018 on the establishment of the General Mechanism for Consultation with Indigenous Peoples. However, it requests the State party to clarify whether this mechanism is binding on all State institutions and on private enterprises. It also requests information on the withdrawal of the bill on the autonomous development of indigenous peoples (File No. 14352) and on the existence of similar bills…
The Committee notes that the Ministry of Justice and Peace has been authorized to carry out consultations. The Committee requests additional information on the measures taken with regard to requests for consultation submitted and/or consultations carried out pursuant to Decree No. 40932 of 2018…
Recommended action: A letter should be sent to inform the State party of the discontinuation of the follow-up procedure. The requested information should be provided in the State party's next periodic report…

21. International Convention of the Elimination of All Forms of Racial Discrimination
Published: 1 December 2020
Document Number: CERD/C/SR.2812/Add.1
Author: Committee on the Elimination of Racial Discrimination

Closure of the session
1. **Ms. Izsák-Ndiaye** (Rapporteur) said that, over the seven working days of the Committee's 102nd session, the second session that it had conducted exclusively via videoconference owing to the coronavirus disease (COVID-19) pandemic, the Committee had heard from five non-governmental organizations, met with the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and the Special Rapporteur on trafficking in persons, especially women and children, and engaged in an exchange of views with the United Nations High Commissioner for Human Rights regarding current global challenges in the fight against racism and racial discrimination and the impact of the COVID-19 pandemic. The Committee had also been updated on the treaty body strengthening process by senior officials of the Office of the United Nations High Commissioner for Human Rights…
3. In addition, the Committee had adopted its general recommendation No. 36 on preventing and combating racial profiling, which defined racial profiling, described States parties' obligations under the Convention and addressed various other aspects of racial profiling. The Committee wished to thank all the States, entities, organizations and individuals that had made valuable contributions to that important and timely general recommendation…
4. The Committee had also issued an opinion in the case of *Lars-Anders Ågren et al. v. Sweden*, in which 15 members of the indigenous Sami people had alleged that the State party had violated articles 5 (a) and (d) (v) and article 6 of the Convention by granting mining concessions on territory they traditionally used for reindeer herding, the most central element of their cultural identity. The Committee had recalled that States parties had the obligation to protect the rights of indigenous peoples to their communal lands, territories and resources and to take steps to return lands and territories that they had been deprived of without their free and informed consent. It had indicated that either ignoring the land rights of indigenous peoples or not observing, in practice, the requirement to obtain their free, prior and informed consent constituted a form of discrimination. The State party had failed to demonstrate that it had held good-faith consultations with the people concerned with a view to reaching consensus. In addition, by delegating the consultation process to a mining company with a vested interest, without providing effective guarantees, it had failed in its duty to respect the petitioners' land rights. Furthermore, environmental and social impact studies conducted prior

to the awarding of a concession should be addressed during the consultation process, which had not been done in the case at hand. The Committee was therefore of the view that article 5 (d) (v) had been violated…

6. The Committee's 103rd session would take place from 19 to 30 April 2021 and would most likely be conducted online. As there were concerns that the effect of the COVID-19 pandemic on the Committee's ability to carry out its work was resulting in a protection gap, the Committee was committed to holding online reviews of implementation of the Convention by States parties at that session. However, online reviews could not provide the same level of dialogue or protection as in-person meetings, where all stakeholders were present…

7. **The Chair** declared the 102nd session of the Committee on the Elimination of Racial Discrimination closed.

The meeting rose at 4.35 p.m.

22. International Convention of the Elimination of All Forms of Racial Discrimination

Published: 20 November 2020

Document Number: CERD/C/SR.2806

Author: Committee on the Elimination of Racial Discrimination

Opening of the session

1. **The Chair** declared open the 102nd session of the Committee on the Elimination of Racial Discrimination.

2. **Mr. Walker** (Office of the United Nations High Commissioner for Human Rights (OHCHR)) said that, since its previous session, the Committee had worked assiduously in several areas to prevent the emergence of a protection gap, despite unprecedented challenges. Unfortunately, the coronavirus disease (COVID-19) pandemic was far from being defeated. It continued to pose human rights challenges related to racial discrimination and was having a disproportionate impact on people of African descent, indigenous peoples, migrants, refugees and asylum seekers. Meanwhile, communities across the globe faced difficulties in accessing health care, education, food and housing. As the development of a vaccine became a reality, the Committee's statement on the pandemic and its implications under the Convention – in particular its recommendation to States to ensure that access to an eventual vaccine against COVID-19 would be provided in a non-discriminatory manner – was more relevant than ever. Along the same lines, the report of the Working Group of Experts on People of African Descent on COVID-19, systemic racism and global protests (A/HRC/45/44), which had been presented at the September session of the Human Rights Council, recommended that States should examine and minimize the impact of systemic racism against people of African descent in policing, health care, responses to the pandemic and other areas…

3. In June 2020, the Human Rights Council had adopted a resolution which mandated the United Nations High Commissioner for Human Rights to prepare a report examining systemic racism and violations of international human rights law against Africans and people of African descent and the use of excessive force against protesters, bystanders and journalists. OHCHR had now commenced preparatory work on that report, and he encouraged the Committee to contribute by sharing its views and recommendations…

Organizational and other matters

Statements by non-governmental organizations

6. **Mr. Komatsu** (International Movement against All Forms of Discrimination and Racism) said that, while he welcomed the Committee's effort to work online in the midst of the pandemic, civil society organizations were increasingly concerned about the growing backlog of State party reports and the protection gap caused by the absence of the treaty bodies' review of those reports. On 2 October, a joint letter, signed by 522 civil society organizations and calling for the resumption of such reviews in 2021, had been sent to all the treaty bodies and OHCHR. Civil society organizations were encouraged by the recent decisions taken by the Human Rights Committee and the Committee on Economic, Social and Cultural Rights to review at least two State party reports each in their first sessions of 2021 and by the successful online dialogue that had been held in September between the Committee on Enforced Disappearances and the Government of Iraq…

8. **Ms. Agosti** (International Institute on Race, Equality and Human Rights) said that the pandemic had exacerbated inequality, discrimination and exclusion and had produced a disproportionate impact on the lives of women, lesbian, gay, bisexual, transgender and intersex persons and people of African descent. To counter those effects, it was of paramount importance to have an international perspective in order to understand how multiple grounds of discrimination intersected with and exacerbated racial discrimination. The United Nations High Commissioner for Human Rights, in referring to the devastating impact of COVID-19 on people of African descent, had stressed the need to focus not only on the current situation, but also on the root causes of violence, discrimination and stigma…

11. **Ms. Abramenko** (Anti-discrimination Centre Memorial Brussels) said that in recent years, her organization had encountered many false concepts and double standards, and also the manipulation of terminology. Thus, those who fought for independence were branded fascists, while indigenous communities that protested against the actions of industrial corporations were declared "obstacles to economic development". Consequently, international experts and human rights defenders required greater clarity in terms of theories and concepts, as well as an understanding of the complexity of the processes taking place in societies. The discourse on racial discrimination was not static; there was space for the development of both theory and practice. In that sense, it would be advisable to apply concepts that had proven useful in other areas in working against racial discrimination. For example, a racially sensitive approach could be taken to discrimination in employment, recognizing that representatives of minorities were often employed only in low-paid or less responsible positions…

13. **Ms. Ali** (Quaker United Nations Office) said that her organization took note of the Committee's work in linking the historical legacies of slavery and colonialism to contemporary forms of racism, particularly the racism faced by migrants and people on the move. In many parts of the world, racist and xenophobic discourse on migrants had conferred legitimacy on actions that dehumanized them and led to appalling fatalities. Immigration laws and controls excluded people and created distinctions among them, while the continued securitization and racialization of borders highlighted the fact that migrants' lives were seen as disposable. The situation of migrants had been exacerbated by the COVID-19 pandemic, which particularly affected those without a regular status and others in situations of vulnerability…

14. That notwithstanding, the Global Compact for Safe, Orderly and Regular Migration was creating renewed energy through its regional review process, the announcement of "champion countries" and the preparation of guidance for the implementation of its provisions. Considering that human rights, including the right to be protected against discrimination, were a guiding principle of the Compact, her organization would welcome the Committee's involvement in the Compact's implementation, for example through the provision of stronger and clearer analysis of the racial aspects of States' migration governance. In its reviews of the periodic reports of States parties, the Committee could draw attention to the Compact, ask about the progress made by the States parties in giving effect to it and recommend the development of national implementation plans. The Committee might also submit its concluding observations on the reports of relevant States parties to inform the Compact's regional review process. She too endorsed the call for the Committee to resume reviews of State party reports…

23. Situation of human rights in Yemen, including violations and abuses since September 2014

Published: 28 September 2020
Document Number: A/HRC/45/6
Author: Human Rights Council

Summary: In the present report, the Group of Eminent International and Regional Experts highlights incidents and patterns of conduct since September 2014, including those occurring between September 2014 and June 2019 that were not covered in previous reports (A/HRC/39/43 and A/HRC/42/17), and incidents and patterns between July 2019 and June 2020 in the context of the ongoing conflict and humanitarian crisis. The Group of Eminent Experts finds that the parties to the conflict continue to show no regard for international law or the lives, dignity, and rights of people in Yemen, while third States have helped to perpetuate the conflict by continuing to supply the parties with weapons…

15. It has been reported that, since the beginning of the conflict, approximately 112,000 people have died as a direct result of hostilities, of whom around 12,000 were civilians. The Office of the United Nations High Commissioner for Human Rights has documented at least 7,825 civilians killed (including at least 2,138 children and 933 women) and 12,416 civilians injured (including 2,898 children and 1,395 women) as a direct result of the armed conflict between March 2015 (when the Office began such tracking) and June 2020. These figures do not include the many thousands of people who have died as a result of the worsening socioeconomic, health and humanitarian conditions…

18. By 10 August, Aden had fallen under the control of the southern transitional council. On 22 August, fighting broke out in the city of Ataq, Shabwah Governorate, between Shabwah Elite Forces affiliated with the southern transitional council and the Yemeni armed forces. On 28 August, fighting intensified in Abyan. On 28 and 29 August, the United Arab Emirates launched air strikes in Aden and Zingibar, which it claimed were against "terrorist" groups, while the Government of Yemen claimed the attacks targeted its regular forces. On 25 April 2020, the President of the southern transitional council declared a state of emergency in Aden and the creation of a self-ruled administration in the regions under its control…

30. The Group of Eminent Experts documented two further air strikes that resulted in large numbers of civilian casualties, especially children. On 24 September 2019, in Muzaimir village, Fakhir town, Dhale' Governorate, over 30 civilians were killed and injured by two air strikes. One of the deadliest airstrikes of 2020 was launched by the coalition in the early hours of 15 February 2020 on a village in Hayjah area, Maslub District, Jawf Governorate, resulting in approximately 50 civilians killed and injured…

71. Discrimination and violence based on sexual orientation and gender identity have been exacerbated in certain governorates since the conflict started. The Group of Eminent Experts verified cases of violations committed by the Houthis and Security Belt Forces against persons on the grounds of their sexual orientation and gender identity between 2016 and 2020. Nine witnesses described how they had survived violations, including arbitrary detention, ill-treatment, torture and sexual violence. Interrogators had accused them of spreading prostitution and homosexuality and supporting the enemy in doing so…

73. The Group documented 259 cases, and verified 16 individual cases, of children recruited and used in hostilities by several parties to the conflict…

83. The International Organization for Migration reported that, despite the ongoing armed conflict and the catastrophic humanitarian crisis, in 2019 over 138,000 African migrants had crossed the Gulf of Aden and reached Yemen as a transit destination. The Group of Eminent Experts received accounts of migrants, including children, being held captive by smugglers in informal camps in Lahij Governorate…

88. On 4 March 2020, for instance, 35 members of the parliament were sentenced to death in absentia by the specialized criminal court in Sana'a ostensibly for having taken actions threatening the stability of Yemen, its unity and the security of its territory…

89. Ten journalists, arbitrarily detained since 2015, were convicted on 11 April 2020 of national security offences arising out of their broadcasts and writing. Four journalists were sentenced to death. They are currently appealing the decision. Six journalists were sentenced to time already served, with three years of assigned residence and the appointment of a guarantor. They should have thus been immediately released. As at 30 June 2020, only one of the six had been released, while the others are reportedly to be released as part of a prisoner exchange. This case exemplifies the way in which journalists have been subjected to a pattern of violations in order to silence their work…

24. Implementation of General Assembly Resolution 60/251 of 15 March 2006 entitled "Human Rights Council"

Published: 7 February 2007
Document Number: A/HRC/4/56
Author: Human Rights Council

5. In a note verbale dated 8 January 2007 addressed to the Office of the High Commissioner for Human Rights, the Permanent Mission of Cuba to the Office of the United Nations at Geneva indicated that, while the Government of Cuba recognized the efforts deployed by the United Nations to end the military occupation by the Israeli forces of the occupied Syrian Golan, its occupation of Arab territories continued, as did the expansion of Jewish settlements…

9. In a note verbale dated 20 January 2007, the Permanent Mission of Morocco to the Office of the United Nations at Geneva reported that Morocco rejected all forms of Israeli practices that violated human rights in Palestine and all the occupied Arab territories, including the Golan Heights, as well as all measures that purport to alter the physical character and

demographic composition of the occupied Arab territories…
9. international law, including that which had been established in the framework of the Madrid Peace Conference of 1991, in particular resolution 6612 (125) of 4 March 2006, in which the Arab League has rejected all measures taken by the Israeli occupation authorities that aim at changing the legal, physical and demographic status of the occupied Syrian Golan, and considers them as null and void and in breach of international conventions and of the Charter and resolutions of the United Nations…

25. Report of the Independent Investigative Mechanism for Myanmar
Published: 7 July 2020
Document Number: A/HRC/45/60
Author: Human Rights Council

6. Welcoming the operationalization of the Mechanism and the appointment of its Head, the General Assembly, in resolution 74/246, urged the Mechanism to swiftly advance its work and to ensure the effective use of evidence of the most serious international crimes and violations of international law collected by the independent international fact-finding mission on Myanmar. In the same resolution, the Assembly also expressed grave concern about the increasing restrictions on humanitarian access, in particular in Rakhine State, and urged the Government of Myanmar to cooperate fully with and to grant full, unrestricted and unmonitored access to all United Nations mandate holders and human rights mechanisms, including the Mechanism…
19. As of March 2020, the Mechanism had recruited personnel with expertise in the following areas, among others: international criminal law; international human rights law; international humanitarian law; criminal investigation and prosecution; information system management; storage and preservation of information, documentation and evidence; military matters; sexual and gender-based crimes and violence; crimes against children; and information technology and security…
63. It is thus dependent upon competent authorities of national, regional and international courts or tribunals to commence criminal proceedings in relation to the most serious international crimes and violations of international law committed in Myanmar since 2011, and for those authorities to make a request to the Mechanism for the sharing of information, documentation and evidence…
75. While the Mechanism will remain guided by its strategy and priorities for the near future, the world has been in a constant state of flux as a result of the COVID-19 pandemic. The impact and consequences of the pandemic will certainly continue to linger and negatively affect the territories, communities and entities that the Mechanism will work in or with. As a result, the Mechanism will continuously assess the relevant circumstances, review its methods, identify areas where it can improve and adopt creative and flexible solutions to remove any obstacles in its way and collect all relevant evidence in an efficient and effective manner…

26. Annual report of the Expert Mechanism on the Rights of Indigenous Peoples
Published: 30 June 2020
Document Number: A/HRC/45/61
Author: Human Rights Council

1. The thirteenth session of the Expert Mechanism on the Rights of Indigenous Peoples, which was scheduled to take place from 8 to 12 June 2020, was postponed to 30 November to 4 December 2020, owing to the coronavirus disease (COVID-19) pandemic…
2. The Expert Mechanism will therefore submit its annual report for 2020 to the Human Rights Council for consideration at its forty-sixth session…