



**UNITAR**  
**Global Diplomacy Initiative**  
**ESSAYS**  
Spring 2022



# UNITAR Global Diplomacy Initiative Spring 2022: Final Essays

## By UNITAR GDI Students

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# 1 Introduction

The UNITAR Global Diplomacy Initiative Spring Class of 2022 gained an understanding of current global issues, and of the shaping of things to come - on the scene, as they happened. Students engaged with six diverse and highly experienced instructors and material covering a range of global issues from Globalization and Multilateral Diplomacy, Climate Change, Conflict Resolution, UN Security Council Reform and more. As part of their practical training requirement, Students were also able to observation 15-20 hours (minimum) of UNITAR Core Diplomatic Training programs including trainings on the work of the ECOSOC, Financing for Development, Agroforestry, the Columbia Law School Conflict Resolution series, among others. Students were also highly encouraged to attend open UN General Assembly sessions and other UN forums. Finally, students produced research papers on relevant topics with the consultation of course instructors.

## 2 Essays



## 2.1 Essay

# Engineering Role In Science Diplomacy

by **Juliana Dagnese**

Advisor: **Ms. Larisa K. Schelkin**



## Science Diplomacy

There are some common aspects that not only make science inherently international but also give science special capacities in advancing communication and cooperation. Its common language and methods; the open, self-correcting nature of research; the universality of the most important questions; and its respect for evidence are some characteristics that make science diplomacy, in many situations, a clear and useful concept, recounting remarkable historical cases of the effective use of international scientific cooperation in building positive governmental relationships and dealing with sensitive and urgent problems [1].

Science diplomacy is a relatively new field of academic study, but together with the practices it covers, it has been part of the diplomatic world for a long time. Science and environmental issues have been an important element of diplomacy for a long, long time. Going back to the creation of the Bureau of Oceans, Environment, and Science in the 1970s and even before that in the post-World War II period, the US Secretary of State had a science advisor throughout those years who helped carry out diplomacy at the nexus between science and politics. And currently, with the Pandemic affecting the globe, it has perhaps never been so relevant. According to a study from Professor Pierre-Bruno Ruffini [2], it is only in the last fifteen years since Science Diplomacy entered the vocabulary of international relations. The large dissemination came from the creation of the Center for Science Diplomacy by the American Association for the Advancement of Science (AAAS) in 2008, from the conference “New Frontiers of Science Diplomacy” organized jointly by the Royal Society and the AAAS in 2009, and from the report which followed the year after [3]. Since then, SD has caught the attention of most of those interested in international relations.

Science diplomacy is commonly described as a set of practices at the intersection of scientific activity, technology, and foreign affairs. It aims at fostering international scientific collaborations among nations to address common problems and to build constructive international partnerships. It can be described into two aspects: the national aspect, which is about advancing national interests through science and scientific operations, and the global aspect, which is the approach to resolving global issues.

Another form to think of practical importance of science diplomacy is whenever there are environmental, or of another nature problems that one must look for scientifically-based solutions to dealing with that problem,

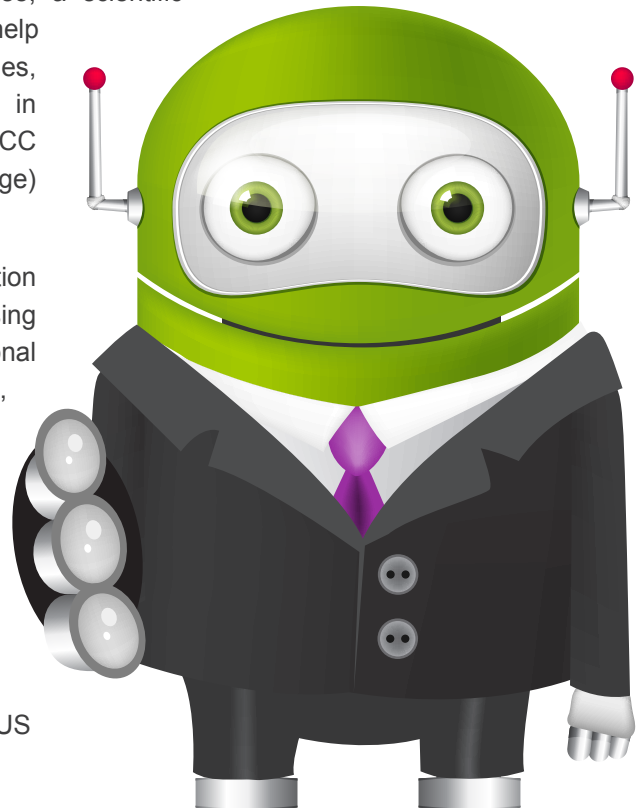
it then becomes essential for scientists from both or all countries affected to start talking to each other to help form the basis for some solution, like the example brought by former US Deputy Secretary of State Mr. John D. Negroponte in an interview 2012 with AAAS, where acid rain was a big issue with Canada back when he was assistant Secretary for OES. Then, both countries were looking for scientifically-based solutions

to dealing with an environmental nature issue. And eventually, rather than having a treaty or an international agreement with Canada on this subject, the problem was resolved through domestic legislation, which put more restrictions on SO<sub>2</sub> emissions by coal-fired power plants in the Ohio Valley. Nonetheless, in the buildup, in the lead-up to that very positive outcome, there was a lot of scientific exchange between North American and Canadian scientists [4].

In an attempt to clarify definitions and answer the questions: “How can diplomacy support science?” and “How can science support diplomacy?” the Royal Society-AAAS pioneering report, which placed the discourse of SD on its launch pad, brought the first-ever taxonomy, identifying the three pillars that are “science in diplomacy,” “science for diplomacy” and “diplomacy for science.” [3]

Those three dimensions:

- 1) Diplomacy for science: Promoting international science cooperation, science bilateral agreements between governments want to support scientific operations; when they sign bilateral agreements, diplomatists are involved in the process. Another example is the support given by embassies on research mobility, from clearing visa problems to funding research students’ missions.
- 2) Science in Diplomacy: Use of science to inform foreign policy objectives, diplomatic decisions, or agreements with scientific advice. In this case, a scientific study can set out the relevant evidence to help solve a disagreement between two countries, informing and using scientific knowledge in international negotiations. For example, the IPCC (Intergovernmental Panel on Climate Change) brings scientific expertise to the negotiation.
- 3) Science for Diplomacy: Using science cooperation to improve relations between countries using the scientific operation to improve international relations between countries. In other words, it is related to diplomatically engaging with countries through science where there’s a strained political relationship; as an example, when the US engaged the Soviet Union in the 1980s during the Cold War, when not only through the exchange of visits and student exchanges and so forth but also in promoting scientific cooperation. This cooperation placed a great deal and formed an essential part of US diplomacy [4].





## Science and the 2030 Sustainable Development Goals

In July 2014, the UN General Assembly Open Work Group (OWG) proposed a document containing 17 goals to be put forward for the UN General Assembly's approval in September 2015. This document set the ground for the new Sustainable Development Goals and the global development agenda spanning from 2015 to 2030. The process of building this Agenda relied on the support of new actors as the first actors that developed the Millennium Development Goals as those have substantially changed in the previous 15 years, as well as the world and the MGD agenda didn't include some of the needs that were become obvious by 2015 but which had not yet been recognized as such in 2000. Businesses, for example, have incorporated the sustainability, environmental and social dimensions of their work as part of their operations, and NGOs have acquired a more prominent role in societies. The areas of concern now included climate change, the state of the oceans, and the distribution of sustainable energy. Social and economic inequality both on develop and developing countries.

In the 76 session of General Assembly Resolution – Agenda item 27: toward global partnership [5], United Nations reaffirms its commitment to its resolution 70/1 of 25 September 2015, entitled “Transforming our world: the 2030 Agenda for Sustainable Development”, in which it adopted a comprehensive, far-reaching and people-centered set of universal and transformative Sustainable Development Goals and targets, its commitment to working tirelessly for the full implementation of the Agenda by 2030. As stated in the “UNESCO Science Report: towards 2030”, there can be no sustainable development without science. Science provides answers that are testable and reproducible and, thus, provides the basis for informed decision-making and effective impact assessments. Both in its scope of study and its applications, science spans the understanding of natural processes and the human impact thereon, the organization of social systems, the contribution of science to health and well-being and to better subsistence and livelihood strategies, enabling us to meet the overriding goal of reducing poverty. [6] The commitment to the 2030 Agenda from all relevant stakeholders requires more than ever to conduct conversations with the use of science to ensure that deliberative processes and decisions are informed by evidence. Those conversations require advanced science diplomacy and the use of evidence and knowledge to inform decision-making by the government at all levels and across all sectors, with a specific focus on complex environmental challenges facing society. This way, international cooperation based on science and technology is rapidly becoming a key dimension of foreign policies in several nations. In other words, science has value beyond obviously scientific issues, and science is already integrated into policy discussions. Indeed, science and engineering are game changers in dealing with global challenges and meeting the Sustainable Development Goals.

## Role of Engineers in Science Diplomacy

Besides politics and conflicts resolution, diplomats' vocabulary always included a variety of other topics, such as renewable energy technologies, the preservation of tropical forests, cyber security, education, intellectual property, and marine resources, to name but a few. The 2030 Sustainable development goals call for uncountable initiatives that go from changing consumer habits in partnership with the private sector to fostering the development of innovative solutions. That requires more than ever to hold conversations about scientific research, scientific policies and social inclusion, new strategies to deepen citizen science and science popularization, building bridges between academia and the private sector, and the role of science in corporate innovation.

The use of science as an instrument of diplomacy requires that the individuals at the table have understanding and value for the use of science in environmental decision-making, skills in science communications, and at the fellowship level with hands-on experience in science diplomacy. Capabilities to use Global Environmental Outlook (GEO) to demonstrate how science can inform decisions. Given the challenges facing foreign policymakers and diplomats in this broader context, engineers become essential actors. That brings engineering diplomacy, a key component of science diplomacy, as a great potential that should be a significant part of ongoing and future activities in diplomacy.

The fundamental role of engineering in modern science diplomacy goes beyond supporting education and research capacity, exchanging faculty and students, and “building bridges” via

partnerships to implement engineering and technology-related projects. These intended engineering objectives for diplomacy with other nations are already well integrated into many formal, government-to-government agreements and memoranda for cooperation between the United States and other countries [7]. In addition, there are many different aspects of Engineering Diplomacy that are incredibly valuable from a diplomacy standpoint.

One of these aspects is the trained mindset and capacity that engineers have to work under constraints while generally searching for an “optimal solution” and not necessarily the “best” or “ideal” solution to a given problem. As observed by Najmedin Meshkati, this optimization process is a key ingredient for appreciating the limitations of diplomacy while taking full advantage of its potential. [7]

Another aspect is the science and technical experience. This is especially important in the early phases of the policymaking process. Norman P. Neureiter, in his article “Engineering and American Diplomacy,” emphasizes the importance of Engineers as part of the policymaking process to get the appropriate technical inputs in the early phases of the process. S&T inputs are essential elements of many policies but rarely the ultimate subject of the policy; they must be made early in the policy process to have an impact. He concluded that the State Department could no longer wait until policies had moved up through the bureaucracy and reached the secretary’s level. It needed more in-house technical capacity—more scientists and engineers distributed throughout the bureaus—to make those technical inputs. “Scientists and engineers with firsthand experience of the scientific, technical, and health issues fast becoming the main items on the diplomatic agenda will become the diplomats of the twenty-first century.” [8]

Another potential aspect of science and engineering diplomacy that plays a major role in ongoing and future activities in diplomacy, given the challenges facing foreign policymakers and diplomats in this broader context, is its capacity to build confidence between countries where political tension is present. Professor Pierre Bruno-Ruffini explains this narrative in his article “Conceptualizing science diplomacy in the practitioner-driven literature: a critical review,” where science, thanks to its universal values and practices, neutral, non-ideological language, is convened to reduce political tensions between countries. From an engineering diplomacy perspective, this is especially true in parts of the Middle East where engineers play essential roles in cultural and political structures; given this prominence and respect, engineering and engineers provide a potentially influential community with which to work when developing broader diplomatic overtures [7].

Although there is a clear synergy between engineering and science, business, finance, and politics, the importance of engineering in that synergy chain was rarely considered an instrument of foreign policy and

international relations. The benefit of engineers being an official part of the diplomacy process on multiple scales, from the vital role in tackling and solving major global issues to being important actors throughout all phases of the policymaking process, has been gaining recognition, and multiple authors have been advocating for it. As observed by Fahmida N. Chowdhury in his publication *t Science & Diplomacy* from AAAS Center for Science Diplomacy entitled “Engineers Outside the Box: Pathways to Global Impact,” science and technology (S&T) policy discussions are rarely encountered at any engineering-related conferences and that often even engineers working on technology development for humanitarian applications tend to remain on the “technology” side—not venturing into policy—despite the clear policy relevance of their work [9]. Therefore, there are many calls for having more

engineers venture out of the traditional engineer role and adventure themselves into a more interdisciplinary approach such as diplomacy.

In his article called “Engineering and American Diplomacy,” Norman Neureiter, former science advisor at the State Department, brought a speech of John Sununu, a Ph.D. mechanical engineer who served as governor of New Hampshire and White House chief of staff under the first President Bush: “Engineers need to think more seriously about accepting the responsibility of the public office. If the problem solvers of the world don’t participate in making public policy, then policies will be developed by those who don’t know how to solve problems.” [8]

In 2015, the National Research Council of the National Academies put out an official recommendation to the State Department in a report titled “Diplomacy for the 21st Century: Embedding a Culture of Science and Technology Throughout the Department of State.” The report called for an increase in the cadre of foreign service officers with technical backgrounds and engineering training for such officers, “including assignments to positions that focus on science and technology issues”. [10]

Recently, in 2016, an engineering diplomacy course was launched at the University of Southern California. It aims to equip the next generation of techno-diplomats to engineer meaningful change in the world through “a systems-oriented interdisciplinary thought process” — a key ingredient in problem-solving and analysis. In this course envisioned by Professor Najmedin Meshkati, Engineering Diplomacy students confront the global challenges from day one of class, from one of the 14 Grand Challenges issued by the National Academy of Engineering, the UN’s Sustainable Development Goals, or from among a lengthier list put forth by the State Department. Topics range from water diplomacy to virtual reality and artificial intelligence to weapons of mass destruction, nonproliferation, counterterrorism, nuclear energy, climate change, oceans and the high seas, food security, conflict resolution, and emergency response to a major coastal disaster in the Persian Gulf. [11]

A willingness to explore opportunities in government or diplomacy is essential for engineers to fully realize their potential contributions to society. In local contexts, models for such a path are cropping up, such as the USC course mentioned earlier. The goal now is to create increased awareness of science and engineering diplomacy and to transform that awareness into tangible actions. [9]



UN PHOTO/MANUEL ELÍAS

## Women Engineers as drivers for Science Diplomacy

Gender diversity in Science and Engineering diplomacy is a topic even newer since Science Diplomacy itself has been officially brought to the table within the last two decades. Both STEM and diplomatic circles, historically, have been male dominated. Therefore, there is still an underrepresentation of women in STEM, diplomacy, and science diplomacy. The contribution of gender diversity in multiples spheres of business, government, education, and politics is recognized, and according to OWSD, when women are included as both participants in scientific research and as beneficiaries of scientific research, the impact on children, elderly and local communities will be directly positive and highly effective. [12]

A study about the participation of women scientists in Central American communities [13] references an article from Diana Rhoten and Stephanie Pfirman [14] that describes that the interdisciplinary nature of scientific networks may present junior women in science with valuable tools to overcome the structural and cultural obstacles of mainstream androcentric science. This study also suggests that women are well-positioned to make major advances in interdisciplinary research as they may integrate across fields and approaches, team-orientations and be committed to connecting their research with societal concerns. During the SDGs 2030 Agenda process, NGOs were recognized as new actors with an emerging role in contributing to identifying needs and working toward the achievements of SDG. NGOs have been impacting intergovernmental negotiations, especially in the environment and sustainable development. These organizations carry diplomacy as an element since the work entails representing the interests of their organization and engaging in information exchange. Some organizations such as “the Society of Women Engineers” (SWE) and The Organization for Women in Science for the Developing World (OWSD) are examples of work that foster and nurture collaboration between countries in favor of gender equality in engineering. The Organization for Women in Science for the Developing World (OWSD) is an international organization founded in 1987 and based at the offices of The World Academy of Sciences (TWAS) in Trieste, Italy. It is a program unit of UNESCO. Its objectives include “Promoting collaboration and communication among women scientists and technologists in developing countries and with the international scientific community as a whole.” [15] SWE is a non-government organization that, for more than seven decades, has given women engineers a unique place and voice within the engineering industry and has been engaging women engineers around the world on a common mission [16]. The nature of the work that has been done

is within the lines of science and engineering diplomacy as global women engineers and scientists work toward empowering women to achieve their full potential in STEM careers is helping to close some of the gaps. To be successful with their mission requires that these organizations have in its core multicultural multidisciplinary, international teams working on many global collaborative projects, contributing to building “bridges” between the countries. The impact of these non-government organizations is fundamental not just in gender equality from a STEM perspective but also in engaging women in engineering diplomacy. Moreover, it fosters and nurtures the cooperation of different nations on a common goal aligned with the 2030 SDG. SWE is dedicated to supporting women engineers and technologists, no matter where they are in the world. Global Programs were developed to provide many different opportunities for international members and partners to get involved and connect with their SWE network. Within the dedicated programs that are designed to expand SWE’s global footprint and enable members of multiple countries to engage in the equality mission in regard to Women in STEM, one can list SWE Global Affiliate, SWE Global Ambassador, WE Local conferences, and Leadership opportunities with the various SWE committees [2]. SWE Global Affiliate Program, for example, is designed for the communities of women engineers outside of the United States who wish to expand SWE’s mission by launching a local chapter. Global Affiliates are local networks that aim to meet the needs of women engineers in their community to help their advancement – whether through organizing professional

development events, hosting outreach activities, connecting women with career opportunities, or other activities unique to their area. The Global Ambassador Program is an opportunity for SWE members outside of the USA to serve in leadership positions to advance SWE’s mission. Global Ambassadors promote the SWE brand, grow the SWE community in their region, and contribute their diverse global perspectives to SWE’s global strategy [17]. The impact of such collaboration and of the work that the SWE organization has been doing is on the numbers that evidence the SWE’s global presence and diversity. SWE has members from multiple countries across America, Europe, Asia, Africa, and Oceania (Figure 1). Per the 2021 report, SWE had reached 82 Global Affiliates in 23 Countries and 110 Ambassadors in 20 countries. SWE also partners with the private sector and with sister organizations, such as the Ontario Society of Professional Engineers in Canada, Women in Science, Engineering and Technology in Korea (WiTeck) in Korea, and the Association of Professional Women Engineers of Nigeria (APWEN) to list some.

*learn more about*

### SWE's Global Presence & Diversity



*SWE's Global Presence & Diversity. Source: <https://we21global.swe.org/>*

Besides fostering and providing channels that enable the collaboration between women from different countries and cultures on working together on a common global mission, SWE has been active also from a policymaking participation standpoint. SWE Public Policy initiatives in the United States, for example, support the society's mission by engaging its members in policy issues that impact the advancement of women in engineering. This SWE's priority is to lead the science, technology, engineering, and mathematics (STEM) and diverse communities to engage SWE members, other professional societies, and policymakers on how Title IX can be applied to STEM fields; therefore, the organization provides SWE members with timely information and tools to enhance their understanding of the issues and encourage volunteer participation at the federal level [18].

## Conclusion

Within the last two decades, Science Diplomacy has gained attention as it has been demonstrated to be an effective tool for using scientific knowledge to accomplish concrete objectives for nations and global issues and interests. Science is an effective tool regards to advancing communication and cooperation both on the national and global levels. Its common language, methods, the universality of the most important questions, and respect for evidence are some characteristics that create trust and that make an important aspect of diplomacy.

We are in an era where diplomacy requires actors with different levels of expertise. This era and its complex social and environmental challenges require conversations with advanced science diplomacy and the use of evidence and knowledge to inform decision-making by the government at all levels and across all sectors. The level of cooperation needed for nations to engage and resolve their common issues, and the global common issues as well, requires a systems-oriented, proactive vision and innovative initiatives requiring engagement, collaboration, and negotiation instead of shortsighted policies of isolation, containment, sanctions, and gunboat diplomacy [7]. Therefore, the role of engineers in science diplomacy has been recognized as key in many situations, and it is essential for engineers to urge to explore opportunities in government or diplomacy to fully realize their potential contributions to society. The goal now is to create increased awareness of science and engineering diplomacy and to transform that awareness into tangible actions.

The underrepresentation of women in STEM and in diplomacy is also reflected in gender diversity levels in engineering and science diplomacy. The work of non-governmental organizations has been playing an important role by enabling collaboration between nations on topics that are essential to achieving the 2030 Sustainable Development Goals. Organizations like "the Society of Women Engineers" (SWE) and The Organization for Women in Science for the Developing World (OWSD) have been playing a key role in building bridges between women in science and engineering around the world while using diplomacy aspects such as inherent part of their initiatives. Non-governmental organizations are, therefore, important actors not just in the 2030 Sustainable Development Goals aspect but also in creating a culture of diplomacy within Women in STEM.

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## 2.2 Essay

# Israel-Palestinian Conflict and International Law

by **Raymond Hakimi**

Advisor: **Dr. Yuriy Sergeyev**



The Israeli-Palestinian conflict is one of the most researched and controversial conflict that exist with the Israeli government advocating one set of terms while the Palestinian authority provides another terminology. The Israeli began occupying the West Bank after Six-Day War. While many legal experts and the International Court of Justice and the Israeli Supreme Court define the status of the West Bank as an occupied territory, the official Israeli government views is that the law of occupation does not apply these territories are disputed The Israeli government states they have a historic right to this area in addition to the affirmation in the Balfour Declaration, for security reasons both internal and external and its symbolic value (Domb, 2002). The United Nations Security Council Resolution 2334 states that settlements in that territory are a violation of international law (UNSC, 2016).

Almost all of Israel and Palestinians position conflict with one another. For example the Israeli position is a demilitarized Palestinian State while the Palestinian position is self-defense capabilities, Israeli position is the right for the Israeli military and police to hot pursuit in the Palestinian territories while the Palestinian position is right of Palestinians to freely visit Israeli territory, Israeli position Israeli or third party controls people and cargo going into Palestinian land, sea and air terminal while the Palestinian position is exclusive Palestinian control, Israeli position Israeli observation posts along the Jordan Valley while the Palestinian position is no Israel presence in the West Bank. These positions will prevent a peace treaty to satisfy Palestinian sovereignty requirements (Mansour, 2010).

According to Amnesty International, Israel's rule over the occupied territories through military orders has given rise to a false perception that the military regime is separate from the civil system within Israel. The existence of these separate legal regimes is a tool which Israel uses to fragment the Palestinians and enforces its system of oppression and domination weakens ties between Palestinian communities in order to give Israel a more effective political and security control over the occupied territories. Israel uses military rule as a tool to oppress and suppress Palestinians across both sides of the Green Line and has been



applying it over different groups of Palestinians in Israel and the occupied territories almost since 1948 to advance the Jewish settlement agenda and to dispossess Palestinians of their land and property by using the pretext for security. Israel placed its Palestinian citizens under military rule from 1948 to 1966 and used the British Mandate Defense (Emergency) Regulations that granted them unrestricted powers to control the movement of Palestinian residents, confiscate their property, allow for the closure of entire villages as military zones, demolish their houses, and try them before military courts and Palestinians were required permits to leave their areas of residence, including to access medical care and jobs. Israel put the Palestinians under a system of surveillance and control that would restrict their political freedoms by preventing protests and arresting political activists. Israel then abolished its military rule over the Palestinian in December 1966 and prevented them from returning to their homes and villages. The emergency regulations were never repealed and in 1967, this regulation was extended to the occupied West Bank and Gaza Strip to control the Palestinian population in these locations (Amnesty International, 2022).

Israel created three main pieces of legislation which are the Absentees' Property Law (Transfer of Property Law) of 1950; the Land Acquisition Law of 1953, which legalized expropriation of lands that the state and established Jewish localities and the Israeli army had taken control of using emergency regulations after the 1947-49 conflict and the British Land (Acquisition for Public Purposes) Ordinance of 1943, which enabled the minister of finance to expropriate land for any public purpose. These laws were used to acquire Palestinian land and property and also enacted additional legal tools for Palestinian land and housing rights in East Jerusalem such as the Absentees' Property Law which gave Israel the control over all property belonging to Palestinians who were expelled or fled their homes. There are currently 123 states parties to the Rome Statute and Israel signed it in 2000 but withdrew its signature in 2002 and in Palestine became a state party to the Rome Statute in 2015 and accepted the jurisdiction of the ICC over alleged crimes, including war crimes and crimes against humanity, committed in the in the Palestinian territories which includes East Jerusalem (Amnesty International, 2022). Yet, the ICC has jurisdiction to investigate and prosecute anyone including those of Israeli nationality where there is evidence that they are responsible for the commission of crimes against humanity (HRW, 2021) Israel is a party to the 4th Geneva Convention but was not ratified their Additional Protocols I or II in regard to the protection of victims of armed conflict. Israel is a party to the convention on Prohibition or Restrictions on the Use of Certain Conventional Weapons which may be considered injurious or to have indiscriminate effects. Israel decided to apply domestic law throughout the occupied Palestinian territories since 1967 (UNHRC, 2009).

According to the Human Right Watch, Israeli settlements in the West Bank violate the laws of occupation. The Fourth Geneva Convention prohibits an occupying power from transferring its citizen into a territory it occupies and from transferring or displacing the population of an occupied territory within or outside the territory. The Rome Statue establishes the court's jurisdiction over war crimes which include crimes of transfer of parts of the civilian population of an occupying power into an occupied territory and the forcible transfer of the population of an occupied territory. Palestine became a member of the ICC on June 13, 2014, which gives ICC jurisdiction over crimes committed in or from the territory of the Palestinian territories. Article 55 of the Hague Regulation of 1907 makes occupied property subject to the laws of usufruct. Israel's confiscation of land, water and other natural resources benefit settlements and residents of Israel which violates the Hague Regulations of 1907 which prohibits an occupying power from taking resources of the occupied territory for its own benefit. Israel settlement project violates international human rights law and its discriminatory policies against Palestinian that govern every aspect of their lives in the West Bank which is

under Israel's exclusive control known as Area C and displaces Palestinians while encouraging the growth of Jewish settlements. Israel operates a two-tiered system in the West Bank which provides preferential treatment to Jewish settlers while imposing harsh conditions on Palestinians. Israeli courts apply Israeli civil law to settlers that gives them legal protections, rights and benefits not enjoyed by their Palestinian neighbors who are subject to Israeli military law. Israel's privileged treatment of settlers extends to virtually every aspect of life in the West Bank (HRW, 2016).

As a result of Israel recognizing the PLO as the representative of the Palestinian people, the International Court of Justice noted that their existence was no longer an issue and implemented the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip of 28 September 1995 as Palestinian people having their legitimate rights. According to Thomas Giegerich, the Palestinian people's right to form a sovereign independent state and the right of self-determination gives the Palestinian people the right to determine its political status and Israel is obligated to promote and respect this right that is written in the Charter of the United Nations (Giegerich, 1999).

Israel argues that it is in lawful control of the Palestinian territories because of the measure it needs to take for self-defense and Israeli possession of the territories is indistinguishable from absolute title which contradicts UN Security Resolution 242 and 338 which is contained in the 1993 Declaration of Principles on Interim Self-government Arrangements. Israel challenges the status of the Palestinian territories and occupied and refers to them as administered or disputed territories and calls the West Bank by its historical name Judea and Samaria. While Israel makes the argument that Jordan and Egypt were the belligerent occupants of the West Bank and Gaza before the 1967 war, neither Jordan or Egypt possessed sovereignty over the territories they occupied (Scobbie & Hibbin).

Israel rejects the language crimes against humanity and the transfer of the concept of transfer of the occupying power of parts of its own civilian population into the territory it occupies. Israel states this was inserted by the Arab and Islamic states as part of their political agenda and the inclusion of this language was an invention of a new crime that was not a breach of the Fourth Geneva Convention or reflects customary international law. Israel states that terror attacks were omitted from the ICC jurisdiction and Israel cannot take self-defensive measures against terrorists nor can the ICC prosecute terrorists. Palestinians have a right to resist where they can justify terror attacks against Israeli civilians and there is an international legitimacy for the recourse of armed struggle to obtain the right to self-determination (Herzberg, 2010).

Israel conducts certain counter-terrorism measures which may breach economic and social rights such as the Israeli wall case, where there were a number of violations of the law which were identified as a result of the building of a wall which is for the purpose of protecting Israeli security. The ICJ found Israel in breach of international law and the ICJ found the destruction or requisition of private property, restrictions on freedom of movement, confiscation of agricultural land and cut-off of access to primary water sources in addition to other issues. ICJ stated that the construction of the wall was contrary to international humanitarian law and aspects of the laws of war. In regards to counter-terrorism, the ICJ also put in context the circumstances in which a state may use upon justifications for limiting, qualifying or more broadly interfering with human rights standards. The ICJ acknowledged that certain humanitarian law and human rights instruments should include qualifying clauses or provisions for derogation that may be invoked by States Parties where military

exigencies, or the needs of national security or public order are required. The argument the ICJ made in this particular case, was the specific route Israel had chosen for the wall was necessary to attain its security objectives. When the ICJ conclusion was that the limitation, qualification, and derogation clauses were not relevant in the context of the stated justification for the wall and Israel was unable to rely upon a right of self-defense or on a state of necessity and the construction of the wall constituted breaches of Israel for its obligations under the international humanitarian law and human rights instruments (OSCE/ODIHR 2007)

Other legal experts observe Israel is fighting an asymmetrical war in which it protects the civil population. There are four principles of just war theory which are principle of necessity, principle of distinction, principle of responsibility and principle of proportionality. Principle of necessity is that the use of force must be targeted just for the purpose of the military mission. Principle of distinction holds that enemy belligerents alone may be deliberate targeted and intentionally harming civilians is strictly forbidden. Principle of responsibility holds states that when collateral harm is anticipated one should minimize the harm as much as possible. Principle of proportionality holds that anticipated collateral damage must be proportional to the military advantage to achieve by a given operation. Asymmetrical warfare that Israel engages with Hamas creates a reality of collateral deaths. Israel distinguishes itself between its military operations as a warrior and a war criminal by these four principles. For example for the principle of necessity did the use of force used only for the purpose of the mission, for the principle of distinction the soldier aim fire towards the combatants, principle of responsibility in an event one anticipated collateral harm did the soldier did the military do everything to minimize it and principle of proportionality was collateral harm proportionate with the military advantage that was achieved (Halbertal, 2014).

The wall's route does not follow the Green Line and the Israeli Supreme Court ruled that the Military Commander's authority must be balanced against the rights, needs and interests of the local Palestinian population. Israel Supreme Court's President, Aharon Barak stated that there needs to be balance with Israel's security interests and local Palestinian needs which comes from international law and fundamental principles of Israeli administrative law. As a result the Israeli Supreme Court ruled that 30 of the 40 kilometers in question should be modified in order to avoid unnecessary hardship to the local Palestinian population (Hirsch, 2004).

Palestinians in the West Bank and Gaza are protected under the Geneva Convention IV which protects them from acts of violence. The legal model in the Palestinian territories is a law enforcement model based on international law of belligerent occupation complemented by international human rights law. Force may only be used in the case of an imminent attack and cannot be halted by arresting a terrorist suspect. West Bank is divided into three different zones, Area A which is both civil and security matters under the PA, Area B security is under Israel while civil matters is under the PA and Area C is both security and civil matters divided between Israel and the PA. If Israel retained its status as the occupying power in Area A then it would need to follow a law enforcement model. When there is a suspected terrorist in that area the PA as the sub-contractor refuses to arrest or extradite the terrorist, Israel is entitled to enter that area in order to arrest them. If Israel decides to stop being an occupying power in Area A, then it would need to give authority to the PA and Israel would not be entitled to enter the area to arrest the person even if they were organizing and executing a terrorist attack. The argument that was made that if the PA was responsible for the attacks and failed to act Israel would be entitled to act. In April 2002 Israel Defensive Shield campaign took control of many of Area A. The conflict between the Israeli army and the organized Palestinian groups

is defined as an armed conflict between state and non-state actors. Jordan waived all claims to sovereignty over the West Bank while Egypt never raised claims over Gaza and the status of the occupied territory does not imply there is an ongoing conflict between two or more states. The conflict between a state and a people under occupation is not regarded as an international armed conflict under customary international law and Israel has not ratified Additional Protocol I to the Geneva Conventions. If there was an international armed conflict, then members of the armed security forces for the PA would be regarded as combatants (Kretzmer, 2005).

According to the UNHCR recent report human rights situation in the occupied Palestinian territory has deteriorated and there has been an increase in violence which included a major escalation of hostilities between Israel and Palestinian armed groups. UNHCR addressed the concerns of the violations of international humanitarian law and the impunity which persists to violations of war crimes. Counter-terrorism legislation should not be applied to prevent human rights and humanitarian work to suppress or deny the right to freedom of association (UNHRC, 2022). During his Council briefing, Mr. Wennesland pointed out that the Israel's settlement expansion is the main reason of violence in the Occupied Palestinian Territory, continuing the occupation and undermining the right of Palestinians to self-determination and independent statehood which was presented in the twenty-first report on resolution 2334 (2016). Mr. Wennesland stated that Israeli settlements in the occupied West Bank, including East Jerusalem, have no legal validity (UN, 2022).

The Security Council meeting on "The situation in the Middle East, including the Palestinian question" on 22 March, in which Mr. Wennesland provided a report on the implementation of resolution 2334 which was adopted in 2016, the resolution states that Israel's establishment of settlements in the occupied Palestinian territory (oPt), including East Jerusalem, constitutes a violation under international law and calls for steps to prevent violence against civilians, including acts of terror. There has also been a deterioration of the security situation and during the March 22nd meeting, Mr. Wennesland reported that between 10 December 2021 and 18 March, Israeli security forces killed 24 Palestinians (including four children) and injured 2,966 Palestinians while Palestinians killed one Israeli civilian and injured 100 Israelis. Israeli authorities aimed at easing tensions, such as halting evictions and demolitions of Palestinian-owned structures in East Jerusalem during the Muslim holy month of Ramadan. Still other members stressed the need for longer-term solutions, with France calling for a permanent halt to evictions and demolitions, particularly in East Jerusalem and Mr. Wennesland called for resolution 2334 on Israel to immediately and completely cease all settlement activities in the oPt, including East Jerusalem (UNSC, 2022).

Many countries believe that the war on terror justifies them to ignore standard of human rights and humanitarian law. There needs to be a practical alternative to defend citizens of states against terrorist attacks while not neglecting their commitment to the standards of human rights and humanitarian law. If practical standards are not created for states that are involved in armed conflicts with terrorist organizations then there will be an environment of lawlessness that characterizes terrorism. It's important that Israel and Palestine will negotiate a treaty without any loopholes that would allow peace and security for both parties and to have selected third parties such as Egypt and Jordan to be a neutral partner in providing security arrangements for Israel and freedom of movement for the Palestinians.

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Security Council Meets on Sudan and South Sudan, 1/17/2022

UN PHOTO/ESKINDER DEBEBE

## 2.3 Essay

### ICC and R2P: Clashing or Co-existing?

by **Dina Lara**

Advisor: **Jelena Pia Comella**



#### Abstract

At the start of the 2005 World Summit and 60th General Assembly of the United Nations, UN Secretary General Kofi Annan delivers a new international legal framework for stopping war crimes after a century of ad hoc humanitarianism. The creation of the Responsibility to Protect (R2P) norm was set out to achieve fundamental change in international affairs. R2P offers a scope of opportunities and strategies to reinforce national sovereignty, national legislations, and national institutions to prevent the commission of any mass atrocity crimes. After a long and tedious diplomatic process, the UN General Assembly unanimously endorsed the principle of R2P, with its three distinctive pillars. It is important to note that R2P offers a comprehensive framework for implementing a prevention agenda against atrocities and emphasizing a full spectrum of tools from diplomatic, legal, economic, humanitarian, and non-coercive military measures. Moreover, the founding treaty of the International Criminal Court (ICC) and the international justice system further highlights criminal accountability. Whereas R2P provides a normative and political framework for protecting people at risk of genocide and other mass atrocity crimes, the ICC aims to prosecute those who commit such crimes, implementing the developing responsibility to prosecute and outlining deterrence of such crimes. Recently, the ICC celebrated ten years since its founding. The ICC has a much firmer legal grounding than R2P, given that it is treaty based. Finally, while R2P lays claims to universal application through the Security Council, the ICC is more restricted to state parties to the Rome Statute of the ICC, although jurisdiction can be extended to non-states parties by the Security Council. The ICC's Rome Statute has been a significant development in international law. Yet, they are both part of the set of potential responses the international community can call upon to address mass atrocities. Member states have agreed to underline and abide by the principle that no one is above the law, no matter how high up they are. Essentially, there is no immunity when it comes to international crimes.

## Responsibility to Protect (R2P)

R2P seeks the prevention of atrocity crimes and to protect populations at risk, while the main purpose of the ICC is to punish those that have already perpetrated them. Wherever possible, the international community may and must assist in building a state's capacity to meet its R2P responsibilities. Furthermore, the January 2009 Secretary General's report on implementing the R2P norm proposes a terminological framework for understanding the implications of national responsibility and defines the measures and actors involved in implementing the three-pillar approach (Evans, 2020). Pillar One of R2P norm emphasizes that States have the primary responsibility to protect their populations from genocide, war crimes, ethnic cleansing, and crimes against humanity. Pillar Two addresses the commitment of the international community in providing aid to states in maintaining their function to protect their populations from genocide, war crimes, ethnic cleansing, and crimes against humanity, and to assist those under stress before crises and conflicts break out. Lastly, Pillar Three focuses on the responsibility of the international community to take timely and decisive action to prevent and halt genocide, ethnic cleansing, war crimes and crimes against humanity when a state is unwilling or unable to protect its populations. The most important element of the World Summit recognition of R2P – both normatively and pragmatically – was the fact that the UN committed itself to use, or authorize the use of, force to halt mass atrocities, especially when all other efforts had failed (United Nations, accessed 2022). It became apparent that, even after the horrors of the Holocaust and all the many developments in international human rights and humanitarian law that followed World War II, the international community did not have a perfect agreement when it came to the 'right to intervene' to halt mass atrocity crimes – genocide, ethnic cleansing, other crimes against humanity and large-scale war crimes. In essence, humanitarian intervention is closely associated with the use of force. Indeed, this terminology was avoided, at least in part because it was viewed as a cover for corruption and neo-imperialist intervention in many developing countries. In defiance of a respective governments wishes to avoid humanitarian intervention, R2P abides by its allegiance to protect those vulnerable to persecution and war. Persecution was the fate of at least 80 million men, women, and children, including Armenians in Turkey, Jews in Europe, suspect classes in the Soviet Union and China, communists in Indonesia, non-communists in Cambodia, Bengalis in former East Pakistan, Asians in Uganda, Tutsis in Rwanda, and Muslims in the former Yugoslavia. Institutionally, R2P has brought more organized attention to civilian response capability and highlighted the need for militaries to rethink their force configuration, doctrine, rules of engagement, and training to deal better with mass atrocity response operations. Importantly, more than sixty states and intergovernmental organizations have now established R2P "focal points" – designated to outline risks and facilitate appropriate responses. Should humanitarian intervention not be possible – that is, if peaceful tactics fail to safeguard populations and national authorities fail to protect them – member states agreed to take collective action through the Security Council. Therefore, the responsibility to protect one's people lies primarily with the state where they live. This has been every state's obligation and continues to be so.



## International Criminal Court (ICC)

In the momentum of creating a culture of preventing and punishing war crimes, the institution of the International Criminal Court (ICC) was not only vital in conducting trial and punishment against perpetrators of the worst mass atrocity crimes of the past, but in preventing future perpetrators and mass atrocities (Evans, 2020). The ICC was established in July 2002 by the Rome Statute, which was signed in July 1998 and entered into force after sixty states ratified it (Silverberg, 2011). As of January 2007, one hundred and four states ratified the Rome Statute. Throughout the course of history, genocide, crimes against humanity, and other serious international crimes have not arisen spontaneously. In the context of political conflicts, these war crimes have occurred because of injustice and lack of accountability. The ICC was created to halt this vicious cycle of crimes, impunity, and conflict. Undoubtedly, the ICC contributes to R2P norm by upholding justice, peace, and security. The principles guiding the ICC resemble the precepts that underlay the notion that the individual is ultimately responsible for state policy. Thus, personal responsibility of state leaders is a principle that transcends the constraints of state sovereignty. Beyond this, the ICC represents a permanent independent international court charged with the responsibility of investigating and persecuting genocide, crimes against humanity, war crimes, and crimes of aggression. Notably, the ICC represents the embodiment of legal positivism. International human rights and humanitarian crimes are to be persecuted, whether they are determined to be wrong by the international community who has arrived at a critical consensus that universal application of legal principles and *jus cogens* is rightful in prosecuting international human rights violations that are considered extremely heinous. Hence, the ICC does not seek to impose its judicial process and procedure on the sovereign state, but rather upholds it when the apparatus of the state fails its people. Accordingly, the signing of the Rome Statute that established the International Criminal Court was a landmark event in international criminal and humanitarian law. The Rome Statute and ICC asserts the credibility of the Court plays a significant role in handling geo-politics, international human rights, and humanitarian law. All in all, the role of the ICC is to prosecute crimes against humanity and to defend victims of war and conflict, while negotiating the Rome Statute conversed by nongovernmental organizations and other representatives of civil society. Since World War II, international criminal law has advertently come a long. The very idea that political leaders could be persecuted from crimes against their citizens was a concept created after 1945. Rome Statute laid the groundwork for legislative and prosecutorial approach to accountability for crimes against humanity. Thus, ICC established a foundation for transnational justice based on the notion of absolute responsibility for policies and laws in the name of the people. When domestic judicial institutions fail to hold perpetrators accountable, international institutions such as the ICC, will do so.

## Analyzing the role of the ICC in the three pillars of R2P

International criminal and humanitarian law has made strides in establishing norms, standards, and procedures for judicial activism. Likewise, the UN Security Council authorized regional and ad hoc tribunals to investigate and prosecute to the full extent of international criminal law. Conversely, there are great synergies between R2P pillars and ICC objectives. Under Pillar Two, international assistance and capacity building closely aligns with the principle of complementarity of the ICC. The principle provides that a case is inadmissible before the ICC if it is currently under investigation by a state with jurisdiction over it. Essentially, “the ICC can only investigate and prosecute core international crimes when national jurisdictions are unable or unwilling to do so genuinely” (Oslo, 2009). The relationship between the principles of complementarity and Pillar Two of R2P norm has a real and observable impact on the behavior of states. Seen as the most promising aspect of the R2P norm, Pillar Two reveals that even those that were critical of the R2P in the aftermath of Libya in 2011 still favor the idea of international assistance. Likewise, the utility of pillar II lies in its potential for addressing the threat posed by non-state armed groups. This is particularly important when one considers that since 2000, rebel groups, rather than governments, have been the primary perpetrators of one-sided mass killing against civilians. Accordingly, pillar II can be seen to hold considerable promise for tackling the threat of mass violence by non-state armed groups in the twenty-first century (Gallagher, 2015). According to International

Criminal and Humanitarian Law Forum, the complementarity principle on which the International Criminal Court (ICC) is based reflects a realization that it is preferable that such crimes are investigated and prosecuted in the country where they occurred (CILRAP, 2009). In its pure form, universal jurisdiction and the principle of complementarity enables prosecution of core international crimes committed in a foreign state, by a foreign citizen, against foreign victims, when neither has a personal link to the forum state. Both Pillar Two of R2P and the complementarity principle of the ICC are both tools in ensuring and developing national, regional, and international capacity in preventing mass atrocities.

Furthermore, accountability and referrals to the ICC by the UN Security Council under pillar 3 is deemed essential in understanding aspects of humanitarian law. According to the 2017 SG report, the notion of accountability is best approached in two ways, first by holding states and the international community accountable to their commitments and obligations. In particular, states have the primary responsibility, sovereignty, in upholding their R2P norms and standards. Secondly, accountability is best illustrated by recognizing the need to end impunity for mass atrocity crimes as a preventive mechanism and to avoid the recurrence of the commission of these crimes, as seen in Sustainable Development Goal Sixteen. That said, Pillar Three is not assumed to be “coercive intervention”. Just because the UN Security Council authorizes force, does not mean that the UN Security Council no longer carries a continued responsibility to examine how that force is being implemented (Pia-Comella, 2022). Essentially, the R2P norm supports responsible sovereignty and affirms the existing limits within the UN Charter and the UN Security Council on how active member states and the international community may respond to protect populations. In conclusion, the UN Security Council is the only authority to employ military measures only when peaceful means have been proved inadequate.



## Co-Existence of R2P and ICC

The universality of the ICC's Rome Statute is important in enforcing the R2P principle. The interaction between the ICC and peacekeeping operations is a good illustration of effective and constructive cooperation between the ICC and the R2P through the UN Security Council.

The ICC and R2P are complementary. They both have an important role to play in preventing international crimes: genocide, war crimes, and crimes against humanity. According to Bakari Diaby, General Coordinator of the African Coordination of Human Rights for the Armed Forces

(CADHA), the R2P norm supports responsible sovereignty and recognizes the UN Charter's existing limitations on when and how foreign countries and the international community can intervene to safeguard populations (Diaby, 2022). Recently, the Global Centre for the R2P issued a statement on June 11th, 2021, declaring specific responsibilities assigned to UN Security Council Elections and the Responsibility to Protect - "The Responsibility to Protect is an expression of a political and moral commitment as well as a blueprint for action to prevent and end genocide, war crimes, ethnic cleansing, and crimes against humanity. We are encouraged by the continuous expression of commitment by a large number of states and agree with previous delegations who have emphasized the need for greater collaboration at national, regional, and international levels to narrow the implementation deficit in responding to and ending atrocity crimes." (UN General Assembly Plenary Meeting on R2P and the prevention of genocide, war crimes, ethnic cleansing and crimes against humanity, 17 May 2021). As mentioned, it is important to note that military action is only authorized by the UN Security Council and should be used only when other options have failed. Only with widespread, high levels of political backing can the ICC be a viable instrument in the R2P template. The Court is impotent to carry out its function, but it will remain powerless in fulfilling its mandate if member-states do not advocate for its legitimacy. In the same respect, both the R2P and ICC co-exist effectively because they address the need for national capacity building. The Court only steps in when states refuse or are unable to act on their own. Essentially, the Complementarity Principle plays an important role in coordinating both the ICC and R2P norm together. As a result, the ICC and R2P help sovereign states play a bigger role. Unfortunately, because of the excessive and exclusive focus on the most contentious subjects, this feature is frequently missed. In practice, the International Criminal Court works with states to avoid impunity. National investigations and prosecutions are encouraged by the Court. Civil society, neighboring nations, regional and international organizations, and civil society all collaborate to help governments strengthen these capacities. It is crucial to improve coordination (Paet, 2020). Travel and national asset restrictions granted through the UN Security Council's sanction committees is another crucial avenue where the both the ICC and R2P might co-exist. Many conflicts and crises are on the agendas of both the ICC and the UN Security Council, for instance, "[In] 2011 when the UNSC lifted a travel ban on the former president of Cote d'Ivoire, Laurent Gbagbo, to enable his transfer to The Hague for trial. In the same way, freezing the assets of suspects or accused persons could be used to cut off some of the means of sustaining the conflict, thereby also contributing (indirectly) to the prevention of atrocity crimes" (Saba and Akbarzadeh, 2020). The institution of the UN Security Council must reform its governance upon the interactions between R2P norm and ICC to be more effective, balanced, and constructive. Nonetheless, the ICC and R2P manage coexistence in a world brimful of political conflict and war by confronting the ending of impunity, increasing Court jurisdiction, enforcing national capacity building, and most importantly, acknowledging the role of women.

## Conclusion

The contemporary co-existence between R2P and the ICC reveals intense intentions for global progression, for decades to come. Though in very different ways, they both deal with the issue of mass atrocities in an efficient manner, especially by disseminating potential or ongoing crimes. Those holding ICC arrest warrants can be apprehended with the help of R2P actors. The ICC and R2P are complementary, as they highly prioritize the prevention. They both have an important role to play in preventing international crimes: genocide, war crimes, and crimes against humanity. Although intention or extent of deterrence is difficult to measure, the ICC is close to have this capability. According to most citizens, “Security Council’s decision to refer a situation to the ICC – or the initiation of legal proceedings by the Court itself – is a signal that the international community has not forgotten them. That they do not stand alone amidst violence” (Paet quoting Estonian civilians, 2020). In conclusion, R2P and the ICC have intrinsic conflicts. They aren’t always at ease in one other’s company. However, these two novel ways to dealing with mass crimes have a lot of room for collaboration and mutual support. Whether these two function together, as always, will depend on political will at the highest levels of global political power to put them into action, and to do so in an ethical manner. As United Nations Secretary-General Kofi Annan declared to the General Assembly in 2000, “If humanitarian intervention is indeed an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica – to gross and systematic violations of human rights that offend every precept of our common humanity?” (Annan, 2000). The ICC was created by a global political process and has a strong relationship with “[the] most powerful of political global institutions – the UN Security Council” (Mills, 2015). When governments fail to live up to their responsibilities, the UN Security Council and ICC have responsibility for implementing R2P. This reaffirmation of our shared commitment will guarantee that the ICC and R2P principle will continue to inspire and catalyze action, resulting in better protection for all mankind.

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## General Assembly Meets on Responsibility to Protect and Prevention of Genocide, War Crimes, Ethnic Cleansing and Crimes Against Humanity, 6/23/2022



UN PHOTO/LOEY FELIPE

## 2.4 Essay

### Responsibility To Protect – Pillar 3: Timely and Decisive Response

by **Gagandeep Singh Randhawa**

Advisor: **Ms Jelena Pia-Comella**



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## INTRODUCTION

1. The Kosovo Conflict (1998-1999) was an event that resulted in extensive debate about international intervention. The international community was quick to condemn the violence in Kosovo and Security Council resolutions 1160 and 1199 of 1998 identified the Federal Republic of Yugoslavia (FRY) as the primary culprit and called on the FRY to achieve a political solution. The resolutions stopped short though of a decision to take ‘all necessary measures’ or to authorise member states to do so. In March 1999, following lack of adherence of the Yugoslav side and continued violence, NATO commenced air strikes against Serb forces. After 11 weeks, the defeated Serb troops retreated from Kosovo. NATO justified the military intervention on humanitarian grounds. Although the intervention was viewed as decisive for ending the military conflict in Kosovo and for stopping mass killings and other human rights violations there, NATO’s actions were controversial and considered by some to be a violation of the prohibition of the use of force.

2. In the aftermath of Kosovo, many attempts were made to find a legal justification for the intervention. Efforts were also made to determine whether developments in Kosovo amounted to acceptance of 'humanitarian intervention' (military action to prevent or end human rights violations, without the consent of the state within whose territory the force is applied) as a legal form of action. There was no general acceptance of that action, evident in the fact that various countries, including China, Russia, India, Japan, Indonesia and South Korea were unsupportive of NATO's intervention. In the aftermath, 133 states comprising the G-77 declared that they reject the so-called 'right' of humanitarian intervention.

3. In response to the legal deficiencies exposed by Kosovo and NATO's justification of humanitarian intervention, then UN Secretary general Kofi Annan called for fresh thinking on the issue. In response, the 2001 report of the International Commission on Intervention and State Sovereignty (ICISS) formulated the alternative principle of "the responsibility to protect," focusing not on the legal or moral "right" of outsiders to intervene but on the responsibility of all states to protect people at risk. In 2005 the General Assembly for the UN World Summit unanimously accepted their "responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity."<sup>1</sup>

## AIM

4. To analyse the Pillar three of Responsibility to Protect and derive recommendations for future.

## PREVIEW

5. The research paper will be covered in following parts: -
- (a) Part I : Background.
  - (b) Part II : Concept of Responsibility to Protect.
  - (c) Part III : Pillar 3 – Timely and Decisive Response.
  - (d) Part IV : Relevance in Current Scenario.
  - (e) Part V : Challenges and Recommendations.

<sup>1</sup> International Legal Frameworks for Humanitarian Action – Huma Haider.  
<https://gsdrc.org/topic-guides/international-legal-frameworks-for-humanitarian-action/challenges/the-responsibility-to-protect/>



## PART I: BACKGROUND

### Reasons.

6. The rise of international humanitarian law starting with the Geneva Conventions in the late nineteenth century and accelerating in the period after World War II; and the profound sense of revulsion at the failure of the international community to act effectively in Rwanda and Bosnia, the need for a broadly accepted new norm to guide the international response to mass atrocity crimes became increasingly apparent.

7. The United Nations (UN) was established in 1945 to prevent conflicts between states. But with the end of the Cold War, inter-state aggression largely gave way to war and violence inside states. When, during the 1990s, horrific violence broke out inside the borders of such countries as Somalia, Rwanda, and the former Yugoslavia, the world was ill-prepared to act and was paralyzed by disagreement over the limits of national sovereignty.

8. Throughout the 1990s, the UN was deeply divided between those who insisted on a “right of humanitarian intervention” and those who viewed such a doctrine as an indefensible infringement upon state sovereignty. At the time Secretary-General Kofi Annan warned that the UN risked discrediting itself if it failed to respond to catastrophes such as Rwanda, and he challenged member states to agree on a legal and political framework for action.

9. In 1999 the failure of the UN Security Council to authorize action to halt “ethnic cleansing” in Kosovo provoked NATO to initiate an aerial bombardment on its own. This deeply divided the international community, pitting those who denounced the intervention as illegal against others who argued that legality mattered less than the moral imperative to save lives. This deadlock implied a pair of unpalatable choices: either states could passively stand by and let mass killing happen in order to preserve the strict letter of international law, or they could circumvent the UN Charter and unilaterally carry out an act of war on humanitarian grounds.

### Formulation.

10. The 2001 report of the International Commission on Intervention and State Sovereignty (ICISS) formulated the alternative principle of “the responsibility to protect,” focusing not on the legal or moral “right” of outsiders to intervene but on the responsibility of all states to protect people at risk. In 2005 the General Assembly for the UN World Summit unanimously accepted their “responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity.”

11. The Responsibility to Protect (R2P) concept sought to confront both the Rwanda tragedy and the Kosovo dilemma by stipulating that the states have an obligation to protect their citizens from mass atrocity crimes; that the international community will assist them in doing so; and that, should the state be “manifestly failing” in its obligations, the international community is obliged to act.

12. R2P seeks to ensure that the international community never again fails to act in the face of genocide, ethnic cleansing, war crimes, and crimes against humanity. By accepting a collective responsibility to protect, the international community has issued a solemn pledge that it cannot lightly ignore.<sup>2</sup>

<sup>2</sup> The Responsibility to Protect: A Background Briefing.  
<https://reliefweb.int/sites/reliefweb.int/files/resources/the-responsibility-to-protect-background-briefing.pdf>

## PART II: CONCEPT OF RESPONSIBILITY TO PROTECT

13. R2P is referred to in the ICISS report as an ‘emerging guiding principle’, which has yet to achieve the status of a new principle of customary international law. It builds upon existing legal foundations, including the Genocide Convention, and can be described as an international “norm.” A norm of international conduct is one that has gained wide acceptance among states and there could be no better demonstration of that acceptance in the case of R2P than the unanimously adopted language of the 2005 World Summit Outcome Document. Once a norm has gained not only formal acceptance but widespread usage, it can become part of “customary international law.” R2P covers four kinds of gross human rights abuse: genocide, war crimes, crimes against humanity and ethnic cleansing.

### Core Principles.

#### 14. **Basic Principles.**

- (a) State sovereignty implies responsibility, and the primary responsibility for the protection of its people lies with the state itself.
- (b) Where a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect.

15. **Foundations.** The foundations of the responsibility to protect, as a guiding principle for the international community of states, are mentioned as following.

- (a) Obligations inherent in the concept of sovereignty;
- (b) The responsibility of the Security Council, under Article 24 of the UN Charter, for the maintenance of international peace and security;
- (c) Specific legal obligations under human rights and human protection declarations, covenants and treaties, international humanitarian law and national law;
- (d) The developing practice of states, regional organizations and the Security Council itself.

16. **Elements.** The responsibility to protect embraces three specific responsibilities.

- (a) **The Responsibility to Prevent.** To address both the root causes and direct causes of internal conflict and other man-made crises putting populations at risk.

(b) **The Responsibility to React.** To respond to situations of compelling human need with appropriate measures, which may include coercive measures like sanctions and international prosecution, and in extreme cases military intervention.

(c) **The Responsibility to Rebuild.** To provide, particularly after a military intervention, full assistance with recovery, reconstruction and reconciliation, addressing the causes of the harm the intervention was designed to halt or avert.

17. **Priorities.**

(a) Prevention is the single most important dimension of the responsibility to protect: prevention options should always be exhausted before intervention is contemplated, and more commitment and resources must be devoted to it.

(b) The exercise of the responsibility to both prevent and react should always involve less intrusive and coercive measures being considered before more coercive and intrusive ones are applied.

## Principles for Military Intervention.

18. **The Just Cause Threshold.** Military intervention for human protection purposes is an exceptional and extraordinary measure. To be warranted, there must be serious and irreparable harm occurring to human beings, or imminently likely to occur, of the following kind:

(a) **Large Scale Loss of Life.** Actual or apprehended, with genocidal intent or not, which is the product either of deliberate state action, or state neglect or inability to act, or a failed state situation; or

(b) **Large Scale 'Ethnic Cleansing'.** Actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape.

19. **The Precautionary Principles.**

(a) **Right Intention.** The primary purpose of the intervention, whatever other motives intervening states may have, must be to halt or avert human suffering. Right intention is better assured with multilateral operations, clearly supported by regional opinion and the victims concerned.

(b) **Last Resort.** Military intervention can only be justified when every non-military option for the prevention or peaceful resolution of the crisis has been explored, with reasonable grounds for believing lesser measures would not have succeeded.

(c) **Proportional Means.** The scale, duration and intensity of the planned military intervention should be the minimum necessary to secure the defined human protection objective.

(d) **Reasonable Prospects.** There must be a reasonable chance of success in halting or averting the suffering which has justified the intervention, with the consequences of action not likely to be worse than the consequences of inaction.

20. **Right Authority.**

(a) There is no better or more appropriate body than the United Nations Security Council to authorize military intervention for human protection purposes. The task is not to find alternatives to the Security Council as a source of authority, but to make the Security Council work better than it has.

(b) Security Council authorization should in all cases be sought prior to any military intervention action being carried out. Those calling for an intervention should formally request such authorization, or have the Council raise the matter on its own initiative, or have the Secretary-General raise it under Article 99 of the UN Charter.

(c) The Security Council should deal promptly with any request for authority to intervene where there are allegations of large-scale loss of human life or ethnic cleansing. It should in this context seek adequate verification of facts or conditions on the ground that might support a military intervention.

(d) The Permanent Five members of the Security Council should agree not to apply their veto power, in matters where their vital state interests are not involved, to obstruct the passage of resolutions authorizing military intervention for human protection purposes for which there is otherwise majority support.

(e) If the Security Council rejects a proposal or fails to deal with it in a reasonable time, alternative options are following.

(i) Consideration of the matter by the General Assembly in Emergency Special Session under the “Uniting for Peace” procedure; and

(ii) Action within area of jurisdiction by regional or sub-regional organizations under Chapter VIII of the Charter, subject to their seeking subsequent authorization from the Security Council.

(f) The Security Council should take into account in all its deliberations that, if it fails to discharge its R2P in conscience-shocking situations crying out for action, concerned states may not rule out other means to meet the gravity and urgency of that situation – and that the stature and credibility of the United Nations may suffer thereby.”<sup>3</sup>

<sup>3</sup> Canadian Association for Refugee and Forced Migration Studies (CARFMS) Online Research and Teaching Tools (ORTT) Responsibility to Protect.  
<http://rfmsot.apps01.yorku.ca/glossary-of-terms/responsibility-to-protect/>

## PART III: PILLAR 3 - TIMELY AND DECISIVE RESPONSE

21. The UN General Assembly has held four informal interactive dialogues on R2P between 2009 and 2012. The UN Secretary-General released a report on R2P in advance of each of the interactive dialogues. The Secretary-General's 2009 report, entitled *Implementing the responsibility to protect*, introduced a three-pillar strategy for R2P implementation. The three concisely stated pillars are:

- (a) **Pillar 1.** The primary protective responsibilities of a state.
- (b) **Pillar 2.** International assistance and capacity building.
- (c) **Pillar 3.** Timely and decisive response.

22. The Secretary-General's 2010, 2011 and 2012 reports encouraged states to think more extensively about R2P implementation. The 2010 report, entitled *Early warning, assessment and the responsibility to protect*, focused on UN institutions and their capacity to monitor and respond to early warning signals. The 2011 report, entitled "The role of regional and sub-regional arrangements in implementing the responsibility to protect", addressed the capacities regional organizations possess for mass atrocity prevention and the mechanisms through which states can achieve effective collaboration. The 2012 report, entitled *Timely and decisive response*, focused on the need to clarify coercive dimensions of Pillar 3.

23. Pillar 3 elaborates on the responsibility of the international community to use appropriate diplomatic, humanitarian and other means to protect population from those crimes and violation. It also presents options for timely and decisive response, including collective action, in accordance with the United Nations Charter and on a case-by-case basis, when national authorities manifestly fail to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity (A/66/874-S/2012/578).<sup>4</sup>

24. The goal is to help States to succeed in meeting their protection responsibilities. It is not the role of the United Nations to replace the State in meeting those responsibilities. The purpose of action under Pillar 3 is to help lay the foundation for the State to reassure its responsibility and for assisting or persuading national authorities to meet their responsibilities to their populations under the well-established legal obligations expressed under pillar one.

25. **Tools Available for Implementation.** Timely and decisive response requires careful assessment of the realistic potential of specific tools in specific circumstances. Identifying the right measures to be taken at the right time also requires taking into account authorization requirements and lead actors. Regional arrangements under Chapter VIII of the Charter have a critical role to play, including in relation to measures authorized by the Security Council. Following are the tools for implementation through Pillar 3.

- (a) Preventive Diplomacy.
- (b) Mediation and Political Dialogue.
- (c) Public Advocacy.

<sup>4</sup> United Nation Office on Genocide Prevention and the Responsibility to Protect: Secretary General. <https://www.un.org/en/genocideprevention/secretary-general.shtml>

- (d) Criminal Investigations, Fact-Finding Missions, & Commissions of Inquiry.
- (e) Monitoring or Observer Missions.
- (f) Referral to the ICC.
- (g) Sanctions.
- (h) Protection of Refugees and Internally Displaced.
- (i) Protection of Civilians in Humanitarian Emergencies.
- (j) UN Charter Chapter VII Authorised Use of Force.

### UN Role.

26. United Nations peacekeeping missions are based on the principle of consent and generally deploy in support of and with the overall consent of the host State. As such, they fall under pillar two and are to be distinguished from pillar three tools. Peacekeeping missions have a broad range of mechanisms which are aimed at supporting peaceful political transitions and building host nation capacity to protect civilians. Where mandated under Chapter VII to protect civilians, peacekeeping missions may use force as a measure of last resort in situations where civilians are under imminent threat of physical harm. The Security Council does not distinguish as to the source of that threat, and thus peacekeeping missions may be called upon to respond wherever civilians are threatened. While the work of peacekeepers may contribute to the achievement of R2P goals, the two concepts of the responsibility to protect and the protection of civilians have separate and distinct prerequisites and objectives.

27. Although other United Nations organs and bodies are not strictly “partners”, as they are part of the United Nations system, however they hold mandates relevant to protection. In addition to the role of the Human Rights Council, the 10 treaty bodies established pursuant to United Nations human rights instruments, which include the Human Rights Committee, the Committee Against Torture and the Committee on the Elimination of Racial Discrimination, are contributing to the documentation of human rights violations of State parties to those instruments and also detecting factors which may increase the risk of genocide, war crimes, ethnic cleansing and crimes against humanity. The Office of the United Nations High Commissioner for Human Rights plays a key protection role through its field presences, as do the United Nations Children’s Fund, in relation to the protection of children, and the Office of the United Nations High Commissioner for Refugees, in relation to the protection of refugees, returnees and stateless persons.<sup>5</sup>

<sup>5</sup> General Assembly Sixty-Sixth Session Agenda Items 14 and 117 Integrated and Coordinated Implementation of and Follow-up to the Outcomes of the Major United Nations Conferences and Summits in the Economic, Social and Related Fields. Etpu (un.org)

## Legality of Use of Force.

28. As for the third pillar of R2P and its relation to Chapter VII of the UN Charter, it must be demonstrated that military intervention—on the basis of the R2P doctrine—is lawful according to the Charter. Even if it is lawful, it must then be clarified who would be allowed to implement the military intervention, and how. Finally, it must be considered whether there is a mere ‘possibility’ or an ‘obligation’ to intervene. These different problems are directly linked. According to the UN Charter, the threat and use of force in international relations is generally prohibited. In particular, Article 2(4) specifies that all Member States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the UN. This is a general principle, incumbent on all states in the international community.

29. Only two exceptions are offered in this framework: self-defence under Article 51, and military measures taken by the Security Council in response to any threat or breach of the peace, or act of aggression, to maintain or restore international peace and international security under Article 42.

30. There are several theories aimed at justifying the use of force concerning the more traditional means of humanitarian intervention.

(a) According to a first approach, the legal basis of the operations implemented by states can be found in the existence of an unwritten rule, which modified Article 42 of the Charter and is confirmed by the general practice of states. From a different perspective, Article 42 as such constitutes the legal basis of the military operations of states authorised by the Security Council, even in the absence of the requirements of Chapter VII, since the Council, according to Article 42, has the power also to authorise the use of force by states.

(b) Others find the possibility to authorise these interventions in Article 24, by applying the theory of implied powers, which enables the Security Council to take measures not specified in the Charter, but which are necessary to carry out its primary responsibility for the maintenance of peace and security.

(c) Finally, another view affirms that the development of general international law has led to the creation of ‘erga omnes’ (towards all) obligations. As a consequence, new powers have been conferred on the UN, beyond the conventional limits of the Charter, for the protection and implementation of ‘erga omnes’ obligations, and the decision-making centre has progressively moved outside of the Charter’s original scope.

31. As for the ‘responsibility to intervene’, based on Chapter VII, the legal basis for the doctrine should be found through an analogous, logical path. The Security Council can intervene, under Chapter VII of the UN Charter, only in relation to a threat to peace, a breach of the peace or an act of aggression, and where its action is aimed at maintaining or restoring international peace and security. Therefore, military intervention in the framework of the R2P doctrine should fulfil the conditions laid down by the Charter, briefly recalled, or otherwise should be conceived as an enlargement of the set of purposes assigned to the Security Council, under Chapter VII.

32. Nevertheless, this effort to find a legitimisation of the R2P intervention is usually carried out within the framework of the UN security system, through a case-by-case analysis. This weak anchoring of R2P within the UN Charter and the uncertain practice, described hereinafter, does not give rise to the conclusion that this type of military intervention is now admitted under international law. Even assuming that R2P military intervention in the case of a gross violation of human rights could be considered to fall within the UN legal framework, the problem remains as to the emergence of a legal obligation to intervene. Indeed, without such an obligation there would be no difference between humanitarian intervention and R2P, in terms of the real impact of the doctrine, and there would be no need to develop further the R2P concept.

33. However, while there is some progress in the practice of the Security Council to authorise actions under Chapter VII in response to gross violations of human rights, there has been no key shift from the Council's traditional practice: military intervention has always been linked to the concept of a 'threat to peace', and references to R2P doctrine have been somewhat vague and, in any case, complementary.

34. Indeed, under Article 99 of the Charter there is no duty or obligation for the Secretary General to exercise his political authority in a particular way, but merely a discretionary mandate to undertake executive action. Similarly, Article 24, which confers the primary responsibility for the maintenance of international peace and security on the Security Council, cannot be interpreted as imposing an obligation upon the Council or its members to exercise that responsibility in predetermined ways. This is true for any action of the Security Council, and, a fortiori, for military actions, such as those interventions 'required' by R2P, which cannot be easily justified under the UN Charter. This exclusion of any obligation to act, coupled with the lack of guidelines in determining the urgency of a situation and the identification of appropriate measures to take in these cases, pose several problems for the effectiveness of the R2P doctrine.<sup>6</sup>

## PART IV: RELEVANCE IN CURRENT SCENARIO

35. R2P covers crimes occurring anywhere in the world, regardless of the status or prestige of the perpetrator. Given that the more powerful states have a far greater capacity to extend assistance – and far greater economic, diplomatic, logistical and military capacity – their responsibility to respond and react to mass atrocity crimes is arguably greater. R2P is fundamentally about protecting the weak (those subjected to mass atrocity crimes) from unconscionable abuse of power.

36. The possibility of intervention being authorised by the General Assembly has also been widely debated. Even though the Security Council has the key role and primary responsibility for the maintenance of international peace and security, Article 10 of the UN Charter recognises a general power of the UN General Assembly to debate and consider any matter within the UN's scope, and Article 11 establishes a

<sup>6</sup> The Responsibility to Protect Doctrine: Between Criticisms and Inconsistencies - By Fiammetta Borgia. [http://www.mcrg.ac.in/RLS\\_Migration/Reading\\_List/Module\\_C/10.Borgia,%20Fiammetta,%20The%20Responsibility%20to%20Protect%20Doctrine.pdf](http://www.mcrg.ac.in/RLS_Migration/Reading_List/Module_C/10.Borgia,%20Fiammetta,%20The%20Responsibility%20to%20Protect%20Doctrine.pdf)



fall-back responsibility of the General Assembly with regard specifically to the maintenance of international peace and security (albeit only to make recommendations, not binding decisions).

37. Thus, in the case of inactivity of the UN Security Council, the 2001 ICISS Report suggested two alternatives: an emergency meeting of the General Assembly in extraordinary session, as was done under the 'Uniting for Peace' resolution, or the involvement of regional organisations, to be approved in any case by the Security Council. In the view of the 2001 Report, in the absence of Security Council endorsement and with the General Assembly's power only to make recommendations, a military intervention under R2P, which took place with the backing of a two-thirds vote in the General Assembly, would clearly have powerful moral and political support.

38. However, after Libya Crisis, and chaos after the NATO's failure to stabilize Libya, China and Russia vowed to never again allow the United Nations to violate the sovereignty of a member country to the same extent after the once-limited R2P intervention in Libya evolved into a regime-change operation. So even as nearby Syria descended into civil war and Arab leaders requested UN intervention to prevent a humanitarian crisis, China and Russia vetoed such action on January 31, 2012. To this day, China and Russia have used their veto power on the UN Security Council to block more than fourteen attempts by the United Nations to intervene in Syria.

39. On 17-18 May 2021, UN General Assembly held a plenary meeting on "Responsibility to Protect (R2P) and prevention of genocide, war crimes, ethnic cleansing and crimes against humanity" as part of the formal agenda of its 75th session. The debate constituted the fourth time that the General Assembly formally considered R2P. During the meeting, 59 UN member states and the EU spoke on behalf of 88 countries. The meeting concluded with a vote in the resolution on "The responsibility to protect and prevention of genocide, war crimes, ethnic cleansing and crimes against humanity". The resolution was adopted with 115 states voting in favour, 28 abstaining and 15 voting against. UN member states decided to include R2P on the annual agenda of the General Assembly and to formally request that the Secretary General reports annually on the topic.

40. Though, the recent case of the Ukraine crisis demonstrates, the Security Council's and General Assembly's inability to act. Although it cannot be termed clearly as genocide or war crime as of now, nevertheless humanitarian crisis and refugee crises have surely erupted. In light of all these considerations, at present it cannot be stated that the practice of the Security Council, or of the UN as a whole, has evolved to accept the R2P as a discrete ground of competence authorising intervention in the field of international peace and security.

41. It is also witnessed that in the current ongoing crisis in Ukraine, there were indicators in the past regarding the Russian intervention. However, no major steps were taken under R2P. Consequently, it is clearly evident that in case of any veto member of Security Council itself involved in any conflict and is a considerable military power with nuclear weapons, the military intervention under Pillar 3 is almost negated. However other tools short of military intervention are still relevant to create substantial amount of pressure.

## PART V: CHALLENGES AND RECOMMENDATIONS

### CHALLENGES.

42. There are three major challenges as we continue to move R2P from theory to practice.
- (a) The first is conceptual – to ensure that the scope, and limits, of the norm as it has evolved are well understood in all parts of the world. As new mass atrocity risk situations arise, there needs to be broad international consensus about how to respond in the context of R2P.
  - (b) The second challenge is institutional. There is a need to ensure that governments and intergovernmental organizations have available all the diplomatic, civilian and, as a last resort, military capability needed to ensure effective early warning and timely action. There is need international institutions with a capacity to provide essential assistance to those countries who need it and to people desperately in need of protection.
  - (c) The third challenge is political. In every case where atrocities have occurred and R2P has been invoked since 2005, the difference between success (Kenya, The Gambia, Cote d'Ivoire, etc.) and failure (Syria, Myanmar, etc.) has depended upon political leadership and timely action by the UNSC, working with a committed regional organization. This means having consensual international arrangements in place for effective mobilization by both governments and civil society. It also requires that there is consistency in the application of R2P.<sup>7</sup>
  - (d) The fourth challenge is sovereignty. This challenge is encountered after evoking of Pillar 3 and subsequent military action. The sovereignty of the country/ state is questioned in this regard. Therefore, it is desired that clear definition or aim and scope of military action must be worked out and cleared by Security Council beforehand. Otherwise, there may be a repeat of the situation that had arisen in Libya.
43. The international community will continue to encounter difficulties when confronting mass atrocity crimes. Crises threatening human security continue to arise, and with them debates over the most appropriate response. But R2P remains the best hope for those who aspire for a world free from genocide, war crimes, ethnic cleansing and crimes against humanity. R2P represents a potential historic end to impunity, injustice and inaction.

### Recommendations.

44. The third pillar of R2P is the most controversial and least understood element of the principle as a whole. Misunderstanding arises out of the fact that many have focused exclusively on the pillar's coercive potential at the expense of its call for the international community to adopt peaceful measures to protect populations from atrocity crimes. When genocide and atrocity crimes appear imminent, generating an early response is crucial to saving lives and fulfilling the responsibility to protect. Early responses tend to be

<sup>7</sup> The Responsibility to Protect: A Background Briefing.  
<https://reliefweb.int/sites/reliefweb.int/files/resources/the-responsibility-to-protect-background-briefing.pdf>

more effective and less costly than later responses because opportunities for creative intercession decline when violence escalates. To respond early to crises, actors require a range of different tools and degree of flexibility.

45. The first component of R2P third pillar, the use of “diplomatic, humanitarian and other peaceful means” to protect populations, provides both. It points to a broad range of actions that can be undertaken to persuade leaders to alter course, deter atrocity crimes, and protect vulnerable populations. Following are the recommendations for progressing the world’s capacity to respond peacefully and efficiently to atrocity crimes:

(a) **United Nations and Member States.**

(i) The Secretary General should articulate an inclusive strategy for the deterrence of atrocity crimes and direct the UN system to its execution. This could involve translating the stratagem outlined by the Secretary General in *Implementing the Responsibility to Protect (2009)* into a set of actions designed to mainstream R2P and atrocity prevention into the daily work of the organization in a manner supportive of other initiatives such as ‘Human Rights up Front’ (HRuF).

(ii) The United Nations’ capacity for implementing R2P should be strengthened through the upgrading of the special adviser (presently Mr George Okoth-Obbo) on R2P position to that of a full-time post, the reorganization of the roles of the special advisers on genocide prevention and R2P, and the strengthening of the joint office.

(iii) The Security Council should consider issuing a resolution requesting the regular public reporting of atrocity crimes.

(iv) The United Nations should appoint a full-time special representative for the protection of ‘Internally Displaced Persons’ (IDPs).

(v) The Secretary General and emergency relief coordinator should bring forward recommendations for strengthening humanitarian access in conflict-affected areas for consideration by the Security Council.

(vi) As part of its ongoing consideration of the protection of civilians in armed conflict, the Security Council should request the systematic monitoring and reporting of humanitarian access issues, including attacks on humanitarian workers and protected sites.

(vii) The General Assembly should agree to fund the Mediation Support Unit and Special Political Missions in full through assessed contributions.

(viii) The United Nations should continue to strengthen its capacity to generate civilian capabilities.

(ix) The Secretary General and UNHCR should convene a high-level panel to examine the current crisis of displacement and recommend steps that can be taken to better protect refugees and displaced populations.

(b) **Regional Organizations.**

(i) Regional organizations should examine whether they have the capacity to support diplomatic and political initiatives to resolve crises involving the threat or commission of atrocity crimes. Where needed, steps should be taken to build these capacities and make them available in times of crisis.

(ii) Regional organizations should consider appointing their own focal points or envoys with responsibility for supporting early and peaceful engagement in emerging crises.

(iii) Regional organizations should facilitate the expansion of civilian capacities to help states and societies respond to crises.

(iv) Regional organizations should foster appropriate regional mechanisms to facilitate the rapid delivery of humanitarian assistance when needed.

(c) **Individual Governments.**

(i) Governments should appoint a national R2P focal point and assign that role an operational function to provide early warning and advise on the steps that the national government could take to utilize diplomatic, humanitarian, and other peaceful means to protect populations from atrocity crimes.

(ii) Members of the Global Network of R2P Focal Points should explore how that network might be utilized to strengthen the use of peaceful means to protect populations and coordinate first responses to new crises.

(iii) Governments should ensure that their own institutions and societies are resilient and receptive when it comes to atrocity prevention. They could do this by following the Secretary General's recommendations of conducting a national assessment of risk and resilience and applying the United Nations' risk-assessment framework to their own national context.

(iv) Governments should understand that their refugee and immigration policies are related to their responsibility to protect populations from atrocity crimes. They should make it easier for those fleeing atrocity crimes to seek asylum, contribute more to global resettlement to make it a meaningful program, and furnish greater assistance to front-line states.

(v) Governments that support R2P should consider increasing their contributions of military, police, and civilian personnel as well as specialized equipment to peacekeeping operations.

(vi) Governments should consider ways to make it easier for civilian personnel to be trained and made available for international missions.

(vii) Governments should strive to increase spending on development assistance and humanitarian aid. In particular, it is important that urgent appeals to support responses to major crises involving atrocity crimes receive the resources they require.

(viii) Governments should encourage and support the strengthening of nonstate capacities to protect populations from atrocity crimes, such as through advocacy, mediation and conflict resolution, unarmed peacekeeping, and private sector prevention.

(d) **Civil Society, Private Sector, Researchers & Individuals.**

(i) It is imperious to supplement the state-centric approach to R2P with perspectives informed by the individual responsibility to protect.

(ii) The performance of public advocacy for atrocity prevention should be reviewed with a view to developing guidelines, training materials, and coordination mechanisms to facilitate better public advocacy by nonstate organizations.

(iii) Nonstate organizations and individuals should redouble their efforts to strengthen public advocacy to ensure that it is conducted earlier and is less selective.

(iv) The concept of unarmed civilian protection should be developed, and partnerships between nonstate actors established, to significantly strengthen global capacity to deploy this type of mission. Nonstate groups working on atrocity prevention and protection should think carefully about the practical steps that could be taken to improve protection.

(v) Analytical tools need to be developed to ascertain whether states and international organizations are faithfully discharging their responsibility to use peaceful means to protect populations from atrocity crimes.

(vi) A systematic approach to lessons-learning is needed. Further systematic research is needed on what combinations of protection measures are more (or less) effective in different situations and on the factors that impact on effectiveness.

(vii) More should be done to identify nonstate groups working to protect populations in regions affected by atrocity crimes and provide them with the support they need.<sup>8</sup>

<sup>8</sup> The First Response: Peaceful Means in the Third Pillar of the Responsibility to Protect Policy Analysis by Alex J. Bellamy. <https://stanleycenter.org/publications/pab/Bellamy3rdPillarPAB116.pdf>

## CONCLUSION

46. The responsibility to protect provides a political framework based on fundamental principles of international law for preventing and responding to genocide, war crimes, ethnic cleansing and crimes against humanity. It is clear that the concept has been widely accepted. The major political organs of the United Nations have invoked the concept, including the Security Council and the General Assembly. However, controversy still persists on aspects of implementation, in particular with respect to the use of coercive measures to protect populations.<sup>9</sup> Prevention is a key focus of R2P. However, it also includes the equally important aspect of responding to atrocities. Prevention initiatives should be supplemented by concrete steps in order to bolster acceptance of the third pillar of the R2P in the community of states as well as to strengthen the R2P as a complete set of norms. Non-violent measures, such as diplomatic pressure, mediation, observer missions, sanctions or referral of a case to the International Criminal Court, are preferable to the application of military force. If these instruments prove ineffective, any military interventions should only be carried out within a narrow scope and under international control.<sup>10</sup>

47. Notwithstanding the fact that the UN Charter largely prohibits the use of force, military intervention is political and polarizing by its very nature. For the third pillar, this polarizing effect is amplified by the space it shares – rightly or wrongly – with “humanitarian intervention”. Unlike humanitarian intervention the use of force under the R2P is conceptually delimited by the need to secure a UN Security Council (UNSC) mandate and is restricted only to the four crimes. Yet the principle is still perceived by some as a way to justify intervention for political reasons under the veil of ethical principles. Countering the power of the ethical rationale for R2P based military interventions are rationales that feel just as forcefully about absolute sovereignty and the international order enshrined by the UN Charter.

48. There exists the temptation to think that the decision to use force can be as clear cut as the moral principles guiding the R2P. On the contrary, no amount of effort to provide R2P interventions with an indisputable ethical basis can avoid the fact that the use of force still means going to war. Indeed, advocates of the R2P have been too ready to think of preventing and halting the four crimes as “police-like” work. The assumption has been that any intervening military force under the R2P would be “applying the law”: to arrest, try and prosecute the assailant. Yet the R2P is not law and its military dimension can never be considered police work. Not only is warfare impossible to neatly categorize into “different types” of intervention, but such interventions will remain controversial regardless of the clarity and forcefulness of the normative basis under which they are justified. Military intervention under the third pillar should imply “wars of necessity” whereas in reality they remain “wars of choice”, and for this very reason such interventions will be politically contested.

49. Military intervention is, however, the most controversial form of intervention. If military action is neither legitimate nor effective, then the possibilities for and merits of armed action are considerably diminished.<sup>11</sup>

<sup>9</sup> General Assembly Sixty-Sixth Session Agenda Items 14 and 117 Integrated and Coordinated Implementation of and Follow-up to the Outcomes of the Major United Nations Conferences and Summits in the Economic, Social and Related Fields. Etpu (un.org)

<sup>10</sup> PRIF Report No. 133 : Ten Years R2P – What Doesn't Kill a Norm Only Makes It Stronger? Contestation, Application and Institutionalization of International Atrocity Prevention and Response by Gregor P. Hofmann. [https://www.hsfk.de/fileadmin/HSFK/hsfk\\_downloads/prif133.pdf](https://www.hsfk.de/fileadmin/HSFK/hsfk_downloads/prif133.pdf)

<sup>11</sup> The Responsibility to Protect and the Third Pillar Legitimacy and Operationalization. Chapter 8: The Use of Force and the Third Pillar. Editors - Daniel Fiott and Joachim Koops. [https://link.springer.com/chapter/10.1057/9781137364401\\_9](https://link.springer.com/chapter/10.1057/9781137364401_9)

## 2.5 Essay

# ISIS Use of Sexual Violence to Commit Genocide Against the Yazidis

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## Introduction

In the early morning of August 3rd, 2014, ISIS (The Islamic State of Iraq and Syria, also known as ISIL and Da'esh) launched attacks on villages across the region of Sinjar, close to the Iraqi Syrian border. They were targeting the Yazidi population with the goal to end the Yazidi community and its religion (Castellano, 2020: Ibrahim, Ertl, Catani, Ismail & Neuner, 2018). ISIS is an internationally recognized terrorist organization that emerged from Al Qaeda in Iraq. The organization took advantage of the ongoing civil war in Syria and expanded all over the country before it spread into Iraq and attacked Sinjar. It is where the majority of the world's Yazidis live (Castellano, 2020: Ibrahim et al., 2018). There are about 500,000 to 700,000 Yazidis throughout the world. They account for about 60 percent of the people in this region and represent less than two percent of Iraq's population overall. Their religion is a mixture of Mithraism, Mazdeism, and Zoroastrianism and have taken on elements of Christianity and Islam (Jaffal, 2020).

Before the August 3rd attack, Sinjar's population was mainly Yazidi, with a smaller number of Arabs who followed Sunni Islam. They lived peacefully together for generations. Just one day before the attacks, the Yazidis of Sinjar went on with their days like any other. 24 hours later, life as they knew it was gone. Suddenly, ISIS fighters were attacking Sinjar from Mosul and Tel Afar in Iraq, and Al-Shaddadi and the Tel Hamis region in Syria. They were well-organized attacks, with hundreds of ISIS fighters working together to take over towns and villages on all sides of Mount Sinjar. Yazidis were forced to escape up to the mountains, where ISIS fighters kept them from receiving water, food and medical care sent from American, Iraqi, British, French, and Australian forces. They would also shoot down planes attempting to airdrop aid. If ISIS did not kill them or capture them, the heat would. ISIS fighters managed to capture thousands of Yazidis in their villages or on the roads as they fled. Within 72 hours, almost all villages were empty (Human Rights Council, 2016). 300,000 Yazidis managed to flee and while more than 6,000 women and children ended up as victims of systematic mass rape. In 2016, it was estimated that at least 3,200 Yazidi women and

girls remained captives of ISIS (Castellano, 2020). These unimaginable horrors against the Yazidis were occurring systematically across ISIS-controlled areas in Syria and Iraq (Human Rights Council, 2016).

Yazidis are a closed community that has been targeted for a long time – they were first accused of devil worship by Muslims in the late 16th and early 17th century. ISIS incorrectly considers the Yazidi population to be infidels and —devil-worshippers. ISIS attacked Yazidi communities, committing atrocities, including rape, to —purify the region from the non-Islamic influences (Castellano, 2020). They would separate men and women. The men were given the choice of either conversion or death. The women were directly sent into the organized sexual market, where they were sold as sexual slaves to ISIS fighters. The Yazidi women were raped by ISIS soldiers daily. ISIS fighters would come into the rooms and select the women and girls they wanted. Survivors have described the feelings of extreme horror when hearing footsteps outside the door. The women would scratch and bloody themselves as a desperate attempt to make themselves less attractive to potential buyers (Human Rights Council, 2016). Victims reported being injured as a result of the rapes, suffering bleeding, cuts, and bruises. There is more than enough evidence of such rapes occurring due to survivors sharing stories and displaying both physical and psychological wounds. Women and girls are looked at as nothing more than property for ISIS fighters (Human Rights Council, 2016; Ibrahim et al., 2018).

This paper will discuss how ISIS used sexual violence as a tool to commit the crime of genocide against the Yazidi people. It will also discuss the laws governing rape and genocide in both Iraq and according to international laws and standards. Then it will look at what Iraq and the UN/international community has done to help Yazidis and end the atrocities committed by ISIS fighters. Finally, it will look at recommendations on how to bring justice to the victims and hold the perpetrators accountable for their actions.



UN PHOTO/ESKINDER DEBEBE

Secretary-General Ban Ki-moon meets with Nadia Murad Basee Taha, a young Iraqi woman of the Yazidi faith, human rights activist and survivor of abduction and torture by the terrorist group Islamic State, on the margins of the World Humanitarian Summit in Istanbul., 5/24/2016

Nadia Murad meets with Secretary-General António Guterres and gifts him a copy of her book, titled “The Last Girl”, 4/12/2019

Nadia Murad, Nobel Peace Prize Laureate and UNODC Goodwill Ambassador, briefs the Security Council meeting on women and peace and security, 4/13/2022



UN PHOTO/MARK GARTEN



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## Definition and Scope of the Crime of Genocide

According to Article II of the Genocide Convention, —genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group; forcibly transferring children of the group to another group.¶ This is the same definition that is included in the 1998 Rome Statute of the International Criminal Court, Article 6 (International Criminal Court, 2011: Human Rights Council, 2016).

Article II of the Genocide Convention also mentions that —a protected group must be a national, ethnic, racial, or religious group, as such. The term —as such¶ —has been interpreted to mean that the prohibited act must be committed against a person based on that person’s membership in a specific group and specifically because the person belonged to this group, such that the real victim is not merely the person but the group itself.¶ For an act to be considered genocide, the perpetrator must have the intent to destroy a protected group. The act must be committed against an individual because of their ethnicity or religious background (Human Rights Council, 2016). The UN Commission has determined that the Yazidis are a protected religious group within the meaning of Article II of the Genocide Convention and Article 6 of the Rome Statute (International Criminal Court, 2011: Human Rights Council, 2016).

Looking at the definition of genocide, it is clear that ISIS is committing this war atrocity. First, ISIS intentionally killed hundreds of Yazidis when they attacked the Sinjar region. ISIS fighters committed mass killings in Kocho and Qani villages. Multiple eyewitnesses can confirm that these killings indeed happened. Captured Yazidi women heard gunfire and saw fighters covered with blood right after the Yazidi men were separated from the women. Second, ISIS has caused serious bodily and mental harm to the Yazidis. For example, ISIS fighters often beat Yazidi children in front of their mothers as a means to punish the mother. Yazidi women were also subjected to rape and sexual violence (Human Rights Council, 2016).

The fighters are purposely making sure that Yazidi women are not returned to their communities – ISIS does not permit the reselling of Yazidis to non-ISIS members as a way to prevent Yazidis from being reunited with their families. ISIS does not immediately kill Yazidi women, but rather seeks their physical destruction from deprivation of resources necessary for survival, such as food or medical services. ISIS is also imposing measures intended to prevent births within the group. They do so through rape, sexual mutilation, sterilization, forced birth control, separation of men and women, prohibition of marriages, impregnation of Yazidi women by ISIS fighters, and mental trauma resulting in a reluctance to procreate. ISIS forcibly transfers Yazidi children from their families and into the custody of ISIS fighters. Girls are sold as sex slaves, while boys are sent to ISIS training bases to learn to fight and be forcibly converted to Islam (Human Rights Council, 2016).

For a crime to be considered genocide, it must be shown that ISIS committed one or more of the prohibited acts of Article 2 of the Genocide Convention and Article 6 of the Rome Statute, as clearly shown by the examples above (Human Rights Council, 2016).

## Rape as a War Tactic to Commit Genocide

Sexual violence in armed conflict, including rape, is recognized as a weapon or method of war. Throughout history, rape has been used as a tool to terrorize, punish and destroy populations. Sexual violence is used by terrorist organizations as a strategy in order to achieve their goals (Jaffal, 2020). Unfortunately, it is now recognized as an —inevitable reality of conflict. It was not until the Fourth Geneva Convention that rape was recognized as a distinct crime. The definition of rape and how it related to war were developed through the jurisprudence of International Tribunals that made rape part of the provisions of International Humanitarian Law instruments, such as the Geneva Conventions (Castellano, 2020).

What is happening to the Yazidi people resembles what the Serbians did towards the Bosnian-Muslim women in the rape camps of Fôca, in the former Yugoslavia (Castellano, 2020). According to research conducted in conflict areas, such as Rwanda and Bosnia, genocidal atrocities bring about long-lasting and severe effects for the survivors, with up to almost 70 percent of the survivors fulfilling criteria for trauma-related disorders (Ibrahim et al., 2018). Rape causes serious harm to the victim, but it also causes harm to members of the group, their families, and the community. Therefore, the Akayesu judgment looked at rape as a tool of war with the intent to destroy a group, and defined rape as a form of aggression and violation of personal dignity. It caused body and mental harm through physical and mental destruction of the women, their families and communities. ISIS is intentionally promoting the use of sexual violence against women of religious minorities, such as the Yazidi. ISIS is doing so as part of their war to establish the caliphate. The rape committed against the Yazidi women is a crime against humanity, a war crime and an act of genocide (Castellano, 2020).

It is important to look at intent – rape itself is not considered an act of genocide, but if the intent is to destroy members of a protected or minority group, it should constitute genocide. According to Castellano (2020), ISIS used rape as part of a genocidal campaign against the Yazidi community. The fighters are fully aware of the fact that they are committing the crime with force or threat of force. They knowingly take advantage of a coercive environment and abuse their power towards the Yazidi women. When they are done with the women, they dispose of them as they wish. ISIS intended to destroy an ethnic, racial or religious group, and the leaders have the intent to cause serious bodily and mental harm to the Yazidi people under Article 2(b) of the Genocide Convention by using rape and the specific intent to destroy the Yazidi people (Castellano, 2020).

To better understand how rape of Yazidi women is used as a genocide tactic, it is important to know about the Yazidi faith. Their faith requires that children have two Yazidi parents. Mixed marriages are frowned upon. Due to the incorrect information about Yazidis being devil worshippers, the Yazidis have been followed and persecuted since the Ottoman Empire. There has also been discrimination against the Yazidis in modern history, which is also a reason why the Yazidi community discourages its members from marrying someone of a different religion (Human Rights Council, 2016).

ISIS is trying to destroy Yazidi communities using rape, knowing that normally, if a Yazidi woman is raped or has intercourse with a non-Yazidi, she will be rejected from her family and community, and her family will retain the stigma and dishonor inside the whole community. ISIS is purposely destroying the honor and respectability of Yazidi women, hoping they no longer will be accepted in their own communities (Castellano, 2020; Ibrahim et al., 2018). However, due to ISIS's heinous actions against Yazidi women, the main religious leaders of the Yazidi

community have stated that women who return from ISIS captivity should be taken care of and welcomed back into the community without any negative consequences (Castellano, 2020). Despite Yazidi spiritual leader Baba Sheik calling on members of the Yazidi community not to punish or ostracize victims of sexual violence, reports indicate that due to stigma, survivors keep abuses secret from their families out of concern for the negative consequences, such as honor killings (Global Justice Center, 2018).

The Independent International Commission of Inquiry on the Syrian Arab Republic by United Nations Human Rights Council investigated the violations committed against Yazidis and documented that the Yazidi people were subjected to mass killings, rape, sexual violence, enslavement, torture, and forcible transfer, leading it to declare ISIS's crimes against the Yazidis as a genocide (Ibrahim et al., 2018).

## Iraqi Law vs. International Law on Rape and Genocide

Iraq's Penal Code is based on patriarchy, preexisting gender inequalities and violence. The Code defines sexual and gender-based violence in a way that is discriminatory against women and fails to meet international standards. The laws fail to provide full accountability and compensate ISIS victims. According to Penal Code Article 393, rape is defined as —sexual intercourse with a female without her consent or...buggery with any person without their consent. However, the Article is limited to vaginal intercourse, leaving out ISIS's violent and invasive sexual crimes, such as penetration with objects and other body parts (Global Justice Center, 2018).

According to the Global Justice Center (2018), international criminal law defines rape as, —invas[ing] the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body. This definition, unlike Iraq's definition, includes all forms and types of penetration. The Rome Statute of the ICC, Articles seven and eight both list rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity as a crime against humanity when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack; and war crimes when committed during armed conflicts (International Criminal Court, 2011).

The Rome Statute is complemented with the Elements Crimes Document published by the International Criminal Court. The elements of a crime are criminal act, criminal intent, concurrence, causation, harm, and attendant circumstances. The Elements of Crimes Document assists the Court in the interpretation and application of articles 6, 7 and 8, consistent with the Statute. For example, The Rome Statute Article 6(a) refers to genocide by killing. The Elements Crime Document then explains that genocide by killing must include: (1) the perpetrator killed one or more persons; (2) such person(s) belonged to a particular national, ethnic, racial or religious group; and (3) the perpetrator intended to destroy, in whole or in part, the national, ethnic, racial or religious group, as such (International Criminal Court, 2013: Sellers, n.d.).

Penal Code Article 398 states that ISIS fighters cannot be charged with rape or sexual assault if they are lawfully married to the victim. According to Penal Code Article 41, no crime can occur where an act is carried

out while exercising a legal right—such as where a husband —punishes a wife. ISIS fighters are aware of the laws and find loopholes to avoid criminal liability. For example, ISIS fighters marry Yazidi women and girls to avoid having to buy them. It also allows them to get away with rape and violence. Forced marriage is illegal in Iraq, but due to a conservative society, the government makes few efforts to enforce the law and allows forced marriages of girls to continue, especially in ISIS-controlled areas. International law condemns marital exception for rape under any circumstances. Married or not, rape is illegal (Global Justice Center, 2018).

Article 3 of the Criminal Procedure Code states that prosecution for rape can only happen if the victims take action. Complaints cannot happen more than three months after the victim becomes aware that the action is illegal. If the victim withdraws the complaint, they lose their right to criminal justice. Yazidi women might be reluctant to come forward and report the crime themselves, due to conservative societies like Iraq, as well as the stigma surrounding sexual violence. International standards do not require victims to report the crime or even participate in the prosecution of rape. This is because such actions can cause further traumatization and revictimization (Global Justice Center, 2018).

There is no domestic law in Iraq, prohibiting or punishing genocide. The state is a party to the Convention on the Prevention and Punishment of the Crime of Genocide, but has failed to comply with its treaty obligations to make genocide a crime in the Iraqi Penal Code. This means that ISIS cannot be punished domestically in Iraq for intentionally destroying the Yazidis (Global Justice Center, 2018).

Genocide is a crime under treaty and customary international law. This means that governments and international entities are required to prevent, suppress and punish ISIS. The government of Iraq, other states and international entities must take all measures reasonably within their means to punish the sexual and gender-based crimes committed by ISIS. Failure to do so violates international obligations (Global Justice Center, 2018). Article 5 of the Rome Statute states that the International Criminal Court has — jurisdiction in accordance with this Statute with respect to the following crimes: (a) The crime of genocide; (b) Crimes against humanity; (c) War crimes; (d) The crime of aggression (International Criminal Court, 2011: International Criminal Court, 2013).

According to Article IV of the Genocide Convention, states that sign the contract must punish both individuals who committed genocide and those who conspire to commit genocide, whether they are complicit (Human Rights Council, 2016).

## Steps Towards Accountability and Justice

According to the Directorate of Yazidi Affairs of the Ministry of Endowment and Religious Affairs of the Kurdistan Regional Government, of the estimated 6,417 Yazidis who were abducted, 3,543 people have been rescued and 2,874 remain missing (UN Security Council, March 2021). Conflict-related sexual violence remains underreported because of a lack of trust in the justice system, a fear of reprisals, pressure from family members, and stigma codified in the law. This allows perpetrators to —escapell the criminal justice system by marrying their victims. The UN confirmed nine cases of conflict-related sexual violence against Yazidi girls (UN Security Council, March 2021).

In October 2020, the Iraqi Government and the Kurdistan Regional Government reached an agreement to provide security and services to facilitate the return of Yazidis to Sinjar. The Government also closed or reclassified 16 camps and informal sites for internally displaced persons. 78 percent of the internally displaced individuals were women and children, vulnerable to economic shocks and protection risks, including sexual violence (UN Security Council, March 2021).

On March 1, 2021, the Council of Representatives of Iraq created the Yazidi Female Survivors Law. The law provides for assistance, reparations and redress for Yazidi, Turkmen, Christian and Shabak survivors of atrocities committed by ISIS (UN Security Council, March 2021).

According to the UN Secretary-General, criminal courts are continuing to create counter-terrorism frameworks to prosecute members of ISIS. There have been no charges of sexual violence against them (UN Security Council, March 2021). There has been one criminal trial, so far, addressing genocide against Yazidi. The Higher Regional Court in Frankfurt, Germany, convicted Taha Al J. for genocide and crimes against humanity. This was the first time a former member of ISIS has been convicted of genocide. Taha Al J. was convicted of genocide for purchasing a Yazidi woman and her five-year-old daughter as slaves in 2015. The Higher Regional Court in Frankfurt found that Taha Al J. (as a member of ISIS) intended to eliminate the Yazidis by buying and enslaving the Yazidi woman and her daughter. Taha Al J. had cuffed the little girl to the window, exposing her to the heat without any protection from the sun. She died in front of her mother. The defendant was therefore found guilty of genocide, crimes against humanity and war crimes (Amnesty International, 2021).

The UN Secretary-General is calling upon the Iraqi Government to address the needs of survivors, especially those who have recently returned to their areas of origin following the closure of camps. He further urges the Government to put in place comprehensive legislation in line with international standards, in order to ensure the effective prosecution of sexual violence as a stand-alone international crime (UN Security Council, March 2021).

The UN has created an investigative team, United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh/Islamic State in Iraq and the Levant (UNITAD), to gather evidence and build cases against ISIS members. UNITAD has established clear and convincing evidence that genocide was committed by ISIS against the Yazidi as a religious group. ISIS intended to destroy the Yazidis, both physically and biologically (UN Security Council, May 2021).

UNITAD has also found that numerous other international crimes were committed against the Yazidis, including extermination, sexual violence, persecution on religious and gender grounds, among other things. The Team also emphasized that these crimes are still ongoing. To bring justice to survivors, UNITAD's work must be presented before national courts to prosecute those responsible for the atrocities (UN Security Council, May 2021).

There are arrangements put in place with the Iraqi judiciary to transfer evidence collected by UNITAD concerning financial crimes committed in support of ISIS activities in Iraq. The support for efforts by the Iraqi Council of Representatives to adopt legislation establishing a legal basis for the prosecution of ISIS members in Iraq for war crimes, crimes against humanity and genocide is an important step toward holding ISIS accountable for its crimes in Iraq (UN Security Council, May 2021).

According to Karim Asad Ahmad Khan, previous Special Adviser and Head of the UNITAD, innovation and

partnership were huge contributions in advancing the Team's work. The application of artificial intelligence and machine learning tools in the analysis of internal ISIS databases helped UNITAD establish a clear timeline of ISIS activities, as well as strengthened partnership with Iraqi authorities, survivor groups, non-governmental organizations and religious leaders (UN Security Council, May 2021).

## Recommendations

In 2017, Nadia Murad, a Nobel Peace Prize Laureate, a Yazidi and survivor of ISIS atrocities, addressed the Council, asking for its support to ensure that ISIS fails in its goal of destroying the Yazidi people. She noted that UNITAD has contributed evidence to some ongoing proceedings and a handful of survivors have faced their abusers in court. What is also needed are public trials and recognition of the genocide, which will help avert future violence and facilitate the healing of survivors. International monitoring is needed to ensure that national courts see justice through, while international tribunals address the global scope of ISIS crimes against humanity (UN Security Council, May 2021).

Five years ago, Murad called on the Council to refer the genocide committed against the Yazidis to the International Criminal Court. She said that they —were met with empty promises and competing priorities, and that —justice was deferred. Yazidis have been persecuted for centuries, and if the international community does not act, violence will be repeated. Accountability is essential (UN Security Council, May 2021).

In 2019, during the 8,514th meeting of the Security Council, Amal Clooney, an international human rights lawyer, addressed the Security Council on the topic of accountability for sexual violence in conflict. Clooney mentioned that authorities are working together to dig up mass graves and identify victims, which is a positive development. However, it does not come close to justice for the victims. Thousands of perpetrators, including some of the highest-ranking members of ISIS, are held by coalition-backed SDF forces in Syria. But these forces lack logistical support to hold ISIS fighters for a long time. President Trump warned that if Europe does not find a way to put foreign fighters on trial, the US will be forced to release them. Thousands more ISIS members are detained in Iraq, but according to the UN, their trials are lacking due process to proceed on a single terrorism charge without witnesses and move swiftly to executions. None of these trials are even close to bringing justice to the Yazidis. They do not provide the victims with the opportunity to face their abusers and tell the world what ISIS had done to them. Also, the charges fail to include sexual violence. Crimes like genocide are not even on the books (UN, 2019).

Clooney gave the Council four recommendations on how to go about addressing crimes committed by ISIS. They included a referral to the International Criminal Court, setting up a court through a treaty by like-minded states who believe in justice, setting up a court through the European Union, or a hybrid court set up between the UN and Iraq such as those done in the cases of Sierra Leone and Cambodia (UN, 2019).

The UN representative of Iraq states that the only way to get justice and hold ISIS accountable is through national and international cooperation. Terrorism cannot be defeated by one state alone. Progress can be

made with assistance from the international community to develop national capacities in security, economy and the judiciary, and to ensure respect for human rights, per the Universal Declaration for Human Rights (UN Security Council, May 2021).

In 2021, the Secretary-General recommended that the security council should, among other things, — encourage all State and non-State parties in conflict to adopt specific commitments to address conflict-related sexual violence and monitor their compliance, including through the Informal Expert Group on Women and Peace and Security. They should also — refer to the Prosecutor of the International Criminal Court situations in which crimes of sexual violence, as defined in its Statute, appear to have been committed (Security Council, May 2021).

The Secretary-General also encouraged member states, donors, regional and intergovernmental organizations — to ensure that victims of sexual violence perpetrated by armed and/or terrorist groups are recognized as legitimate victims of conflict and/or terrorism; to enhance protection measures, in particular for women and children in displacement and refugee settings; to support durable solutions to displacement, including voluntary return in conditions of safety and dignity, through adequate socioeconomic reintegration support; and the prosecution of perpetrators implicated in sexual violence; and to guarantee that law enforcement agencies have the capacity to investigate, prosecute and adjudicate cases of conflict-related sexual violence, including by increasing the representation of women at all levels (Security Council, May 2021).

## Conclusion

In August 2014, ISIS launched attacks in the region of Sinjar in Iraq. ISIS fighters captured thousands of Yazidis. Women were captured and sold as sexual slaves to ISIS fighters, where they were brutally raped every day. This was done as part of ISIS's goal to — purify the region from non-Islamic influences (Human Rights Council, 2016: Castellani, 2020). Sexual violence, including rape, has been used as a war tool throughout history. It is used by ISIS as a strategy to destroy the Yazidis. Rape causes serious mental and physical harm to victims and is therefore looked at as a tool of war with the intent to destroy a group and individuals' personal dignity. Rape committed against the Yazidis is a crime against humanity, a war crime and an act of genocide (Castellano, 2020).

According to the Geneva Convention and The Rome Statute, genocide is defined as the intentional destruction of an ethnic, racial, or religious group — in whole or in part. The Yazidis are, according to the UN commission, considered a protected religious group within the meaning of Article II and Article 6 of the Rome Statute (International Criminal Court, 2011: Human Rights Council, 2016). The Iraqi Penal Code fails to protect Yazidi women from sexual violence due to its vague definition and inadequate laws governing gender-based violence. Rape is limited to vaginal intercourse only and leaves out ISIS's sexual crimes such as penetration by objects and other body parts. The Iraqi Penal Code also states that ISIS fighters cannot be charged with rape if they are lawfully married to the victim. ISIS is aware of the laws and therefore marry Yazidi victims to avoid accountability (Global Justice Center, 2018). International laws are less vague and state that all forms and types of penetration are illegal — married or not — and when used in context of war

and as systematic attacks against civilians, it is considered a crime against humanity and a war crime (International Criminal Court, 2011).

Iraq is a party to the Convention on the Prevention and Punishment of the Crime of Genocide. However, Iraq has failed to make genocide a crime in the Iraqi Penal Code. According to international law, genocide is illegal and governments and international entities are required to prevent, suppress, and punish actors like ISIS. According to Article IV of the Genocide Convention, states that signed the contract must punish both individuals who committed genocide and those who conspire to commit genocide (Human Rights Council, 2016).

The international community, including the UN Security Council, has taken some steps towards helping Yazidi victims. There are protocols in place to address the needs of victims. The UN has also created an investigative team, UNITAD, to collect and establish clear and convincing evidence that genocide was committed by ISIS against the Yazidi as a religious group. However, victims are still requesting the opportunity to face their abusers in court and tell the world what ISIS had done to them. It is not enough to prosecute and execute ISIS members for terrorist actions, but also specifically for the sexual violence committed against Yazidi women (UN Security Council, 2021: UN, 2019).

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## 2.6 Essay

# Roadmap of Turkey for the Full Implementation of the Women, Peace, and Security Agenda

by **Cemre Ulker**

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## Executive Summary

For the last decades, women's rights have been in constant turmoil in Turkey. As a result of the increasing crackdown on the rule of law, the gender equality gap widens over the years with the constant shrinking space of women peacebuilders, decision-makers, and human rights advocates. Women from diverse ethnic and religious backgrounds in Turkey encounter distinct challenges. Extreme levels of violence of all forms that Kurdish women are combatting, impunity against the sexual-based crimes that they face, and the oppression against Kurdish decision-makers remain as unique challenges that hinder sustainable peace and security in the region. Being one of the most critical NATO members with a strong-armed force, Turkey must instate an inclusive National Action Plan to fully implement the Security Council Resolution 1325 to prosper the role of women leaders in conflict prevention and resolution.

## WPS Agenda and Transitional Justice

United Nations Security Council Resolution (UNSCR) 1325, also known as the founding resolution of the Women, Peace, and Security Agenda (WPS), is a visionary roadmap setting international norms to strengthen the role of women's leadership in peace agreements and combat gender-based sexual crimes occurring in war settings and conflict zones.<sup>1</sup> This landmark resolution also recognizes the commitments of the Beijing

<sup>1</sup> United Nations Security Council. (2020). *Resolution 1325*. [https://peacemaker.un.org/sites/peacemaker.un.org/files/SC\\_ResolutionWomenPeaceSecurity\\_SRES1325%282000%29%28english\\_0.pdf](https://peacemaker.un.org/sites/peacemaker.un.org/files/SC_ResolutionWomenPeaceSecurity_SRES1325%282000%29%28english_0.pdf)

Declaration and Platform for Action adopted in 1995 as an outcome of the 4th World Conference on Women. Women, Peace, and Security Resolution aligns and endorses 4 of the 12 critical areas of concern addressed by the Beijing Declaration: violence, armed conflict, power, and decision making.<sup>2</sup>

UNSCR 1325 recognizes the disproportional impact of war crimes and sexual-based violence on women and girls. While discussing the challenges combatted in armed conflicts, the resolution also stresses the critical role that women peacemakers and mediators have in establishing long-lasting peace agreements and security policies. Not only for conflict resolution, but women's leadership is also essential in establishing successful prevention mechanisms.

Gender-mainstreaming of the peacekeeping operations is another important headline that the WPS agenda endorses (in particular UNSCR 2242, 2538). Given the challenging context of conflict settings, women and children have special needs to be protected from sexual crimes, human trafficking, and violence of all forms. To recognize and promote women's and children's rights, WPS Resolution urges the Member States to provide gender-sensitive trainings to their peacekeeping operation personnel. Humanitarian assistance must also be delivered with the same gender-sensitive policy actions.

UNSCR 1325, 1820, 188 and 1960 also bring the urgent responsibility of Member States to end impunity against all forms of gender-based crimes, exempt them from any form of amnesty and prosecute the perpetrators with the full measures provided in their national constitution. If the national law mechanisms do not comply with the global standards and international human rights conventions, Member States must take urgent actions to introduce extensive definitions of gender-based sexual crimes as a tool of weapon. Along parallel lines, States must acquire effective provisions to prosecute the perpetrators preventing repetitive mass atrocities. The full implementation of the rule of law is necessary not to normalize any form of violence against women and children both in times of internal or armed conflict and at different phases of reconciliation.

Besides the implementation of the WPS agenda, in similar aspects, women decision-makers at all levels, human rights advocates and mediators have an influential role in the transitional justice processes as well. The report "Women's Meaningful Participation in Transitional Justice" published by UN Women and UNDP defines transitional justice as "the full range of processes and mechanisms associated with a society's attempt to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation."<sup>3</sup> The framework of establishing transitional justice and the WPS agenda have several common themes underlining women's meaningful participation in establishing peaceful societies where people from all religious, cultural, and ethnic backgrounds live in harmony. Both fundamental working areas promote the critical role of women's leadership embracing feminist norms to prevent any future internal or international armed crisis.

In the context of conflict resolution and prevention, women are mostly presumed as victims. This view not only degrades women leaders' potential and capacity to contribute meaningfully but also hinders young women to equip themselves with resources and skills to take influential roles and high-level responsibilities in social settings and particularly in political life. Meaningful participation of women to fully implement the WPS agenda and establish transitional justice demands more than a gender-balanced physical presence of women in

<sup>2</sup> UN Women. (1995). *Beijing Declaration and Platform for Action*. [https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/CSW/PFA\\_E\\_Final\\_WEB.pdf](https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/CSW/PFA_E_Final_WEB.pdf)

<sup>3</sup> UN Women & UNDP. (March 2022). *Women's Meaningful Participation in Transitional Justice*. <https://reliefweb.int/sites/reliefweb.int/files/resources/Research-paper-Womens-meaningful-participation-in-transitional-justice-en.pdf>

decision-making mechanisms. Women stakeholders must be provided with the same opportunities, social and economic resources to be able to facilitate their mandates on equal terms as their male counterparts. Women decision makers' access to financial resources and budgets is particularly important for the effective implementation of any gender-sensitive policy brief.

UN Women and UNDP's report on transitional justice underlines that identifying and overcoming the challenges and barriers that women face as a form of gender-based discrimination is necessary to increase their meaningful participation in long-lasting, sustainable peace and security. The underlying social, cultural, and political causes of gender inequalities in each society must be extensively analyzed to promote women in leadership positions. Foremost, women's meaningful participation in WPS and transitional justice mechanisms is essential since it is a fundamental human right. Isolation of women from civil and political leadership is a matter of equality. Discriminatory power structures, male-oriented policy-making traditions, and patriarchal traditions must be challenged to facilitate women's critical presence in building cohesive societies. To begin with this transformation, women must be recognized as agents of change, influential stakeholders rather than victims only.

## WPS, Transitional Justice and Turkey as a Country Case

Women's participation in politics is an important part of the facilitation of the WPS agenda and implementation of the transitional justice mechanisms during and in the post-crisis phase of all conflicts. There are many critical obstacles that remain in action in Turkey that hinders women peacebuilders', decision makers' participation. As of today, Turkey does not have a National Action Plan (NAP) focusing on the framework of the WPS priorities. Without any hesitation, over the last decades, the missing commitment and political will to endorse WPS led to failing peace processes and caused an increase in all forms of state violence against women human rights defenders, civil leaders, and women politicians.

Over the last two decades, with the oppressive policies on women and girls in all spheres of civil and political life, dramatically increasing domestic violence, shadow pandemic, femicide, and women's rights in Turkey are far from ideals. Being the first signatory Member State, Turkey's unlawful withdrawal from Istanbul Convention has been one of the recent historical turning points for the crackdown on women's rights and gender equality in Turkey. According to World Economic Forum's Global Gender Gap Report 2021, Turkey is ranked 133 out of 156 countries listed.<sup>4</sup> In comparison to the 2006 scores, all the variables of the Global Gender Gap Index 2021 including economic participation and opportunity, educational attainment, health, and survival and most significantly, political empowerment has been downgraded. In parallel lines, UN Women's "Women in Politics: 2021" reporting also lists Turkey among the low-scoring nations at the 129th rank.<sup>5</sup>

<sup>4</sup> World Economic Forum. (March 2021). *Global Gender Gap Report 2021*. [https://www3.weforum.org/docs/WEF\\_GGGR\\_2021.pdf](https://www3.weforum.org/docs/WEF_GGGR_2021.pdf)

<sup>5</sup> UN Women. (January 2021). *Women in Politics: 2021*. <https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2021/Women-in-politics-2021-en.pdf>

Unfortunately, authoritarian regimes are rising across global posing a greater threat to women's rights and their meaningful participation at all levels of society. The plight of women's access to civil and political rights is becoming more chaotic not only in Turkey but taking place through the crimes against humanity that Ukrainian, Afghan, Iranian, Uyghur, and Yezidi women are facing among the other regions of conflict. As it is observed in the case of Turkey, internal conflicts do indeed take place in the absence of an armed war with the crackdown on rule of law, oppressive state policies, dramatically increasing number of women politicians, journalists, and civil society leaders arbitrarily imprisoned, impunity of different forms applied to the perpetrators of femicide and domestic violence. Authoritarian governments are using their resources and institutions very effectively for the state-endorsed purpose of fostering hate speech and polarization in the society, which are all taking place in times of "peace", if it is only defined as the absence of an armed conflict.

Being in the main axis of Anatolia, Turkey has been a homeland to many ancient societies, ethnic, religious, and cultural groups for hundreds of years. Despite the value of embracing diverse citizens, full of social capital and resources, state policies have not been successful in creating inclusive and peaceful societies. According to the Harvard Divinity School, there are about 20-25 million Kurds across the Middle East with over half living in the southeastern region of Turkey.<sup>6</sup> Even though there are neighboring regions to Turkey claimed as Kurdistan by the Kurdish diaspora, Kurds are among the largest ethnic groups without an independent, established, officially recognized state. Since the 1970s, the foundational demand of Kurdish citizens living in Turkey have been ending the hate speech and violations against Kurdish citizens, and right to speak their mother tongue, disseminating Kurdish literature culture legally, and having a Kurdish media outlet, which are all among the fundamental civil and social rights. However, a Kurdish identity was intentionally discouraged by the nationalist regimes throughout the decades with the Turkification methodologies of enforcing one state, one nation, one language state policies.

Human rights violations that Kurdish citizens are encountering in Turkey remain one of the most critical social and political obstacles in Turkey hindering the establishment of a peaceful, secure, and just society. In the last 30 years, civil and political space in Turkey has been shrinking for Kurdish citizens at an increasing pace. Eventually, Kurds have been divided into violent, marginalized guerilla groups (Kurdistan Workers Party-PKK) in the late 70s as well as democratic, political initiatives through the establishment of the People's Democratic Party (HDP) in 2012, being the 3rd largest political party in Turkey with the highest number of women members of parliament in the Turkish Grand Assembly.

Kurdish women are very brave in every sphere of civil and political life to demand their fundamental rights and actively participate in local, regional, and national politics through women's initiatives, and peaceful platforms. However, when the political will to promote women's meaningful participation in the WPS agenda is missing, oppressive state policies hijack the peaceful, political, and civil contributions of women. No form of violence can ever be justified on any grounds. However, when crowded ethnic groups are faced with devastating life-threatening means and mass destructions, individuals are leaning toward violence to seek justice. In the case of Turkey, it is observed that the missing commitment of Turkey to establish a NAP and endorse Kurdish women's contributions to peacemaking processes resulted in taking Kurdish citizens, both women and men as guerillas, to the mountains to fight against their own country's armed forces.

It is an unfortunate result that at times when civil and political participation of dissidents is not allowed, when women are tortured by their own government's peacekeeping forces, raped mostly in Eastern regions of

<sup>6</sup> Harvard Divinity School. *Kurds in Turkey*.  
<https://rpl.hds.harvard.edu/faq/kurds-turkey>

Turkey by the officials, they are left with no legal means to seek justice and have access to fair trials. In this dead end, women lose their trust to the independent rule of law.

Women peacemakers' and especially Kurdish women politicians' contributions to endorse a WPS NAP in Turkey is a fundamental requirement to establish transitional justice. Kurdish Parliamentarian Members have been arrested since the failure of the Kurdish peace processes and many of them are women representatives. Aysel Tuğluk is a Kurdish politician, who is now sentenced to 10 years in prison. Despite her critical medical condition and Kocaeli Faculty of Medicine's reports indicating that she is not eligible to stay in prison, Tuğluk remains in isolation and can not access proper medical treatment.<sup>7</sup> In the Summer of 2020, before her medical and mental condition worsened, she sent an essay to the Middle East Research and Information Project, underlining "Kurdish women's political struggle was now moving on two axes. On one hand, it was playing a role in the struggle for the existence and freedom of unrecognized people. On the other hand, it was trying to advance the equally important issue of women's liberation."<sup>8</sup>

Attacks on Kurdish peaceful women political and civil actors continue at different levels. On June 2021, in the province of Izmir located in Western Turkey, HDP's Izmir office has been attacked and the perpetrator killed Deniz Poyraz, the youngest women member of the Izmir HDP party delegation.<sup>9</sup> On the civil persecution side, a Kurdish mothers-led movement "Saturday Mothers" continues their dedicated call as Kurdish mothers have been gathering every Saturday in a very well-known square in Istanbul, Taksim, seeking justice for their abducted sons and daughters for the last 26 years. Women peacemakers and representatives are delivering public statements calling the authorities to find the missing, abducted Kurdish children. Unfortunately, every single Saturday, the peaceful protestors are systematically facing extreme police interference during public gatherings. Unlawful detention of elderly mothers and grandmothers are taking place.<sup>10</sup>

The impunity of sexual violence against women is also at its peak in Turkey. A Turkish court recently rejected to impose pre-trial detention for sergeant Musa Orhan and then suspended his arrest, who faced charges of raping an 18-year-old Kurdish woman, Ipek Er, in the Southeastern province of Batman.<sup>11</sup> In a recent Commission on the Status of Women parallel event organized by Set Them Free on March 2022, HDP Member of Parliament Huda Kaya talked about the challenges of women from all backgrounds in Turkey to take an active role in the transitional justice forms in Turkey. MP Kaya underlined that "There are countless cases of femicide, rape and harassment of all forms against women in Turkey for many decades. If the perpetrators of such sexual crimes are government officials, in most of the cases, the criminals are exempted from any charges. I have been attending the femicide trial cases as a witness over the years, but unfortunately the transitional justice, the rule of law is not independent. It is male-dominated and transformed the system embedding their patriarchal values."<sup>12</sup>

<sup>7</sup> Duvar English. (February 2022). *Kurdish politician suffering from illness sent back to jail after three days under observation*. <https://www.duvarenglish.com/kurdish-politician-aysel-tugluk-suffering-from-illness-sent-back-to-jail-after-three-days-under-observation-news-60316>

<sup>8</sup> Middle East Research and Information Project. (2020). *Where will you find that many women?* <https://merip.org/2020/08/where-will-you-find-that-many-women/>

<sup>9</sup> Bianet English. (June 2021). *Attack on HDP Izmir Office: Party Worker Deniz Poyraz Killed*. <https://bianet.org/english/human-rights/245836-attack-on-hdp-izmir-office-party-worker-deniz-poyraz-killed>

<sup>10</sup> The London School of Economics. (September 2021). *The Saturday Mothers movement in Turkey: 26-year quest for justice and truth*. <https://blogs.lse.ac.uk/wps/2021/09/09/the-saturday-mothers-movement-in-turkey-26-year-quest-for-justice-and-truth/>

<sup>11</sup> Duvar English. (February 2021). *Turkish court again rejects request to arrest former sergeant in ongoing rape case*. <https://www.duvarenglish.com/turkish-court-again-rejects-request-to-arrest-former-sergeant-musa-orhan-in-ongoing-rape-case-news-56412>

<sup>12</sup> Set Them Free. (March 2022). *Women's Lack of Access to Justice in Turkey*. <https://www.youtube.com/watch?v=fYq73VpK9-M&t=1993s>

## Expected Dynamics of Turkey`s Future NAP on Women, Peace, and Security Agenda:

Turkey is an influential NATO Member with the 5th strongest military among the other 30 Member States followed by Germany, Spain, and Canada.<sup>13</sup> Having a strategic role in bringing together the Middle East with Western states, Turkey can have an impactful leadership in the region. However, a critically improved human rights report card is required to carry out to be a key stakeholder. All the pillars of positive peace must be embedded into the policy-making bodies to respect every citizen's right to live in dignity, where fundamental human rights are promoted.

As of today, according to the Women's International League for Peace and Freedom, there are 98 UN Member States that have adopted a National Action Plan (NAP) aiming for the full implementation of the UNSCR 1325.<sup>14</sup> The first NAP was put into action by Denmark in 2005 and the recent proactive mandates are imposed by Mexico, United Arab Emirates and South Africa. 70 of these NAPs underline the critical role of civil society organizations dedicated to uplifting women leaders' roles and responsibilities to establish long-lasting sustainable peace and security.

Hindering cultural and traditional norms, similar patriarchal barriers with the same historical roots impose unique challenges for women to be active stakeholders in peacemaking. Among the countries with a NAP on Women, Peace and Security agenda, it is observed that countries with parallel historical and cultural backgrounds with Turkey (Gender Gap Index:133 – Women in Parliament Index:129) have higher rankings both in the gender inequality gap and the political participation of women ratings. Bosnia Herzegovina (Gender Gap Index:76 – Women in Parliament Index:78) and Azerbaijan (Gender Gap Index:100 – Women in Parliament Index:125) are some of the country cases where the introduction of NAP has taken these states to better rankings at the world-renowned listings.

Turkey must instate a NAP to protect and promote women's fundamental right to meaningfully participate in all decision-making levels. An effective National Action Plan is a requirement to be a critical stakeholder in the transitional justice phase and Turkey must embrace of its NAP's framework to improve human rights for all. Ending the chaotic social, cultural, and political atmosphere in Turkey and protecting the rights of Kurdish citizens is not possible without the presence of women in the peace processes. Let alone triggering the peace initiations for harmony and diversity in the country, the establishment of a NAP will surely improve Turkey's record of gender equality and women's rights as the pillars of the WPS agenda opens many arenas endorsing women's meaningful participation.

There are surely unique challenges and contexts that every Member State must address in producing an effective NAP. Foremost, the active role of civil society organizations must be recognized in establishing a critical partnership by involving their credible field experience in the drafting sessions from the early stages

<sup>13</sup> Global Fire Power. (2022). *NATO Member States Military Ranking*.  
<https://www.globalfirepower.com/countries-listing-nato-members.php>

<sup>14</sup> Women's International League for Peace and Freedom. *1325 National Action Plans (NAPs)*.  
<http://1325naps.peacewomen.org>

on. However, contrary to this requirement, after the failed coup attempt of July 2016 in Turkey, there has been a massive crackdown on civil society organizations and a shrinking space of NGO initiatives. Many women's rights organizations have been leading a very critical role for the empowerment of women and girls in Eastern part of Turkey, which are mostly shut down by groundless decree laws. Peaceful civil society organizations working towards women's rights must be re-opened urgently and continue their socio-economic development operations.

Foremost, a political commitment must be presented to raise awareness of the concerns and barriers that women peacebuilders and decision-makers encounter in Turkey. Back in 2011 June, Ministry for Women and Family was replaced with the Ministry of Family and Social Policies.<sup>15</sup> This backward policy step wiped away the gender-mainstreaming of many government actions. A high-level state body must oversee the content of a NAP and layout the fundamental implementation steps by mobilizing diverse stakeholders of civil society organizations, women's rights movements, feminist activists, media outlets and higher education institutions.

On the lines of rule of law, Turkey's NAP must have determined actions to end impunity against all forms of sexual and gender-based violence against women and girls as envisioned by Sustainable Development Goal 16. There must be a series of gender-sensitive trainings provided to the local police officers, peacekeeping operators, and judiciary members. The same set of legal actions must be taken toward the perpetrators of rape and femicide, even if the criminal is a government representative or an armed soldier. Sexual crimes must be exempted from any form of amnesty. All imprisoned women Members of Parliaments must be immediately released.

Unlawful and arbitrary detention of women peacemakers, political prisoners must be tried based on international human rights standards.

A successfully designed and implemented NAP in Turkey will not only empower women in all levels of decision-making positions and endorse UNSCR 1325, but also strengthen the role that Turkey has in a historically challenging region to prosper peace and security. It must be embraced by the whole society that women's rights are foremost a matter of equality, and it must never be an agenda concerning women human rights advocates only. Promoting and protecting women's significant role in establishing long-lasting peace and security will not only increase gender equality in society but improve the economic, social and political empowerment.

<sup>15</sup> Human Rights Watch. (June 2011). *Turkey: Backward Step for Women's Rights*. <https://www.hrw.org/news/2011/06/09/turkey-backward-step-womens-rights#>





## 2.7 Essay

# Enhanced Interrogation Techniques in the United States and the Violation of International Law

by **Judith Vargas**

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## Introduction

Twenty years have passed since the 9/11 terrorist attacks on New York City, considered the largest terrorist attack in US history. The tragic event marked the beginning of the so-called “war on terror”, framing an era of fear, abusive programs, torture, and illegal detention and interrogations. Under the Bush administration, the CIA was authorized to use a detention and interrogation program as a way to extract information or confession of suspected al Qaeda members and others believed to be involved in the attacks. The methods utilized included psychological and physical pain. These interrogations occurred in secret overseas CIA prisons or black sites, such as Abu Ghraib. This paper aims to prove that international humanitarian law was violated in the United States during the CIA’s Detention and Interrogation Program.

## Enhanced Interrogation Techniques in the United States

As a consequence of the 9/11 attacks, the United States declared the War on Terror a few days later after. Former President George W. Bush addressed Congress and expressed that “Our war on terror begins with al Qaeda, but it does not end there...It will not end until every terrorist group of global reach has been found, stopped, and defeated” (George W. Bush Library, n.d.). The War on Terror resulted in the authorization by the Bush administration of various initiatives, including the CIA’s Detention and Interrogation Program,

conducted between 2002 and 2009. The program allowed the use of “enhanced interrogation techniques” on suspected terrorists. According to a declassified report 119 detainees were held in CIA custody, and at least 39 were subjected to these techniques (United States., and Feinstein, 2014) that involved psychological and physical pain. Some of the methods of these “enhanced interrogation techniques” consisted of:

- Waterboarding - Waterboarding, or “water torture,” is an anguish execution where an interrogator straps a prisoner to a board, places a wet rag in his mouth and pours water through the rag induces controlled drowning.
- Solitary Confinement - Detainees are confined with no human interaction and in some circumstances are left for long periods.
- Sleep deprivation - A detainee is placed in a horizontal position and the interrogator maintains the individual awake by shackling him in such a painful position that it made it impossible to sleep.
- Walling - This technique involves encircling the detainee’s neck with a collar or towel, and slamming him against a wall.
- Stress positions - Detainees are placed in uncomfortable positions for a long time. Some positions include shackling a detainee without clothes at the wrist to the prison bar.
- Rectal feeding and rehydration - Interrogators insert a tube with pureed food into the detainee’s anal passage.

An individual named Abu Zubaydah is believed to be the first person who was subjected to the CIA’s torture and “enhanced interrogation techniques” program, he is called patient zero (or experiment zero) in reports. Zubaydah was captured in March 2002 when he was shot in Pakistan by Pakistani authorities who were working with the CIA and transferred him to a detention center in Thailand. According to The Senate Intelligence Committee report on torture, during 20 days of interrogation Zubaydah underwent “a total of 266 hours (11 days, 2 hours) in the large (coffin size) confinement box and 29 hours in a small confinement box, which had a width of 21 inches, a depth of 2.5 feet, and a height of 2.5 feet. The CIA interrogators told Abu Zubaydah that the only way he would leave the facility was in the coffin-shaped confinement box” (United States., & Feinstein, D., 2014). Eventually, Zubaydah has not been charged since the day he was transferred to Guantanamo.

## Abu Ghraib

Numerous cases of abuse and torture of prisoners incarcerated in the Abu Ghraib prison in Iraq by the U.S. service member at the beginning of 2003. These abuses came to light when Sergeant Joseph M. Darby gave anonymously Army investigators a CD containing the notorious pictures of prisoner abuse in 2004 (Dunoff et al., 2015). After investigation, it was found that detainees at the Abu Ghraib prison were tortured

and abused by American soldiers. Some of the abuse included photographs and videotapes of naked male and female detainees, the use of military working dogs, the use of electric torture, placing a sandbag on the detainee's heads, sexually abusing the female detainee, and other atrocities (Human Rights Watch, 2004). However, only a small number of U.S. soldiers were tried and charged. Some of the defendants were charged with mistreatment, assault, conspiracy to mistreat, dereliction of duty, and other offenses and those convicted were demoted in rank, dishonorably discharged, sentenced to prison, or some combination of these (Dunoff et al., 2015). Eventually, "Several cases are still being investigated as possible homicides. To date, no one has been criminally charged in any of the cases (Human Rights Watch, 2004).

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

International human rights law defines the limits of state power over individuals and imposes positive obligations on states towards them. States voluntarily sign and ratify treaties that recognize and guarantee the rights of each person. In 1984, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the "Torture Convention") was approved by the United Nations, to reinforce the fight against torture and other forms of cruel treatment. The Convention entered into force on 26 June 1987 and there are currently 113 parties and 84 signatories (United Nations, 1984). The United States signed the Convention on April 18, 1988, and agreed to follow and take effective measures to prevent torture.

Article 1, paragraph 1 of the Convention establishes a definition of torture and states that "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions" (United Nations, 1984). From article 1, three fundamental elements can be derived from this definition, which is that: (1) Intentionally inflicting severe pain or suffering, whether physical or mental, (2) By a public official, directly or indirectly involved, and (3) deliberate intent to inflict pain and suffering.

Article 2 of the Convention, states that all States Parties "shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction" (United Nations, 1984). Meaning that States are obliged to take all necessary measures to prevent acts of torture. These measures include those of a legislative, administrative, and judicial nature, as well as any other measure that may be appropriate. Article 2.2 of the Convention establishes that under "No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture" (United Nations, 1984). In other words, unforeseen circumstances do not justify torture.

Article 3 of the Convention states that “No State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture” (United Nations, 1984). This article establishes the principle of non-refoulement, which requires States not to proceed with the expulsion, return, or extradition of a person to another State when there are “well-founded reasons” to believe that the person would be in danger of being subjected to torture.

Article 14 states that “Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation (United Nations, 1984). This article of the Convention specifies that victims of torture have the right to seek reparation, compensation, and rehabilitation if possible.

## International Covenant on Civil and Political Rights (ICCPR)

The International Covenant on Civil and Political Rights (ICCPR) was approved by the United Nations General Assembly in its resolution 2200 A (XXI) on December 16, 1966. The ICCPR is an international treaty and it entered into force on March 23, 1976. It has currently been ratified by 173 countries; another six States have signed it, but not ratified it and 18 are completely outside this treaty. The U.S. ratified the ICCPR in 1992. Upon ratification, the ICCPR became the “supreme law of the land” under the Supremacy Clause of the U.S. Constitution, which gives ratified treaties the status of federal law (American Civil Liberties Union, 2022). The ICCPR is the first universal human rights treaty implemented to prohibit torture and other cruel, inhuman, or degrading treatment. There are two articles in the ICCPR that specifically talk about torture, which are articles 7 and 10.

Article 7 states that “No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation” (UN General Assembly resolution, 1966). This article indicates that a person may not be subjected to torture, treatment, or punishment that is cruel, inhuman, and degrading.

Article 10 states that “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person” (UN General Assembly resolution, 1966). Article 10 means that individuals who are detained or in detention centers should not be subjected to treatment that violates their human rights.

## United States Violation of International Law

Although the United States law prohibits torture, the use of the “enhanced interrogation techniques” clearly violated the international prohibition of torture and other ill-treatment and protections to detainees. The Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment treaty articles 1, 2, 3, and 14 and the International Covenant on Civil and Political Rights (ICCPR) articles 7 and 10 prohibit torture and mistreatment of detainees. Under the program, the Convention was violated in the US by transferring suspected terrorists to different black sites around the world and it subjected the detainees to deplorable and horrific abuses, mistreatment, and torture.

A memorandum from a working group appointed by Pentagon legal counsel Haynes that was headed by Air Force General Counsel Mary Walker and included senior civilian and uniformed lawyers from each military branch, and which consulted the Justice Department, the Joint Chiefs of Staff, the Defense Intelligence Agency and other intelligence agencies argued that “the president had the authority as commander in chief of the armed forces to approve almost any physical or psychological actions during interrogation, up to and including torture, in order to obtain “intelligence vital to the protection of untold thousands of American citizens”” (Human Rights Watch, 2004). However, Human Rights Watch points out that The Convention Against Torture “provides [n]o exceptional circumstances whatsoever, whether a state of war or a threat or war, internal political instability or any other public emergency, may be invoked as a justification of torture” and The International Covenant on Civil and Political Rights, who considers the right to be free from torture and other cruel, inhuman or degrading treatment as nonderogable, “meaning that it can never be suspended by a state, including during periods of public emergency” (Human Rights Watch, 2004).

In addition, the U.S. as well failed to sign the Optional Protocol of the Convention against Torture (OPCAT) of 2002. The Optional Protocol to the Convention against Torture was adopted by the United Nations General Assembly on December 18, 2002, and it entered into force on June 22, 2006. The OPCAT was implemented not only to strengthen the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment but also to establish a system of regular visits to places of detention carried out by independent national and international bodies to prevent torture and other cruel, inhuman or degrading treatment or punishment (Human Rights Watch, 2009). There are 48 member states, however, the United States is not a State member of the Optional Protocol of the Convention against Torture (OPCAT). According to Human Rights Watch, “The Bush administration has objected to the protocol, stating in 2002 that inspections mandated by the protocol would be “overly intrusive” and that the US legal system already provides numerous opportunities for persons in detention to complain about abuse. It has also said that the protocol would infringe on the federal rights of individual US states, but this objection is not supported by US Supreme Court case law” (Human Rights Watch, 2009).

In 2009 former President Barack Obama banned the CIA’s torture techniques via executive order. However, Obama failed to indicate what was going to happen with the Guantánamo detainees. As of today, the Guantánamo still holds 39 detainees and they continue to be detained indefinitely in violation of the due process of law and other internationally recognized human rights (Amnesty International UK, 2022).

## Conclusion

The 9/11 attacks changed the lives of many people. In order to protect America from any terrorist attack, the United States implemented the CIA Detention and Interrogation Program, which allowed the use of “enhanced interrogation techniques”. These techniques were cruel, inhuman, and torturous. It also violated international human rights laws such as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) and the International Covenant on Civil and Political Rights (ICCPR) (1966). The U.S. convicted eleven military members of the US Department of Defense for torture in the Abu Ghraib prison. However, there was a problem with the adequacy of punishment for the severity of the crimes committed at Abu Ghraib. According to a United Nations Special Rapporteur, Nils Melzer “the perpetrators and policymakers responsible for years of gruesome abuse have not been brought to justice, and the victims have received no compensation or rehabilitation” (United Nations, Office of the High Commissioner for Human Rights, 2017). Finally, current U.S. President Joe Biden announced in 2021 that his Administration would study how it could shut down Guantanamo, as was first promised by former President Barack Obama (United Nations, Office of the High Vargas 11 of 13 Commissioner for Human Rights, 2021). Since this date, the current administration has maintained silence.



UN PHOTO/ESKINDER DEBEBE

General Assembly Elects President of 77th Session of General Assembly  
Csaba Kőrösi (at podium), President-elect of the seventy-seventh session of the United Nations General Assembly, addresses the 75th plenary meeting of the 76th session of the General Assembly. The Assembly elected Csaba Kőrösi of Hungary as President of the seventy-seventh session of the UN General Assembly during the meeting.

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# UNITAR GLOBAL DIPLOMACY INITIATIVE 2022

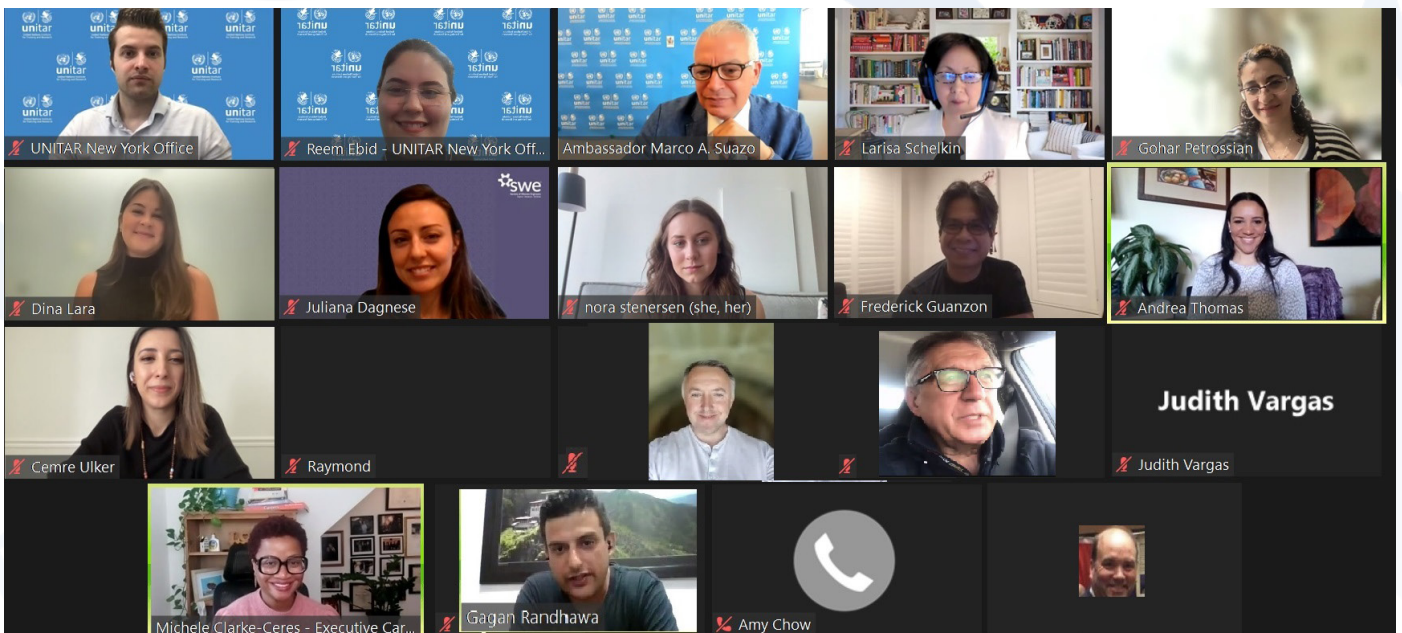




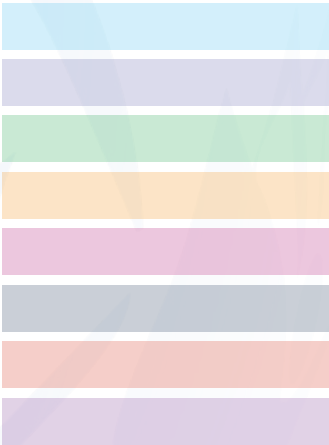
### 3 Final Notes and Remarks – GDI Publication

UNITAR is pleased to offer the Global Diplomacy Initiative each semester at the United Nations Headquarters. GDI serves as a portal into the UN system for students interested in international relations and global diplomacy, with the hope that it will inspire its participants to pursue careers and further studies in this field. In hopes of ensuring a brighter future through diplomacy, the newly-designed UNITAR Global Diplomacy Initiative allowed students to experience international relations and contemporary politics alongside those actively engaged in these fields — the diplomats themselves. Designed for students enrolled in Political Science, International Relations, or similar academic programmes within New York colleges and universities, the programme includes access to UNITAR's Core Diplomatic Training toolkit, weekly three-hour seminars with renowned professors, as well as the opportunity to synthesize diplomatic methodology and current affairs into an academic paper under their guidance. Students have the opportunity to attend meetings of the High-Level Political Forum for Sustainable Development, informal meetings in the Economic and Social Council, General Assembly meetings and other events occurring in the United Nations Headquarters.

# Graduates and Faculty



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## 4 BIOGRAPHIES OF INSTRUCTORS



### H.E. Dr. Yuriy Sergeyev

Former Permanent Representative of Ukraine to the United Nations

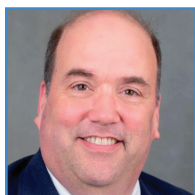
Senior Fellow and Lecturer at MacMillan Center for International and Area Studies, European Studies Council, Yale University. Ambassador Yuriy Sergeyev is a former Ukrainian diplomat and politician, having served as the Permanent Representative of Ukraine to the United Nations from 2007 to 2016 and Bahamas (2008-2015); as Ukrainian Ambassador to France and UNESCO “2003-2007”; to Greece, and Albania (1997-2000). He held various posts in the Ukrainian Ministry of Foreign Affairs - Director of Information Department (1992-1994); Chef de Cabinet (1994-1996); First Deputy Minister (2001); State Secretary (2001-2003). Before joining diplomatic service of Ukraine in 1992, Yuriy Sergeyev for 12 years worked in the academic sphere as assistant professor, associate professor, professor at Kiev State University (Ukraine); at UNESCO guided Politechnical Institute in the Republic of Mali (1983-1986); and at the Scientific board of the Institute of Eastern Studies “Paris-Sorbonne IV” (France). He has a PhD degree from the Institute of Linguistics of Ukrainian Academy of Science (1987). Yuriy Sergeyev holds a rank of Ambassador of Ukraine (2000). He is a Grand Officer of the State Order of Ukraine “For Merit” (2006).



### Dr. Angel Angelov

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He is specialized in the work of the UN Security Council, with a particular focus on agenda items related to Europe and the Middle East. Dr. Angelov was recently elected as a Bureau member of the Special Political and Decolonization Committee for the 72nd session of the UN General Assembly. Dr. Angelov has been a visiting professor at several universities in Europe and North America where he teaches courses on different aspects of the work of the UN. He holds various academic degrees in political science, international security and regional studies from the University of Geneva, the University of Bologna and the University of Athens. Dr. Angelov was awarded numerous research grants, contributed to over 100 international conferences and workshops on foreign policy and has published more than 40 academic and media articles and book chapters. He is a member of editorial boards of a peer-reviewed journal and contributes to different think tanks.



### Dr. Michael Jabot

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## Ms. Jelena Pia-Comella

Former Deputy Permanent Representative of the Principality of Andorra to the United Nations, Senior International Consultant

Ms. Jelena Pia-Comella has 25 years of experience in international relations and a deep knowledge of the United Nations system. Starting her career in 1996 as a diplomat representing Andorra at the United Nations, she was part of the team that created foreign policy of her country. She participated in the Conferences and negotiations that set new standards in international human rights and international humanitarian law such as the Rome Statute and the Responsibility to Protect norm. Ms. Pia-Comella was appointed Deputy Permanent Representative of Andorra to the United Nations in 2002 and served as chargé d'affaires a.i./Chief of Mission to Canada and the United States from 2001 to 2007. She shifted her career to transfer her knowledge and skills to the service of activism. She was a consultant for the Center for Women's Global Leadership and Women's Environment and Development Organization to coordinate the Gender Equality Architecture Reform Campaign (GEAR) which led to the creation of UNWomen. She was the Deputy Executive Director of the World Federalist Movement – Institute for Global Policy (WFMIGP) setting the strategy and overseeing the work of the Organization including the secretariats of the International Coalition for the Responsibility to Protect and the Coalition for the International Criminal Court. Ms. Pia-Comella served as adviser on gender, peace, and security issues for the Organization Internationale de la Francophonie from June 2019 to August 2021. Ms. Pia-Comella is currently consulting with the Global Action Against Mass Atrocity Crimes (GAAMAC) as Managing Coordinator of GAAMAC's Support Office; adjunct lecturer at John Jay College of Criminal Justice and faculty member of the United Nations Institute for Training and Research (UNITAR).



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Larisa is the author of the Global STEM Classroom® - a globally connected teaching and learning model. She develops and runs collaborative Global STEM programs with schools and universities in Massachusetts and around the world. Before that, Larisa held executive positions in academia and STEM multinational corporations (WPI, WIT, Tufts University; TYCO Electronics Global Corporation). Larisa was a Fellow for Education Policy, Rennie Center for Educational Research and Policy & Institute for Education Leadership (IEL), Washington, DC (Class 2015); Larisa is a Fellow Global Diplomacy Initiative at UN Institute of Research and Training (Class 2021). She is a NASA GLOBE educator, NASA GLOBE International Science Network member, NASA GLOBE International Virtual Symposium judge and NASA GLOBE US Student Research Symposium leadership group member. Larisa served as a Chair of Society for Women Engineers National Multicultural Committee – including leading SWE NASA Space Camp program, SWE Motorola Multicultural National Awards, SWE The Boeing Company Multicultural National Awards. Larisa is a frequent speaker at many professional associations' conferences. Larisa Schelkin holds a BS and MS in Petroleum Engineering & MS in Computer Science. Before moving to Boston she and her family lived in India, Africa, and Russia.

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