Justice is not a construct.
The Universal Declaration of Human Rights (UDHR) is a milestone document, which underpins all international human rights law and inspires us to continue to work to ensure all people can gain freedom, equality and dignity.
In 2018, the Declaration turns 70.

Article 1.
All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2.
Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3.
Everyone has the right to life, liberty and security of person.

Article 4.
No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5.
No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6.
Everyone has the right to recognition everywhere as a person before the law.
Article 7.
All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8.
Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9.
No one shall be subjected to arbitrary arrest, detention or exile.

Article 10.
Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11.
(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.
(2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.
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Justice is not a construct

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Law and order exist for the purpose of establishing justice and when they fail in this purpose they become the dangerously structured dams that block the flow of social progress

Martin Luther King, Jr.
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Justice is not relative in the global community

What does really justice mean? Is there a justice for all? The etymology associates the word justice to righteousness, equity and just behaviour. Over the centuries, justice has been always considered as a central virtue to both the moral and political dimensions of societies. Despite the many – and sometimes opposite – interpretations, justice should be aimed at establishing balance among powers and societal order. Justice is the litmus test for the well being of the community as well as for the conduct of its governors.

Modern philosophers rejected the idea of justice as a natural moral and political absolute value. Justice was thus interpreted as a social contract, something of a public construct or artefact which in the “state of nature” would not exist because we are motivated by antagonism and selfishness that result in non-cooperative behaviours. Other lines of thought were centered around the causal determinism and substantial egoism driven by survival instinct and self-interest. In this sense, justice was also seen as a tool to guarantee a balance between personal liberty and public order.

Actually, defining justice has always been about framing the values of human beings, their needs, their aspirations and their interactions with the other members of their community. All over the centuries, the most advanced societies were those striving to develop justice systems reflecting values and virtues, political and moral obligations. These were the societies were equal rights, peace and cohesion were central. By contrast, history has casted an ignominious shadow on those who built empires funded on violence and inequity. For those, justice was nothing but an instrumental architecture of rules to justify repression and wars. Too many dictators used law to trample human rights, maintain the status quo and impose a regime of terror.
Nullum crimen, nulla poena sine lege. A crime does not exist and is not punishable if there is not a law that defines it. This guarantees that a person cannot be arbitrarily condemned for a crime that is not regulated by a law. On the other hand, this is where the very dilemma of justice lies. If a country does not regulate certain offenses, the offenders are not punishable. The crime does not exist. The crime becomes a construct of a specific culture.

The question then arises: are we, as a global community, sharing the same values and principles? Are we adopting the same concepts that help shaping appropriate justice systems aiming at addressing any type of violation against human beings and triggering a process of cohesion and development? One can argue that justice as well as human rights are artificial values defined by different contexts and cultures. This relativity that feeds violence and impunity has to be strongly condemned. No regime, no offender, should feel that justice is merely an option, a dress that can accommodate different needs time by time.

There is no such relativity in the preamble of the UN Charter signed in 1945: *We people of the United Nations determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in larger freedom.*

There is no such relativity in the provisions of the Universal Declaration of Human Rights. 70 years ago
the General Assembly proclaimed the Declaration and the words of its preamble do not leave space for relativity:

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,
Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,
Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law. The articles of the Declaration tell us about a humanity that is progressing towards a new model funded on universal principles to be protected by a new model of universal justice.

Kant’s vision projects a model of global law shared by all peoples of the earth, which prevails everywhere to the point that a violation committed in one place of the world is perceived as such in all the other places. This ideal of universal justice was echoed two centuries later in UN Secretary-General Dag Hammarskjold’s belief that the pain caused by a wound in the world is heard at the same time in the body of humanity.

Kant’s revolutionary theory of justice is the first approaching the idea of justice as an absolute moral value governing international relations and the world. Justice is not relative to whatever ends and objectives but is an independent, objective, non-arbitrary variable. The categorical imperative as the principle of duty applicable to all persons as moral agents is the pillar of this vision: it is our duty to be just simply because this is the right thing to do. Justice is the only innate human right we have as equal rational agents, and is the right of freely follow our own will so as long as it is compatible with the freedom of everyone else in accordance with a universal law.

Today, the images of death and devastation on the numerous war fronts are open wounds in our collective conscience. We see people disappearing, jailed without a fair trial, abused, silenced and forgotten. Much progress is needed to foster international justice and peace. Today weapons of mass destructions and new technologies are threatening the survival of the human species. Today we face risks without frontiers from climate change to terrorism, but we are not able to share common solutions. We cannot afford and get stuck in this paralysis anymore. When we see the rising of nationalism and the retreat from transnationalism, we should remind ourselves the mistakes of the past.
As global community, we have developed tools such as conventions, courts, and mechanisms for coordination and mutual legal assistance. But still, in too many places old paradigms and regressive conceptions of society are impeding a real progress towards universal values.
We live in a world that is exponentially subject to the effects of a techno-financial revolution as well as to the de-territorialisation of citizenship. We are all interconnected and we share common challenges. We should acknowledge that we are just a global community. Our cooperation models in terms of justice and human rights should operate at the same scale. Much more should be done for the universal equality of human beings as cosmopolitan citizens to be achieved.

The Chart of the United Nations, the UN Declaration of Human Rights as well as the International Tribunals are among the most important achievements of the 20th century. We need international justice to reinvigorate and protect them. Despite the progresses and the achievements of the present, the atrocities committed in many countries in the name of rules and principles that blatantly violate human rights require international justice to be strengthened. Justice cannot be reduced to pragmatic utility, and the global community together with its member states must recognize the need to develop a common cultural model to sustain the universal idea of justice.
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Women

Always in the front line to defend rights and peace. Always the first to be hit by violence and conflicts.

#TimeIsNow  
#Womenday #IWD2018  
#TimesUp @UN_Women  
#Standup4humanrights
“Pennies from heaven”
Three case studies on civil forfeiture

by Dilia Marcela Ortíz Fonseca

Colombia, 19th June 1991: Pablo Escobar turns himself in, a few hours after a Constituent Assembly overturned the extradition of Colombian nationals. Seven years of terrorism and political murders perpetrated by the Medellín Cartel and “The Extraditables”, whose motto was “we prefer a tomb in Colombia, than a dungeon in the US”, were over. That day, Colombia knelt down to the narcos: with no extradition law, no money laundering legislation, no international judiciary cooperation and a level of corruption that had reached the highest instances of power.

However, the same Constituent Assembly introduced in the Political Charter article 34, which bans the criminal sanctions of exile, life-time sentences and confiscation, but allows the so called extinción de
dominio, or extinction of property, for those assets deriving from illicit enrichment, in cases of embezzlement of public funds, or with serious harm to the social morals. The extinción de dominio, sought to be introduced by a State of Emergency decree in 1980 and then declared unconstitutional for violating the fundamental right of property, passed unnoticed on this occasion: it was sown like a seed that later developed into the strongest weapon of the Colombian Government against corruption and organised crime.

Still, many years had to go by before this constitutional provision, which changed the rules of the game for drug cartels and corrupted officials, could be implemented. In 1996, after the death of Pablo Escobar, the Colombian Congress approved the first law of extinción de dominio (law 333/1996) allowing the State to confiscate the proceeds of crime at any time - even after the death of the perpetrator - when there is unjustified disproportion between the value of the owned property and the feasible income of the owner. The immense fortunes of the traffickers started to fill the public coffers and criminals realised that the inclusion of this measure in the Political Charter was a fatal trap, for it hits them where it most hurts: the wallet!

The situation in Italy, in the eighties and early nineties, was not all that different. In fact, 1992 was a tragic year in the history of Italy. Giovanni Falcone and Paolo Borsellino, two criminal judges engaged in the anti-mafia war for more than twenty years were assassinated after having carried out the Maxi-Trial (1986-1992): the most important trial against the Sicilian mafia.

Colombian Congress approved the first law of extinción de dominio (law 333/1996) allowing the State to confiscate the proceeds of crime at any time.

The peculiarity of this trial, where 474 mafiosi were indicted.
and 360 were convicted (including 19 life sentences to the mafia bosses), was the innovative approach of holding the mafia as an organisation responsible for its criminal activities instead of trying individuals for isolated crimes. This was possible thanks to the first Italian anti-mafia law of 1982, known as “Rognoni-La-torre law”, that criminalised the act of belonging to a mafia-type organisation. This law envisaged a “mandatory confiscation” for the assets directly linked to the crime, as well as a “preventive confiscation” for the property of the person affiliated to a criminal organisation in order to avoid its reuse in other criminal activities.

The latter was declared unconstitutional for contradicting the principle of presumption of innocence and Italy, like Colombia, remained without a comprehensive legal framework on forfeiture until 1992, when a new law (decree law 306/1992) established the “enlarged confiscation,” which allowed the judiciary to attack the proceeds of crime with the only proof of the affiliation of a person to a mafia-type organisation, or his/her “criminal lifestyle.” By shifting from prosecuting the criminals to prosecuting their assets, this law was the cornerstone for a more efficient confiscation system in Italy.

On the other side of the Atlantic, the United States was also setting up a legislative strategy against organised crime. Early in 1970, the Congress passed the equivalent of the Rognoni-Latorre law: the Racketeer Influenced and Corrupt Organisations Act, known as RICO Act, to inaugurate what President Nixon called the “war on drugs”. One of the penalties imposed by the RICO Act, was the mandatory confiscation of the proceeds of crime. This measure was the first forfeiture in personam (against the person) introduced in the U.S. after its prohibition in the late eighteenth century by the US Constitution and the abolition of criminal confiscation of estate as a punishment for federal crimes by the first US Congress in 1790. Its purpose was to attack the illicit activities of the mafia by taking possession of the ill-gotten gains of criminals. By shifting from prosecuting the criminals to prosecuting their assets, this law was the cornerstone for a more efficient confiscation system in Italy.

During the Reagan administration the Comprehensive Crime Control Act of 1984 amended RICO’s provisions on forfeiture, and a “civil forfeiture”, confiscation in rem (against the thing), was put into place. In 1986, the Mafia Commission Trial, the equivalent of the Italian Maxi-Trial, was carried out: eleven people, including the heads of New York’s so called “Five Families” of the Cosa Nostra, were indicted and sentenced to 100 years imprisonment - the maximum sentence available under the RICO Act. In the same year, the Assets Forfeiture Fund of the Department of Justice had an income of 93.7 million US dollars.

One of the penalties imposed by the RICO Act, was the mandatory confiscation of the proceeds of crime. This measure was the first forfeiture in personam (against the person) introduced in the U.S.

How is civil forfeiture different from the criminal confiscation?
There are three different kinds of federal forfeiture in the US: criminal forfeiture; civil judicial forfeiture and administrative forfeiture.

"Criminal forfeiture is an action brought as a part of the criminal prosecution of a defendant. It is an in personam (against the per-
Criminal forfeiture is an action brought as a part of the criminal prosecution of a defendant.

Another difference between criminal and civil forfeiture is that the latter places the probative burden on the defendant. The onus probandi is inverted, so the persons claiming to be the legitimate owners of the “tainted assets” have to prove their licit source, otherwise the court concludes “on the balance of probabilities” that the assets are directly or indirectly linked to a criminal activity. The consequence is that the property rights are extinguished and pass on to the local or federal state, from the moment when the property was used illegally and not from the moment when it was seized. The “relation-back” doctrine applies in the civil forfeiture whereas in criminal cases, only the assets belonging to the person, at the moment of the conviction, can be confiscated.

Another difference between criminal and civil forfeiture is that the latter places the probative burden on the defendant.

How does civil forfeiture work in practice?

I asked Public Defence Attorney

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2 A Guide to Equitable Sharing of Federally Forfeited Property for State and Local Law Enforcement

3 A lower standard of evidence used in civil cases, as opposed to the criminal standard of proof: “beyond reasonable doubt.”

Bradley Fuller, a Drug Court expert active in Chicago.

“A common case might look like this”, he said. “A civilian is suspected of dealing drugs. The police conduct an investigation, including ‘controlled buys’ which are drug deals that are arranged by ‘snitches’ who are working for the police. Law enforcement officers will conduct surveillance of the controlled buy and record evidence of the criminal activity. The police will then often obtain a search and/or arrest warrant based on the evidence they have. The suspect is then arrested and charged with the crime of delivering a controlled substance. During the search and arrest, officers will seize instrumentalities of the crime such as scales, cell phones, ledgers and cash. Simultaneous to the criminal case, the state may also seize the vehicle of the suspect, which was used in a drug deal, and institute a civil forfeiture. While the defendant is entitled to a lawyer in the criminal case, there is no such entitlement to an attorney in the civil matter. Many defendants are obviously unable to retain private counsel and are thus at a huge disadvantage in the forfeiture case. The state’s burden of proof is much lower in the civil case. In fact, the state must only show by a preponderance of the evidence that the item seized was used in the commission of a crime. The burden shifts to the defendant to demonstrate that the item was not an instrumentality of crime, and they must try and do this without making statements or producing evidence that could jeopardise their criminal case - which can be very tricky.”

However, local and state law-enforcement agents can carry out civil forfeiture outside a criminal investigation and seize assets without any warrant simply on the basis of “suspicion”. Some practices, such as highway stops to seize cash from motorists, have been extremely controversial, especially after the “war on terror” was declared by President Bush in September 2001. Seizures of cash on highways skyrocketed, with only 1/6 being challenged, in part because of the high costs of legal action.

Property can also be forfeited through the “Equitable Sharing Program” of the Department of Justice’s Asset Forfeiture Fund created in 1984. Through this program assets that have been seized by local or state law enforcement authorities can be confiscated using feder-
al laws, either because they are seized during a joint operation, or because the federal agency “adopts” the property. In those cases, 80% of the proceeds go back to the local or state law enforcement agencies and the remainder is kept by the federal government. This financial incentive for federal forfeiture has turned equitable sharing, particularly after the 9/11 terrorists attacks, into “a virtual cash cow” for local and state law enforcement agencies.5

5 According to criminal justice scholars Gregory M. Vecchi, Robert T. Sigler, (2001), Economic factors in drug law enforcement decisions, cited in Policing for Profit: The Abuse of Civil Asset Forfeiture, Dick M. Carpenter II, Ph.D., Lisa Knepper, Angela C. Erickson and Jennifer McDonald, with contributions from Local and state law-enforcement agents can carry out civil forfeiture outside a criminal investigation and seize assets without any warrant simply on the basis of “suspicion”

To illustrate this phenomenon, the police chief of Columbia, Missouri, described civil forfeiture during a Police Review Board in 2012, as “pennies from heaven.”6

6 Civil Forfeiture: Last Week Tonight with John Oliver, HBO, 2014.

The increase in civil forfeiture since the creation of the Equitable Sharing Program and the consequential participation of local and state law enforcement agencies in civil forfeiture gains has been notorious, with proceeds going from 27 million dollars in 1985 to 556 million in 1993, and then soaring to 4.2 billion dollars in 2012.7 The Civil Asset Forfeiture Reform Act (CAFRA) of 2000 broadened the Attorney General’s authority to

7 Taken, Sarah Stillman, the New Yorker, August 12, 2013.
restore forfeited assets to the victims of any offence that give rise to the forfeiture, including civil forfeiture. In 2002, the Department of Justice initiated a procedure called “restoration”, which allows the use of forfeited funds to pay restitution, namely, the equitable remedy for victims of any crime, as journalist Sarah Stillman of The New Yorker points out:

“The rise of civil forfeiture has, in some areas, proved to be of great value. It allows the government to extract swift penalties from white-collar criminals and offer restitution to victims of fraud. Since 2012, the Department of Justice has turned over more than 1.5 billion US dollars to 400,000 victims of crime, often in cases of corporate criminality.”

Federal agents have used forfeiture to hunt down migrant smugglers, environmental offenders and individuals taking advantage of highly lucrative illicit activities. It has also proved to be a powerful weapon when it comes to hitting proceeds of foreign corruption. An example is the Department of Justice action in 2014 against Teodoro Obiang, son of the President of Equatorial Guinea, that resulted in a settlement of its civil forfeiture case for 20 million U.S. dollars. The latter can also apply to corporations, as a criminal sanction and not as a preventive measure, and can be extended to the heirs of the convicted person within five years of his/her death (law 575/1965).

In Italy, a “non-conviction-based” (NCB) confiscation became possible in 2008 with the law 92/2008. The legislature decided to create a “preventive measure” separated from the criminal procedure for a category of “socially dangerous” individuals. The 2011 Anti-mafia Code (law 159/2011) confirmed the application of the preventive measure for assets belonging to individuals that are usually dedicated to illicit trafficking, with a life-style depending totally or partially on criminal activities, posing a threat to the moral or physical integrity of minors and/or committing crimes against public health, security and tranquillity. The preventive measure can be carried out by various entities, such as the Public Prosecutor, the National Anti-mafia Prosecutor, the Director of the Investigative Division Anti-mafia and the Police Commissioner. The Anti-mafia Code foresees that the confiscated assets have a social function: they must be returned to the community and be administered by civil society.

Is the double-track system working in Italy and how is the NCB confiscation perceived by civil society?
I asked Nicola Palmiero, a police officer of the Italian Asset Recovery Office and this is his statement:

“All in all, the double-track system works. There is information sharing between police offices for transnational cases and for asset recovery through the INTERPOL International Asset Recovery platform, Camden Assets Recovery Interagency Network (CARIN) and other regional and global initiatives. However, most
of the national resources are used for the investigation and the conviction of criminals and much less is dedicated for asset recovery. Italian public opinion in general is in favour of NCB confiscation: it approves and encourages the measure, but it does not consider it a priority because it ignores how much is being done by the police in this sector. The greater involvement of civil society in the administration of the confiscated assets is generating a higher level of transparency and trust. It is true that there is still a lot to be done, but in the last years, thanks to the NCB confiscations, we have made great progress and we are among the countries in Europe with the highest figures for confiscations. Based on recent available statistics, I think Italy has one of the most efficient asset recovery systems in Europe.

The greater involvement of civil society in the administration of the confiscated assets is generating a higher level of transparency and trust

In fact, the Italian confiscation system is considered a model to be followed in Europe where there is no harmonised legislation. Judicial cooperation for investigative matters is done through EUROJUST. Mutual cooperation works well when it comes to conviction-based confiscation, but NCB confiscation orders are still not recognised in all countries. The EU has accepted non-criminal confiscation procedures only in cases of tax evasion and has accepted the extended confiscation in cases of serious crimes like terrorism or in cases of gross disproportion between the assets declared and the assets owned. The European Court of Human Rights (ECHR) has also validated the enlarged confiscation to third persons and corporations.

A new Directive of the European Parliament and the European Council (dir. 2014/42/EU) accepts the NCB confiscations only in cases where a criminal procedure is not possible and as long as guarantees of a criminal trial are in place (protection of third bona fide persons, presumption of innocence, due process and notifications). The ECHR conceives confiscation only as a criminal sanction within a criminal procedure, and even if domestic laws consider in rem confiscation as civil, the principles and guarantees of criminal proceedings, such as the presumption of innocence and the prohibition of retroactivity, must prevail.

How does extinción de dominio work in Colombia?
Extinción de dominio is a Constitutional Action. It is not criminal, nor civil. It follows the principles of an in rem confiscation, but it is an autonomous action deriving directly from a provision of the Political Charter that guarantees private property in accordance with civil laws, but at the same time provides a strong limitation to this right (art. 58 of the Political Charter): property has a social function and therefore implies obligations, and it has an inherent ecological function. The State can therefore extinguish such right in two cases: if the property was not acquired according to the legal standards (its origin), or if the property is used in a way that causes serious harm to the social morals (its function). This includes crimes against public health, the economical and social order, the environment, public security, the constitutional and legal regime and other crimes, such as kidnapping, extortion and pandering.

According to the Constitution, the declaration of extinción de dominio needs to be done through judiciary sentence or order. For many years, under the first extinción de dominio law, this role was assigned to criminal judges and could not be carried out simultaneously with a criminal procedure because of the principle of double jeopardy. This had greatly limited the practice’s efficiency. Law 793 of 2002 changed this: extinción de dominio became independent from a criminal procedure and the action was passed on to the General Prosecutor’s Office, which had enormous powers to investigate and no other judicial controls to safeguard fundamental or subjective rights. This
was highly criticised by human rights guardians, but the Constitutional Court expressed a favourable opinion of the special powers of the General Prosecutor’s Office in this matter, given the fact that the declaration of extinción de dominio is not a criminal procedure, bound to the principles of criminal law, but a completely autonomous constitutional action.

In 2014, the legislature codified extinción de dominio into one single law (law 1708/2014) that streamlined the procedure to make it less lengthy and further protect the rights of third bona fide persons. The assets from the extinción de dominio go to FRISCO (Fund for the Rehabilitation, Social Inversion and Fight against Organised Crime) and are allocated as follows: 25% for the judiciary branch, 25% for the General Prosecutor’s Office and 50% for the National Government. The new extinción de dominio code has created a special jurisdiction with specialised prosecutors and judges. This special jurisdiction will play an important role in the transitional justice process that the country is currently undergoing.

“The Colombian model of extinción de dominio has been exported and replicated by most Latin American countries from the Rio Grande river to Patagonia, thanks to UNODC’s technical assistance and the Stolen Asset Recovery initiative (STAR) done in partnership with the World Bank”, explained Wilson Martínez Director of the Money Laundering and Extinción de dominio Observatory of Nuestra Señora del Rosario University and author of many books and articles on this topic. Martínez himself has led the campaign with UNODC across Latin America proposing the Colombian model to the neighbouring countries. “Colombian extinción de dominio is a very refined product: the fruit of twenty years of experience” he said. The homogenisation of domestic legislation on this crucial matter has allowed inter-regional cooperation through the creation in 2000 of the Financial Action Group of Latin America (GAFILAT) and its Network System of Asset Recovery (RRAG) to combat money laundering and the financing of terrorism.

Is international cooperation in confiscation matters working? In the international arena, when it comes to the recovery of illicit assets there are important networks that play an important role, such as CARIN, as well as regional networks for asset recovery: the Regional Asset Recovery Network of GAFILAT (RRAG), the Asset Recovery Interagency Network Asia Pacific
(ARIN-AP), the Asset Recovery Interagency Network for West Africa (ARINWA) and the Asset Recovery Inter-agency Network for Southern Africa (ARIN-SA). However, there is still a long way to go considering that less than 1% (around 0.2%) of global illicit financial flows are currently seized and frozen, only 2.2% of the estimated proceeds of crime were provisionally seized or frozen in the EU (annual value estimated to 2.4 billion euro) and only 1.1% of criminal profits in the EU were ultimately confiscated.

Is there an ideal model of confiscation?
There is no flawless asset recovery system. However, countries like Colombia and Italy have developed precious know-how and highly sophisticated legislation that can inspire other countries when choosing their own. The last figures of the Fund for the Rehabilitation, Social Inversion and Fight against Organised Crime show an equivalent of half a million U.S. dollars in assets (after extinción de dominio sentence) and about 1.5 million U.S. dollars in liabilities (pending extinción de dominio sentence). Colombia is currently working on rationalising the extinción de dominio framework which means applying it to macro-crime to avoid the overload of cases with minor impact on the illicit economy and the exhaustion of the judiciary system which had occurred in the past. Colombia is also introducing the principle of pro-activity instead of reactivity, understood as “investigating to seize instead of seizing to investigate.” The new extinción de dominio code lays strong emphasis upon the protection of third bona fide persons to avoid abuses of the kind committed in the past.

With regards to Italy, some impressive figures show that the double-track confiscation system works. In fact, in 2014 and in 2015 confiscations amounted to 1.5 billion euros. In October 2017, the Anti-Mafia code has been reformed to speed up the NCB confiscation procedure and enlarge its range, strengthen the protection to the rights of third parties and make the administration of seized and confiscated assets more efficient and transparent. Having those ends in mind, the reform has introduced specialised sections dealing with preventive measures at lower and higher courts; it has extended the cases of mandatory confiscation and the crimes that lead to liability of corporations; it has restructured the public agency for asset management.
(ANSBC), and, most important, it has included preventive measures for suspects of terrorism, stalking and crimes against the public administration such as corruption, extortion, embezzlement and influence peddling. Such reform, that stemmed from a civil society initiative, entails a major coup against government white-collar criminals.

Finally, the U.S. model of civil forfeiture has proved to be very effective in intercepting organised crime and corruption proceeds. However, the dependence of police departments on forfeited assets and cash for their regular functioning, and the full discretionary powers given to police officers to apply the measure have led, according to many scholars and journalists, to excessive use of civil forfeiture and, therefore, to abuses against the fundamental rights of property and a fair trial.

The challenge lying ahead for any State claiming to be under the Rule of Law is: how to find a balance between the State’s “super-powers” needed to crack-down on crime and the protection of human rights. States and the international community need to respond to the urgent boiling matters pressing them in the area of local and/or global threats to peace and security. However, they should find the ways to do it without creating new systems of despotism and tyranny which turn against the citizens that they ought to protect.

Is it possible to achieve a balance between law enforcement and human rights protection?

James Shaw, Senior Legal Officer for Asset Recovery, with the United Nations Interregional Crime and Justice Research Institute (UNICRI) believes it is possible to achieve that fine equilibrium through a holistic approach.

The United Nations in general, and most particularly UNICRI, follows what stated in the UN Convention against transnational organized crime, art. 12 on confiscation and seizure: “States may consider the possibility of requiring that an offender demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation to the extent that such a requirement is consistent with the principles of their domestic law and with the nature of the judicial and other proceedings. The provisions of this article shall not be construed to prejudice of the rights of bona fide third parties” (paragraphs 7 and 8).

“UNICRI promotes a balanced approach”, stated Mr. Shaw. “Through our various projects, we encourage all States to adopt, where possible, a mechanism allowing for NCB forfeiture of assets outside of the lengthy and cumbersome criminal process; at the same time, we motivate them to protect due process and bona fide third party rights through appropriate legislation and procedures. Given that it is an in rem action, which would not allow the court to deprive anyone of their liberty, the burden of proof can still be lower than in a criminal trial, so the State may show that the assets, more likely than not, have an illicit origin. This holistic approach has proven, in Colombia, Italy and in a number of other countries, to be the right formula to fight crime and avoid abuses that would pervert the system characterised as ‘pennies from heaven’.”

The author

Dilia Marcela Ortiz Fonseca was born in Colombia in 1969. She studied Law in Bogota at the University of Nuestra Señora del Rosario and graduated in 1993. She was active as a lawyer in Colombia in the oil private sector and then specialised in International Relations and Diplomacy at the Vienna Diplomatic Academy. From the year 1996 to 2000, Mrs. Ortiz Fonseca worked at UNODC as an Associate Expert in the field of drug control. She is the author of “Des-Nudos”, 2008, and “Calle 14 Tras las Huellas del Homo Amans”, 2013.
The questionable ethics of civil forfeiture

by Dick M. Carpenter II, PhD

On a cool, sunny November day, Mark Brewer - a disabled decorated U.S. Air Force veteran - was driving through the state of Nebraska on his way to Los Angeles to visit his uncle. While there, Brewer planned to make a down payment on a house. To that end, he was carrying more than $60,000 in cash, that he had saved during his military service and from disability payments.

After allegedly crossing traffic lanes without signaling, Brewer was stopped by a sheriff’s deputy. During the stop, the deputy performed a criminal background check, which "revealed no major violations." The deputy then walked around the car with a canine unit, and the dog alerted to the trunk. When he searched the trunk, the deputy found the cash in two backpacks that had a "strong odor of raw marijuana," but no actual drugs.
Although the deputy found no evidence of criminal wrongdoing and did not even issue Brewer a traffic citation, he still seized the cash and started a legal proceeding to keep it permanently on the suspicion that it was somehow related to criminal activity. Brewer challenged the forfeiture in court but lost, never to see his money again.

Civil forfeiture is a mechanism by which law enforcement can seize and keep property that is purportedly connected to a crime. In contrast to criminal forfeiture, where property is taken only after a criminal conviction, civil forfeiture allows law enforcement to take property from innocent people - like Brewer - who have never been formally charged with a crime, let alone convicted of a crime.

Civil forfeiture is based on a legal fiction in which the government proceeds against the property directly as if the property itself somehow committed a crime. America’s civil forfeiture laws can be traced to 17th-century English maritime law, which permitted courts to obtain jurisdiction over property when it was virtually impossible to obtain jurisdiction over owners - pirates, for example - who had violated the law. Although civil forfeiture remained a relative backwater in American law for much of the nation’s history, its use expanded greatly during the early 1980s with the War on Drugs. Today, unmoored from the practical necessities of enforcing maritime law, civil forfeiture is a popular tool of law enforcement.

Proponents of civil forfeiture argue that it fights crime, both by removing assets required for certain criminal activities - a proposition with almost no empirical support - and by reducing the profitability of crime. But reducing the profitability
of crime can itself be profitable. Forfeiture laws at the federal level and in most states award a portion, and sometimes all, of the proceeds from forfeited property to law enforcement agencies for their own use. The laws in some jurisdictions even provide the opportunity for agencies to use forfeiture proceeds to pay salaries, benefits, and overtime, which means law enforcement personnel could derive a direct personal benefit from forfeiture. Allowing agencies to reap financial rewards from forfeiture can distort law enforcement priorities, shifting the focus from fighting crime to generating revenue.

The bad incentives they create are not the only problems with civil forfeiture laws. They also have a low standard of proof required to forfeit property in most states and at the federal level. In a criminal case, the government must prove the accused’s guilt “beyond a reasonable doubt.” This high standard - the highest in the American legal system - is intended to protect against the possibility of convicting innocent people. By contrast, the standard used in civil forfeiture is typically far lower, affording much less protection to owners.

Added to this is that the laws also turn the presumption of innocence on its head for innocent property owners - people whose properties are involved in criminal activities without their knowledge. In a criminal case in the United States, the government must prove its case against the accused, who is presumed innocent. If it cannot, the accused goes free. The burden of proof lies with the government. But in civil forfeiture in most states and at the federal level, an innocent owner bears the burden of proving he did not know about or consent to the illegal use of his property. The owner is, in effect, guilty until proven innocent.

Taken together, these elements of civil forfeiture laws put owners at a significant disadvantage while incentivizing law enforcement to engage in and succeed at forfeiting property. And succeed they have. From 2001 to 2016, the federal government took in more than $35 billion through forfeiture. State and local law enforcement took in hundreds of millions more, although the exact number can never be known since many states do not require agencies to track or report their forfeiture activity.

Mounting evidence suggests two prominent concerns. First, as discussed above, forfeiture laws incentivize the diversion of law enforcement priorities toward revenue-generating activities. Second, because protections for property owners are so poor, forfeiture laws allow law enforcement the option to seize property with no evidence or charges of wrongdoing.

Alda Gentile’s story is illustrative. Gentile, her son, and her grandson were driving home to New York after looking at condos in Florida. In Gentile’s trunk were $11,530 that the Long Island grandmother had taken along in case she wanted to put a down payment on one of the condos. Fourteen miles inside Georgia, state troopers pulled them over for speeding. During the stop, officers asked the family if they had any bombs, drugs, guns, or money in the car. Gentile mentioned the money in her trunk. The troopers called in a drug dog to search the vehicle but found nothing illegal. Nevertheless, after detaining the family for six hours on the side of the road, the police seized the cash and sent them on their way - without charge (other than a speeding citation). Numerous newspaper stories in recent years demonstrate this is not an isolated incident.

Forfeiture laws incentivize the diversion of law enforcement priorities toward revenue-generating activities

Forfeiture proponents will claim these behaviors are within the law - a position that is debatable. But even if legal, they raise ethical issues. The United States is a nation built on the premise that individuals and their rights come first, and government and its powers second, with governmental powers deriving from individual rights, including property rights. Individuals may exercise their rights provided they
do not violate the rights of others. And when they do, the purpose of remedies is to ensure that they put things right. Forfeiture in the general sense, then, is a remedy “aimed at securing rights by restoring a pre-violation status quo.”

Noted U.S. legal scholar Roger Pilon explains:

“Stated most generally, legitimate or justified remedies are forfeitures: to require a wrongdoer to restore the status quo by returning what his action has taken is to require him to ‘forfeit’ those holdings that are necessary to that end. But while all justified remedies are forfeitures, not all forfeitures are justified remedies. In fact, when not justified, forfeitures are themselves rights violations: they take what belongs to the person required to make the forfeiture.”

Thus, before law enforcement - whose police powers derive from individual rights - can ethically impose upon a person’s rights through seizure and forfeiture, it must have sufficient reason: “Take ... without sufficient reason, and another wrong has been committed.”

This, then, is the core ethical problem with civil forfeiture: under cover of - and encouraged by - civil forfeiture laws, those who have done no wrong, either in fact or absent a conviction are punished. As described above, property is seized on nothing more than suspicion. And the vast majority of seized property - upwards of 80 percent at the federal level - is forfeited in civil proceedings devoid of any charges against, let alone convictions of, owners.

Property is seized on nothing more than suspicion

Civil forfeiture is not unique to the United States. Canada and the European Union have similar provisions. The United Nations, too, has addressed civil forfeiture under the term “non-conviction based forfeiture” (NCBF). Framing it as a tool for combating anti-corruption, the United Nations Convention against Corruption encourages countries to permit NCBF to recover stolen assets when criminal convictions are truly impossible, such as when the violator is dead, has fled the jurisdiction,
is immune from investigation or prosecution, or is essentially too powerful to prosecute.

NCBF is therefore similar in concept and scope to civil forfeiture in the United States when it was still tied to maritime law. Were civil forfeiture still applied as such, we would likely not see the ethical controversies we see today. To the extent other countries and the United Nations facilitate civil forfeiture, they can avoid the ethical problems previously described by limiting its scope to a very narrow application where the property owner has unquestionably committed a crime and securing a conviction against that person is truly impossible.

The author

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Introduction

On 19 November 2015, following two specially-crafted agreements with the Democratic Republic of Congo (DRC), the International Criminal Court (ICC) has transferred two of its convicted defendants, Congolese nationals Thomas Lubanga Dylio and Germain Katanga, to serve the remainder of their sentenc-
es in a national prison facility in DRC.¹ The transfer represents a precedent in the practice of enforcing the sentences of fully international criminal tribunals – here also counting the *ad hoc* international tribunals, i.e. the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) – as for the first time the state of origin of the perpetrator has been effectively decided as the enforcement state. The decision paves the way for discussion over its potential impact on the future of the established system for enforcement of international sentences, as well as its significance, particularly in the light of the challenges the enforcement system has encountered through the enforcement practice of the ICTY.

**International criminal tribunals and the vertical system for the enforcement of international sentences**

The activation of the ICTY in 1993 marked the “rejuvenation” of international criminal justice after World War II. Besides providing at the time a much-needed momentum for prosecution and adjudication of international crimes, the tribunal established a system for enforcement of sentences where, in the absence of official international prison facilities, convicted persons are being transferred to national prisons in those states that entered into special agreements for that purpose with the Tribunal, to serve their sentenc-

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Figure 1. The Hague Map of Europe: blue indicating European states that entered into enforcement agreements with the ICTY; green indicating the states that entered into enforcement agreements with the ICC; and dark blue indicating the states that entered into enforcement agreements with both the ICTY and the ICC.

In the absence of official international prison facilities, convicted persons are being transferred to national prisons in those states that entered into special agreements

Challenges for the legitimacy of the current enforcement system

Due to the 1993 Security Council prohibition to transfer the ICTY convicts back to their states of origin for enforcement, the ICTY (nowadays the Mechanism for International Criminal Tribunals, or the MICT) has from the beginning of its mandate been dependent on the willingness of other states to accept its convicts in their prisons. The validity of the Security Council prohibition was not questioned in the midst of the violent conflict in the Balkans as there was serious concern that national institutions could not maintain impartial enforcement in accordance with relevant human rights standards. A shift of opinion started in the 2000s when the ICTY, after the introduction of Rule 11bis to its normative framework, transferred several of its accused to the former Yugoslavian states to stand trial there and, subsequently, incarceration in national prisons. Arguably, many ICTY prisoners and ex-prisoners would nowadays testify to the prohibition – which is still in force – as creating aggravating difficulties for them, but also for the ICTY as well as the enforcement states. The possibility to serve a prison sentence in a familiar environment (i.e. via social, lingual, cultural and family ties) is nowadays strongly encouraged by instruments regulating international prison transfers on the grounds of supporting effective rehabilitation, yet rehabilitation does not seem to be a dominant principle guiding the enforcement of the ICTY sentences in practice. Given its dependence on other states, as well as the fact that states themselves carry the costs of enforcement – something which the ICC en-
Enforcement states are also burdened with – the ICTY could never have demanded enforcement from other states, even after they signed the enforcement agreements. As a result, the ICTY has been forced to maneuver through criteria discretionally imposed by the states – such as being willing to enforce only sentences of a certain duration or only a limited number of sentences (altogether or within a certain time frame) – when negotiating a state of enforcement.\(^4\) This means that prisoners are being transferred to prisons based on a “lottery” system, where prisoners’ personal considerations regarding the state of enforcement would be taken into account only if there would be enough willing states at the time to choose from.

The possibility to serve a prison sentence in a familiar environment (i.e. via social, lingual, cultural and family ties) is nowadays strongly encouraged

Perhaps the only rehabilitative aspect the ICTY has continuously been able to fulfill concerns the enforcement inside Europe and not on other continents, given that this would make the possibility to maintain contacts with families meaningless and to that degree aggravating already detrimental effects of imprisonment in a foreign state. Nevertheless, significant inconsistencies can be observed between different European states’ experiences of enforcement practices.\(^5\) Daily enforcement is subjugated to the national laws of the states and the ability of states to meet the needs of international prisoners is based on general quality and sensibility of their penal systems.\(^6\) In addition, the status of an ICTY prisoner, being both


\(^{5}\) See in detail supra Vojta 2014.

\(^{6}\) In general, considerable discrepancy in treatment of the ICTY prisoners has been observed between Scandinavian states and those of Central/Western Europe, where prison conditions and treatment in Scandinavian states could be rated as having much better quality than in rest of Europe.
foreigner as well as internationally convicted criminal, can have a significant impact on the quality of prison treatment, dictating e.g. the level of prison security, imposed restrictions, visitation regime, work detail as well as availability of other services, including coherent rehabilitation programs. If a state is not already sensitive to the needs of foreign nationals as prisoners, the standard of provided programs, if any at all are provided, can sink well below those that are offered to nationals. Another question is whether rehabilitative programs can offer more than merely satisfying the basic needs of incarcerated people, especially in terms of their moral and social rehabilitation. Crime etiology of international criminals can go well beyond the lack of basic problem-solving or social skills, towards which general offending behavior programs are oriented. Many perpetrators feature members of political or military elite, highly educated and socially intelligent, who nevertheless mandated commission of atrocious acts. Similarly, there is a plethora of “average Joes” among the perpetrators who, induced by extraordinary war-time circumstances and under auspices of state policies, committed grave crimes. Many of them lack criminal identity as what they did was considered an act of obedience and not deviance, therefore they might be (self-) assured they did nothing wrong. Assisting these people in understanding the wrongness of their acts and giving them the opportunity to make amends to societies they have grieved is something the rehabilitation should strive for, despite being difficult to achieve as long as prisoners bear grievances because of inequality of their prison treatment. Many prisoners also argue that sending them to foreign states is unnecessary aggravation of their punishments, as next to the increased isolation provided by prisons featuring foreign cultural, lingual and social milieu, the states themselves are not welcoming them to stay, therefore they are often denied services such as psychological counseling, better remunerated work detail or furloughs, which are usually granted to national prisoners who are later re-inte-
grated back into their societies. On the contrary, the ICTY prisoners are mostly forced to leave states of enforcement upon their release, which due to the practice of the tribunal usually happens after 2/3 of the sentence served. There are broadcasted instances of ex-prisoners returning to their home states only to re-embrace former dangerous rhetoric without actually expressing remorse for their acts; however, it might be worth asking whether this is a consequence of “incorrigibility” of these persons or a justice system that did not do enough, or in fact, further solidified perpetrators in their attitudes.

Crime etiology of international criminals can go well beyond the lack of basic problem-solving or social skills

Socrates spoke of a true knowledge coming from within a person – and criminal justice should contribute to such a development. Yet inducing personal change in prisoners by implementing mechanisms and conditions that brought the atrocities afore in the first place (i.e. dehumanization of human beings) will be almost certainly met with failure. What the enforcement system should first consider then, is how to reduce unnecessary harm delivered by discrepant prison conditions and
treatment, before any meaningful improvement in rehabilitation of international convicts is made.

**Socrates spoke of a true knowledge coming from within a person – and criminal justice should contribute to such a development**

**Discussion**

With regard to the enforcement decision of the ICC in *Lubanga* and *Katanga* cases, it is worth pondering the extent to which it might have been influenced by trials and tribulations the ICTY had (and continues to have) in enforcement of its sentences. Has the Presidency of the ICC come to a conclusion that the pains of finding a willing enforcement state – only to be later potentially faced with complaints from both Messrs. *Lubanga* and *Katanga* as well as national authorities of their respective enforcement states – are simply not worth the trouble of going through, therefore leaving the DRC to cope with their nationals might be the best pragmatic choice, or is it a carefully though-through decision intended to promote the development of complementarity of international and national justice institutions in reaction to atrocity crimes? The ICC holds the prerogative of supervising its sentences and, given that most international prisoners tend to be released from prison to their home states anyway, making the latter accountable for purposeful imprisonment of their citizens might just be a valid way how to mutually and more directly engage both perpetrators and (post-) conflict societies into a proactive transition, from violating internationally recognized human rights and values to supporting them. As such, it is to be seen whether the decision will pave a new way in the enforcement of international sentences, or will attain only an *ad hoc* quality.

**The author**

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A legal response to today’s reality: economic crimes as crimes against humanity

by Sunčana Roksandić Vidlička, PHD*

“…Those who use weapons and resources and violate human rights are as guilty as those who collaborate in business with them. Both groups should face tangible sanctions, investigations and criminal trials.”

Whether in times of peace or during armed conflict, trade occurs, which sometimes leads to serious, systematic and widespread economic crimes. As with other core crimes, national states are often unwilling or unable to prosecute such large-scale crimes by themselves. (Core) international criminal

1 Smith, C. J., UN Interregional Crime and Justice Research Institute, director, UNICRI, MPI, Freedom from fear Magazine, A call for new heroes (July 2015), pp. 9-11, p. 11.
law remains the most effective tool to “stop the culture of impunity” for serious economic criminal offences. Then, if the detrimental consequences of national wrongdoing can no longer be confined to the place of perpetration, the International Criminal Court’s (ICC) principle of complementarity might be needed to incentivize national states in prosecuting relevant offences. These aspects imply two things for international justice. First, the culture of impunity for serious economic criminal offences increases and second, an adequate response from international and national criminal law is expected. By connecting international criminal law with international human rights law, serious economic violence does find its place within the jurisdiction of the ICC, without the need of amending its Statute (ICCSt). The same could be true for national provisions on crimes against humanity and its understanding.

As stated in the Preamble of ICCSt, the jurisdiction of the ICC is limited to the most serious crimes of concern to the international community as a whole that threaten “security, peace, and the well-being of the world.” In my opinion, serious (transitional) economic offences undoubtedly belong to this narrative and while some of these crimes are already listed as war crimes under the ICCSt (i.e. pilage), they should also find their place in the Statute during peacetime as crimes against humanity. Ignoring that serious economic crimes, often represent economic violence characteristic of transitional and post-conflict countries, can lead to another cycle of armed conflict and/or physical violence as well as to internal and external insecurity. As reaffirmed in many UN and regional documents, sustainable peace requires an integrated approach, which is based on the development of security policies that are consistent with human rights, and includes gender equality, the rule of law and justice activities. For example, the UN resolution 2122 (2013) recognized the need to address the gaps and strengthen the links between UN peace and security in the field, as well as human rights and development work as a means of addressing the root causes of armed conflicts and security threats to women and girls in the pursuit of international peace and security. As recognized by the European Union and the United Nations, stable economies represent a fundamental prerequisite for peace.

Economic violence’ in various forms, including widespread corruption, theft and looting from civilians, plunder of natural resources to fuel wartime economies and fill warlords’ pockets, and other violations of economic and social rights, is also deeply woven into the narrative of many modern conflicts, as both driver and sustainer (Sharp, D.N., Economic Violence in the Practice of the African Truth Commissions and Beyond, in: D. Sharp (ed.), Justice and Economic Violence in Transition. Springer (2014), p. 79.)
The jurisdiction of the ICC is limited to the most serious crimes of concern to the international community

The factual interrelationship between serious economic offences, especially large-scale corruption, and violent offences may mean that efforts to prosecute war criminals are undermined by the failure to address economic violence. This statement is in line with the transitional justice discourse on the need to address the root causes of conflict, and thereby tackles violations of economic, social and cultural rights. The same discourse is present in the narratives of human security, as visible in the Global Strategy for the European Union’s Foreign and Security Policy from 2016. The inseparability between economic crimes and human rights is not to be doubted. Serious economic crimes infringe on economic, social and cultural rights, but they also violate civil and political rights (which are often perceived as the protected interests of existing core crimes). Economic, social and cultural rights are also breached by physically violent crimes. Schmid’s study from 2012 already provided examples for the prosecution of gross violations of economic, social and cultural rights through existing core crimes by international tribunals.

Sustainable peace requires an integrated approach, which is based on the development of security policies that are consistent with human rights.

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Serious economic crimes infringe on economic, social and cultural rights, but they also violate civil and political rights

By ignoring these crimes and violations – unlike what international human rights law and transitional justice do - core international criminal law no longer responds to the needs of societies and individuals. Of course, where there is enough evidence, the prosecution of businesspersons as perpetrators, accomplices and abettors of core crimes remains a possibility. Nevertheless, the question is whether it should remain the only option. In order to respond to today’s challenges and to address the root causes of conflict, prosecuting serious economic crimes as crimes against humanity is, in my opinion, long overdue. Although crimes against humanity have emerged from international humanitarian law as an extension of the category of war crimes, they are understood today to be “closely linked to the gradual expansion of international human rights law.” Therefore, it is important to connect the international criminal law with international human rights law based on Art. 21 (3) of the ICCSt. According to this provision, the application and interpretation of law pursuant to Art. 21 must be consistent with internationally recognized human rights.

Crimes against humanity fall under the ICC jurisdiction if some of the acts enlisted in article 7 of the ICCSt are committed as part

5 Murder, extermination, deportation, or forcible transfer of population; Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; Torture; Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in para 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court; Enforced disappearance of persons;
of a widespread or systematic attack directed against any civilian population, with knowledge of the attack. Besides the defining acts, there also lies a possibility that crimes against humanity are committed as “other inhumane acts of similar character intentionally causing great suffering, or serious injury to body or to mental or physical health”, as described in article 7(1) (k) of the ICCSt. The phrase “intentionally causing great suffering or serious injury to body or to mental or physical health” is an effort to define this paragraph in a way which will be consistent with the cardinal principle nullum crimen sine lege. The Rechtsgrut in need of protection by prosecuting serious economic crimes that fall within the category of core crimes on an international level is comprised by the “security, peace and well-being of the world. In turn, the ICC’s possible engagement with economic violence has a legal basis without the need of amending the ICC Statute. However, one should be cautious about an overly broad inclusion of economic crimes under the ICCSt, especially since there is no common agreement on precisely which offences do fall under the notion of econom-
ic crimes. In light of Art. 21 para. 1 (b) of the ICCSt,7 offences under the UN Convention Against Corruption seem to be plausible candidates if they meet the criteria for being categorized crimes against humanity. The arguments proposed do not fall short from the Office of the Prosecutor’s (OTP) Policy Paper on Case Selection and Prioritization from 2016. According to this Policy, the Office of the Prosecutor of the ICC will select cases for investigation and prosecution in light of the gravity of the crimes, the degree of responsibility of the alleged perpetrators and the potential charges. The impact of crimes may be assessed in light of, *inter alia*, the suffering endured by the victims and their increased vulnerability, the terror subsequently instilled, or the social, economic and environmental damage inflicted on the affected communities. Moreover, in the same Policy Paper on case selection and prioritization, it is added that the Office will give particular consideration to prosecuting ICCSt’s crimes that are committed by means of, or that result in, *inter alia*, the destruction of the environment, the illegal exploitation of natural resources or the illegal dispossession of land.

To this end, “two paths lie open: strengthening the inadequate norms and mechanisms that currently exist, and beginning to contemplate the creation of a new legal regime better adapted to tackle this problem.”8 If the ICC proves to be an inadequate body to tackle root causes of conflicts by prosecuting serious economic crimes as crimes against humanity, international justice might require new institutions. In any case, if one wants to respond to today’s realities, serious economic crimes should be placed at the core of international criminal law.

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7 According to this provision, the ICC will apply, in second place, where appropriate, applicable treaties and the principles and rules of international law, including the established principles of the international law of armed conflict.


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**The author**

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*Sunčana Roksandić Vidlička (PhD Freiburg/Zagreb). Findings in this article represent the main conclusions from her forthcoming book, *Prosecuting Serious Economic Crimes as international Crimes, A New Mandate for the ICC?, Duckner&Humblot 2017. In this respect, also see: Filling the void: the case for international economic criminal law, ZStW, Germany, 2017: 129(3)1-34.*
Illicit trade: the worldwide, multi-billion dollar funding stream

by Sharon A Melzer, PhD
Somewhere in the world, there is a national health crisis. Doctors quickly receive the life-saving pharmaceuticals. However, the “pharmaceuticals” are counterfeits containing a combination of toxic chemicals and are powerless against the pandemic. In another part of the world, a country has developed a sophisticated, laser-guided missile capable of neutralizing targets with minimal collateral damage. Except, some of the missile’s components are counterfeit, causing its guidance system to malfunction. Meanwhile, a terrorist organization engages in the trafficking of illicit tobacco and antiquities to fund their operations while a crime group moves its proceeds across borders via diamonds. Moreover, a rogue nation is circumventing the international community’s sanctions and finances their prohibited activities through illicit trade. Unfortunately, these illustrations are not plots from Hollywood movies but
examples where illicit trade and security intersect.

**A terrorist organization engages in the trafficking of illicit tobacco and antiquities to fund their operations while a crime group moves its proceeds across borders via diamonds**

It is essential to analyze illicit trade, especially for counterintelligence and national security purposes, and then develop policies to combat it for four reasons. First, illicit trade provides a funding mechanism for nefarious actors. Those who engage in these activities represent transnational organized crime groups, terrorist organizations, cybercriminals, the private sector, and illicit actors who are sympathetic to those groups as well as hostile governments. Second, if the product is counterfeit or inferior, then the items can also cause direct and indirect harms. Third, the physical goods and the financial transactions can penetrate physical borders and security provisions established by sovereign nations. Fourth, governments and non-state actors can also engage in intellectual property theft, which can be a form of economic espionage.

It is essential to analyze illicit trade, especially for counterintelligence and national security purposes, and then develop policies to combat it.

Over the last few decades, sovereign nations have enacted semi-efficient measures to combat traditional illicit revenue streams - such as narcotics - through training, data sharing, enhanced punishments, increased international cooperation, and the enactment of
anti-money laundering laws. As governments implemented these measures, illicit actors moved to more non-traditional revenue streams, such as illicit tobacco and counterfeit products. The significant profits also come with a lower risk of detection and punishment since governments have not fully realized the potential profits and harms associated with illicit trade and enact appropriate responses. Moreover, preferred methods for moving their profits have also shifted toward moving value across borders, such as diamonds and art, instead of cash.

Counterfeits are a unique form of illicit trade. They fund a wide-range of illicit activities that are intended to cause harm and disrupt, while simultaneously producing a myriad of direct harms to a nation’s security sectors, such as public health and safety, science and technology, the economy, and defense. For the United States economy alone, the Commission on the Theft of American Intellectual Property estimates that “the annual cost to the U.S. economy continues to exceed $225 billion in counterfeit products, pirated software, and theft of trade secrets, and could be as high as $600 billion.” These estimates may not include some indirect costs, such as those associated with health-related injuries and costly countermeasures that governments must implement. For these reasons and those outlined below, it is prudent for counterintelligence and national security personnel to more closely examine the threats and actors related counterfeit goods and illicit trade in general.

Counterfeit goods
Most, if not all, countries are impacted by counterfeit goods and the theft of intellectual property. For some countries, counterfeit products, or the economic losses associated with counterfeit products, harm their citizens and negatively impact their overall security. Others, however, indirectly profit from the manufacturing and exporting of counterfeit products. The economic losses and profits earned by illicit actors alone warrant attention by governments. Additional concerns are justified because the physical items penetrate borders via cargo containers, parcel post, and express mail couriers. The potential profits can be staggering, as can the financial losses suffered by governments and the intellectual property rights holders. The counterfeit items tended to infringe on the intellectual property rights of individuals and entities located in United States, Italy, France, Switzerland, Japan, Germany, United Kingdom, and several other European countries.

A 2016 Organisation for Economic Co-operation and Development (OECD) study placed the value of the 2013 worldwide trade in counterfeit products to be about $461 billion and estimated that counterfeit products comprise about 5% of the European Union’s total market. In 2016, the U.S. Customs and Border Protection had more than 31,000 seizures of counterfeit products, including counterfeit automotive and airplane parts, pharmaceuticals, computer parts, apparel, luxury goods, and numerous other categories of goods. Had the goods been genuine, the estimated value would have exceeded $1.3 billion. During the same year, the European Union estimated the value of its counterfeit seizures at more than €672 million.

Most, if not all, countries are impacted by counterfeit goods and the theft of intellectual property

Dangers and harms of counterfeit goods
All nations are vulnerable to counterfeit products’ potential harm to national security. The illicit proceeds, the products themselves, and the networks that move illicit items across borders are all threats to national security. Counterfeit parts, especially those intended for the defense and aerospace sectors, can cause serious harm to individuals as well as a nation’s overall security. The United Nations, through their “Counterfeit: Don’t

Buy into Organized Crime campaign, warned consumers about the multi-billion dollar black market and its connections to organized crime groups, money laundering, trafficking in persons, drugs, and weapons, as well as the various harms that counterfeits can cause to consumers. Furthermore, the individuals who carried out the 2015 terror attacks in Paris, France trafficked in counterfeit apparel.

In 2011, the United States Senate’s Armed Services Committee investigated counterfeit parts in the U.S. Department of Defense’s supply chain and found that the Department had 1,800 cases, involving approximately one million individual counterfeit parts. The detected counterfeit parts, such as semiconductors and memory chips, impacted guidance systems, missiles, aircraft, and numerous other types of military equipment. In addition to the direct harm to national security and public safety caused by counterfeit semiconductors, Senator Carlin Levin noted an industry estimate that places the loss to the United States’ semiconductor business at $7.5 billion annually and a loss of approximately 11,000 jobs.

Counterfeit products comprise about 5% of the European Union’s total market

More recently, the United States has taken additional actions to detect counterfeit parts within its supply chains and then prosecute and punish those involved. Operation Chain Reaction, a joint venture between 16 federal law enforcement agencies, investigated counterfeit products that made their way into U.S. government and military supply chains. Investigators were able
to seize cash and items worth more than $13.7 million. Among the 23 convictions, a few individuals pled guilty to the importation of counterfeit parts and selling them to the U.S. Navy. In 2011, the United States enhanced penalties for trafficking in counterfeit military goods, and some of the offenders in Operation Chain Reaction were sentenced under the new penalty structure.

A 2017 OECD report found that counterfeits could account for up to 6.5% of all ITC products worldwide. These counterfeits can become serious safety threats when they do not function correctly.

Illicit actors can instigate a humanitarian crisis or panic by penetrating supply chains for medicines. There have been numerous cases where counterfeit pharmaceuticals replaced authentic medications needed to treat malaria, HIV, and pandemics. In 2007, well-publicized cases involving counterfeit diethylene glycol from China sounded the alarm, again, of counterfeit medications. The counterfeit glycol was fatal in at least 365 cases in Panama alone, and counterfeit diethylene glycol resulted in deaths and poi-
soning in Argentina, Bangladesh, China, Haiti, India, and Nigeria well before the Panamanian incident. Since then governments, companies, and researchers have tried to increase awareness of the dangers related to counterfeit pharmaceuticals and authorities are increasingly concerned about counterfeit Oxy
codone, Xanax, and other pills that contain Fentanyl.

The international community has organized efforts to combat the trade in counterfeit and harmful pharmaceuticals and medical devices. The World Customs Organization (WCO) and the International Institute for Research Against Counterfeit Medicines have worked together to reduce the amount of counterfeit and illicit pharmaceuticals in Africa. Since 2012, through their initiatives, they have seized illicit and counterfeit medications worth approximately €400 million. During the 2016 iteration of Operation ACIM (Action against Counterfeit and Illicit Medicines), a 10-day operation made possible with the assistance of 16 African Customs agencies, authorities seized approximately 113 million counterfeit and illicit pharmaceuticals. And, INTERPOL, via Operation Pangea, targets online sales of counterfeit and illicit pharmaceuticals. Each year INTERPOL runs a week-long operation, and in 2017, during Operation Pangea X, representatives from INTERPOL, the WCO, and 123 countries joined efforts to seize more than 25 million illicit and counterfeit pharmaceuticals and medical devices worth an estimated $51 million. Seized items included dietary supplements, contact lenses, condoms, medical and surgical equipment, and medications intended to treat malaria, psychotic conditions, epilepsy, erectile dysfunction, and pain, including opioids containing Fentanyl. The international operation also removed more than 3,500 websites.


Authorities are increasingly concerned about counterfeit Oxycodone, Xanax, and other pills that contain Fentanyl

Unscrupulous individuals can counterfeit almost any item. Authorities have uncovered examples of counterfeit airbags and other automotive components that relate to steering, braking, and safety operations of motor vehicles. Toothpaste, hair care products, cosmetics and perfumes, toys, foods and beverages, and apparel are known to be targeted by counterfeiters. These products may contain hazardous substances or may not meet manufacturing standards. For example, counterfeit batteries and e-cigarettes can cause fires on airplanes and burn users.

Finally, counterfeit products and the theft of intellectual property have an impact on a country’s economic security, innovation, and its technology sector. Counterfeiters and criminals engaging in economic espionage, especially those who are state-sponsored or state-approved, also engage in reverse engineering of products and theft of defense and electronic technologies. Those who engage in state-sponsored theft of intellectual property may do so to increase military and technology advances or to bolster diplomatic and economic initiatives; whereas, non-state actors tend to be motivated by profits or to fund operations. Piracy can threaten electronic infrastructures, research and development, and productivity, especially if the pirated electronic technology and software includes malware. Economic espionage and the theft of intellectual property harms a country’s academic, business, and government sectors through devaluation of products as well as attacks on infrastructures. In addition to national security concerns, theft of intellectual property negatively impacts taxation, research and development budgets, creates unfair market advantages, erodes brand integrity, reduces profits and royalties, and results in employment loss.

Authorities have uncovered examples of counterfeit airbags and other automotive components

Counterfeit batteries and e-cigarettes can cause fires on airplanes and burn users

The volume of trade in illicit tobacco is staggering and yields significant profits while exploiting weaknesses in sovereign countries’ borders and law enforcement efforts. The estimates for the illicit trade in tobacco products are astounding. The World Health Organization’s (WHO) estimates that one in ten cigarettes consumed worldwide is illicit. The WCO’s 2016 Operation Gryphon II, a two-month operation that involved customs agencies and other intergovernmental organizations from around the globe, seized an impressive 729 million cigarettes, 287,000 cigars, and 250 tonnes of other tobacco products...

Other popular forms of illicit trade: tobacco, cultural artifacts & antiquities, and diamonds

Numerous, seemingly legal products can generate “illicit trade” depending on their origin, transit, and legality during the supply chain. For decades, the illicit trade in tobacco, which includes counterfeit tobacco products and counterfeit tax stamps, has been a favorite revenue stream of organized crime, drug cartels, terrorist organizations, and even some governments. Some, including drug trafficking organizations, have used cigarettes instead of cash for payments or moving money. This form of illicit trade undermines health policy, reduces tobacco-related taxes that pay for various government programs and expenses, and moves production jobs to the underground economy or abroad.
Components of machines used to manufacture cigarettes were also seized along with bulk cash and more than 12 million excise duty stamps.” The European Union\textsuperscript{16} reported that counterfeit cigarettes accounted for 24\% of all counterfeit products seized in 2016 - the largest category of counterfeit products seized that year. A 2017 European Union report estimated that if all illicit tobacco were sold legally, more than €10 billion annually would be added to European Union countries’ treasuries. The United Kingdom\textsuperscript{17} alone estimated approximately £2 billion in annual revenue losses from illicit tobacco in 2015.

Those who engage in state-sponsored theft of intellectual property may do so to increase military and technology advances or to bolster diplomatic and economic initiatives

These statistics illustrate the global nature and size of the illicit trade in tobacco as well as illicit networks’ ability to penetrate borders and markets.

Numerous reports and academic studies have linked organized crime and terrorist organizations to the illicit trade in tobacco products. Italian mafias\textsuperscript{18} engaged in cigarette smuggling throughout the 20th Century.\textsuperscript{19} The Royal Canadian Mounted Police\textsuperscript{20} estimated that 175 organized crime groups operating in Canada were involved in the illicit tobacco trade and about three-quarters of those groups also trafficked weapons and drugs. Concerning terrorist organizations, in their 2015 report,\textsuperscript{21} the Center for the Analysis of Terrorism, located in Paris, France, estimated that approximately fifteen terrorist organi-

\textsuperscript{18} https://lirias.kuleuven.be/bitstream/123456789/202043/1/oc_i
\textsuperscript{19} https://global.oup.com/academic/product/mafia-brotherhoods-9780195375268?c=us&lang=en&
organizations, including Al-Qaeda in the Islamic Maghreb (AQIM), engage in cigarette smuggling as a regular and very profitable activity.

**Economic espionage and the theft of intellectual property harms a country’s academic, business, and government sectors**

In 2015, the U.S. Department of State, in consultation with numerous U.S. government partners, published The Global Illicit Trade in Tobacco: A Threat to National Security. This publication discusses the intersections of illicit tobacco national security concerns, such as the involvement of transnational organized crime and terrorism and the attempted importation of a surface-to-air missile and highly-deceptive counterfeit currency.

Additionally, the European Union, in 2017, concluded that illicit tobacco is a funding stream for organized crime groups and terror financing.

Another form of illicit trade that has received increased attention is the illicit trade in cultural artifacts and antiquities. The theft or destruction of cultural property has two positive outcomes for illicit actors: a revenue stream and removal or destruction of cultural artifacts that contribute to ethnic cleansing. The international community began to realize the importance of combating this market during World War II with the plundering of art and artifacts during the Nazi occupation and the Soviet

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Union’s Trophy Brigades. The theft of cultural artifacts and their movements through illicit markets has occurred in Latin America, Asia, Africa, and the Middle East for decades. More recently, the Islamic State of Iraq and the Levant’s (ISIL) use of this black market and the destruction of cultural artifacts have increased awareness of this revenue stream and the illicit networks utilized. Initially, ISIL only taxed the antiquities market, but then they took over the market entirely and maintained control from extraction to exportation of the items.

A 2017 European Union report estimated that if all illicit tobacco were sold legally, more than €10 billion annually would be added to European Union countries’ treasuries. Cultural property not only generates revenue streams but can also be a vehicle for moving value across borders. Illicit actors can move stolen artifacts and art pieces through specialized black markets that provide them with needed buyers and finances to continue their operations or to move funds undetected. While the proceeds of this form of illicit trade might not reach the levels of drugs, tobacco, or counterfeits, the markets themselves can provide governments with the needed intelligence to map them, determine points where various actors converge, and shut down critical players and sources of revenue.

The theft and trafficking of these treasures not only fund illicit activities but also contributes to the pilfering a society’s cultural heritage; we cannot estimate those costs. While we cannot measure the actual proceeds or social costs, a 2011 Rand report cited estimates that place the size of the illicit trade to be about $6 billion annually. Targeted operations and seizures also help illuminate the size of the illicit trade in cultural property. In 2016, Operation Pan-

23 https://www.tandfonline.com/doi/abs/10.1080/02684527.2012.661648
26 https://www.washingtonpost.com/posteverything/wp/2016/06/03/how-much-money-has-isis-made-selling-antiquities-more-than-enough-to-fund-its-attacks/?utm_term=.c0d39092420a
27 https://www.tandfonline.com/doi/abs/10.1080/08850600701854441

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dora\textsuperscript{29} - a week-long operation that included the WCO, Europol, INTERPOL, The United Nations Educational, Scientific and Cultural Organization (UNESCO), and numerous countries - seized more than 3,500 items and arrested 75 people. Operation Pandora was only one week, but law enforcement and experts around the world help combat this trade throughout the year.

Cultural property and works of art are not the only commodities that can be used to move value across borders. The trade in illicit diamonds allows nefarious actors to move value across borders with little risk of detection. Diamonds can also serve as payment for weapons, cigarettes, bribes, debts, and drugs. They can fund organized crime, terrorism, corruption, and most notably - wars. While all conflict diamonds are illicit diamonds, not all illicit diamonds are conflict diamonds. Illicit diamonds can be ethically and legally sourced, polished, and traded; but, once they cross a border without the appropriate duties paid, they become illicit. Conflict diamonds\textsuperscript{30} are illicit diamonds that are also rough diamonds, usually mined in rebel-held territories. Conflict diamonds, or blood diamonds, are used by rebel groups to fund armed conflicts against internationally recognized governments.

Approximately fifteen terrorist organizations, including Al-Qaeda in the Islamic Maghreb (AQIM), engage in cigarette smuggling as a regular and very profitable activity.

Diamonds have unique properties that make them very attractive as a form of illicit currency, and as a means to move value across borders. A semi-unique

\textsuperscript{29} www.wcoomd.org/en/media/newsroom/2017/january/operation-pandora.aspx

\textsuperscript{30} https://www.kimberleyprocess.com/en/faq
quality of diamonds, and some other precious stones and metals, is that they can earn, transport, and store value. They are also difficult to detect at borders and are susceptible to customs fraud as well as under- and over-valuation schemes. Not surprisingly, the Financial Action Task Force (FATF) concluded in their 2013 analysis, *Money Laundering and Terrorist Financing Through Trade in Diamonds*,\(^{31}\) that diamonds have a high-value to weight ratio and are susceptible to criminal exploitation in trade-based money laundering schemes. Increasing the attractiveness of diamonds to criminals is the lack of awareness or attention paid by authorities – despite the known vulnerabilities in the diamond pipeline and that diamonds are “one of the most common methods used by criminals to launder illegally gained funds.” \(^{32}\)

### Cultural property not only generates revenue streams but can also be a vehicle for moving value across borders

#### Countering illicit trade

When experts illuminate threats and revenue streams and then develop countermeasures, illicit actors tend to move into less risky activities. Therefore, it is prudent to raise awareness of numerous revenue streams and forms of illicit trade, dedicate analysts to monitoring these threats, and encourage data collection on not only seizures but also on the illicit networks and smuggling methods/routes. These efforts should be at the local, national, and international levels and include governments, inter-governmental organizations, the private sector, and academia. Collectively, these stakeholders can bring together their different methodologies and perspectives to create a more holistic approach and to counter these threats while expanding the knowledge base relating to the illicit networks behind these crimes.

There is diversity among the schemes and the type of actors involved, and counterintelligence and national security personnel need to be aware of the various manifestations of illicit trade and intellectual property theft. Analysts should look at supply chains, legitimate networks and infrastructure related to trade, delivery methods, and retail distribution. Focusing only on a particular product or market might not be as important as identifying key variables, steps, or skills that enable illicit actors to exploit criminal opportunities and vulnerabilities in legitimate markets. For example, some characteristics of non-traditional revenue streams include low risk of detection, low risk of punishment or punishments are
minor compared to trafficking in drugs or humans, economic or other useful gains (e.g., intelligence and establishing relationships and trafficking routes), and various forums and levels of corruption.

When experts illuminate threats and revenue streams and then develop countermeasures, illicit actors tend to move into less risky activities

Capacity building initiatives and training can lead to an increase in the quality and quantity of data for law enforcement and intelligence analysts. Universities and the private sector can assist with research and training programs. Inter-governmental organizations, such as INTERPOL, can play a role in capacity building too. They have designed, in cooperation with Underwrites Laboratories (UL), an online training program called the "International IP Crime Investigators College" which provides free training to law enforcement officers worldwide and in more than 20 languages. The program covers the dangers of illicit trade, distribution means and networks, counterfeit goods and piracy, and illicit tobacco as well as how law enforcement can detect and investigate these crimes. Furthermore, the U.S. Department of Justice published a 2015 manual and a 2016 United States Attorneys’ Bulletin that provides guidance on prosecuting intellectual property crimes. Finally, public and private sectors can lessen the vulnerability of supply chains by offering training and guides that include anti-counterfeiting components and best practices, such as the U.S. Federal Bureau of Investigation (FBI)’s guide for Supply Chain Risk Management.

Once governments expand their analytical approaches and efforts to combat illicit trade, then they can work together to form networks of intelligence analysts, law enforcement officers, judicial personnel, and policymakers. These networks can develop national and international strategies that limit the economic and operational benefits of illicit trade involving commodities such as counterfeit goods, tobacco, cultural property and antiquities, diamonds, gemstones, and precious metals.

The author

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Interfaith dialogue as a means to address incitement to violence based on religion or belief

by Ahmed Shaheed, United Nations Special Rapporteur on freedom of religion or belief
In age of rising incitement to violence based on religion or belief it would be useful to examine the great potential of interfaith dialogue to prevent and mitigate the advocacy of religious hatred. In fact, this type of dialogue can play a positive role on several fronts.

There are two phenomena that need to be urgently addressed. One is that crimes against humanity, terrorism and violence can be waged in the name of religion. Second, in many parts of the world, we live in an era of increased hateful discourse, triggering the polarization between groups, as well as the rise of populism and xenophobia.

Religion can certainly be misused as a force to divide people and to violate human rights. But interfaith dialogue can also be used as a positive force to bring people closer together and to revitalize trust between groups.

Religion can certainly be misused as a force to divide people and to violate human rights

It is of course important to recognize that perpetrators of violence represent comparatively small segments of the various religious communities to which they belong. To decrease tensions, these communities must overcome the culture of silence and denounce violence waged in the name of religion, without using excuses or justifications. Care must also be taken to avoid the stigmatization of entire communities on account of violence perpetrated by individual members; and focus on building bridges rather than erecting walls.

The phenomenon of fear has to be taken very seriously. As a previous Special Rapporteur on freedom of religion or belief has stated: “fear can escalate to collective paranoia, and contempt can lead to acts of public dehumanization.” He raises the case of anti-Semitic conspiracy theories, which may be the most intensively studied and one of the most malign examples. The toxic mix of fear and contempt

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1 UN Doc A/HRC/28/66
can frequently target religious minorities or individual dissenters to build conspiracy theories around them. This can lead to hateful discourse and polarization of society, with a **breakdown of trust** between groups and individuals — as well as between citizens and their trust in public institutions.

**The toxic mix of fear and contempt can frequently target religious minorities or individual dissenters to build conspiracy theories around them**

In order to rebuild trust between public institutions and victims of discrimination, hostility or violence, public authorities must ensure that they tackle all aspects of this scourge, including legislative solutions, judicial practices and a broad range of preventive policies and coping strategies. These are very well highlighted in the UN’s Rabat Plan of Action.²

All forms of dialogue can contribute substantially to the question of **trust-building** and challenging stereotypes. Religious and belief groups can play a positive role in de-escalating tensions and rebuilding eroded trust between groups and/or the state. Pluralism needs to be constantly nurtured for it to survive - and inter-faith/intra-faith dialogue is part of the solution.


Religious and belief groups can play a positive role in de-escalating tensions and rebuilding eroded trust between groups and/or the state

I strongly believe that there is a need to deconstruct stereotypes and put forward success stories of shared common values, or in other words the “golden rule”. Humanity is bound by one common belief. A “Golden Rule” is frequently voiced across many faiths and philosophies; it is the rule that defines one’s relationship to the Other: **treat others as you would like to be treated**. There is a universality to the
values of coexistence, compassion, empathy and solidarity; it runs like a common thread across many nonviolent convictions. This core belief implies reciprocity and a commitment to equality. In trying times, this message needs to be reinforced, at every occasion.

I strongly believe that there is a need to deconstruct stereotypes and put forward success stories of shared common values.

Many government and civil society initiatives have been put forward, and it’s important to stress their importance. Here are some notable success stories:

The Fez process: the Special Adviser of the Secretary-General on the Prevention of Genocide has worked on bringing religious leaders together. His plan of action, known as the “Fez Process”, stemmed from the need to better understand, articulate and encourage the potential of religious leaders in preventing incitement and the violence that it can lead to, and to integrate the work of religious leaders within broader efforts to prevent atrocity crimes. Given the particular influence that religious leaders have, the Office has sought to engage them to prevent incitement to violence around the world.

The Beirut Declaration: Another UN initiative occurred in March 2017, when the Office of the UN High Commissioner for Human Rights launched its initiative on “Faith for Rights” with an expert workshop in Beirut. This initiative reflects on the deep, and mutually enriching, connections between religions and human rights. The objective is to foster the development of peaceful societies, and pledges towards 18 commitments, including: free choice, equal treatment, non-discrimination, the rights of minorities and the obli-

Interfaith dialogue as a means to address incitement to violence based on religion or belief

There is a universality to the values of coexistence, compassion, empathy and solidarity

In addition to forums involving the United Nations, there are numerous initiatives that have been initiated and conducted by faith-based groups, civil society actors, or indeed by states and regional organisations. Some of these are implemented at the national level, while others are regional or transnational. Many of these serve as antidotes to the so-called ‘clash of civilization thesis’, while others respond to more immediate national or regional challenges. There may even be instrumental motives attached to these ‘religion diplomacy’ efforts.

When addressing the question of inter-faith dialogue, there is a need to ensure that the right people are at the table to achieve the objectives of the gathering. Indeed, there are many forms of interfaith dialogue, and it is important to set the goals straight - in order to avoid the pitfalls! Several questions can be raised, such as: does this initiative aim at dialogue between religious leaders or grassroots activists? Is this a symbolic meeting or does it aim at future practical cooperation in a variety of fields? How is the dialogue planned to avoid possible negative effects, for example, disappointment or frustration? How inclusive is participation? Are women well represented? If the state is a facilitator, how to ensure that this is not an exercise in double standards - where one speech will be made during the event, and an opposite attitude will transpire in diplomacy? All these questions are crucial to discuss and tackle beforehand in order to achieve success.

Finally, I would like to mention the question of intra-faith dialogue, and highlight several remarkable initiatives advanced in the Islamic world at civil society and governmental level.

A letter was signed by numerous Muslim theologians, lawmakers and community leaders who wrote an open letter to Abu Bakr al-Baghdadi, leader of ISIS. It included a technical point-by-point refutation of ISIS’ actions and ideology based on the Quran, and using references to other normative texts.

There were also other initiatives, such as the Amman Message (notably declaring that a person is an apostate is impossible and impermissible in Islam)
and the Marrakesh Declaration (a statement made in January 2016 by over 250 Muslim religious leaders, heads of state, and scholars, which champions “defending the rights of religious minorities in predominantly Muslim-majority countries). All of these initiatives are tools that show how interfaith/intra-faith dialogue can help prevent violent extremism. It can be especially effective when there is a deep commitment to create inclusive societies that leave ‘no one behind’. Where dialogue can enhance understanding, promote empathy, build trust, facilitate cross-boundary solidarity, and is supported by policies of inclusion, it can contribute to fostering resilient societies that can overcome intolerance and hatred that often undergird extremism and incitement to violence.

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The author

Mr. Ahmed Shaheed is the United Nations Special Rapporteur on freedom of religion or belief. The Special Rapporteur on freedom of religion or belief is an independent expert appointed by the UN Human Rights Council. The mandate holder identifies existing and emerging obstacles to the enjoyment of the right to freedom of religion or belief and present recommendations on ways and means to overcome such obstacles. Mr. Shaheed is Deputy Director of the Essex Human Rights Centre. He was the first Special Rapporteur of the Human Rights Council on the situation of human rights in the Islamic Republic of Iran since the termination of the previous Commission on Human Rights mandate in 2002. A career diplomat, he has twice held the office of Minister of Foreign Affairs of Maldives. He led Maldives’ efforts to embrace international human rights standards between 2003 and 2011.
NEW PUBLICATION:

SUNČANA ROKSANDIĆ VIDLIČKA: PROSECUTING SERIOUS ECONOMIC CRIMES AS INTERNATIONAL CRIMES. A NEW MANDATE FOR THE ICC?


Serious economic crimes and violations of economic, social and cultural rights have often been neglected in criminal proceedings and reports of truth commissions that have followed in the wake of economic transitions or conflicts. Although such economic crimes often result in a substantial loss of wealth to the overall economy and society of the country in question, they have not been widely nor effectively prosecuted. The Balkan region is no exception to this rule. However, as argued in the book, from Nuremberg on, there have been attempts and successful examples of prosecuting war profiteering cases. Even quite recently, the International Criminal Court’s prosecutor called for such a prosecution before the ICC.

This study explores the legal and social preconditions under which serious economic offences may be characterized as crimes under international criminal law. It searches for answers as to why such crimes have been left out of the focus of mainstream international criminal law development since the end of WWII. It connects international criminal law with discourses of international human rights law, security studies, (supranational) criminology, political sciences, transitional justice and (economic) criminal law in order to find arguments as to why it is necessary to start prosecuting serious (transitional) economic offences as crimes under international law and why they should find their place in the Rome Statute of the ICC.
The use and abuse of the ‘clash of civilizations’ rhetoric

by Alessia Vedano
For well over two decades, and particularly in the aftermath of 9/11, public perception of terrorism has largely been dominated by its seemingly inherent link with the Islamic faith. From al-Qaeda to the more recently-born Islamic State of Iraq and the Levant (ISIL), - perhaps better known as the Islamic State of Iraq and Syria (ISIS) - today’s terrorist narrative revolves to great extents around the contraposition of Islamic against Western ideals and values. It is safe to claim that today, should a Western citizen be asked what he or she associates “terrorism” with, the reply would quite surely make reference to the Islamic State, and probably to the State in Iraq and the Levant (ISIS).

Indeed, this is of little surprise: this particular terrorist group has entered the international agenda and taken over political debates since 2014, earning the podium in the past years as one of the most concerning global threats and almost overshadowing all other internationally-recognized terrorist organizations. The reason for this is that, never in history had a terrorist organization hit at the heart of Western societies as repeatedly as ISIS has done in the past years. But, perhaps more relevantly, it has been the first terrorist group taking over major cities and trying to establish what could be considered as a de facto ‘state’, if we think strictly in Weberian terms of territory control and monopoly of the use of force1.

In other words, the association between terrorism and ISIS, but more broadly between terrorism and the Islamic faith, along with its contraposition to Western ideals, has long been mainstreamed. Western media, in this context, have played a significant role in fuelling the perception of a ‘civilizational clash’ between cultures. Whereas it is certainly true that the religious component has been manipulated to shape the narrative of terrorism in recent years, it would be a dangerous mistake and utterly simplistic to frame this phenomenon solely in religious or

1 For Max Weber’s definition of ‘state’ see Politics as a Vocation published as Politik als Beruf (1921 Gesammelte Politische Schriften). Originally a speech at Munich University in 1918, published in 1919 by Duncker & Humblodt, Munich.
As measured in the 2017 Global Terrorism Index (GTI) Report, the five countries suffering the highest impact from terrorism steadily remain Iraq, Afghanistan, Nigeria, Syria and Pakistan, which accounted for as much as three quarters of all deaths from terrorism in 2016 - last year for which data is available. Similarly, only four groups, namely ISIS, Boko Haram, the Taliban and al-Qaeda, were responsible for 59 per cent of all these deaths.

The geographical spread of terrorist activities had a peak in 2015, mostly due to ISIS expanding its operations, especially through the process of online recruitment. As reported in the 2016 GTI, this group was responsible for attacks in 28 countries in 2015 alone. Consequently, to the various and still ongoing military operations carried out against ISIS in Syria and Iraq in the following years, the situation in early 2018 may at a first glance look slightly brighter as the group lost considerable field and terrorist-related deaths have decreased as a consequence. Nevertheless, ISIS is still very active on a rather large geographical scale: it already allegedly carried out attacks in 13 countries in 2016. Further, in 2017, it slightly increased its activities compared to 2016: 18 countries were affected by ISIS attacks that year, although with a decrease in the number of deaths for that year.

Contrarily to the wider public’s perception and to what Western media too often portray, ‘global terrorism’ is still a highly concentrated phenomenon, with some of the gravest attacks committed primarily in a small number of countries and by a small number of groups.

Impact of terrorism on the Muslim world

It is certainly true that the religious component has been manipulated to shape the narrative of terrorism. The use and abuse of the ‘Clash of Civilizations’ rhetoric...
countries, 9 of which are predominantly-Muslim.  

The five countries suffering the highest impact from terrorism steadily remain Iraq, Afghanistan, Nigeria, Syria and Pakistan

When it comes to Boko Haram, their attacks are still quite concentrated in Nigeria, despite earlier efforts to expand into neighbouring countries. The group, which aims at establishing an Islamic state in Nigeria targets private citizens as well as religious institutions. In 2015, around 20 attacks against mosques and four attacks on churches were reported. However, while the group killed about 12,000 people in years between 2013 and 2015, as a result of the Multinational Joint Task Force military operations, deaths decreased by roughly 80 per cent in 2016.

The Taliban on their hand have continued to be centralised along the Afghanistan and Pakistan border as well as in the northern provinces of Afghanistan, targeting mainly law enforcement agencies and the civilian population. Deaths at the hands of this terrorist group amounted to 4,502 people in 1,094 terrorist attacks in 2015, making it the group’s deadliest year. In 2016, bombings and explosions were reported to have increased from 27 per cent of attacks in 2015 to 32 per cent in 2016, killing an average 8 people in each attack. As of April 2018, the Taliban have been allegedly responsible of 75 attacks, predominately in Afghanistan.

Al-Qaeda and its affiliates - Al-Shabab, the Al-Nusrah Front, al-Qaeda in the Arabian Peninsula, al-Qaeda in the Islamic Maghreb and others - have been mostly committing deadly attacks in, among others, Syria, Algeria, Pakistan, Yemen, Mali, Somalia and Kenya. Again, the main targets are usually civilians. The latest GTI reports that in 2016 as much as 155 attacks against civilians were carried out by Al-Qaeda affiliated groups in the above-listed countries, amounting to 29 per cent of all incidents.

In spite of the fact that such data only relates to four of the deadliest internationally-recognized terrorist groups and is not inclusive of many other factions and smaller groups, which operate in many other contexts, the statistics offered are still emblematic for understanding the extents to which the Muslim world is affected by terrorism. As stated by former United Nations Secretary-General “the threat of violent extremism is not limited to any one religion, nationality or ethnic group. Let us also recognize that today, the vast majority of victims worldwide are Muslims.” While acting in the name of Islam, these terrorist groups are in fact hitting at the very heart of the faith they blatantly pretend to represent. In this regard, one very striking event that shows the ‘a-religious’ of terrorism is the attack that hit the Saudi Holy city of Medina on 4th July 2016. The bombings, allegedly carried out by ISIS, occurred right outside of the Prophet’s mosque, second in importance only to the Grand Mosque in Mecca, a day before the Eid al-Fitr festival which marks the end of the Muslim Holy month of Ramadan. The appalling attack on this religious site, holy to both Sunni and Shia Muslims, was considered a defiant act against the Islamic faith. Nevertheless, it had little

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7 The country is divided between the Christian south and the Muslim north.
8 GTI 2016 54.
9 GTI 2017 74.
10 GTI 2016 55.
11 GTI 2017 75.
13 GTI 2017 75.
international resonance among Western media. Likewise, attacks during Ramadan are far from occasional. Under the horrified eyes of the Muslim community, the ‘Holy month’, which represents a time for reflection, prayer, purification, and charity, has been bloodstained more than once, in particular by ISIS, which has openly encouraged its followers to perpetrate barbaric killings against the ‘infidels’ during that time. In light of these facts, and on the general indiscriminative nature of their attacks, it remains somewhat unclear who such ‘infidels’ exactly are to them.

A clash of civilizations, within civilizations or an anti-establishment phenomenon?

As previously mentioned, today a more or less deliberate attempt to associate terrorism with radical Islamic terrorism can be noted, at both political and societal levels, with the international focus being mainly on ISIS. In this context, seemingly there has been an attempt to frame the discourse on Islamic terrorism in terms of a “civilizational war” against the West. Indeed, many of these groups, and particularly ISIS, overtly put forward the same rhetoric. But is this really a war between civilizations or is it rather a war within civilizations?

The concept of ‘clash of civilizations’ was first famously advanced by Samuel Huntington in a renowned article published in 1993 and later theorized into a best-selling book, where, in brief, he argued that future conflicts would be fought along the fault lines of civilizations, and, in particular between the West and Islam. According to Huntington, the latter, incompatible with Western democratic values, is itself responsible for large amounts of violence. In this regard, one of his most famous and perhaps controversial statements is that “the crescent-shaped Islamic bloc [...] has
bloody borders.”  

Though he acknowledged that conflicts and violence may also occur within civilizations, he argued that those would more likely be less intense. This provocative view was unsurprisingly challenged by many scholars of international relations and political sciences who regarded it as too simplistic to explain modern global politics. Henderson and Tucker for instance found that “civilization difference is not significantly associated with an increased likelihood of interstate war”, while Norris and Inglehart argued that Islam and democracy (typically associated with Western values) are not necessarily mutually exclusive. Specifically talking about radical Islamic terrorism against Western countries, Neumayer and Plümper explain that this shall not be understood as a war between civilizations, but instead as a result of “Western interference in countries of the Islamic civilization, whose support is often crucial in preventing Islamic terrorist groups’ bid for political influence.” In other words, they theorise that terrorist leaders choose their targets on a strategical basis rather than on culture per se. Despite its controversial implications, Huntington’s arguments have nevertheless been used by several right-wing extremist parties and populist movements, in an attempt to frame Islam as the real ideological enemy of the West, this way legitimising racism through anti-terrorism policies of profiling and border control. In these regards, as former US President Obama pointed out in a speech in 2016, “If we fall into the trap of painting all Muslims with a broad brush […] we are doing the terrorists’ work for

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them. In other words, the Islam vs West rhetoric can be inherently counterproductive and in fact contribute to fostering said civilizational war, perfectly in line with some terrorist groups’ goals. As a matter of facts, in view of the impact that terrorist activities have on Muslim communities analysed in the previous section, the current situation seems to be more likely a clash within civilizations rather than between them. In this sense, religion and ideology shall be seen tools of legitimization for jihadists’ violence as opposed to being themselves the trigger.

However, a third way to analyse contemporary radical Islamic terrorism can also be advanced. And this is to regard it as an anti-establishment phenomenon which shall not be confined simply within ethnic or cultural terms. Professor Olivier Roy explains what he calls ‘contemporary jihadism’, particularly in the West, in terms of youth revolt, counter-culture response and a search for identity among young Muslims. According to Roy, this phenomenon is to be rooted in the ‘deterritorialisation’ of Islam as a consequence of globalisation and Westernisation processes, which has led frustrated young generations to alienate themselves and reject western values and conventional Islamic values altogether. In this context, Roy contends that the attitude towards religion can be understood as a stress on the individual dimension as well as a quest for personal realisation, where faith supersedes the dogma in itself. According to his theory, such new interpretations of religion, or “religiosity”, are often characterised by a certain degree of anti-intellectualism in favour of easily accessible norms, where emotions override knowledge. However, one must be cautious, he warns, and not fall into the

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26 Olivier Roy, Globalized Islam. The Search for a New Ummah (Hurst 2004).

27 Ibid. 148-197.

28 Ibid. 51.
The use and abuse of the ‘Clash of Civilizations’ rhetoric

trap of viewing this phenomenon as a “fundamentalisation of Islam” but rather as an “Islamisation of fundamentalism”, in which religion becomes only a paradigm for youth revolt rather than of cultural affiliation.29 “The genius of ISIS” he says, “is the way it offers young volunteers a narrative framework within which they can achieve their aspirations.”30

Huntington’s arguments have nevertheless been used by several right-wing extremist parties and populist movements

A dangerous rhetoric: the rise of islamophobia

Going back to the ‘civilizational war’ way of analysing Islamic terrorism, one must note how the rhetoric contraposition of West vs Islam might, and indeed already has, led to rather undesirable consequences. When it comes to people’s attitude towards Muslims, regrettably, it can be observed that Muslims are no longer regarded and treated as themselves victims of terrorism to the same - if not greater - extent as western societies (as described above). Instead, the actions of a few stigmatize Islam as a whole. The rise of Islamophobia and the general anti-Muslim sentiment has become a scary reality in the West, and particularly in Europe, especially as a consequence of the uptick in ISIS terrorist attacks in 2015 and 2016 combined with the latest waves of migration to the Mediterranean shores.

Religion becomes only a paradigm for youth revolt rather than of cultural affiliation

During the 35th Session of the Human Rights Council, former Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mr. Mutuma Ruteere, expressed concerns on the proliferation of anti-Muslim rhetoric and the rise of right-wing extremist parties. According to the Special Rapporteur, “these two trends are intensifying globally following recent terrorist attacks and have led to an atmosphere of fear of Muslims in countries where Muslims are racialized or viewed as foreign, which in turn has increased experiences of racism and xenophobia.”31 He noted that “there were reports of a government and the media building a campaign focusing on the differences between Christians and Muslims, perpetuating negative stereotypes against Muslims and describing them as dangerous people.”32

The rise of Islamophobia and the general anti-Muslim sentiment has become a scary reality in the West

Former Special Rapporteur also indicated that some anti-terrorist measures adopted in several countries, including in Western Europe, in response to rising fear for terrorist attacks in combination with the waves of migration, were undoubtedly discriminatory and not in accordance with international law. In particular, he referred to the deportation of individuals on the basis of national security to countries in which they are likely to experience ‘serious persecution’ as being in striking violation of the jus cogens principle of ‘non-refoulement.’33 According to Mr. Ruteere, “political scapegoating, administrative exclusion, selective and restrictive immigration policies, targeted gang violence, police harassment, profiling and stereotyping in the media are also dangerous consequences of

30 Ibid.
32 Ibid. para 51.
33 Ibid. para 64.
xenophobia.” In early 2017, the United Nations Secretary General António Guterres expressed his concerns regarding the spread of islamophobic ideologies at a joint press conference with Saudi Foreign Minister Adel al-Jubeir, explaining that one of the things that fuels terrorism is in fact “the expression in some parts of the world of islamophobic feelings and islamophobic policies and islamophobic hate speeches.”

34 Ibid. para 11.

Profiling and stereotyping in the media are also dangerous consequences of xenophobia

Muslim communities’ response to terrorism

On several occasions the Islamic world was criticized for not clearly and strongly condemning the atrocities committed by some terrorist groups acting in the name of their religion, and in so doing seemingly fostering the ‘us’ against ‘them’ narrative. Bus is this really the case? The answer is certainly no. Condemnation by Islamic communities, and in particular by religious leaders and imams is loud, yet most times it goes unheard. The idea that the horrific actions committed by some terrorist groups can have any religious fundament repels the large majority of Muslims. In this regard, a public opinion poll among Arab Muslims conducted by the Doha-based Arab Centre for Research and Policy and reported by the International Centre for Counter-Terrorism surveying public opinion in seven countries, found that, indeed, “chances that more Muslims rally behind ISIS are small as the extreme violence (crucifixions, stonings, beheadings, amputations, rapes, mass killings of prisoners) disgust large major-
ities of Muslims and non-Muslims alike.”

Thus, in total rejection of Huntington’s theory that violence is culturally enshrined within Islam, the Muslim community firmly responds that in fact the Quran itself recites that killing one innocent person is equivalent to killing all humanity. Mr. Yousef Al-Othaimeen, Secretary-General of the Organisation of Islamic Cooperation (OIC), an organization comprising 57 nations with Islamic majorities, warned at the Human Rights Council in Geneva on 1 March 2017 that “far-right politics is on the rise, strengthening the narrative of ‘us’ against ‘them’. This is a scary scenario for an intolerant world that none of us would like our children to live in. [...] We all need to play our role.”

As reported by a British newspaper, the Muslim Council of Britain was also very loud in expressing condemnation for ISIS barbaric actions.

The Quran itself recites that killing one innocent person is equivalent to killing all humanity.

In the aftermath of the Westminster attack carried out by ISIS on 22 March 2017, the General Secretary Harun Khan, besides offering prayers for the victims and the law enforcement agencies, reportedly issued a further statement saying that “This attack was cowardly and depraved. There is no justification for this act whatsoever. The best response to this outrage is to make sure we come together in soli-
darity and not allow the terrorists to divide us.” In addition to public condemnation, other significant attempts to detach from the ‘islamisation’ of terrorism narrative have been made by Muslim communities. One of them is, for instance, the Muslim Reform Movement, born in rejection of interpretations of Islam that call for any violence, social injustice or politicized Islam while promoting a culture of human rights, equality and tolerance. But for many, condemnation and detachment by the Muslim majority seems to not be enough to excuse them for the behaviour of a few ‘black sheep’. In this sense, it may be argued that in fact Muslims should not feel forced to ‘apologize’ on behalf of individuals who they do not feel are representing neither their culture nor their religion. The best response to this outrage is to make sure we come together in solidarity and not allow the terrorists to divide us.

Conclusion: intercultural dialogue as the way forward
Having established that contemporary Islamic terrorism does not easily fit into the “clash of civilizations” rhetoric, particularly as terrorist attacks are, still, significantly concentrated in predominantly Muslim countries, but could instead be viewed as an anti-establishment phenomenon of generational fracture in which religion (or ‘religiosity’ as Roy calls it) is only a narrative framework to legitimize violence, it is important to understand how the ‘us’ against ‘them’ discourse, with its dangerous consequences, can be countered. One way forward could be intercultural dialogue. Though this article excludes that Islamic terrorism is the product of a civilizational clash between different populations whose cultures necessarily collide against one another, it indeed acknowledges that the wrongful use of such rhetoric may in fact lead towards the undesired path of cultural clash, as demonstrated by the rise of islamophobia.

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in Europe and beyond. In this sense, as explained by United Nations University Research Fellow Valeria Bello, intercultural dialogue, which happens between ‘civilizations’ and ‘cultures’, is an emerging practice that could effectively represent a way of deconstructing the discourse on both violent and non-violent extremism, if those are to be understood as socially-constructed phenomena. As she advances, the role of non-state actors in this sense could be pivotal as, according to some, they “hold the capacity to influence international relations.”

In other words, not only states, but also international organizations, NGOs and other civil society groups should come together and create platforms to promote dialogue that aims at addressing cross-community issues and build peace, respect and tolerance, so to facilitate the adoption of effective counter-terrorism and counter-extremism policies.

With this in mind, the invitation is, therefore, to use intercultural dialogue to unravel the logic behind the ‘islamisation’ of terrorism and deconstruct the discourse behind the clash of civilizations. These misleading and deceptive narratives can only lead to further division and intolerance among populations and, ultimately, will only contribute to fueling terrorism as well as ideologically empowering terrorist groups further, without offering hope of finally breaking the cycle of violence.

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**The author**

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When Mafia and jihadists team together

by Alessio Postiglione
Business is business. We might say this is the principle all the illegal activities follow, when criminal ethics meets the spirit of capitalism, to paraphrase Max Weber. Today, a new violent cartel rules the Mediterranean; an unholy alliance between international mafia groups and jihadists, which spans from the northern to the southern flanks of the Mare Nostrum: human trafficking, drugs and weapons smuggling, and new criminal partnerships have developed across the sea. A mobsters’ new entente cordiale aimed at perpetuating illicit trafficking and destabilizing the whole region. Because both jihadists and mafia groups share criminal but also political goals, including subverting institutional polities, capturing States, turning their gangs into the ruling elites of new Mafia States.

In our recent book, “Sahara the desert of mafia and jihadists”, Italian journalist Massimiliano Boccolini and I have highlighted the emergence of new unexpected ties between godfathers and jihad affiliates. Italy, located in the very centre of the Mediterranean, is obviously a main hub, thanks to its well established and influential mafia groups: Sicilian Cosa Nostra, Calabria’s ‘Ndrangheta, Neapolitan Camorra and Apulian Sacra Corona Unita. At any rate, this criminal partnership is an international network: from Cechenian Obishna, to the Mexican and Colombian drug cartels, actors from all over the world are playing the game. In a moment in which States are replaced by mega-cities competing over connectivity more than borders, as to quote Parag Khanna, the most networked criminal gangs will win.

A new violent cartel rules the Mediterranean; an unholy alliance between international mafia groups and jihadists.
However, the pivotal actor is Italy, due to its central geopolitical location and the straight relational-political nature of its gangs. In fact, the foremost criminal affinity between jihadists and Italian mafia groups lies in the political role the latter have always played. As jihadists aim at establishing new States, like ISIS - but also other lesser known entities such as the Caucasus Emirate -, so Italian Mafias have always done. During its existence, Cosa Nostra has dealt with "deviated" secret services; liaised with élites during Risorgimento; infiltrated a Sicilian separatist political party, whose objective was to establish an independent region; negotiated with "deviated" Italian functionaries, after the Portella della Ginestra massacre and the period of '92 and '93 manslaughters, when mafiosi murdered renowned judges Giovanni Falcone and Paolo Borsellino and several other anti-Mafia activists. In doing so, Italian mafia groups have also always relied on terrorist strategies, like during the “strategy of tension” years, a period of social and political turmoil, marked by numerous acts of political terrorism. It is not by chance that the use of uploading on YouTube video of beheadings to scare the enemies was firstly started by Mexican cartels, lately imitated by jihadists, thus supporting the existence of an exchange between the two entities, not only at an economic level, but also on ethical and aesthetic grounds. A jihadist such as Mahmood Omar Khabir has been living in Mexico in recent years, working with Ismael “el Mayo” Zambada from the Sinaloa drug cartel.

### Italian mafia groups have also always relied on terrorist strategies

Jihadists and mafia gangsters both share a criminal economy. From the Gulf of Guinea, through Sahel - Mali, Niger, and then Libya - , mainly drugs and human beings are smuggled: Highway 10, the 10th parallel marine and aerial routes linking South America and West Africa, the shortest route between the two continents, has become the preferred lane used by traffickers for shipping multi-tons of cocaine from Mexico and Colombia to Europe. The furthest destinations of this route are intertwined with jihadism. Through Boko Haram’s controlled areas in the Sahel region, new illicit traffic caravanserais are flourishing. Migrants and people trafficked from all over Africa are gathered at the border between Niger and Libya and then smuggled through Fezzan, Southern Libya, towards Europe. Judiciary sources included in our book prove how mafia groups, especially Neapolitan camorra, provide vital expertise in counterfeiting documents to help migrants and also terrorists to move freely inside the EU’s Schengen area. Many victims of...
human trafficking are enlisted in Italian mafia ranks or involved in illegal activities that fund terrorist attacks in Europe. The 2004 Madrid train bombings at the Atocha Railway Station were financed by drug smuggled at Santa Maria Capua Vetere, close to Naples, with the cooperation of Camorra. Mokhtar Belmokhtar, a key leader of AQUIM - Al Qaeda in Islamic Maghreb - who started his career in Afghan and Algerian civil wars, is nicknamed Mr. Marlboro, due to his main funding activity, yet has been involved into different turmoils associated with “liberation” movements and separatism.

**Western Sahara may become increasingly permeable to the interests of groups such as al-Qaida**

At the present stage, we are witnessing two trends: on the one hand, there is an alliance between many subversive movements which share populist and anti Western values; on the other hand we observe a shift from secular-revolutionary roots to religious fanaticism. Eloquenty, Western Sahara may become increasingly permeable to the interests of groups such as al-Qaida. The overall poverty of youth, disillusioned with the elites establishment, accused of mispending the economic resources is triggering a sort of paradigm change: some young people seem to flee the secular values and are turning to jihadism, seduced by its political discourse. A belief is growing that jihad is a better way to ameliorate living conditions, when political leaderships are accused of corruption and marxist ideology has lost its grip on the hopes
of the youth. Similarly, terrorist-salafi groups such as the MUJAO (Movement for Unity and Jihad in Western Africa) and Ansar Eddine, the former led by Belmokhtar and Abu Walid al Sahrawi, the latter by Iyad Ag Ghaly gained ground by exploiting disillusioned youth or fragile territories. Ag Ghaly is a billionaire who started his career with secular movements, became a Malian diplomat, led the Tuareg rebellion against his government, lastly affiliated to Nusrat al-Islam, a qaedist group formed by branches of AQIM, some Taliban and the Macina Liberation Front. Abu Walid al Sahrawi is an iconic narco-emir, associated with another milestone activity of the criminal economy: ransoms.

In our book, we cover the case of Italian tourist Maria Sandra Mariani, kidnapped on February the 2nd 2011 in Djanet, southern Algeria, who recounted being held hostage by Adnan Abu Walid al-Sahrawi and his militants, all young people purportedly from the Tindouf Camp. Having said that, there is some evidence that this tactical alliance between mafia and jihadist might include also subversive extremists leftist and rightist groups, in Europe, which are sympathetic with the anti liberal and anti capitalist stance of Salafi terrorists.

The enemies of the open society cooperate. This implies its supporters must collaborate at any level and in any place to cope with these threats. The establishment of a common European Public Prosecutor’s Office which cooperates with its homologues worldwide may be the right answer. In a connected world, networked criminals cannot be countered individually.

The author

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Since it was first addressed as the right to know the fate of missing and dead persons under international humanitarian law, the idea of a ‘right to truth’ has gradually expanded into other fields of law such as human rights law and international criminal law. Though this right has not been codified in a legally binding instrument of international law, the Human Rights Council (HRC), as the monitoring body of the International Covenant on Civil and Political Rights (ICCPR), has interpreted that there is a right to truth and that it is a development of the right to remedy. This has been the theme of various of its Res-
The United Nations General Assembly Resolutions are no different as they also understand the truth as a right. The jurisprudence of the European and Inter-American Courts of Human Rights similarly recognized the right to truth, this time, as an extension to the right to access to justice. It is because of this wide recognition that some commentators, including Yasmin Naqvi, researcher at the ICRC, consider this right to be a general practice of international law which grants it the status of a norm of customary law. But, even if considered a right because of its customary status, what does the right to truth entail? What is its content? What are its contours? These are questions that remain unanswered.

One thing is clear however: the right to truth comes from norms of international humanitarian law and human rights law and then moved into international criminal law. It was (and still is) a matter of State responsibility, not thought as an element of personal liability. This is important because it shows that the right to truth was not conceived originally as part of international criminal law and that in an effort to implement it, the international criminal procedure has suffered substantial changes, trying to imitate a human rights tribunal or a truth commission.

The right to truth comes from norms of international humanitarian law and human rights law and it then moved into international criminal law.
Regardless of the ambiguity of this concept and as mentioned above, the right to truth was imported to the field of international criminal law. Consequently, this changed the nature of the ascertainment of the truth in the criminal trials, from unveiling the guilt or innocence of an individual, to a much broader objective. The truth that international criminal procedure pursued became a very complex and ample concept that goes as far as setting down a historical record that includes all the circumstances surrounding the perpetration of an international crime.  

Though the resolutions establishing the International Criminal Tribunals for the former Yugoslavia (ICTY) and Rwanda (ICTR), and their respective statutes, make no reference to such a complex concept, truth has been considered the main objective of the jurisprudence of these tribunals. The International Criminal Court (ICC) went a step further by acknowledging this purpose in its statute, particularly in articles 54(1)(a) and 69(5). International criminal tribunals thereafter have taken a similar approach. As argued before, importing the right to truth from human rights law and humanitarian law into international criminal law led to recognizing an ample and complex truth as the heart of international trials. This raises at least three questions: First of all, what truth are international trials supposed to unveil? Second, can international criminal trials establish such a truth? Finally, should international criminal tribunals do so? These questions are not meant to be answered in this article. But, addressing them in the following sections, will hopefully provoke discussion around the objectives of international criminal law and the content and scope of the truth in international criminal proceedings.

What is truth in the international trials? In common-law systems, the notion of establishing truth in criminal proceedings is limited to the by-product of presenting and refuting evidence concerning individual criminal guilt or innocence. This has been referred to as "procedural" truth. In a civil-law system, in contrast, the truth is defined as a factually accurate verdict that goes beyond the truth of the parties directly involved in the case. This model calls for the intervention of the parties, the judge and participants with the aim to achieve a "material", "substantial" or "ontological" truth regarding the guilt or innocence of the accused. In the context of international criminal law, common-law and civil-law traditions influence the approach to the truth that the tribunal may have. The ICTY and ICTR conduct their proceedings in an attempt to reach a material truth, though these proceedings follow a common-law-oriented scheme in which two equal parties present their cases. The ICC also attempts to find a material truth as a result of the proceedings and, while maintaining its common-law features, it moves towards the civil-law tradition in allowing the involvement of the judge and the victims in establishing the truth. But besides the common-law and civil-law traditions that govern these tribunals, the influence of the concept of a right to truth, born in human rights and humanitarian law, has exalted the importance of the truth of criminal proceedings to the point of becoming the core objective of international criminal law. International criminal tribunals not only determine the guilt or innocence of the accused, but also look for the facts and establish a historical record of the circumstances surrounding international crimes. This is the type of truth that international criminal trials look for, and for the purpose of this article will be considered the "historical truth."

Can international criminal tribunals establish a historical truth? While it has been one of the main objectives of international criminal tribunals to achieve a truth that involves establishing a historical record of the circumstances surrounding the perpetration of international crimes, in practice, that objective usually falls short for a number of reasons.
Look for the facts and establish a historical record of the circumstances surrounding international crimes

First of all, the use (and misuse) of plea bargains and charge bargains have made it difficult to achieve a historical truth. As seen in the previous section, though the ICTY includes elements of both traditions of law, the model put in place is heavily oriented towards a common-law system. This opened the possibility of plea bargains and charge bargains. This common practice consists of an agreement between the parties made with the purpose of shortening the trial and making them more efficient, as well as obtaining information, otherwise never obtained. However, these agreements are considered controversial as they imply limiting clarity on the circumstances of the crime and may obscure the true facts of the case. In fact, ICTY judge Wolfgang Schomburg, presiding judge in the Deronjic case, criticized these agreements as they conflicted with the mission of establishing the truth. That can be seen in the case of Biljana Plavšić, the former co-president of the Republika Srpska (who was sentenced 11 years in prison). The prosecutor dropped the charges for genocide as part of a charge agreement. Plavsic was then convicted for war crimes only and after her early release she renounced her admission of guilt. As a consequence, Plavšić’s involvement in the crime of genocide will remain forever unknown. To date, twenty of these agreements have taken place. A similar approach was followed at the ICTR, where seven of the thirty-seven people convicted pleaded guilty as a result of an agreement with the prosecutor. This approach implies, by definition, making it impossible to establish a truth that allows for a robust historical truth.

At the ICC, departing from the experiences in the former Yugoslavia and Rwanda, no plea bargains have taken place. Also, the Rome Statute - which established the ICC - in articles 54(1)(a) and 69(1)(3) takes on a broader un-

15 ICTY, Key Figures of the ICTY (May 20, 2012).
understanding on the truth in the proceedings. First, Article 54(1)(a) recognizes as a duty of the prosecution to extend the investigation to cover all facts in order to establish the truth. Later, Article 69(1)(3) allows the Court to request the submission of all evidence, be it inculpatory or exculpatory, with the purpose of establishing the truth in the proceedings. This approach is more likely to fulfil the requirements of establishing a holistic truth in international criminal trials.

Nonetheless, the provisions of the Rome Statute do not rule out the possibility of plea bargains or charge bargains, as it contains provisions regarding the admission of guilt. Therefore, there is still room for trials that use plea bargains and charge bargains in the ICC and that achieve a mere procedural truth instead of the intended historical truth.

For the sake of clarity, the use of plea bargains and charge bargains has proven to make trials more efficient. However, this practice is not compatible with the concept of a historical truth and it makes more difficult to achieve a right to truth. Victims should then apply to the realm of human rights law and look for a truth that meets their demands either before national or regional human rights courts.

The use of plea bargains and charge bargains has proven to make trials more efficient

Secondly, the participation of victims in the proceedings, viewed as a means to guarantee the right to truth in international trials, may have the opposite effect. This is because it is assumed that the participation of victims in the proceedings will reveal the true facts behind the circumstances of crimes. Far from that, victims’ participation in certain cases has taken the form of inconsistencies and false testimonies that detract from the truth.17

To conclude, many elements present in international criminal trials like plea bargains, charge bargains and victims’ participation have been necessary to conduct the proceedings and even to guarantee the ascertainment of the truth (be it procedural, material or historical). But, these very tools may in some cases render establishing a historical truth impossible. Taking the experi-

ences from the former Yugoslavia and Rwanda, it can be argued that the recurrent use of plea bargains and charge bargains led to a mere procedural truth, making a historical truth unreachable. Likewise, despite the effort of the ICC to depart from the procedural truth by giving judges a more active role in the search for the truth, the possibility of plea bargains and charge bargains still remains. As to the victims’ participation in the proceedings, allowing victims’ voices to be heard in trial may help to establish a holistic truth. But, as shown in practice, victims’ voices have also led in some cases to false testimonies and inconsistencies that are divorced from the facts. Therefore, victims’ participation must be limited to the role of a witness to deprive other interests to conflict with the search for the truth and limit to the extent possible that external factors interfere with the proceedings.

Should international criminal tribunals establish a historical truth?

In addition to the practical difficulties international criminal tribunals face in establishing historical truth, one has to wonder: is that an appropriate role for international criminal trials?

First of all, let us bear in mind that the historical truth that international criminal trials seek came from the notion of a right to truth in international human rights law. This means that the satisfaction of a right to truth is a matter of human rights law, not a matter of international criminal law. This means that to satisfy the right to truth is a responsibility of a State and should be addressed in a national or regional court of human rights, not an international criminal tribunal. Therefore, the recognition of such truth as the core value of international criminal trials is the result of a confusion between two different bodies of law. In other words, an international criminal tribunal should not have the burden of satisfying victims’ right to truth, as it is not a human rights tribunal.

This practice is not compatible with the concept of a historical truth and it makes more difficult to achieve a right to truth. Plea bargains, charge bargains and victims’ participation have been necessary to conduct the proceedings and even to guarantee the ascertainment of the truth.

Secondly, it could be argued that achieving a historical truth could be beneficial as it fights impunity, deters and prevents further violations, re-establishes the rule of law and reaffirms the principle of legality.

Achieving a historical truth could be beneficial as it fights impunity, deters and prevents further violations, re-establishes the rule of law and reaffirms the principle of legality.

Finally, far from achieving the goals of international criminal law or satisfying victims’ rights, the role of international criminal tribunals as historical-truth-seekers entails many dangers. As the Finnish international lawyer Martti Koskenniemi argues, giving internationally

18 Ibid.
tional criminal tribunals the power to write history, instead of only determining the guilt or innocence of the accused, will make the line between justice, history and manipulation invisible.

The right to truth, deeply rooted in human rights and humanitarian law, has permeated international criminal law

This is because the highly political context under which international criminal trials take place will increase the chances of making international criminal proceedings a show trial that intends to educate people on historical truths through law.

Conclusions

As argued in this article, the right to truth, deeply rooted in human rights and humanitarian law, has permeated international criminal law. As a result, international criminal tribunals have taken on the challenge to provide a truth that goes beyond establishing the guilt or innocence of the accuse. This truth has been expanded to the point of searching for all aspects related to the crime committed, its context, reasons, etc., in order to set a historical record. Nonetheless, such a historical truth can hardly be created by international criminal tribunals, and such truth has not proven to be beneficial for the aims of international criminal law. Moreover, to pursue this truth endangers the legitimacy of international criminal tribunals as it gives the procedure a political hue. With that in mind, it can be argued that international criminal law should focus on determining the guilt or innocence of the accused, as assuming such lofty objectives as writing history and achieving an uncontested truth may be anything but beneficial.

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UNICRI is implementing a pilot project on Countering Violent Extremism (CVE) in Burkina Faso, Chad, Libya, Mali, Mauritania, Morocco, Niger and Tunisia. The project is piloting most diverse grass-root initiatives in collaboration with more than 60 civil society organizations, proposing successful practices for countering violent extremism.

The project involves:

- Conducting field research in low, medium and high-risk environments
- Identifying, vetting, selecting, engaging and micro-financing grass-root projects
- Enhancing the resilience of local communities via early warning mechanisms
- Enhancing the resilience of local communities via continuous vocational training, education and awareness raising
- Building the capacity of progressive local religious leaders, civil society organisations and youth
A photographic journey into an unprecedented migration crisis

Valentina Tamborra is a 35 year-old photographer born in Milan, Italy, where she currently lives and works. Her photography, largely consisting of reportages and portraits, is a successful attempt to combine storytelling with pictures.

Within a wider range of projects and exhibitions spanning mainly the years 2016 and 2017, she devoted much of her latest works to the cause of migrants, by reporting through photographic diaries her firsthand experiences in some of the most crowded and unsafe refugee camps.

From the Dandora dump – Nairobi, Kenya – to the hotspots of Ventimiglia, at the border between Italy and France, and Moria, on the island of Lesbos, the photographer collects and tells us about the stories of thousands of refugees living in inhuman conditions.
From Ventimiglia to Lesbos

Ventimiglia

From September to December 2017, Valentina works on a project entitled *La sottile linea rossa* (The thin red line), developed in cooperation with Médicins Sans Frontière - MSF. She witnesses and documents the stories of refugees that she describes as being “stucked in a limbo” in Ventimiglia, at the border between France and Italy. A tiny strip of land where “never-ending dramas, unfulfilled hopes and shattered dreams are part of their daily lives”.
Passo della Morte – the bridge marking the beginning of the long, deadly route from Italy to France

The bridge under the SS20 highway – hundreds of people living on the banks of the river
Hope – looking forward to a better life. On the other side, France is a promised land.

Mohamed – a 15 year-old migrant living under the bridge who has been denied access 3 times when trying to reach France.
As her photographic journey continues, Valentina is committed to reporting on the astonishing living conditions of refugees in the hotspot of Moria – Lesbos, where about 6000 migrants live in a camp of a maximum capacity of 2000. The shoots, collected in one of her most recent exhibitions – Lesbos: Stories of migrants, depict an appalling situation where people struggling to survive are constantly seeking for asylum or waiting to be returned to their countries of origin.
The 70 year-old grandpa desperately waiting for a healthcare provider. “Doctor” is the only English word he learned.
“Overlapping faces. Untold stories. Thousands of men and women whose identities have been denied. Who became nothing but numbers and labels of an endless list”
I went to Nairobi – Kenya and thanks to Amref Health Africa social workers I documented the story of the children living in dumpsites and their re-birth thanks to recycling materials found in the garbage to make musical instruments”. Valentina Tamborra summarizes in a nutshell her astonishing visit at the Dandora dumpsite, Nairobi, where she contributed to the social workers’ rescue operations and followed the kids inside Amref centres, where they receive education, healthcare and practical assistance.

CHOKORA – The singing tin

It’s pronounced “Cho ko rah” and in Swahili means trash. This is the name given to the Nairobi street kids. Kids who live in the trash, or to better say: survive. From the immense Dandora dumpsite to Dagoretti slum and Amref HW, we’ll tell their stories and a tin one. It’s a story of re-birth, childhood that can be finally lived, hope. It’s the story of a piece of garbage which becomes music, play, new life.
Kibera - one of the largest slums in Kenya

Kids sniffing glue
The effects of glue on a kid: suppresses hunger and cold, annihilates senses while destroying life.

Dandora – people collecting materials for resale to buy food and clothes.
The return of hybrid courts: omen or promise?

by Davide Brunone

According to Greek mythology, chimeras were monstrous hybrid creatures made up of the parts of different animals, usually a lion, a goat and a snake. These monsters were regarded as nature’s abortions and their appearance was considered an omen for disaster.

Just like chimeras, hybrid courts are courts whose staff and applicable law consist in a combination of heterogeneous elements: the international and the domestic. However, should the return of hybrid courts on the international stage be considered as ominous as that of their mythological ancestors?

During the last decades, the hybrid design slowly emerged as the standard design for transitional justice courts, its success relying largely on its ability to get the best of both worlds: respect for international fair trial standards and a decent degree of domestic ownership. Unlike purely international courts, hybrid
courts are said to enjoy greater legitimacy, since they rely heavily on local staff, lay their seat in the countries where the atrocities occurred, apply a blend of international and domestic law and set out legacy-building mechanisms. On the other hand, unlike purely domestic courts, they stir international capacity into the domestic judicial system, promote compliance to international legal standards and ensure the independence of proceedings.

After the adoption of the Rome Statute, but before it became fully operational, hybrid courts enjoyed their golden age: between 2002 and 2006 the Special Panels for East Timor, the Special Tribunal for Sierra Leone (STSL), the Extraordinary Chambers in the Courts of Cambodia (ECCC), the Kosovo’s Regulation 64 Panels, the Bosnia’s War Crimes Chamber (BWCC) were established and the creation of the Special Tribunal for Lebanon (STL) was already underway.

And yet, after the creation of the International Criminal Court (ICC), few would have guessed such a bright destiny for hybrid courts. Squeezed between the universal mandate of the ICC and domestic prosecution of international crimes, their survival on the international stage appeared unrealistic, as no room had been left for a third actor in the binary (domestic/international) system envisaged by Art. 17 of the Rome Statute. In the face of the ICC’s complementarity regime, their role was to be secondary and short-lasting, and those who already celebrated the “promise of hybrid courts” were regarded as romantic and naïve.

Most recently, after a phase of both “practical obsolescence and theoretical disfavour”, the hybrid design has regained the spotlight as several hybrid criminal justice mechanisms have been set up, such as the Specialist Chambers for Kosovo, the Special Jurisdiction for Peace in Colombia, the Special Criminal Court for the Central African Republic and the African Union-backed Hybrid Court for South Sudan.

This revival of the hybrid design comes with a question: have hybrid courts kept their promise? The original promise of hybrid courts lay in the capacity of such courts to overcome the draw-

backs of both domestic courts and *ad hoc* international tribunals while drawing on their respective strengths in terms of ownership, legacy-building and rule-of-law enforcement. Whether hybrid courts have delivered this promise or not, however, is a question that does not have, nor deserves, an answer.

“Hybrid courts” is a definition encompassing a patchwork of transitional justice mechanisms, each one displaying its specific design as shaped by the historical, geographical, social and legal context in which it is embedded. As a consequence, there is no way to assess the promise of hybrid courts *per se*. In each case, the circumstances under which the court operates, the challenges it faces and the aims it chases must be taken into account.

The original promise of hybrid courts lay in the capacity of such courts to overcome the drawbacks of both domestic courts and *ad hoc* international tribunals

Besides, this promise has been largely misplaced. Since its first appearance, the hybrid design has been advertised as the ultimate stage of an evolutionary process leading from UN-based *ad hoc* tribunals (such as the ICTY and the ICTR) to domestic courts enforcing universal jurisdiction and, eventually, to hybrid courts. This enthusiastic propaganda created false expectations, portraying hybrid courts as a panacea for every setback in international justice, as well as unnecessary concerns, raising the suspicion that hybrid courts were secretly spoiling the ICC of its jurisdiction by overriding the complementarity regime established by Art. 17 of the Rome Statute.

On the one hand, the promise of a long-lasting legacy of rule-of-law in the countries where hybrid courts have been established is deceptive. As stated in a recent report by the Office of the United Nations High Commissioner for Human Rights, “legacy needs a strategy and will not necessarily happen automatically or by osmosis.” Hybrid courts have so far been designed as *ad hoc* courts with a relatively short lifespan and no other major task than to provide accountability for the atrocities perpetrated. In fact, policy-makers have always been more concerned about building agile and cost-effective transitional courts, rather than all-round, all-purpose courts. In most cases, capacity and legacy building schemes have been secondary to the delivery of early convictions. In other words, if there is one way hybrid courts have achieved a lasting legacy and promoted a culture of accountibility, it is by successfully bringing to justice the perpetrators of the gravest breaches of international criminal law, rather than by relying on their capacity-building mechanisms.

In each case, the circumstances under which the court operates, the challenges it faces and the aims it chases must be taken into account

On the other hand, the assumption that hybrid courts would override the ICC’s complementarity regime is misleading and reveals a poor comprehension of the dynamics of the unfolding international justice system.

Legacy needs a strategy and will not necessarily happen automatically or by osmosis

The ICC’s complementarity regime encourages the enforcement of universal jurisdiction at its earliest stage by letting the Court step in only when domestic courts are unable or unwilling to carry out the investigations or the proceedings. This, however, is also the case when the establishment of a hybrid court

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is taken into consideration. In fact, transitional justice takes place, by definition, right in the aftermath of wars or civil conflicts, when domestic capacity is too scanty, biased or flawed to deliver meaningful justice. And yet, according to their detractors, hybrid courts would usurp ICC’s jurisdiction by sneaking in between unwilling or unable domestic courts and the Court itself.

This allegation largely overrates the centrality of the ICC within the international justice framework. The ICC was designed as “a relatively small and jurisdictionally constrained institution with a fairly low budget.” As a consequence, its jurisdiction is, as a matter of fact, confined to the prosecution of those who were most responsible for the commission of the most serious crimes. There is actually a high chance that, at least in the near future, the ICC’s outreach will remain soft and symbolic in nature, while domestic and hybrid courts take on the burden of prosecution. Therefore, it is because of the congenital shortcomings of the ICC’s jurisdiction, rather than despite them, that hybrid courts should back up its action.

A remarkable example in this respect is the Special Criminal Court (SCC) for Central African Republic. Since the outbreak of an armed conflict between the Islamic rebel group of the Séléka and the Christian/Animist Anti-Balaka militias following a
failed coup d’état to overthrow president François Bozizé in December 2012, impunity has spread across the country. CAR’s situation has been under scrutiny by the ICC since 2004.

Policy-makers have always been more concerned about building agile and cost-effective transitional courts, rather than all-round, all-purpose courts

Most recently, on the 3rd of June 2015, current interim president Catherine Samba-Panza promulgated a law creating a Special Criminal Court to investigate and prosecute grave violation of human rights and international humanitarian law committed in the country since January 2003. Considering it is the first time a hybrid tribunal has been set up in a country that is also under investigation by the ICC, the creation of the SCC marks an unsteady first step towards a partnership between hybrid courts and the ICC where the former are a complement, rather than an alternative, to the latter. Because the SCC is part of the judicial system of CAR, its relationship with the ICC falls under the complementarity regime of Art. 17 of the Rome Statute, which gives primacy to domestic prosecution. However, given the high number of indicted expected and the budgetary bonds of ICC, it is expected that the bulk of prosecution will be borne by the SCC, with the ICC going after the “big fishes”, according to a case-load sharing scheme already rehearsed by the Bosnian War Chambers and the International Criminal Tribunal for the former Yugoslavia. Whereas it is naïve to believe that the SCC will bring peace and justice to CAR by itself, its example could set a strong case of horizontal cooperation between the ICC and hybrid courts in prosecuting international crimes.

Hybrid courts will also play a leading role in combating impunity for crimes falling outside the ICC’s ambit. This could be just the case of the Hybrid Court for South Sudan (HCSS) which, despite the resistance put up by the South Sudanese government and the countless challenges standing in its way, could be a game-changer in the eradication of the “entrenched culture of impunity” spread across country.

4 Final report of the African Union Commission of Inquiry for South Sudan, 14 October 2014, § 991.
Transitional justice takes place, by definition, right in the aftermath of wars or civil conflicts, when domestic capacity is too scanty, biased or flawed to deliver meaningful justice.

The August 2015 Agreement between President Salva Kiir and Riek Machar, military leader of the Sudan People’s Liberation Movement and former Vice-President, which formally settled the armed conflict raging in the country since December 2013, dedicates an entire section to the establishment of an hybrid court “to investigate and prosecute individuals bearing the responsibility for violations of international law and/or applicable South Sudanese law.”

Because South Sudan did not ratify the Rome Statute, nor did the Security Council consider a referral to the ICC, the Court cannot claim any jurisdiction over the crimes committed in the country. This means that the burden of the creation of a hybrid court for South Sudan will lie entirely on the African Union, but also that the eagerly-awaited court will play the lead in the fight against impunity in South Sudan and get a chance to reiterate the success already gained by other hybrid courts.

As these recent examples show, the return of hybrid courts still holds a good deal of promise. Rather than evanescent all-purpose courts, rather than usurpers of ICC’s jurisdiction, rather than chimeras, hybrid courts have been, and will remain, an asset in the fight against impunity for international crimes.

The author

Davide Brunone studied law at the University of Naples “Federico II”. After a study period abroad at the University of National and World Economy of Sofia, he graduated with a thesis on hybrid courts and their juridical nature, where he focused on the case of the Extraordinary Chambers in the Courts of Cambodia. Most recently, he attended the Specialized Training Course on International Crime and Global Threats to Peace and Security held by UNICRI and worked as a legal intern at the International Criminal Tribunal for the former Yugoslavia.
THE ART OF CRIME
New models of governance, compliance and accountability for the art world

by Marcílio Franca
Issue 29/2005 of German magazine Der Spiegel announced that, according to German Police findings, terrorist Mohammed Atta possibly tried to finance the attacks of 11 September 2001 through illegal art trade. According to the publication, Atta had offered antiques to a Professor of the University of Göttingen, who suspected the origin of the artwork and declined. Despite the world’s astonishment at such revelation, Al Qaeda was not the first terrorist organization to use the art and antiques market to finance their criminal operations, a market that only in 2016, handled an officially reported amount of 45 billion dollars, according to the TEFAF Report 2017 on the global art market.

Criminal organizations have known for over 50 years that it is relatively easy to steal and sell art to raise funds. As an example, still in the 1960s, the Unione Corse - a mafia organization that operated in Corsica and Marseille - stole works by Picasso, Cézanne, Van Gogh and many other authors in the French Riviera. The Camorra and the ‘Ndrangheta have all used similar procedures. In the 1980s, Pablo Escobar, the Colombian king of cocaine, was known to have used priceless works by Dalí, Rodin, Botero and Picasso to launder money.

Criminal groups soon realized how easy it is to cross borders with a rolled-up canvas; prices can be raised or lowered by millions in few months in the art market; the tangle of conflicts of interest can contaminate the result of expert reports and technical opinions, and the names of buyers and sellers tend to be kept anonymous, leaving law enforcement authorities with the hard work of guessing who was involved, where the money came from and whether or not the price was suspicious. The “prestige” or “elegance” of the person who steals art (so different from shoplifters, for example); the development of online sales; and the lack of regulation in the sector, are conditions that can all be conducive to a number of crimes involving works of art, especially money laundering.

Like terrorism and the mafia, corruption also is closely linked with the art market. Take Brazil’s current scenario: in the middle of a political crisis, highlighted by the corruption scandal involving the giant contractor Odebrecht, many works of art used to ei-
ther corrupt public authorities or hide or launder money that originated in corruption acts, have been apprehended. A single Brazilian museum, the Oscar Niemeyer Museum, in Curitiba, has already received nearly 150 works of art, including paintings by Miró and Dalí, confiscated from individuals involved in the corruption scandal. Power, secrecy and mobility are together in this market. The Panama Papers and Paradise Papers provide an unprecedented look at the connection between international art trade, money laundering, corruption and offshore secrecy.

**Criminal organizations have known for over 50 years that it is relatively easy to steal and sell art to raise funds**

Although there have long been many good instruments of hard law against money laundering in the field of criminal law, administrative law, economic law and international law, the State/domestic law has not been enough to regulate the ever bigger and more opaque art market.

**Colombian king of cocaine, was known to have used priceless works by Dalí, Rodin, Botero and Picasso to launder money**

In 1984, Italo Calvino – one of the most important Italian writers of the 20th century – was invited by Harvard University to deliver the Charles Eliot Norton Poetry Lectures for the 1985/1986 academic year. Calvino decided that the theme of his lectures would be the literary values that deserved to be preserved in the course of the new millennium which was to start some years later. However, Calvino passed away in September 1985, shortly before setting off to the United States. Posthumously, the five conferences written so far were collected in one volume whose English version is entitled *Six Memos for the Next Millennium*. The first conference he wrote was about lightness. Italo Calvino starts his lesson on lightness by remembering that “to cut off Medusa’s head without being turned to stone, Perseus supports himself on the very lightest of things, the winds and the clouds [...]”

With that in mind and since money laundering in the art market is a complex, widespread and multi-faceted activity, it must be tackled nowadays from several different angles, far from domestic criminal law alone. One of the new angles to face this issue may be precisely corporate self-regulation and
soft law, like codes of conduct, compliance tools, governance methods, accountability mechanisms and legal principles.

Criminal groups soon realized how easy it is to cross borders with a rolled-up canvas; prices can be raised or lowered by millions in few months in the art market.

While different anti-money laundering regimes have been adopted around the globe, a single, harmonised, efficient, global legal regime for the art market is still far from existing. However, it is worth mentioning that enterprises and legal entities of the art sector like Sotheby’s, Christie’s, Allianz Versicherung, SGS Logistics, ARIS Insurance, ING Bank, the Conseil des Ventes Volontaires, the International Council of Museums (ICOM), Art Basel, for example, already do have corporate codes. An International code of ethics for dealers in cultural property has been adopted by the UNESCO in 1999. In January 2017, a group of Geneva-based art institutions known as the Responsible Art Market Initiative (RAM) published their first set of directives on anti-money laundering best practices. This means that methods of self-regulation are already in sight for the art market players as tools to prevent raising risks and confidence loss.

Like terrorism and the mafia, corruption also is closely linked with the art market.

It is obvious that one does not buy art merely to hide or to launder money of illicit origin. It would be tremendously prejudiced or naive to think so. In an increasingly aesthetic and visual world, in addition to individual collectors whose access to works and auctions has been democratized with the Internet, private museums, non-profit institutions and...
companies have been achieving an increasingly important role in art and culture through their corporate collections, their patronage policies (acquisitions, sponsorships, prizes, grants and artistic residencies) and even their art investment funds. In view of this strengthened importance, whether for cultural, political, imaginary, social, market, strategic, philosophical or even status-based reasons, it is fundamental that the art market be protected more and better against its use for unlawful purposes, preserving its image and solidity as well as guaranteeing security, certainty, confidence and predictability to its many operators. Against this backdrop, here is what is left to find out: if art is so creative, why can’t such creativity contaminate the world of art law to cause the discussion of new models of regulation and cooperation of the sector? I am sure that UNICRI, its researchers and its long and deep expertise have a fundamental role in this debate!

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Is there a unique perspective to transitional justice?

by Golriz Moezzi

Is there a unique perspective to transitional justice?

Ordinary justice and transitional justice are significantly and distinctively different. As many studies will show, the qualities of ordinary justice assume there is in place a reasonable democratic system. This paper will identify the features of ordinary justice compared to transitional justice. The focus will be on: definitional perspective, timing arguments, and limitations of transitional justice both substantive and procedural. The general hypothesis is: a level of uncertainty makes transitional justice unique because it requires a fresh perspective every time. There is indeed something unique that arises from uncertainty.

Transitional justice defined

The International Center for Transitional Justice (ICTI) defines transitional justice as “a range of ap-
countries that societies undertake to reckon with legacies of widespread or systematic human rights abuse as they move from a period of violent conflict or oppression towards peace, democracy, the rule of law, and respect for individual and collective rights.” Historically, the definition of transitional justice is: “conception of justice in periods of political transition.” Transitional justice studies and literature find specific jurisprudence, moral and system and institutional issues of transitional governments. According to Murphy, the transitional development often faces one common challenge: whether to use retroactive systems for criminal and civil justice from the old regime or to develop new ones. Furthermore, the author posits that there are arguments that there is no such thing as transitional justice and that it is just ordinary justice applied to a transitional period of a regime. A common argument is that an established democratic regime can practice transitional justice. However, since states within the regime are not in fact in a period of transition, there is no conceptual difference from ordinary and transitional justice.

The transitional government sets standards and legitimates procedures for societies transitioning after a long period of conflict and repression.

Where a mere series of changes within an already established democratic regime may claim...
to be practicing a transition in their justice system, these existing democracies are not old regimes emerging from times of war or becoming democracies, therefore they are not practicing transitional justice. These are systems and institutions of an existing democracy that may be in the process of systematic reform, but they are not practicing transitional justice because they are not created post-conflict during a political transition.5

During a transitional period, standards for the legitimate exercise of power by the state are in flux

The transitional government sets standards and legitimizes procedures for societies transitioning after a long period of conflict and repression from their regime.6 For a transitional government to be successful, the repression and wrong-doings must be addressed and then further communicated to the community directly wronged and the public at large. As a response to “systematic or widespread violations of human rights,” transitional justice associates with the regime authority and regime legitimacy. There exists a level of uncertainty within a transitional period of a fallen regime, that requires community healing and interest-based justices for mass violence and oppression which is often caused by the authoritative system that pre-existed. The timing is a distinctive trait within an emotional environment surrounding transitional governments.

Timing arguments
During a transitional period, standards for the legitimate exercise of power by the state are in flux, with past standards not yet completely repudiated and new standards not yet fully consolidated. Whereas in an ordinary context of a stable, democratic regime there is a stable conception of justice, that legitimizes the exercise of a state’s power. Some challenges to this argument focus on the similarities between transitional and ordinary contexts. Posner and Vermeule argue that there may in fact be nothing distinctive about transitional justice compared to those of stable consolidated democracies, that have the same changes of political order and justice. Furthermore, an argument could be made that there is an overlapping between the transitional period and the new regime when the legal reform takes place and often those in office maintain their roles through the transitional period into the new. Rebuilding the system needs a complex set of changes and procedures that basic existing concepts do not address and are necessary for political reconciliation to be possible. However, to challenge this idea, we must consider that in transitional contexts the old order was not liberal and the transitional period differs from it completely in character.

The timing and duration of transition for fallen governments into democracy is a critical one. It is important to keep in mind that the government’s transition does not end at the signing of peace agreements, yet continues for long periods thereafter. Transitional justice studies and literature identify specific jurisprudence, moral and system and institutional issues of transitional governments. The transitional development often faces one common challenge: whether to use retroactive systems for criminal and civil justice from the old regime or to develop new ones.

The timing and duration of transition for fallen governments into democracy is a critical one

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Limitations to transitional justice

The current available studies and literature highlight that justice during a government transition from authoritative to democratic requires a public disclosure of past wrongs. The dilemma surrounding punishment arises in the aftermath of a fallen regime where there may be a high demand that the immoral acts of officials should be subject to severe punishment. Often during this shift, the persons to be punished are officials or power holders of the old regime. A new conception of justice which transcends upon the use of community-based interests and reconciliation has developed. Furthermore, for restoration and a reasonable expectation for social order to be possible, individual victims and individual perpetrators must be addressed otherwise the restoration of the new government will not be sustainable. The concepts in literature and research of reconciliation, political and civil, are unsophisticated for rebuilding communities that have suffered severe human rights violations because they are specific to issues and building relationships during transitions.

Justice during a government transition from authoritative to democratic requires a public disclosure of past wrongs

Consider the South African Truth and Reconciliation Commission (TRC) that in some cases granted amnesty to perpetrator of gross human rights violations - for the first time in the history of such commissions amnesty was granted when specific conditions were met. This was based on a more active victim-perpetrator reconciliation. Through its contributions the TRC aided the transformation of South African society from an unjust to a just one where justice refers to a kind of order that is valuable to the community to make their own decisions for political issues in a civil manner.

Transitional justice is nothing like ordinary justice, and it is unique and distinctive because each transitional government will have its own set of wrongdoings and human rights violations to address. There is no “one-size-fits-all” model and this is why each time a government or regime falls, the transitional will be distinctive to the issues and past wrongdoings at hand.
F3 Magazine
Justice is not a construct
Is there a unique perspective to Transitional Justice?

References


The author

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CENTRE FOR ARTIFICIAL INTELLIGENCE AND ROBOTICS IN THE HAGUE, THE NETHERLANDS

Understanding the Security Implications of Artificial Intelligence and Robotics

The benefits of Artificial Intelligence (AI) and robotics will be of paramount importance for society in the years to come. Critical areas such as health, education, energy, economic inclusion, social welfare, the environment, as well as crime prevention, justice, security and stability, will benefit from the progress being made. However, this growth will not be costless if societies will not be prepared to take up the gauntlet to address relevant challenges, for the greater good. Indeed, with every new technology comes vulnerability to new forms of crime and threats to security. A dedicated international discussion on the risks and benefits from a law enforcement and national security perspective is needed. UNICRI advocates for improved coordination, educational, awareness-raising, and outreach on the risk-benefit duality of AI and robotics in a balanced and comprehensive manner.

UNICRI, with support of the Municipality of the Hague and the Ministry of Foreign Affairs of the Netherlands, signed the host country agreement for the opening of its Centre for Artificial Intelligence and Robotics in The Hague, the Netherlands, in September 2017. The Centre is dedicated to:

- Advance knowledge of the potential implications of AI and robotics for crime prevention, criminal justice, as well as law enforcement and national security, focusing on both possible risks and benefits.
- Share and examine good practices on how AI and robotics can be used to counter crime and enhance security, and discussing the policies or legal frameworks that may be required to address the potential associated risks.
- Development of a multi-perspective network of stakeholders committed to understanding and addressing the duality of AI and robotics.
- Development and adoption, as appropriate, of informed approaches to address potential security implications of AI and robotics at the national, regional and international level.
- Support the achievement of Goal 16 of the UN 2030 Agenda for Sustainable Development on peace, justice and strong institutions.
Is Italy facing a migration emergency? Italy’s challenge and its new legal framework

by Clarissa Spada
This essay aims to analyse the new 2017 Italian law established for the improvement of both the asylum procedures and the contrast of illegal migration in a context in which Europe is required to improve procedures’ efficiency without undermining the rights of people in need of protection.

Europe is experiencing an unprecedented migration crisis. The phenomenon per se is not new but the Continent has seen a remarkable increase in terms of arrivals over the last few years. On the one hand, the Arab Spring triggered widespread political instability, and wars in countries such as Syria and Libya have pushed massive flows of migrants towards European countries. On the other hand, economic factors are also forcing large numbers of people to leave their countries of origin in Africa and Asia. This mixed-migration movement composed of asylum-seekers and economic migrants poses serious challenges for asylum processes in European countries.

When debating refugee protection and related procedures, the main challenges always lie in and derive from politics. Some scholars keep restating that the so-called migration crisis is, in reality, nothing but a refugee crisis deriving from the continuing failure of the CEAS1 – a set of common standards for the treatment of asylum seekers and applications, aimed in particular at managing migration flows, creating an efficient system for allocating asylum applications was consolidated. Nowadays, further reforms are ongoing. In 2016, a fourth revision of the Dublin agreement was proposed with the main idea of improving the resettlement mechanism and to establish a better system for identifying the state competent to assess asylum applications. v. chetal, the Common European Asylum System: Bric-a-brac or system? Criminal Justice, Borders and Citizenship Research Paper No. 2564990, 2016. European Union, (2014). A Common European Asylum System. Publications Office of the European Union. URL: http://ec.europa.eu/dgs/home-affairs/e-library/docs/ceas-fact-sheets/ceas_factsheet_en.pdf. Dublin IV, http://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-270-EN-F1-1.PDF

1 The CEAS has been subjected to two main reform packages. The first package (1985-1999), when the system was firstly established, and the second one (2004-2013), when the
ations among Member States and establishing harmonised protection standards and rights for asylum seekers throughout the EU - rather than arrivals in se. Nowadays, Member States face two main challenges: a) ensuring the protection of people escaping from persecution and armed conflicts; b) the contrast of illegal migration and the threat of extremists infiltrations among migrants arriving mainly on boats.

Despite the various reforms over the last few years, the CEAS is fragile and still contain several unfilled gaps. One of the main deficiencies derives from the implicit assumption about the existence of a harmonised system regarding asylum procedures and reception conditions among Member States. Despite this not-harmonised system, no real attempts have been made to solve this situation. This can be inferred, for example, from the choice of preferring directives rather than regulations.

Doubtfully the various changes to the CEAS legal framework have been able to solve this refugee crisis, shifting more responsibilities on countries at the EU borders, such as Italy and Greece. Furthermore, as a consequence of the EU-Turkey statement of March 18, 2016 - which has halted the massive influx of migrants from Turkey to Greece and Eastern Europe - Italy has become the European country most affected by migration, with daily arrivals in the order of the thousands.

**When debating refugee protection and related procedures, the main challenges always lie in and derive from politics**

Although accurate data are often difficult to collect, the figures released by Frontex show the seriousness of the situation. According to the agency, a total of 181,376 migrants reached the europa.eu/en/press/press-releases/2016/03/18/eu-turkey-state-ment/
Italian coasts in 2016. In 2017, instead, 118,962 illegal-border crossings have been detected in the Central Mediterranean route⁶ - a significant drop in term of arrivals, but numbers are still noteworthy. Approximately 90% of sea arrivals in Italy left from Libya, in particular from the ports of Tripoli, Benghazi and Zuwarah. The majority of detected migrants in 2017 came from Guinea, Nigeria, Senegal and Bangladesh but the number of arrivals of Somali, Eritrean and Ethiopian nationals through the Central Mediterranean route is increasing. It should also be noted that not every newly arrived migrant applies for international protection and many of them try to stay illegally in Italy or, in some cases, try go elsewhere in Europe to apply for asylum. Against this backdrop, irregular migration becomes another urgent and pressing challenge to tackle. Moreover, the imperfect functioning of the EU relocation system, which was regulated under the European Agenda on Migration in 2015, is overwhelming the Italian reception system with disproportionately high numbers of migrants. The consequences of this unprecedented situation are, on one hand, the potential infringement of asylum seekers’ rights and conditions and, on the other, tensions within Italy’s social and financial structures. These challenges partially overlap with those posed by illegal criminal networks and terrorist groups. Attempts to tackle these issues have therefore unsurprisingly been at the forefront of the political and legislative debate in Italy.

Although accurate data are often difficult to collect, the figures released by Frontex show the seriousness of the situation

How does Italy internally regulate the migration crisis? Italy has established a huge, sophisticated reception system under the EU regulations and directives (a complex topic deserving a separate analysis). But it has also recently modified part of the legal framework concerning disputes on international protection and the fight against human trafficking and illegal migration. The law regulating

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these matters, law n. 46 of April 13, 2017 – previously, decree law n.13/2017 – modifies various previous norms in light of the necessity to adopt faster procedures to assess the claims of the huge number of migrants and asylum seekers reaching Italy. This new law aims at better protecting the rights of the migrants and deserves special attention since the “urgent provisions” it lays down seem to represent a sort of alarm call to draw attention on the Italian case.

Specialized Sections
First of all, the most significant innovation introduced by the law 46/2017 is the creation of 26 specialized sections (the decree-law 13/2017 had foreseen 14 specialized sections) based out of the ordinary tribunals where the appeal courts are located. The specialized sections have jurisdiction over several disputes, in particular related to: international protection recognition; appeal of measures adopted by the authority in charge of establishing the State competent to assess the asylum claim; failed recognition of residence permit for EU citizens and relatives;

appeal, failed release, renewal or suspension of the residency permit; denial of the authorization of entry for family reunification and of the residency permit for family reasons; verification of stateless and Italian citizenship status and appeal of public safety and public order banishment act for EU citizens.

The creation of these new sec-

8 The Legislative Decree 30/2007, art.7, provides criteria according which a EU citizen can remain in Italy longer than three months: 1) study reasons 2) work 3) if the individual has enough economic resources to live in the country without requiring any public support 4) if the individual is a relative of an EU citizen holding one of the above mentioned criteria. Art 14 gives specifications how an EU citizen can acquire a permanent residence permit in Italy and thus, when the individual have lived legally and continuously for five years. Art 15 foresees situations in which an EU citizen can acquire the permanent status before these five years. Available at http://www.camera.it/parlam/leggi/deleghe/07030dl.htm.

9 In the first two cases, the specialized sections will rule en banc. Otherwise, and in exception to the common procedures, sections sit as single judge. The law gives specification on the composition and structure of the specialized sections and on judges’ skills. (art 3).

10 The Legislative decree 30/2007 provides details on when an EU citizen can be removed from Italy: in case of public safety and public order. In cases of EU citizens with a permanent residence permit, they can be removed only in cases of serious circumstances of public safety and public order. The principle of proportionality must be always respected. (art. 20). Available at http://www.camera.it/parlam/leggi/deleghe/07030dl.htm.
tions with specialized personnel is unprecedented. The goal behind them is to accelerate all related procedures, provide applicants with additional rights and ensure the procedures’ fairness. These sections have territorial jurisdiction based on the place where the authority (Territorial Commissions) that has adopted the appealed measure is located.

Italy’s Constitution prohibits the creation of special or extraordinary judges; yet, specialized commissions do not run afoul of the provision as, according to article 102 of the Italian Constitution, they are specialized sections established within ordinary judicial venues.

Territorial Commissions and transfer measures

The so-called Territorial Commissions (Commissioni Territoriali), revised by Legislative Decree n. 220, of December 22, 2017 – which entered into force on January 31, 2018 – are the bodies in charge of examining international protection claims filed by migrants through the police. They are issued in a maximum number of 20, distributed throughout Italy, and composed of four members: a prefect, a police officer, a representative of a territorial entity and a UNHCR representative. Asylum seekers can be granted three different protections: 1) refugee status, which gives a 5-year international protection; people considered meeting all criteria mentioned in the 1951 Geneva Convention – ratified and implemented with Italian law n. 722/1954 – can enjoy this kind of protection, which entitles them to apply for the renewal on expiry and for the Italian citizenship after five years of residence; 2) subsidiary protection – included in article 2 (g), Legislative Decree 251/2007 – is provided for third country nationals or stateless persons who do not qualify as refugees, but who – based on substantial grounds – would face a real risk of suffering serious harm in case of return in their state of origin. This kind of protection is valid for three years and renewable on expiry, and provides applicants with the possibility to have a permit of stay for work reasons; 3) humanitarian protection – from 6 months up to 2 years – it is a residual form of protection available to those who are not eligible for refugee status or subsidiary protection but can be granted a permit of stay by the police authority – upon request of a Territorial Commission – because of serious reasons of humanitarian nature. In this case the benefits differ from those guaranteed by the first two protections – defined in article 5, Legislative Decree 286/1998. When asylum seekers submit a claim for international protection, they are granted a temporary permit of stay in the Italian territory for a period of six months, renewable according to the procedural time for examining the claim.

Beyond the increase in resources for Territorial Commissions, law n. 46 has amended the previous Legislative Decree n. 25, January, 2008 and added new provisions in order to better comply with the Dublin Regulation. First of all, under the terms of article 27 of the Dublin III Regulation, the law establishes specific provisions regarding the possibility for the party to appeal against transfer decisions issued by the Territorial Commissions on international protection granting.

When asylum seekers submit a claim for international protection, they are granted a temporary permit of stay in the Italian territory for a period of six months

The appeal has to be submitted within 30 days of the notification of the transfer decision. The specialized section deliberates in closed session and has to issue a verdict within 60 days after the appeal has been lodged. The party can only appeal against the measure before the Supreme Court (Corte di Cassazione) within 30 days of the notification of the measure. In this way, the number of appeals allowed in case of rejection of the asylum application is reduced from three to two levels of judgement, thus resulting in faster and simpler procedures.12 It should be

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11 It is a peculiar form of protection since Italy is the only member state providing asylum seekers with a third possibility.

12 Disputes are directly brought before the Supreme Court and not before
noted that 1) the effectiveness of the appealed measure can be suspended when serious and detailed reasons exist; 2) the Territorial Commission has the right to bring legal proceedings and issue a defence statement including proof or circumstantial evidence constituting the grounds of the transfer decision; 3) the applicant can also submit defence statements; 4) the judge can ask for the summoning and appearance of the parties only when he/she deems it necessary for the decision.

The law establishes specific provisions regarding the possibility for the party to appeal against transfer decisions

Video recording
By modifying article 14 of legislative decree n. 25, January 28, 2008, the law has introduced video recordings of the interviews in which applicants request international protection before the Territorial Commission. The video recording is then translated into Italian, but the applicant has the right to read all relative transcripts in a language that he/she understands and with an interpreter’s support. The applicant will then receive a copy of the transcript in Italian. All documents – the video recording and relative transcripts – are stored in an appropriate computer archive for a period of 3 years in order to guarantee the documents’ integrity.

Furthermore, law n. 46 provides for the possibility for the applicant to submit a reasoned claim against being video recorded. The final decision issued by the Commission cannot be appealed. The law also set out some conditions – including technical issues – according to which the video recording cannot take place. It is worth noting that, in comparison to article 5 of the Dublin III Regulation, this new Italian provision on personal interviews provides the applicant with more guarantees. Indeed, while Dublin III limits them to the presence of a qualified interpreter, a comprehensible language for the applicant and a clear summary of the interview, Italian law (by also introducing the video recording and the relative appeal), increases the protection of the applicants’ human rights. Furthermore, while article 5 of the Dublin III Regulation provides for the presence of the interpreter only when necessary, the new Italian provision states that the interpreter is present in all cases.

Disputes on granting international protection
The law in question has also partially modified the 2008 Legislative Decree with regard to the granting and withdrawing of refugee status. The amendments provide for a new legal process lasting up to four months and taking place in closed session.

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The party has the right to appeal within 30 days of the notification of the measure or, if he/she does not live in Italy, within 60 days. Except for some cases (for example, when the appeal is considered to be invalid), the appeal has the effect of suspending the measure’s enforceable effectiveness. The appeal notification is sent to the Ministry of the Interior, to the Commission or Section which adopted the measure and – limited to the cases of cessation or withdrawal of international protection – to the National Commission for the Right of Asylum. The appeal is then sent to the public prosecutor who draws the conclusions and identifies any potential reasons against the granting of international protection. Within 20 days after the appeal has been notified, the Ministry can submit a defence note. Within the same terms, the Territorial Commission has to disclose a copy of the international protection claim, the video recording and all related documents, including those showing the economic, political and social situation of the country of origin of the applicant (that the judge shall also consider in issuing the decision). As provided by law n.46, the judge can order the personal F3 Magazine
Justice is not a construct
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appearance of the parties when 1) despite the video recording, there is a need to hear the applicant; 2) the judge considers that further clarifications are necessary from the parties 3) the judge requests technical advice. Moreover, the parties shall be convened when at least one of the following circumstances applies: 1) the video recording is not available; 2) the interested party has requested to be heard and his/her motivations are well-founded and essential for the decision; 3) new elements have emerged. It should be noted that the applicant can also submit a defence note. The Tribunal has to reach a decision on whether to grant international protection or not within four months of the filing of the appeal. In case of rejection, in fact, the party can only bring the case before the Supreme Court within 50 days of the communication of the verdict. The Supreme Court has six months from the complaint’s filing to issue its final decision. While reducing the number of appeal proceedings allowed, the law seeks to intensify the protections granted by Territorial Commissions, making them identical to those previously granted in second instance.

It should be also noted that law n. 46 aims at integrating both refugees and asylum seekers in the social fabric by including the possibility for Prefects (the State’s representative in a province) to issue memoranda of understanding or other kinds of agreements with municipalities and NGOs for the promotion of socially useful work projects, which asylum seekers can join on a voluntary basis and without remuneration. In order to fund these projects, municipalities can use European resources earmarked for the immigration and asylum sector.

**Law n. 46 aims at integrating both refugees and asylum seekers in the social fabric**

Illegal migration
Among the various provisions law n.46 also attempts to accelerate return and readmission procedures. In this regard, the amendments introduced by the new law seem to reflect the general spirit of the European Union and the United Nations. The importance of improving the existing return and read-
mission policies has also been stressed by the European Commissioner for Migration, Home Affairs and Citizenship, Dimitris Avramopoulos, who, during a meeting with the Italian Minister of the Interior on January 12, 2017 in Rome, pointed out the need to regulate and implement return and readmission policies. Indeed, the European Union believes that “an effective and humane return policy is a necessary part of a comprehensive migration policy and does not contradict a more open migration policy. Ensuring the return of irregular migrants is in fact absolutely essential in order to enhance the credibility of policies in the field of international protection and legal migration.” Accordingly, the newly amended policies shall also 1) be in line with the EU Charter of Fundamental Rights and 2) be based on the principle of giving preference to Assisted Voluntary Return (AVR). During the Third Berlin Roundtable on Refugee and Migration in May 2017, Commissioner Dimitris Avramopoulos stated that the high number of arrivals in Italy this year is a “call for actions.”

The amendments introduced by the new law seem to reflect the general spirit of the European Union and the United Nations

Law n. 46 has modified many aspects of Legislative Decree n. 286/1998 – concerning the Italian provisions of law on migration issues. First of all, it states that when a person is detected while illegally crossing Italian borders or rescued at sea, he/she should first be brought to reception centres located at dedicated hotspots. Here, the migrant will be provided with medical treatment and subjected to identification procedures – such as taking a digital fingerprint and photograph – according to European Regulation n. 603/2013. On that occasion, the migrant will be also informed about the possibility of AVR. The above-mentioned European Regulation prescribes identification procedures also for everyone found illegally on the Italian territory. However, any repeated refusal to submit to identification procedures is considered to be compelling proof of a risk of absconding for the purposes of detention in what are now called “Detention Centres for Repatriation” (CPRs). Indeed, it should be highlighted that law n. 46 has

changed the name of previous detention centres for the repatriation and expulsion of irregular migrants from Identification and Expulsion Centers (CIEs) to Detention Centers for Repatriation (CPRs). These new centres will be distributed throughout Italy in a number of 18 with a capacity of 100 people per centre and located far from cities and closer to airports in order to facilitate expulsions. A guarantor of the human rights of detained people with monitoring powers will be also provided in order to ensure fair treatment and good conditions within the centres. According to law n. 46, both the centres’ management and the expulsion measures’ implementation will be financed through the AMIF (Asylum, Migration and Integration Fund), co-funded by the European Union within the programming period 2014/2020.

Furthermore, the new law stipulates that, when an immediate expulsion cannot be ordered due to temporary circumstances hampering the repatriation or the expulsion itself, the person will be held in detention at the nearest CPR no longer than the strictly necessary amount of time. However, the above provisions do not apply to unaccompanied minors. With regard to expulsion measures issued by the Minister of the Interior, the law establishes the adoption of an abbreviated trial procedure (the so-called, “rito abbreviato”) in cases including reasons of public order and State’s security (article 13, Legislative Decree n. 286, July 25, 1998) and terrorism prevention (article 3, Law Decree n. 144, July 27, 2005). The Legislative Decree n. 286 states that a person can be detained in these centres for a maximum of 90 days and provides that people already detained for 90 days can be detained for an extra 30 days. Law n.46 adds, in cases where major difficulties in the identification procedures and the organization of repatriation arise, the time-limit can be extended for a further 15 days following validation by the Justice of the peace (Giudice di pace). This extension has been provided in order to make repatriations more effective. Otherwise, these people would be released and their illegal stay would continue. On this regard, it should be highlighted how the new law does not provide a proper explanation on when major difficulties arise, giving a sort of margin of appreciation.15

Final considerations

Inevitably, return and readmission policies have to be supported by cooperation, in the form of multilateral or bilateral agreements with relevant parties. Yet, their implementation could encounter practical obstacles. This is because repatriation is a complex process involving nationality identification procedures and the need to gather all documents required to return migrants. There are many challenges to be addressed such as: 1) the lack of automatically connected systems between coun-

tries slows down the identification process 2) the repatriation process could represent an additional burden for the security apparatus of countries that are already facing various domestic challenges. Furthermore, some countries may be not interested – or unable to take part in search and rescue operations and deploy more security personnel to arrange and check the arrival of irregular migrants. Italy is making major efforts in enhancing cooperation with Libya, one of the most crucial partners in the Mediterranean. However, due to the country’s political instability, goals are quite far away from being achieved. Moreover, further monitoring efforts will be made in order to counter criminality and terrorism. Lastly, the Italian Minister of the Interior recently hosted a roundtable with authorities from Chad, Libya and Niger with the aims of: 1) intensifying cooperation on counter-terrorism and human trafficking; 2) supporting military training 3) helping Niger and Chad create new reception centres for irregular migrants in accordance with international humanitarian standards 4) building a legal economy which may replace illegal networks, especially human trafficking and 5) providing substantial support to the reception centres for irregular migrants in Libya. In order to effectively implement these resolutions, the four countries involved have established a monitoring body that will periodically conduct internal consultations.

What can be done?
The spirit of the analysed law seeks to enhance and improve the ability to respond to refugees and asylum seekers as soon as possible trying to ensure that fair process and justice are fully respected. Nevertheless, the necessity to cope with illegal migration and the threat of extremists’ infiltration into Italian soil have induced the government to reinforce the government to reinforce the expulsion and detention system.
Inevitably, return and readmission policies have to be supported by cooperation, in the form of multilateral or bilateral agreements with relevant parties.

Given this, the new system is not without imperfections. Some provisions should be better regulated – i.e. grounds allowing to longer detentions - in order to avoid an excessive margin of discretion which would potentially exposed to the risk of abuses. The Italian government, the EU and the international community have an important role to play to promote stabilization and peace by assisting in strengthening the judicial, political and social systems of various African countries. Most recently, this point has been particularly stressed during the G20 Africa Partnership in Berlin. Private and public investments in migrants’ African countries of origin and transit would have a positive impact on their development and security. The main goal should be the introduction of common best practices for the management of migration flows from many African countries.

The main pathway to pursue this goal is improving relationships with crucial countries of origin and transit of migrants. As previously highlighted, this form of cooperation could lead to mitigate the migration crises, counter the smuggling of migrants, human trafficking and the threat of terrorism.

The author

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See Lampedusa and live

If I had not lived in Lampedusa, I would have never found the inner resilience to narrate these stories of migration through drawings. Moreover, at the age of 40-something, I would have never depicted the emotions making me able to describe these last four years spent on working along this European-Mediterranean border.

I began making those drawings quite by accident, during the hot and sleepless nights when the dusty winds blowing across the sea from North Africa almost suffocate you. I have tried blending my colours scattered on a palette to give an account of what has been happening in Lampedusa.

While I was drawing what I was seeing around me, I found a common thread in different meanings. I expressed something inside myself that was still to be settled. It was the need to address the feeling of being powerless: instead of being able to help, I could do nothing but counting dead people.

In these drawings, I wanted to harness my anger and remember what made me angry. Drawing, to me, means a soul searching to narrate what is happening inside: a picture becomes a key to open the door of a tale that crosses the borders.

My drawings tell stories that otherwise would have been consigned to the oblivion of the sea. These stories fit perfectly together. They can be used like tarot cards to tell the story of humanity, to both predict the future and explain the present. There is something epic in what is happening today in the Mediterranean Sea, where death and rebirth are creating a founding myth for a new humanity. Ulysses and Ithaca; the mermaids’ song; Neptune and the Trojan War, Moses’ exodus and the passion of Christ are all coming back again.

My works are essential and everything is drawn exactly just as it is. My drawings are completed in a matter of minutes, by means of hopeful vivid colours that are in contrast with the pain they recount. The colours, scrawled onto the page, swirl as in the vortex of a storm; they almost tear the paper on which they are drawn. My works depict the struggles of the wretched of the earth. My illustrations depict the oppressive barriers that surround migrants: the barbed wire and the indifference. My drawings are an act of love for humanity – I would consider them emblems of justice and freedom.
...IN EQUILIBRIO SULLA FRONTIERA.
Nella Stiva
FREEDOM!!!
**Mediterranean Hope**

Mediterranean Hope (MH) - Refugees and Migrants Program was initiated by the Federation of Protestant Churches in Italy (FCEI) to strength the action and advocacy for the displaced and the asylum seekers.

MH performs different actions: reception activities of the migrants and the management of the Observatory on the Mediterranean migrations in the island of Lampedusa. Furthermore, the MH House of Cultures in Scicli, (Ragusa, Sicily) takes care of unaccompanied minor migrants and vulnerable women while the relocation desk and a coordination desk in Rome, liaise with the national and international partners, the institutions and the ecumenical bodies.

Among the actions implemented by MH, the Humanitarian Corridors managed with the Community of Sant’Egidio, aimed at opening safe and legal passages to vulnerable refugees from North Africa and Middle East.

**The author**

Francesco Piobbichi is a social designer and works as an operator of the MH project promoted by the FCEI. *Drawings from the border* is his first work narrating MH’s four years of activity in Lampedusa, Morocco and Lebanon during which Francesco Piobicchi has been involved in the development of humanitarian corridors. Mr. Piobicchi has always been committed to social rights and anti-racism, for this reason he uses illustrations as a communication tool to raise awareness on social issues.
Equality of arms: the continued development of due process rights at courts of international character

by Bradley Alan Fuller, J.D.

Audi Alteram Partem, the Latin phrase meaning, “the other side shall be heard as well,” enshrined on the walls in City Hall of The Hague.

A fundamental principle of any fair and civilized criminal justice system is that the accused be given the opportunity to meaningfully respond to and attack the allegations against them. This idea of equality to both sides of a legal matter before a tribunal, dates back at least as far as the ancient Greeks, and can also
be found in traditional Islamic law texts.¹ Though this basic due process guarantee of the right to mount a defense has been generally accepted throughout the civilized world in domestic settings for centuries, defeated war criminals have only recently begun to enjoy such protections on the international stage. Though there have been several ad hoc military tribunals throughout world history such as the Leipzig War Crimes Trials following the First World War, those tribunals are largely regarded as having been insufficient or even farcical.²

This idea of equality to both sides of a legal matter before a tribunal, dates back at least as far as the ancient Greeks

The proceedings at Nuremberg, in which high ranking members of Nazi leadership were prosecuted for the atrocities committed during World War II, are correctly lauded as a turning point in the handling of war criminals by the victors of hostilities. These trials marked a genuine effort on behalf of global civil society to deliver justice to suspected war criminals in a fair and principled manner. However, many legal historians agree that even at Nuremberg there were several gross violations of the defendant’s basic due process rights, including the deprivation of appellate review.³ Perhaps the most profound injustice was the complete failure of the tribunal to allow the defense teams adequate time and facilities to properly prepare and present their defense.⁴

Though the defendants at Nuremberg were indeed represented by bright attorneys, the defense teams were exclusively comprised of German personnel who had very little experience

with Anglo-American procedure. Moreover, these lawyers, who were hastily struggling to familiarize themselves with a brand new legal environment, were only given thirty days between indictment and trial to prepare their defense. Fully developing an adequate defense for serious and complex charges can take months, or even years. Consider that the prosecution in Nuremberg submitted tens of thousands of pages of evidence to the tribunal. Expecting a defense team to adequately review such a mountain of materials in such a short time was indeed absurd, and clearly a breach of traditional notions of fairness and justice.

Fully developing an adequate defense for serious and complex charges can take months

Despite these shortcomings, the due process protections that were afforded to the defendants at Nuremberg did indeed portend the creation of a truly legitimate and fair international mechanism for prosecuting war crimes. This shift was due in no small part to the growing international influence of the United States of America, a country with a truly honorable tradition of protecting defendant’s rights. One hundred and fifty years before Nuremberg, the United States ratified the Bill of Rights, ten constitutional amendments that enshrined, among other things, an accused person’s due process rights as absolute in federal prosecution.

America’s ideals of fairness and judicial process predate even its Constitution. On March 5, 1770, several British soldiers were involved in a skirmish with the citizens of Boston that resulted in gunfire, leaving five Americans dead. This tragic day has come to be known as the Boston Massacre. Though many Americans were calling for the immediate capture and hanging of the ‘red coats’, the young British soldiers were given a fair jury trial. Talented young lawyer, and future president, John Adams, represented they and even earned an acquittal for several of the soldiers.

A century later, in 1865, the United States was dealing with
the aftermath of an unspeakably bloody civil war. Again, many people, including military and government officials, advocated for the capture and summary execution of Confederate war criminals. However, even egregious offenders such as Captain Henry Wirz who presided over the most awful and deadly southern prisoner of war camp, Andersonville, was given a trial before a special military commission with a competent attorney, the right to confront state witnesses, and the right to present his own case.9

As the hostilities of World War II wound down, allied leadership convened on multiple occasions to discuss the prospect of bringing Hitler and his Nazis to justice for their multiple atrocities. In the Moscow Declaration of 1943, United States President Franklin D. Roosevelt, British Prime Minister Winston Churchill, and Soviet Premier Joseph Stalin all signed a document which stated that German war criminals should be, “judged on the spot by the peoples whom they have outraged.”10 In 1944, as people were exterminated in the concentration camps, Churchill declared that Nazi leadership should be, “hunted down and shot.”11 Even in the middle part of the twentieth century, it is no surprise that many civilized persons throughout the world advocated for the summary execution of German war criminals given the unfathomable scope of their savagery. Nevertheless, the Americans, led by Secretary of War and prominent lawyer Henry Stimson, advocated for proper judicial proceedings.12

Though the Nuremberg trials were a landmark step in the direction of civilized international tribunals that would ensure due process rights for accused war criminals, it wasn’t until July 17, 1998 that the International Criminal Court (ICC) was established. Again, it was an American who spearheaded the creation of the ICC. Ben Ferencz, a war hero and former prosecutor at Nuremberg published a book in 1975 entitled, “Defining International Aggression: The Search for World Peace”, in which he argued for the creation of an International Criminal Court that would have served as a worldwide tribunal of last resort to prosecute instances of crimes against humanity, war crimes, and genocides.

Mr. Ferencz, and many other prominent men and women from the United Nations Member States around the world were instrumental in creating the Rome
Statute, the treaty which established the ICC.

The Rome Statute contains an impressive list of due process protections to be enjoyed by all accused persons brought before the ICC such as: the right to remain silent, the right to an attorney, the right to present evidence, the right to confront the prosecution’s witnesses, the right to be present at trial, the right to have the charges proved beyond a reasonable doubt, the protection against double jeopardy, and, perhaps most importantly, the presumption of innocence.13 In fact, former U.S. State Department Legal Advisor Mon-roe Leigh once said, “The list of due process rights guaranteed by the Rome Statute is, if anything, more detailed and comprehensive than the one of the American Bill of Rights.”14

However, even at the ICC there may be a major institutional disadvantage that unfairly prejudices defendants. The Office of The Prosecutor (OTP) is expertly trained, highly organized, and well funded. Perhaps most importantly, the OTP is a permanent organ of the ICC, while defence teams are made up of private attorneys who are not associated with the Court.15 While the ICC does ensure that defendants receive adequate legal representation by requiring all defence counsels to be listed on and meet the strict qualifications for their attorney registry, there is no permanent defense organ at the Court. This imbalance creates some obvious concerns for advocates of true “equality of arms” (procedural equality).


15 https://www.icc-cpi.int/about/defence
The term equality of arms dates back to medieval times when disputes were often settled through violent battle. Naturally it was only fair to ensure that both combatants entered the clash with equal weaponry and armor. The modern conception of equality of arms is articulated in Article 6 the European Convention on Human Rights. The language of the convention specifically bestows upon all persons who have been criminally accused the traditional due process rights which have been previously mentioned in this article. Additionally, Article 6 states that everyone charged with a crime shall be provided the free services of an interpreter and shall have adequate time and facilities for the preparation of his defense.

How can it be said that the prosecution and defense are on equal footing when the attorneys at one end of the courtroom belong to a permanent organ of the Court, while the attorneys at the other do not. In an attempt to correct this obvious structural imbalance, the ICC created the Office of Public Counsel for the Defense (OPCD) in 2006. As a component of the Registry which is a permanent organ of the Court, the OPCD provides a


number of services to defense teams, including, “facilitating the protection of confidentiality, providing support during the investigation’s activities conducted in the field, assisting the accused to obtain legal advice and the assistance of legal counsel.” Upon request, defense teams may also be provided with certain logistical support such as temporary equipped office space to work on their cases.

The term equality of arms dates back to medieval times when disputes were often settled through violent battle

Nevertheless, it has been highlighted that the resources of the independent appointed counsel, even with the limited assistance of the OPCD, pale in comparison to that of the prosecution. This was flagrantly visible in the Dyilo Lubanga case. Mr Lubanga’s entire pre-trial defense team consisted of one attorney, one co-counsel, one legal assistant, and a case manager. The prosecution on the other hand has teams of lawyers consulting with numerous experts and special advisors. Though the defense was eventually granted a meager budget to hire a single investigator, the prosecution benefitted from twenty researchers in the field making a case against Lubanga.

In January of 2009 the Special Tribunal for Lebanon Court for Sierra Leone (STL)(SCSL) was established to prosecute those responsible for the 2005 assassination of the former Lebanese Prime Minister and 21 others, gross violators of humanitarian law during the Sierra Leone Civil War. The Court was unique in that it established a permanent defense organ, independent from the Registry called the Defense Office. This is certainly a bold step towards true equality of arms. Chad Mair, a defense attorney at the STL SCSL describes the situation as follows; “One constant in international tribunals is the existence of a permanent prosecution, with experienced lawyers and investigators, a wealth of institutional knowledge, and the capacity to share information and documents from a single evidence database. The existence of an independent defense organ helps to balance this by providing institutional insight and support, the capacity to conduct research and maintain a legal library available to all defense teams, and a budget created and maintained solely by an independent organ of the court. Thus, an independent defense organ is important for equality of arms as it improves the imbalance inherent in international tribunals.”

As one can see, the protection of due process rights have undoubtedly expanded at courts of international character since Nuremburg. However, the principle of a true equality of arms is still a challenge in international criminal law.

The author

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CALL FOR CONTRIBUTORS: INNOVATIVE IDEAS AND NEW SOLUTIONS TO MITIGATE EMERGING RISKS OF ADVANCES IN BIOTECHNOLOGY

Deadline: 27 August 2018

Advances in biotechnology are rapidly changing what is possible in several fields, from medicine to agriculture. All the progresses that have been made so far suggest that the XXI century definitely prove to be the “Century of Biology”. With this capacity, however, there also exist new possibilities for deliberate misuse.

We are looking for innovative ideas and new solutions that can concretely contribute mitigating emerging and future risks posed by advances in biotechnology.

The call is for security experts and representatives from industry, academia, civil society organizations and international organizations. Those interested to share innovative ideas and new solutions will be invited to a UNICRI meeting in Geneva on 7 September 2018. The results will be used to prepare a “Report on Emerging and Future Risks” that will scan the horizon of technology solutions to anticipate and mitigate risks posed by the advances in technology.

The call is organized by UNICRI within the framework of the SIRIO Initiative in Geneva. If you are willing to join, please contact Mr. Francesco Marelli (Francesco.marelli@un.org) or Mr. Marco Musumeci (marco.musumeci@un.org)
Preventing crime and violent extremism by strengthening youth resilience: Implementation of the BOUNCE resilience tools in 10 European cities

by Christiaens, E., Hardyns, W., Pauwels, L & Klima, N.
A new trend in prevention policies is the focus on resilience, which particularly for youngsters is said to lower their susceptibility to criminal behaviour and radicalization. To that end, the “BOUNCE programme” aims to strengthen youngsters’ resilience by means of a 10-session group intervention. Over the past year, ten European pilot cities have been introduced to the BOUNCE resilience tools and are now left to implement the youth training on their own. The case of BOUNCE confirms the need for integrated implementation strategies to obtain effective early prevention of youth delinquency.

Introduction
Could you lower youngsters’ susceptibility to delinquency and radicalization by making them more ‘resilient’ against adversities in their lives? Resilience seems to be a buzzword in the current prevention literature, and policy-makers have followed this shift to consider resilience as a promising prevention tool. A wide range of resilience trainings have been designed for many purposes: to prevent depressions, anxieties, or negative coping, but also with a view on preventing (youth) delinquency and recently even violent extremism. Yet, evaluation research of resilience trainings is still very limited to date. As for any crime prevention programme, evaluation research is fundamental for enhancing the working methods of youth resilience trainings, but also for supporting their practical implementation in diverging local contexts.

One such youth resilience training is the EU-funded intervention called ‘BOUNCE’, an early preventative intervention for youngsters. The BOUNCE programme was developed in 2010 in the framework of “Strengthening Resilience against Violent Radicalisation” (STRESAVIORA), a project of Belgium’s Federal...
Preventing crime and violent extremism by strengthening youth resilience: Implementation of the BOUNCE resilience tools in 10 European cities

Public Service Home Affairs. It was funded by the Internal Security Fund of the European Union and conducted in partnership with Arktos vzw, RadarAdvies, the European Forum for Urban Security (EFUS), Thomas More University College and Ghent University.

BOUNCE consists of three inter-connected tools: BOUNCEYoung, a 10-session resilience training for youngsters; BOUNCEAlong, an open awareness-raising tool for parents, teachers and first-line workers; and BOUNCEUp, a train-the-trainer course for youth workers and first-line practitioners, teaching them how to work with BOUNCEYoung and BOUNCEAlong. Through this threefold model, the BOUNCE programme aims to make youngsters less vulnerable to violence and criminal behaviour but also to internalising conditions such as anxieties or depression.

Whereas its original focus was set on preventing violent radicalisation of youngsters only, over the past two years BOUNCE has opened its emphasis towards general promotion of youth wellbeing. It has been established that many risk and protective factors for a wide array of negative outcomes (e.g. juvenile delinquency, troublesome youth group involvement, and extremist violence) are similar, so promoting youngsters’ wellbeing is a form of general early prevention. To this end, BOUNCEUp train-the-trainer courses were given in ten European cities in order to incite local stakeholders to implement the BOUNCE programme.

The question at this point is whether these newly-trained BOUNCE trainers will eventu-
ally spread the BOUNCE tools in their city – and thus, make youngsters more resilient. A full-year evaluation was conducted to follow-up on every city, and our findings will be discussed in this article.

The BOUNCE programme
As explained, the BOUNCE programme is built along three interconnected tools in order to reach the youngsters, but also their surrounding adults. First, the BOUNCEYoung training consists of ten sessions, each building towards a different aspect of resilience. The first three sessions focus on acquaintance in the group, creating trust and raising self-esteem by focusing on all children’s talents. The fourth and fifth sessions focus on the youngsters’ posture, how they can listen to their body clues and set their personal boundaries. The following three sessions focus on understanding feelings, prejudices, information from media, and group conformity. The aim of these sessions is to enhance critical thinking styles and raise awareness of their own preconceptions. The ninth session focuses on where youngster can find supportive resources, for example in their social networks. Finally, the tenth session is targeted at setting a goal for the future. By means of kickboxing methods, the youngsters build up strength in order to break a wooden plank with their bare hand. The plank then represents their sense of purpose and their mental strength to reach their personal goals.

Second, the BOUNCEAlong training aims to assist parents and teachers in their communication with youngsters. The sessions focus on using positive language and open communication towards youngsters, on knowing when to worry and who to contact in case of concerns. Third and finally, the BOUNCEUp training teaches first-line workers how to use both tools. In addition to the BOUNCEYoung exercises and the BOUNCEAlong sessions, participants receive additional theory on early prevention, resilience and radicalisation.

The BOUNCE programme is built along three interconnected tools in order to reach the youngsters, but also their surrounding adults
The emphasis on promoting resilience is interesting as this fits into general trends into psychology with a focus on personal strengths and positive attitude. BOUNCE makes use of several theories with regard to resilience and crime prevention, which are not entirely new, but rather a combination of existing youth training methods. The concept of resilience – i.e. the skill of positively adapting oneself to adversity – already arose in developmental psychology in the 1970s. However, only since the early 2000s was it applied into public health and prevention discourses. The shift occurred together with a general paradigm shift towards “positive psychology” at the time. Therapies and trainings started to focus less on risk factors and problems, and put a stronger emphasis on protective elements and positive emotions. The rationale is that, while risk factors remain important, prevention workers need to work with the individuals’ capacities. Resilience is one application of this positive psychology discourse: by strengthening personal resilience, trainings hope to enhance positive, protective factors among the youngsters. Examples are assertiveness, critical thinking styles, self-knowledge, social skills and a sense of purpose. These factors are also part of youth interventions that aim at reducing all kinds of juvenile delinquency.

The theoretical assumption is that resilience might protect against and thus prevent certain behaviour, both internalising and externalising conditions. It is on this same theoretical basis that the (implicit) logic model of BOUNCE is founded: by strengthening youngsters’ resilience and raising aware-
ness among their surrounding adults (parents, teachers, practitioners), BOUNCE aims to prevent violent radicalisation at an early stage, through universal (primary) prevention.

By strengthening personal resilience, trainings hope to enhance positive, protective factors among the youngsters.

During a first phase of the BOUNCE project (STRESAVIORA I, 2013-2015), relevant tools were disseminated in different Belgian cities. The second phase (STRESAVIORA II, 2015-2018) aimed to train more BOUNCE trainers on a European level, by providing 3-day BOUNCEUp trainings in ten European pilot cities. This BOUNCEUp training introduced the full BOUNCEYoung programme to local youth workers, complemented with additional theory on prevention, radicalisation and resilience. After approximately six months, all cities received three days of implementation support, mostly used to answer pending questions and/or to try out the BOUNCEYoung exercises on a local group of youngsters. The BOUNCEUp training was thus meant as a first step into local implementation of the BOUNCE tools.

Accordingly, the scientific evaluation of the BOUNCEUp tool was intended to distinguish which contextual preconditions are recommended for successful implementation of the BOUNCE tools. It is highly useful to evaluate prevention programmes not only on their inherent programme characteristics, but also on the contextual preconditions that allow for programme success. The latter relates to the field of implementation science, which
is a relatively recent topic in the prevention literature.

Finding such promising practices of the BOUNCE\textsuperscript{Up} programme is useful both for the continuation of the programme itself as well as for prevention strategies in general. By providing empirical data on BOUNCE\textsuperscript{Up}, we may guide policy-makers in their choice for adequate prevention plans, and youth workers in their practical application of the three BOUNCE tools. The ultimate goal is to enhance youngsters’ resilience and wellbeing, and to prevent juvenile delinquency more effectively and more integrally.

**Evaluating the BOUNCE\textsuperscript{Up} programme**

When evaluating youth interventions, public authorities are in favour of the establishment of evidence-based actions. This means that a causal link between the aspired outcomes and the programme techniques should be present. A classical evaluation method to this end is the experimental design, whereby two randomised groups are compared (intervention versus control group). However, striving for such evidence-based working methods might overlook important contextual factors in the implementation of these interventions. It might also not always be possible. For example, as no secluded BOUNCE\textsuperscript{Young} activities have yet been organised, it has not been possible to conduct an experimental study on their effectiveness. Similarly, the BOUNCE\textsuperscript{Up} training could not be evaluated through experimental studies as all participants received the intervention, so that there was no control group in place.

A more adequate research design would also take a deeper look at the situation and context in which the BOUNCE tools are implemented. As BOUNCE\textsuperscript{Up} is trialled in ten different pilot cities, this means ten different working
It is more recommendable to focus on working elements of the training outline and implementation strategy. If we find patterns of working elements across cities, we can establish clear recommendations for BOUNCE projects in other cities as well. Hence, instead of evaluating solely what works through (quasi) experimental designs, we aim to focus on what’s promising, within the framework of a realist evaluation. A realist evaluation wants to find out what works for whom in what situation and in what respect (how). Its methods are of a more qualitative nature, to test linkages between contexts, theories, and outcomes.

**BOUNCE aims to prevent violent radicalisation at an early stage, through universal (primary) prevention**

This threefold structure means that a thorough evaluation of BOUNCE\textsuperscript{Up} should assess its training processes (descriptive), its working theories (theoretical) and its programme outcomes (indicative). Whether the outcomes are in fact caused by the training (causality) cannot be proved at this point. Hence the level of evidence of our evaluation will only be of descriptive, theoretical and indicative nature, but it may provide a basis for future research. Moreover, a well-founded evaluation should first evaluate the preconditions and process patterns of a programme, before evaluating the outputs and outcomes. The better the process patterns, the better the results will likely be.

**A realist evaluation wants to find out what works for whom in what situation and in what respect (how)**

The BOUNCE\textsuperscript{Up} teaches first-line practitioners how to work with the BOUNCE\textsuperscript{Young} and BOUNCE\textsuperscript{Along} tools in their own city. Hence, evaluating BOUNCE\textsuperscript{Up} should mean checking whether the two other tools are clearly explained, whether the participants feel motivated to spread these tools, and whether they actually set up BOUNCE actions in their cities. The latter is the most important outcome to verify. However, much of this practical implementation will depend on the local context, the level of external support for early prevention and the inherent characteristics of the BOUNCE\textsuperscript{Up} training. This means that implementation support should go beyond the content of the training only.

**Short and long-term implementation of the BOUNCE tools**

Over the course of 2017, ten BOUNCE\textsuperscript{Up} trainings were given in different European pilot cities in the Netherlands (Amsterdam, Groningen), Germany (Düsseldorf, Augsburg), Sweden (Malmö, Landskrona), Belgium (Leuven, Liège) and France (Montreuil, Bordeaux). In total, this led to 101 newly trained BOUNCE trainers – being youth workers and social workers from all ten cities involved.

**A well-founded evaluation should first evaluate the preconditions and process patterns of a programme**

Participants have indicated that they enjoyed the training particularly the open and equal training style by the two BOUNCE\textsuperscript{Up} trainers. Some participants also mentioned that the BOUNCE\textsuperscript{Young} exercises opened their own views as youth workers by making them aware of their own prejudices and attitudes towards youngsters. The sequence of the ten BOUNCE\textsuperscript{Young} sessions was described as a very effective way to work towards a more resilient personality. On the contrary, the BOUNCE\textsuperscript{Along} training did not have a similarly fixed training outline and is recommended to be developed including clear exercises.

The question at stake is whether these 101 new BOUNCE trainers will also start to organise their own BOUNCE actions in their respective cities. In the short-term, this year’s project has not
led to an immense outburst of BOUNCE actions in the ten involved cities. Only one complete BOUNCEYoung programme has been finalised, two others are planned in two schools. Two BOUNCEYoung youth camps have been organised as well. This seems little for a project that has been unrolled in ten cities, but interestingly, in all cities, participants are still enthusiastic about the BOUNCE rationale and many of them wish to organise BOUNCE actions in the future. As the motivations of participants (incited by the training outline of BOUNCEUp) are likely not the problem, it is needed to evaluate what impedes the practical implementation of the BOUNCE tools on a contextual level. A long-term implementation strategy of preventative projects should look beyond the mere training outline of a youth intervention. Several preconditions for implementation are at stake.

First, there should be an adequate level of external support in the city, corresponding to the provision of financial means, staff and organisational support. The level of support will likely depend upon the framing of the BOUNCE project: if a city has a high political agenda to prevent violent extremism, and BOUNCE is framed as an early preventative project to this end, the city may provide more financial support for BOUNCEYoung trainings. Similarly, cities with strong early prevention services might finance BOUNCE from a general wellbeing promotion perspective. This will also relate to the existence of similar prevention projects, in sum, to what extent BOUNCE might provide an added value in the city.

External support also depends upon organisational factors at the policy-level. Cities with strong continuity of (policy) staff will likely be more involved in the BOUNCE project. Switching project partners has proven to slow down the implementation of the BOUNCE tools. Another governance factor is the level of cooperation between youth services in the city. When the work of youth services is very fragmented, the opportunities for multi-agency cooperation are lower and thus organisational support for BOUNCE as well. Secondly, when external support is present, it should be decided who will facilitate the BOUNCE projects. A project coordinator with clear tasks should be appointed to inform the participants, communicate to the relevant stakeholders, ensure that the end objectives of the local BOUNCE project remain clear, and generally keep the BOUNCE participants organised after their training as well. The facilitator is recommended to be a member of the city’s prevention services, however, he or she may also be a participant of the BOUNCEUp training (bottom-up). Third, when a local facilitator is assigned, the participants of the BOUNCEUp training may be selected and informed about the expected commitment to the programme. The participants of the BOUNCEUp training are expected to become BOUNCEYoung and/or BOUNCEAlong trainings after their 3-day training, and accordingly should be in a position to implement the tools afterwards. This means that they should ideally be experienced with youth work in a group setting, that they should work in a setting that allows for the implementation of the tools, and that they should be supportive of the open, early preventative approach of BOUNCEYoung. Only with such adequate selection of participants may the continuation of the BOUNCE tools be guaranteed.

A long-term implementation strategy of preventative projects should look beyond the mere training outline of a youth intervention

Consequently, only once these three first steps have been taken, should the BOUNCEUp training be introduced. In the past pilot project (2015-2018), it has been too often the case that cities were not correctly informed about the required external support, facilitation and selection criteria for participants. It is thus needed to reinforce this required commitment from all stakeholders in order to come to long-term implementation of the BOUNCE tools. After the BOUNCEUp training has been given, participants should receive ongoing implementation support from their BOUNCEUp trainers. This support can be given in the
form of supervision, coaching-on-the-job and an (online) platform to discuss implementation ideas and answer pending questions. The new BOUNCE website\(^1\) will provide such a platform for knowledge-exchange across cities and trainers.

Subsequent steps in the long-term implementation relate to continuous registration and evaluation of the newly implemented BOUNCE actions. Moreover, as no evaluation research of BOUNCE\(^{\text{Young}}\) has been conducted, it is needed to evaluate these youth interventions based on their process patterns and their outcomes in different cities. It is also needed to continuously register the outcomes of the BOUNCE\(^{\text{Up}}\) trainings, mostly emphasising the number of participants who still undertake BOUNCE actions after one, two or three years, and the specific set-up of these BOUNCE actions.

In sum, a long-term implementation strategy for the BOUNCE programme should include a supportive policy-basis, a facilitating actor and a well thought-out selection of new BOUNCE trainers. The train-the-trainer sessions and the additional implementation support should only be given after these first three steps. Later, all subsequent BOUNCE actions should be continuously registered on their processes and outcomes, with the aim of informing the external supportive climate and adapting the prevention strategies in order to provide locally suitable BOUNCE\(^{\text{Young}}\) activities for youngsters. This ‘implementation cycle’ of seven core steps is depicted in figure 1.

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\(^1\)https://www.bounce-resilience-tools.eu/

**Figure 1: Implementation cycle for long-term implementation of the BOUNCE tools**

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When the work of youth services is very fragmented, the opportunities for multi-agency cooperation are lower

**Discussion: Lessons learnt for implementing early prevention projects**

The evaluation of BOUNCE\(^{\text{Up}}\) does not only bring us lessons for the implementation of the BOUNCE tools, it also builds upon previous research findings from prevention science and adds content to the policy choices concerning resilience trainings.

The pilot project of ten BOUNCE\(^{\text{Up}}\) trainings has shown that
a promising training such as BOUNCEUp will not lead to practical implementation of its two preventive tools BOUNCEYoung and BOUNCEAlong without a coherent implementation strategy, embedded in the city’s prevention plan. In line with previous research, durable prevention will depend on multi-agency cooperation, which requires a stakeholder analysis and clear communication about all partners’ commitment. The integral approach of projects such as BOUNCE is of high importance, as a single prevention project cannot prevent youth delinquency and radicalization on its own. Rather, prevention should be ensured by a variety of societal actors, going from public agencies, police, civil society actors, youth organisations and schools. A combination of interventions is needed in order to enhance social cohesion and collective efficacy at the neighbourhood level, to strengthen youngsters’ protective factors so as to lower their chances of engaging in criminal activities. In order to conclude such assumptions we recommend the framework of resilience to be researched more in-depth by means of practical case studies of BOUNCEYoung. During this year’s project, a long-term evaluation tool was developed for the BOUNCEUp tool, allowing cities to register their own BOUNCE actions and follow-up on the results. Such continuous registration of youth resilience trainings and their outcomes is needed so that policy-makers can be informed in their search for adequate prevention strategies. Still, whereas more evaluation research is required, previous studies have shown that resilience trainings may indeed be a first step into the prevention chain. By focusing on positive and protective factors, early resilience trainings may counter-balance more represive discourses on crime and extremism, allowing for a shift from fear to openness.

References

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It was six men of Indostan,
To learning much inclined,
Who went to see the Elephant
(Though all of them were blind),
That each by observation
Might satisfy his mind.

The First approach’d the
Elephant,
And happening to fall
Against his broad and sturdy
side,
At once began to bawl:
"God bless me! but the Elephant
Is very like a wall!"

The Second, feeling of the tusk,
Cried, -"Ho! what have we here
So very round and smooth and
sharp?
To me ‘tis mighty clear,
This wonder of an Elephant
Is very like a spear!"

The Third approach’d the
animal,
And happening to take
The squirming trunk within his
hands,
Thus boldly up and spake:
"I see," -quoth he- "the Elephant
Is very like a snake!"

The Fourth reached out an eager
hand,
And felt about the knee:
"What most this wondrous beast
is like
Is mighty plain," -quoth he,-
"Tis clear enough the Elephant
Is very like a tree!"

The Fifth, who chanced to touch
the ear,
Said- "E’en the blindest man
Can tell what this resembles
most;
Deny the fact who can,
This marvel of an Elephant
Is very like a fan!"

The Sixth no sooner had begun
About the beast to grope,
Then, seizing on the swinging
tail
That fell within his scope,
"I see," -quoth he,- "the
Elephant
Is very like a rope!"

And so these men of Indostan
Disputed loud and long,
Each in his own opinion
Exceeding stiff and strong,
Though each was partly in the
right,
And all were in the wrong!

MOORAL
So, oft in theologic wars
The disputants, I ween,
Rail on in utter ignorance
Of what each other mean;
And prate about an Elephant
Not one of them has seen!

The famous Indian fable of blind men and an elephant was very appropriately used during a training course on conflict prevention and management conducted in Chad. The training was conducted by a local non-governmental organisation, Action Tchadienne pour la Promotion des Initiatives Rurales (ATPIR) for young people at risk of social exclusion and recruitment by violent extremist groups.

The fable is, however, very appropriate to describe the pilot project Countering radicalization and violent extremist in the regions of Sahel and Maghreb. The project is seeking to understand drivers that incite young people to join radical and violent extremist groups. Which issues, and their complex interplay at the level of community, region or country, create frustrations within young people that are so unbearable that they decide to take up arms? Once this understanding is reached, the challenge becomes defining an effective course of action. This, in short, is the objective of the project: to UNDERSTAND drivers and IDENTIFY best practices for preventing and countering youth radicalisation, terrorist recruitment and violent extremism.
On SDG 16: Peace, Justice, and Strong Institutions*

by David M. Malone United Nations University

*This article was first published in Our World Magazine produced by United Nations University.*
When the 2030 Agenda for Sustainable Development and the Sustainable Development Goals (SDGs) were adopted, Goal 16 was seen as truly transformative, formally linking, for the first time at the United Nations, development, peace, justice, and good governance. Some of its more ambitious targets include significantly reducing all forms of violence, ending abuse and violence against children, promoting the rule of law, reducing illicit financial flows and corruption, and developing accountable and transparent institutions.

But Goal 16 was not adopted without controversy. Many countries argued against the intrusion of peace and security, and even more so justice, considerations into the development sphere, and would have preferred that the goal be dropped altogether. Other countries maintained that this goal was central for them and that their support for the 2030 Agenda hinged upon it.

Nearly three years later, progress on Goal 16 is uneven, and there is considerable doubt that it can be achieved at its current implementation rate. Challenges arise in all countries, including Canada, and are likely to become more acute given current trends, particularly those related to violence.

Violence worldwide is on the rise and becoming increasingly complex and multidimensional. Almost half the world’s people have been affected by political violence over the last fifteen years, with lower-income countries bearing a disproportionately high share of the burden of armed violence. Yet developed countries are not immune — in many parts of the developed world, different forms of violence are also on the rise. Canada itself faces domestic challenges in addressing issues of violence and homicide, particularly against women and children.

Canada is also facing challenges in other related areas of Goal 16. Issues of justice for Indigenous Peoples have been much debated but insufficiently addressed over the past four decades. Comprehensive combatting transnational organised crime and illicit financial flows are elusive goals for Canada as well.

The challenge will be linking these subnational priorities with national strategies.

A common impediment for countries attempting to implement Goal 16 is the yawning gaps in reliable data, making it
difficult to measure progress in meeting the goal’s targets. Fragile and conflict-affected states, in particular, often have incomplete, imperfect, or a total lack of data. The countries of the world vary hugely in their capacity to collect, monitor, and track indicators.

Moreover, obstacles to reaching the goals of SDG 16 are increasingly encountered in urban areas. Populations in cities are expected to increase to almost 70 per cent by 2050, and cities register higher homicide rates than rural areas. The challenges found within ‘fragile cities’—characterised by rapid, unregulated urbanisation; high levels of inequality, unemployment, and violence; poor access to key services; and exposure to climate threats—mean that Goal 16 must be addressed at the subnational level.

In this context, one possible approach to accelerate the pace of implementation is to link national and local-level policies, providing greater support to subnational governance institutions. Local and regional governments in many countries have already recognised this, arguing that new institutional arrangements and channels of coordination need to underpin more effective, accountable, and transparent institutions, as well as more responsive, inclusive, participatory, and representative decision-making. This is necessary for local governments to become more responsive to their communities, and for states to deliver on Goal 16.

Positive initiatives are currently underway that illustrate how this is happening. New forms of participatory decision-making—such as in budgeting and in enhancements to city housing, service delivery, and slum conditions—have led to improvements in public security and urban safety. Local governments have been working internationally and nationally to share relevant information and innovative, frequently data-driven, solutions.

The challenge will be linking these subnational priorities with national strategies. For example, Canada’s progress in implementing its Federal Sustainable Development Strategy 2016–2019, which focuses on the environmental aspects of the SDGs, does not sufficiently account for Goal
16, even though one of the aims of the strategy is to build safe, secure, and sustainable communities. However, at the provincial level, many strategies overlap with the SDGs — without specifically mentioning them — focusing on employment, education, and environmental concerns, but less commonly on violence and justice.

Achieving implementation of Goal 16 is a daunting task globally, for poorer countries in particular. The plethora of targets and indicators aiming to guide them tends to create white noise. Some countries have been felt disempowered by the ambition and wide spectrum of the 2030 Agenda, as much as they have been able to harness its potential for energising society. This has represented an obvious downside in practice to the United Nations’ otherwise admirable effort to design an all-encompassing agenda.

National governments will get to showcase their achievements at the United Nations High Level Political Forum, which is reviewing Goal 16 in 2019. Until then, greater effort is required nearly everywhere to achieve implementation of national policies towards this goal. Improved links between the national and subnational levels will move us all in the right direction.

The authors

Prior to joining the United Nations University on 1 March 2013, Dr David Malone served (2008–2013) as President of Canada’s International Development Research Centre, a funding agency supporting policy-relevant research in the developing world.

Dr Malone had earlier served as Canada’s Representative to the UN Economic and Social Council and as Ambassador to the United Nations (1990–1994); as Director General of the Policy, International Organizations and Global Issues Bureaus within Canada’s Department of Foreign Affairs and International Trade (DFAIT, 1994–1998); and as President of the International Peace Academy (now International Peace Institute), a New York-based independent research and policy development institution (1998–2004). He oversaw Canada’s economic and multilateral diplomacy within DFAIT (2004–2006) and served as Canada’s High Commissioner to India and non-resident Ambassador to Bhutan and Nepal (2006–2008).

Dr Malone also has held research posts in the Economic Studies Program, Brookings Institution; Massey College, University of Toronto; and Norman Paterson School of International Affairs, Carleton University. He has been a Guest Scholar and Adjunct Professor at Columbia University, and an Adjunct Professor at the New York University School of Law, where he is currently a Senior Fellow.

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In summer 2017, Dr Malone was reappointed for a second term as UNU Rector (2018–2023).
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