Research project

The Individualisation of War

Reconfiguring the Ethics, Law, and Politics of Armed Conflict

ABSTRACT

The individual civilian has achieved new significance in international policy on armed conflict.

The protection and assistance of civilians has become a major focus of concern in UN Security Council resolutions and as the practical objective of many UN field operations. Civilian protection has also driven the increasing number of non-governmental humanitarian agencies and advocacy groups in armed conflicts.

Department

Department of Political and Social Sciences

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Project Description

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The protection and assistance of civilians has become a major focus of concern in UN Security Council resolutions and as the practical objective of many UN field operations. Civilian protection has also driven the increasing number of non-governmental humanitarian agencies and advocacy groups in armed conflicts.

The new centrality of the civilian individual in international relations poses a range of political problems and operational dilemmas. How can the rights of individuals be balanced against the rights of states during armed conflicts? When do the rights of individuals trump the sovereign rights of states? How can humanitarian agencies operate better to reach, protect and assist civilian populations in contemporary conflicts? How does the new international policy of R2P add value to existing humanitarian action or conflict with aid operations on the ground? How can UN integrated missions be simultaneously humanitarian and militarily confrontational in conflicts like Somalia and DRC? What does it mean to engage in humanitarian action in a conflict with very high death rates that is not deemed to be a conventional armed conflict, like Mexico's drug wars? And finally how do conflict-affected populations think about their own security? What strategies do they adopt to avoid, defy and resist violence, and how do these strategies relate to international protection efforts?

To answer these questions, the Civilian Protection stream of the IoW project will carry out detailed fieldwork in the conflicts in DRC, South Sudan, Somalia and Mexico. It will also analyse existing research and experience from Lybia, Syria and Sri Lanka.

Our analysis will focus on a number of specific research questions, including: How was the objective of civilian protection pursued in macro-level policy? What normative, legal or political dilemmas arose? How did the norm of civilian protection translate into the operational procedures for various actors on the ground, and what dilemmas arose? How did third party strategies support or undermine the micro-level strategies of civilians themselves?

Our study will also look backwards to trace the history of the increasing significance of individualism in the international relations of armed conflict. The team will construct a broad narrative of the rise of the civilian protection norm, its institutionalization and the major challenges to macro-level implementation.

Original project proposal:
Proposal summary, State-of-the-art and objectives, Methodology

1. Proposal Summary

This path-breaking interdisciplinary project critically analyses the impact of the increased prominence of the individual in the theory and practice of armed conflict. The 'individualisation of war', while based on powerful normative and technological developments, places enormous strain on the actors most actively engaged in contexts of conflict: the governments and armed forces of states, international security organisations, and humanitarian agencies.

Individualisation has generated new kinds of 'humanitarian' wars and peacekeeping missions, as well as precision weapons which enable both the targeted killing of those individuals deemed most liable for acts of war or terror, and the protection of innocent civilians caught up in armed conflict or acts of state suppression. It has also facilitated the injection of human rights law into the law of armed conflict, and a new class of international crimes for which individuals can be held accountable. We hypothesise that efforts to operationalise protection, liability, and accountability are all underpinned by a

tension between the newly privileged moral and legal claims of individuals and the more traditional ones of sovereign states. The ethical, legal, and political dilemmas raised by these efforts demonstrate just how contested the process of individualisation remains, and how uncertain is its eventual endpoint.

The research of our distinguished inter-disciplinary team will produce two main outcomes: the first integrated conceptual framework for explaining and resolving the dilemmas raised by the individualisation of war; and concrete recommendations for policy actors – both on how to respond to particular ethical, legal, or political challenges and on how to shape the longer term trajectory of individualisation. It will do so through innovative exploration of alternatives to dominant paradigms for the regulation of armed conflict, such as Just War Theory; a critical approach that both acknowledges and analyses resistance to the operationalisation of protection, liability, and accountability; through heuristic case studies that identify the key factors contributing to that resistance; and through a pragmatic epistemology that seeks the integration of theory and practice. Our methodology entails not only rigorous conceptual, legal, and political analysis, but also close engagement with practitioners representing national governments and armed forces, international organisations, and humanitarian agencies. We also analyse the important relationship between macro-level actors and structures – such as the United Nations or International Criminal Court – and local actors who employ particular strategies of self-protection and who have particular motives for engaging in violence.

2. State-of-the-art and objectives

The rights and responsibilities of the individual are at the centre of today's armed conflicts in a way that they have never been. This process of "individualisation", which challenges the primacy of the sovereign state, has two main drivers: powerful normative developments related to human rights, which have spawned new kinds of wars and peacekeeping missions and a new class of international crimes (Teitel, 2011; Weiss, 2012; Sikkink, 2011); and dramatic technological and strategic developments that empower individuals as military actors, and that enable either the targeting or protection of particular individuals (Singer, 2009; Gross, 2010; Kaldor, 2007; Munkler, 2005). The individualisation of conflict forces us to confront the status of invaiduals in three different capacities, which serve as the organising pillars of our research: 1) as subject to violence but deserving of protection; 2) as liable to attack because of their status as combatants or their responsibility for attacks on others; and 3) as agents who can be held accountable for the perpetration of crimes committed in the course of conflict. Our project begins from the assumption that while the human rights norms underpinning individualisation are normatively desirable in themselves and enjoy relatively broad support, efforts to operationalise protection, liability and accountability are placing enourmous strain on the actors and institutions most actively engaged in armed conflict: the governments and armed forces of states; international security organisations; and humanitarian agencies.

This crisis is manifest in a series of concrete dilemmas that are confounding contemporary policy-makers and weakening the legitimacy of national, international, and non-governmental institutions. In the realm of protection, the UN Security Council is caught between its state-centric constitution, which has traditionally demanded the even-handed treatment of parties to a conflict, and its increasing recognition of its responsibility to protect individuals – illustrated in the contrast between the relative speed with which the Council was able to act in Lybia in 2011, compared with its recent failure to reach a consensus on how to respond to documented crimes against humanity in Syria.

In the Democratic Republic of Congo (1999-2010), UN peacekeepers faced agonising strategic and operational dilemmas over how to fulfil their civilian protection mandate, which required addressing atrocities perpetrated by either state or non-state actors, while at the same time avoiding criticism that would alienate the government of President Kabila, whose consent was critical to their continued presence (and which was eventually withdrawn). With respect to operationalising liability, Unmanned Aerial Vehicles (UAVs or "drones") seemingly offer state leaders a golden opportunity to target lethal force more precisely against a specific individual who poses a great threat, thereby minimizing the loss of their own personnel. On the other hand, the use of lethal force by the executive branch, without judicial or legislative oversight, calls into question fundamental protections of a liberal-democratic society. In the case of accountability, diplomatic actors face a dilemma between pursuing criminal action against individual perpetrators (as they did in Lybia in 2011), which can close off options for negotiation that might bring a more rapid end to conflict and civilian suffering, or privileging conflict resolution strategies (as they did in Yemen in 2011) that deny justice to some victims of international crimes and contradict rhetorical commitments about "ending impunity". New legal practices associated with accountability also place humanitarian agencies in a deeply uncomfortable position, since they are closer to the crimes of war than most other institutions, and could potentially provide evidence in criminal proceedings. To give such evidence, however, could make their personnel the targets of violence or – as in the case in Darfur in 2005-6 – persona non grata, thereby rendering it impossible for them to continue to protect civilians on the ground.

We argue that these seemingly discrete dilemmas are all underpinned by a tension between the newly privileged moral and legal claims of individuals (and the technologica changes that often enable them), and the more traditional ones of sovereign states. When analysed together, they demonstrated just how contested the process of individualisation remains, and how uncertain is its eventual end-point. Our ambitious programme of research therefore has three main objectives:

1.   To explain why and how dilemmas of individualisation have arisen;

2.   To develop both theoretical and practical solutions to these dilemmas for key actors and institutions engaged in armed conflict, and

3.   To suggest where the process of individualisation could and should lead, and how policy-makers might shape its future trajectory.

The central academic outcome of our work will be the first integrated conceptual framework for analysing the moral, legal and political dilemmas deriving from the individualisation of armed conflict. While protection, liability, and accountability have been addressed separately by other researchers, often through the lens of a single discipline, they have not been studied as inter-related phenomena that require cross-disciplinary perspectives. A unified approach offers significant analytical and explanatory dividends, both for scholars working in moral philosophy, international law, and international relations, and for those attempting to work across disciplinary boundaries. These dividends will be disseminated through concrete academic outputs, including articles in leading journals, research papers, blog-posts and conference reports, as well as single and co-authored books with prestigious academic presses. The practical outcomes for "real-world" actors, which stand alongside this scholarly endeavour, will consist of critical analysis of existing practices; lessons learned from past cases; and concrete guidance to

policy actors – both on the short and medium-term challenges posed by individualisation, and on the longer-term question of how states, international organisations, and NGOs ought to participate in shaping the developments related to protection, liability and accountability. These will appear either in "policy briefs", or in dissemination meetings with representatives from national governments, international organisations, or NGOs. In some cases these practical outputs will entail recommended changes to law, organisational capacity, organisational mandates, or operational handbooks, while in other they will involve more informal guidance on how to reconcile competing norms or political demands. Finally, by assembling a team that combines senior and junior researchers, we will be nurturing a new cadre of scholars with the inter-disciplinary expertise to address the realities of contemporary conflict and make on-going contributions to policy debates.

3. Methodology
Our overall methodology has five key features:

A critical approach: Our project adopts a critical stance with respect to the traditionally dominant, state-centric paradigms for the analysis and regulation of armed conflict in the disciplines of international relations, international law, and moral philosophy. While we recognize that individualisation has been analysed using these frameworks, such as modern Just War Theory (Walzer, 2006; Coates, 2007), we proceed from a willingness to challenge that architecture in a more fundamental way, by considering radical alternatives, should our analysis dictate. This carries risk, but also creates potential for significant advances. At the same time, we also contend that a great deal of existing literature on individualisation is inherently progressivist. In international relations, for example, prominent scholars posit that the future will be marked by a stronger commitment to individual human rights, and that the most pressing task is to design a better strategy and stronger institutions to ensure compliance with that commitment (Sikkink, 2011; Risse, Ropp and Sikkink, 2012). In moral philosophy, scholars mounting a 'revisionist' challenge to modern Just War Theory (McMahan, 2009; Rodin, 2002; Fabre, 2012) argue that while the current law of armed conflict is often incompatible with an ethics of war based on individual human rights, this disjuncture between law and morality is not sustainable – even if there are strong prudential reasons for maintaining it. In international law, scholars demonstrate how individual human rights and accountability are transforming states' conceptions of their rights and responsibilities, and the relationship between the state and the individual (Teitel, 2011; Cassesse, 2008; Drumbl, 2007). By contrast, our project recognises that many non-Western actors do not necessarily view individualisation as an unmitigated 'good'. Indeed, the imperative to protect civilians or hold leaders accountable can conflict with other powerful norms, such as non-intervention, sovereign equality, or impartiality (Hurrell, 2007; Roth, 2011; Cohen, 2012). Moreover, non-Western states point to the uncomfortable reality that the operationalisation of norms related to individualisation is often directed solely at developing countries – manifest in the fact that humanitarian interventions have yet to occur in developed countries (with the exception of the former Yugoslavia) and that the criminal cases pursued by the International Criminal Court has thus far all related to African countries. Finally, humanitarian agencies acknowledge that even within their own organisations there are profound disagreements over whether and how to cooperate with Western governments pursuing protection and accountability (Donini, 2012; Magone et al, 2012). These critiques cast doubt on linear, teleological models of normative change, and call for an approach that both accepts and analyses the potential for on-going norm contestation and norm conflict (Weiner, 2009; Milanovic, 2010). In other words, we do not

assume that efforts to institutionalise protection, liability, or accountability necessarily fixes their meaning, or ends the debate about either their desirability or applicability in particular cases. An appreciation of the reality of contestation will not only enrich our explanation of the dilemmas associated with individualisation, but will also require us to look beyond 'technical' solutions, such as better coordination or more resources, as ways to address them.

Interdisciplinary analysis: Our research also involves path-breaking interdisciplinary analysis that will integrate the currently segregated scholarship on individualisation in moral philosophy, international law, and international relations. With some notable exceptions (May, 2005; Teitel, 2011; Lessa and Payne, 2012) analysis of individualisation has proceeded largely in separate streams, without recognition of the important links between law, morality, and politics that constitute the day-to-day reality for policy actors. Our team is comprised of leading scholars in moral philosophy, international law, international relations, and humanitarian action, and will therefore assess the core concepts at the heart of the research – protection, liability, and accountability – from deep theory, through legal enactment, to real-world political practice. This unique and innovative approach has been the defining feature of the Oxford Institute for Ethics, Law and Armed Conflict (ELAC), home to two of the team members, which has quickly established itself as one of the leading global institutes for the interdisciplinary study of armed conflict. For each of the three streams there will be a 'lead' discipline – international relations for protection, moral philosophy for liability, and international law for accountability – but researchers from the other disciplines will play an important supporting role and in some cases serve as co-authors on research and policy publications. As part of this interdisciplinary approach, we will illustrate why these three concepts should be analysed together, as part of a broader phenomenon, since developments in one domain can affect and in some cases undermine developments in another. For example, while accountability has arguably been strengthened by steps to define the crime of aggression at the 2010 Kampala Review Conference of the International Criminal Court, that definition could make states more reluctant to engage in humanitarian interventions designed to protect civilians, since such acts could be construed as 'manifest violations' of the UN Charter's rules on the use of force. Similarly, the Security Council's efforts to prevent mass atrocities in Libya in 2011, which included referral to the ICC, have been viewed by some as eroding the Court's legitimacy, by politicizing criminal justice and undermining the spirit of complementarity.

Case study analysis: Each stream of research will follow a common three-stage approach, beginning with the identification of dilemmas associated with individualisation, moving on to the analysis of the factors contributing to those dilemmas, and concluding with the design of potential solutions. Integral to this approach is the use of case studies. These cases are selected on the basis of their association with efforts to operationalize protection, liability or accountability. While they will be used primarily for heuristic purposes, to understand challenges related to individualisation, they will also inform a broader comparative analysis. For the liability stream, the case studies will encompass instances of targeted killing (drawing on secondary literature, published first-hand accounts, and interviews), as well as legal cases marked by the intersection of human rights law and the law of armed conflict, such as the high-profile Al Jedda Case (involving the European Court of Human Rights and the UK government). For the accountability stream, we will study cases where international criminal prosecutions have either been pursued (as in Kenya and the Democratic Republic of the Congo) or have been called for but not implemented (as in the case of Syria). For the civilian protection stream, the case

study analysis will be more in-depth, given the need to address multiple actors, and encompass a larger set of cases, given the need to take account of the significant changes in the nature of armed conflict (elaborated further below). It will also require extensive fieldwork, which will be undertaken in partnership with local organisations. The data sources for the cases will be both secondary (advanced literature reviews, media reports, and official documents) and primary (including interviews with representatives from governments, military officials, representatives of NGOs and international organisations, and members of armed groups where necessary and accessible).

Integration between theory and practice: One of the project's strengths is the pursuit of rigorous conceptual thinking about the purposes and nature of armed conflict, and key concepts such as those at the heart of this project. However, our research seeks to contribute more than theoretical innovation. It also follows the logic of the 'practice turn' in International Relations (Adler and Pouliot, 2010), by adopting a pragmatist epistemology that enables us to both examine and strengthen the link between theory and practice (Friedrichs and Kratochwil, 2009). Consequently, while the first two objectives of our research – explaining and resolving the dilemmas of individualisation – require philosophical reasoning and applied legal and political analysis, they also rely heavily on close engagement with practitioners from the three main actors of concern to this study: national governments and armed forces; international organisations; and humanitarian NGOs. In so doing, we will draw on the already-existing capacity of our team members (Welsh, Rodin, Akande and Slim) for interaction with current and former policy-makers in military, political, and humanitarian organisations. In each of the three streams, team members will leverage these networks to present and 'test' early findings, and to engage in knowledge exchange. We will also use ELAC's highly-regarded convening power to bring key decision-makers together both for public events, and for closed-door sessions that enable frank and open discussion of sensitive issues. In examining why the dilemmas of individualisation have arisen, researchers will consider the perspectives of a range of Western and non-Western states. Our existing relationships with practitioners are focused primarily on Western or Western-based organisations, including the wider European and NATO context. Our practical recommendations will therefore primarily be directed at these particular actors, who have often been at the forefront of efforts to promote individualisation. European states will be a particularly important audience for our work, given that they have played a brokerage role between the U.S. and Western-dominated institutions on the one hand, and developing states on the other.

Interaction between the global and the local. Finally, our project employs methodologies that capture the important inter-relationship between macro-level and local-level dynamics in situations of armed conflict. This is particularly true of the civilian protection research stream, where conventional international relations scholarship has been predominantly focused on structural explanations for the rise and impact of individualisation – including broad normative developments (Wheeler, 2000; Bellamy, 2011), changes in the strategies employed by external military actors (Kaldor, 2007; Munkler, 2005), or bureaucratic pathologies and culture (Barnett and Finnemore, 2004) – rather than on local realities. Drawing lessons from the burgeoning political science literature on the micro-foundations of conflict (Kalyvas, 2006), we will investigate what protection means for local agents in particular contexts, and how external actors can both contribute to and undermine it. This entails uncovering and examining the strategies that civilians employ to survive, as well as the perceptions they have of policies and practices of outside actors. It also requires a deeper inquiry into the reasons behind 'on the ground violence', which is often a complex mix of private and local motives and group or

national-level goals and cleavages. This latter reality also suggests that intra-state violence is not always imposed from the 'top' on unsuspecting and innocent civilians, and that there is often inter-changeability between the identities of perpetrators and victims (Kalyvas, 2006). Though we take these micro-level dynamics seriously, we do not adopt rational choice or political economy models of conflict (Collier and Hoeffler, 1998). Despite the predictive power of such models, they overlook the complexity of actors' motivations, by depicting them as maximizing agents, and simplify the realities of conflict by portraying engagement in civil wars or insurrection as 'resource allocation' decisions (Cramer, 2002). By contrast, our research assumes that actors are motivated not only by instrumental rationality, but also by 'value rationality' (Varshney, 2003), which encompasses beliefs, identities, and norms. More broadly, we reject the ontological realism associated with positivist research, and instead adopt a social ontology that acknowledges the intersubjective character of interactions in contemporary international society – at both a micro and macro level. Therefore, in meeting our first research objective, our explanation avoids positivist notions of causality in favour of a 'thicker' description that demonstrates how multiple factors work together in particular contexts. In meeting the second and third objectives, we employ theoretical and explicitly normative reasoning, which will then be tested and refined through interaction with those who have become intimately acquainted with the challenges of individualisation.

In what follows we provide a more in-depth discussion of the three key developments associated with individualisation and set out the specific questions and methods that guide each stream of research.

1) Civilian Protection

The first major aspect of individualisation is the move to make the individual – and his or her rights – one of the central reasons or causes for engaging in armed conflict (what is referred to in Just War literature as jus ad bellum). Whereas conflicts in previous centuries were about the gain of territory or resources, defence of the state against attack, or – in exceptional cases – the rescue of minority groups in neighbouring states, many contemporary conflicts have as one of their central and explicit purposes the protection of individuals' security. The NATO-led action in Libya in 2011 is the culmination of this trend, but the practice stretches back to the significant shifts in Security Council practice at the end of Cold War, which enabled the UN to broaden its definition of what constitutes a threat to international peace and security, and to the development and endorsement by UN member states in 2005 of the principle of the 'responsibility to protect' (Ferris, 2011; Bellamy, 2011; Orford, 2011; Evans, 2008; Welsh, 2008).

In addition to justifying the use of force, the protection of individual civilians has transformed the practice of peacekeeping. Beginning with the conflict in Sierra Leone in 1999, the UN Security Council now routinely includes civilian protection in peacekeeping mandates, calling on UN contingents to respond to and prevent extreme violations of human rights. Thus, while during the Cold War era peacekeepers practiced a more passive kind of impartiality, in which they were beholden to the wishes of the parties to a conflict, contemporary peacekeepers are expected and mandated to be robust and assertive, by penalising infractions against the peace process or broader international norms and principles (Paddon, 2011; Tardy, 2011; Wills, 2009). This new practice, while portrayed as consistent with long-standing UN operational principles, implicates peacekeepers in activities beyond their traditional ones of monitoring ceasefires or keeping warring factions apart. Such activities have stretched the notion of impartiality

almost to the breaking point, and sparked debates about the proper ends and means of protection. This tension is illustrated by the UN's controversial military strikes against hardware close to the palace of the former President of the Ivory Coast, Laurent Gbagbo, following contested elections in 2011, which led to serious divisions within the Security Council about the potential conflation of protection with regime change (Bellamy and Williams, 2011).

A parallel debate is raging within the humanitarian NGO community, whose traditional commitment to neutrality and impartiality are increasingly coming under pressure as these organisations seek to respond to the new international political determination to protect individuals in today's conflict zones (Magone et al, 2012; Donini, 2012; Abild, 2009; Slim, 2004; Fox, 2001). In particular, the imperative to protect civilians using armed force creates deep practice dilemmas for humanitarian agencies that have spent the last 60 years developing a careful field of unarmed civilian protection and assistance. While humanitarian agencies know that force, and only force, can protect civilians in certain situations, they also know that to call for it, or to be politically associated with it, can place severe limitations on their own humanitarian practice. Reconciling the different habitus of military and humanitarian institutions around a common moral goal of civilian protection is proving operationally problematic, even if it seems conceptually coherent. Indeed, humanitarian organisations have become closely associated with the more partial objectives behind contemporary peacekeeping, since they now often operate as part of 'integrated' missions that bring NGOs together with the UN's civilian and military components (Metcalfe et al, 2011).

Thus, in contrast to scholars who focus on operational failures of protection (Howard, 2007), our project assumes that there are fundamental normative and political dilemmas at the heart of civilian protection, which cannot easily be overcome through 'better coordination' or 'more resources'. In addition, while much of the international relations literature concentrates on the macro-level or structural impediments to the effective protection of civilians (Barnett, 2009; Terry, 2002), our research addresses and incorporates local agency: the actions taken by non-combatants to protect themselves.

2) Individual Liability

The second key aspect of individualisation is the move to both establish and act upon individual liability in the conduct of armed conflict (what is commonly referred to as jus in bello rules). Modern Just War Theory and the contemporary LOAC assert that principles of liability and immunity derive from a person's status or membership in a particular group: combatants or non-combatants (Walzer, 2006). But a powerful new stream within moral philosophy is challenging this status-based approach to the ethics war using the framework of individual human rights (McMahan, 2009; Rodin, 2002; Fabre, 2012). If all persons have rights, and if important rights such as the right to life can only be lost or forfeited on the basis of some responsible action of the right bearer him or herself, then it seems to follow that liability can only be established by examining the particular circumstances of individual actors within a conflict.

This simple but powerful observation has been extensively developed within the ethics of war over the last decade. However, three main issues remain open and form the basis for our research. While our primary methods are philosophical reasoning and legal analysis,

the issue of liability stands at the confluence of important theoretical and practical developments; it therefore creates the opportunity for interdisciplinary interaction between philosophers, lawyers, and policy practitioners. The lead researcher on this second stream, David Rodin, has extensive experience in working with military officials in both the US and Europe, as part of his previous work with the UK Defence Academy, the US Military Academy at West Point, and NATO. He will collaborate on key aspects of the research with Amos Guiora, an international lawyer and former legal adviser in the Israeli Defense Forces, who specialises in counter-terrorism and targeted killing.

3) Individual accountability

Attempts to give effect to the norms and laws regulating armed conflict have traditionally focused on the imposition of obligations on states and state-like actors. Over the course of the last century, however, specific obligations have been imposed directly on individuals (as either leaders or soldiers), breaches of which give rise to accountability for criminal acts undertaken in the course of war. This third key aspect of individualisation began in 1945 with the International Military Tribunal (IMT) at Nuremberg, and continued half a century later with the Security Council's creation of ad hoc tribunals to prosecute crimes in the former Yugoslavia, Rwanda, and Sierra Leone. It culminated in the 2002 ratification of the Rome Statute creating the International Criminal Court (ICC), which has recently concluded its first trial.

The rise of the imperative of accountability, and its institutionalisation both internationally and domestically, has been extensively analysed in both legal and political science literature (Sikkink, 2011; Cassesse, 2008; Drumbl, 2007; Schabas, 2011). Our project, by contrast, integrates the political and the legal, by examining the challenges that this aspect of individualisation poses for existing mechanisms for preventing, managing, and resolving conflicts, and for existing principles of international law. While international criminal law (ICL) seeks to determine the criminal responsibility of an individual offender, it is underpinned and enabled by a state-centric system: it is states which ratify the relevant treaties establishing this body of law; it is states that must enforce ICL, by apprehending indicted individuals and collecting evidence; and, it is states that have privileged access to the international institutions (like the Security Council) that are crucial for operationalising accountability.

Although the idea of individual criminal accountability is decades old, there are three 21st century developments, elaborated below, that create new dilemmas for policy-makers concerned with both managing conflict and ending impunity. This project stream will therefore involve close interaction between international lawyers and international relations scholars to address a set of interdisciplinary research questions about the impact of these recent trends. Crucial to this interaction will be small, intensive workshops where scholars can present and discuss position papers to advance their research. In addition, we will hold at least two collaborative sessions with practitioners at the ICC in The Hague to share our findings and discuss the implications for the pursuit of individual accountability.

Summary

By pursuing the research questions for each project stream, and demonstrating how the streams inter-relate, we will significantly enhance knowledge about the impact of efforts to operationalise protection, liability and accountability. The distinctive contribution of our published work will be close integration of moral, legal, and political perspectives, and of theory and practice. In addition, we will engage in high-risk exploration of alternatives to dominant paradigms that seek to regulate armed conflict. Beyond these academic outputs, we will draw upon existing, trusted relationships with practitioners to provide concrete guidance on how to respond to the challenges and dilemmas raised by attempts to elevate the status of the individual in contemporary armed conflict.

Conversations for the Future of Europe

2020 series
A series of events tackling major EU challenges from February to June 2020

Objective: To guide the steps of the European Union and to mobilise its citizens so as to make policy change possible, it is not sufficient to analyse the past and criticise the present. It is necessary to develop concrete proposals for a better future and to subject them to critical multidisciplinary discussion. The Conversations for the Future of Europe aim to contribute to such discussion. The focus of our Conversations will be to consider concrete and politically feasible projects which may guide the future development of the Union. A concern for political applicability, however, is compatible with creativity and boldness. Indeed, it may require it.

Format: Each Conversation will focus on one issue manifesting as a major challenge to the EU. The issue will be briefly introduced by two presenters, each presenting a brief proposal for how to address this challenge. Presentations will be followed by comments from one or two discussants after which, there will be a general discussion.

Output: The aim of the Conversations is to facilitate debate and inspire far-sighted, creative ideas for how to address current policy problems. However, we wish to share those ideas with a wider community. We will therefore invite all presenters to publish their contributions on our online blog. It is also our intention that some Conversations will be developed into more substantive pieces and published as debate sections in academic journals such as the *Journal of European Public Policy*.

The seminar series is organised in collaboration with **The European Governance and Politics Programme** of the **Robert Schuman Centre for Advanced Studies**

 11 February 2020
The Future of Inequality in Europe
Conversations for the Future of Europe – 2020 #1
@ Sala Triaria, Villa Schifanoia

Digital Europe: Challenges and Opportunities for Education
Conversations for the Future of Europe – 2020 (experimental session)
@ Webinar | 13:00 – 14:30 (CET)

13 May 2020
"Whatever it takes"? How to move ahead in post-crisis Europe
Conversations for the Future of Europe – 2020 #2
@ Webinar | 13:00 – 14:30 (CET)

22 May 2020
The Future of Direct Democratic Voting in the EU
Conversations for the Future of Europe – 2020 #3
@ Webinar | 13:00 – 14:30 (CET)

3 June 2020
Constitutional Design of the European Union: Getting Rid of the Unanimity Rule
Conversations for the Future of Europe – 2020 #4
@ Webinar | 13:00 – 14:30 (CET)

17 June 2020
The Future of EU Unemployment Insurance: An Ethical Perspective

Conversations for the Future of Europe – 2020 #5
@ Webinar | 13:00 – 14:30 (CET)

Conversations for the Future of Europe 2019

Publications

ARTICLES

- Emily Paddon Rhoads and Jennifer Welsh contribute article to the new special section on 'The dynamics of dissent' published in International Affairs
- How the Pentagon Made Transgender Rights Disappear
- Norm Robustness and the Responsibility to Protect, Journal of Global Security Studies, Volume 4, Issue 1, 1 January 2019, Pages 53–72
- Will the War on Terror Ever End? Cross-posted from La Revue des Droits de l'Homme (English version, French version)
- "Safe areas": The international legal framework, Author: Emanuela-Chiara Gillard
- Ruben Reike contributes book review essay "The International Criminal Court and Its Effects on Active Armed Conflicts" to the Journal of Intervention and Statebuilding.
- Arbitrary Withholding of Consent to Humanitarian Relief Operations in Armed Conflict – an article by Dapo Akande and Emanuela-Chiara Gillard

- Dapo Akande co-authors Article on [the International Legal Framework Regulating the Use of Armed Drones](#)
- Ruben Reike contributes book review "[The Struggle for Individual Criminal Accountability in a World of States: From "New" to "Credible" to "Rough" Justice](#)" to the Journal of Intervention and Statebuilding.
- [GR2P – Global Responsibility to Protect](#), Vol. 6 No. 02 2014, Special Issue: Humanitarian Action and the Responsibility to Protect, Guest Editors: Hugo Slim and Alex J. Bellamy
- [The "Responsibility to Prevent": An International Crimes Approach to the Prevention of Mass Atrocitie](#)s – by Ruben Reike

Books

- UN Security Council Referrals to the International Criminal Court: Legal Nature, Effects and Limits, Publication Date: 26 November 2018 - ISBN: 978-90-04-34221-7 DOI: **https://doi.org/10.1163/9789004342217**
- [Taking Sides in Peacekeeping: Impartiality and the Future of the United Nations](#) – a book by Emily Paddon Rhoads
- [The Responsibility to Prevent: Overcoming the Challenges of Atrocity Prevention](#) – a book edited by Serena K. Sharma and Jennifer M. Welsh
- Hugo Slim contributes opening chapter to [the new Routledge Companion to Humanitarian Action](#)

Working papers

- Launch of [Oxford Guidance on the Law Relating to Humanitarian Relief Operations in Situations of Armed Conflict](#)

Policy Briefs

- IOW Policy Brief – Who is a Civilian? Perceptions of "Civilianness" in the Central African Republic by [Rebecca Sutton](#)

- IOW Policy Brief 2 – Everyday Criminal Justice and Civilian Protection in the Central African Republic by [Rebecca Sutton](#)

- When Should the ICC Prosecutor Defer Investigations or Prosecutions in Situations of Active Armed Conflict in Favor of Peace Negotiations?
  by Talita de Souza Dias & [Dapo Akande](#)
  First published on [ICCForum.com](#)

- Accountability for International Crimes Committed in Syria by <u>Alexandre Skander Galand</u>

Project Streams

Individual Accountability

Credits: <u>http://www2.friendourworld.org/</u>

The accountability stream examines challenges and dilemmas that arise from the increasingly prominent practice of holding, or threatening to hold, individuals criminally accountable for unlawful acts undertaken in the course of war. The Law of Armed Conflict has traditionally imposed obligations on states and state-like actors. Over the course of the last century, however, specific obligations have been imposed directly on individuals, breaches of which give rise to individual criminal accountability. By and large, the rise of the imperative of individual criminal accountability started with the establishment of International Military Tribunals in Nuremberg and Tokyo in 1945/46, continued with the Security Council-created ad hoc tribunals for the former Yugoslavia and Rwanda in the 1990s, and culminated in the creation of a permanent International Criminal Court in 2002. While international criminal law seeks to determine the criminal responsibility of individuals, the emerging regime of international criminal justice is underpinned and enabled by a state-centric system. A number of thorny issues arise from efforts to operationalize individual criminal accountability in a world still dominated by states. The objective of the accountability stream is to not only identify dilemmas that arise from this, but to also design potential solutions for them.

The project studies challenges that the operationalization of individual criminal accountability poses for political and diplomatic efforts to prevent, manage, or resolve armed conflicts. This has become particularly relevant with the creation of a permanent International Criminal Court and its involvement in the context of on-going armed conflict. Involvement of the ICC during a conflict can complicate and potentially destabilize existing mechanisms for resolving conflict. Moreover, there is to date only limited evidence for the claim that threats of individual criminal accountability deter potential perpetrators of international crimes. Given that the involvement of the ICC can potentially complicate conflict management, it is important to examine the deterrence impact of the ICC in detail. Beyond the ICC, the project will also examine the increased role of domestic courts in the prosecution of international crimes, or in providing civil redress for actions in armed conflict, and the impact of this development on traditional diplomatic relations. In particular, this stream of research will examine how international criminal law has reshaped principles of international law, such as head of state immunity, jurisdiction of states over acts of foreign states and the requirement of consent for the imposition of legal obligations.

In this stream, we also examine the implications of the move to amend the Rome Statute to provide for jurisdiction over the crime of aggression. Prior to the 2010 Kampala Review

Conference, there was no agreement on a definition of the crime of aggression. While the Kampala amendments (which will come into force no earlier than 2017) strengthen the quest for accountability by providing greater precision to both the crime and the conditions for the exercise of ICC jurisdiction, they also create new dilemmas for the regulation of armed conflict. Can the ICC operate in the same way when it exercises jurisdiction over aggression as it does with regard to the other three crimes? Does the ICC's jurisdiction over the crime of aggression undermine the historically central role of the Security Council as the body determining whether an act of aggression has occurred? Does operationalizing the crime of aggression inhibit the use force for individual protection purposes?

Individual Liability

Credits: http://dronewars.net/

Who is liable to be killed or harmed in war? On the traditional view, the distinction between those who are liable to attack and those who are immune is roughly the distinction between combatants and non-combatants. But according to 'revisionists' theorists, rights-bearing persons can only become liable to violence when they are responsible – as individuals – for inflicting grave unjust harm on others.

We investigate the implications of this transformative approach to the ethics of war in three domains.

First, we investigate the basis of combatant liability. Why – and under what conditions – are combatants liable to be targeted in war? What kinds of discriminations are soldiers required to make in the course of combat to ensure that those they target are genuinely liable?

Second, we explore the nature of non-combatant immunity. By individualising notions of liability, revisionist theorists have opened the possibility that non-combatants may sometimes be appropriate targets in war. We use the practice of drone strikes to probe this analysis.

Finally, we ask whether revisionist thinking, with its insistence on respecting the moral status of individual actors, is fundamentally incompatible with the practice of war. Does revisionist theory require us to move beyond Just War Theory into a position closer to pacifism. Or, conversely, should the tensions between individual rights and the practice of war lead us to reconsider the application of those rights to the domain of war.

This streams uses a mixture of philosophical and legal analysis to explore and develop our understanding of underlying norms, both in theory and as they apply in military practice.

Civilian Protection

Credits: https://farm8.staticflickr.com/7545/16041343082_b278268bff_c.jpg

The individual civilian has achieved new significance in international policy on armed conflict.

The protection and assistance of civilians has become a major focus of concern in UN Security Council resolutions and as the practical objective of many UN field operations. Civilian protection has also driven the increasing number of non-governmental humanitarian agencies and advocacy groups in armed conflicts.

The new centrality of the civilian individual in international relations poses a range of political problems and operational dilemmas. How can the rights of individuals be balanced against the rights of states during armed conflicts? When do the rights of individuals trump the sovereign rights of states? How can humanitarian agencies operate better to reach, protect and assist civilian populations in contemporary conflicts? How does the new international policy of R2P add value to existing humanitarian action or conflict with aid operations on the ground? How can UN integrated missions be simultaneously humanitarian and militarily confrontational in conflicts like Somalia and DRC? What does it mean to engage in humanitarian action in a conflict with very high death rates that is not deemed to be a conventional armed conflict, like Mexico's drug wars? And finally how do conflict-affected populations think about their own security? What strategies do they adopt to avoid, defy and resist violence, and how do these strategies relate to international protection efforts?

To answer these questions, the Civilian Protection stream of the IoW project will carry out detailed fieldwork in the conflicts in DRC, South Sudan, Somalia and Mexico. It will also analyse existing research and experience from Lybia, Syria and Sri Lanka.

Our analysis will focus on a number of specific research questions, including: How was the objective of civilian protection pursued in macro-level policy? What normative, legal or political dilemmas arose? How did the norm of civilian protection translate into the operational procedures for various actors on the ground, and what dilemmas arose? How did third party strategies support or undermine the micro-level strategies of civilians themselves?

Our study will also look backwards to trace the history of the increasing significance of individualism in the international relations of armed conflict. The team will construct a broad narrative of the rise of the civilian protection norm, its institutionalization and the major challenges to macro-level implementation.

People

Principal Investigator: Jennifer Welsh

Jennifer M. Welsh is Professor and Chair in International Relations at the European University Institute and a Senior Research Fellow at Somerville College, University of Oxford.

She was previously a Professor in International Relations at the University of Oxford, and co-director of the Oxford Institute for Ethics, Law and Armed Conflict. In 2013, she was appointed by the UN Secretary General to serve as his Special Adviser on the Responsibility to Protect.

Co-Investigators: Dapo Akande

Dapo Akande is Professor of Public International Law, Yamani Fellow at St. Peter's College, Co-Director of the Oxford Institute for Ethics, Law and Armed Conflict (ELAC) & the Oxford Martin Programme on Human Rights for Future Generations. He has held visiting professorships at Yale Law School (where he was also Robinna Foundation International Fellow), the University of Miami School of Law and the Catolica Global Law School, Lisbon. Before taking up his position in Oxford in 2004, he was Lecturer in Law at the University of Nottingham School of Law (1998-2000) and at the University of Durham (2000-2004). From 1994 to 1998, he taught international law (part-time) at the London School of Economics and at Christ's College and Wolfson College, University of Cambridge.

Co-Investigators: David Rodin

David Rodin is a leading authority on the ethics of war and conflict. He is a Senior Fellow at the Carnegie Council for Ethics in International Affairs in New York and Senior Research Fellow at the University of Oxford.

Research Fellow: Lars Christie

Lars Christie received his MIA from Columbia University in 2005. Between 2006 and 2012 he has worked in the Norwegian Foreign Ministry, serving as a diplomat both in Islamabad and Jerusalem.

Research Fellow: Emanuela-Chiara Gillard

Emanuela-Chiara Gillard is a Senior Research Fellow at the Oxford Institute for Ethics, Law and Armed Conflict, and an Associate Fellow in Chatham House's International Law Programme.

Post-Doctoral Researchers : Alexandre Skander Galand

Dr Alexandre Skander Galand is a Post-Doctoral Research Fellow on the ERC-funded project The Individualisation of War: Reconfiguring the Ethics, Law and Politics of Armed Conflict. Dr Galand's current research focuses on the dilemmas arising from the application of the doctrine of command responsibility in contemporary armed conflicts. He has published articles on aspects of international criminal law, international human rights law and international humanitarian law.

Research Fellow: Rebecca Sutton

Rebecca Sutton is a Canadian lawyer and a PhD candidate in Law at the London School of Economics (LSE), where she is a Trudeau Scholar and SSHRC Scholar. Her doctoral research engages with the principle of distinction in International Humanitarian Law, exploring how international actors struggle with 'distinction' when they encounter each other in armed conflicts.

Project Collaborators: Yuna Christine Han

Dr Yuna Christine Han is a Fellow in International Relations Theory at the London School of Economics and Political Science.

Project Collaborators: Helen McDermott

Dr Helen McDermott is a Research Associate on the ERC-funded project "The Individualisation of War: Reconfiguring the Ethics, Law and Politics of Armed Conflict". Helen's research focuses on the relationship between international legal frameworks in the situations of armed conflict.

Project Collaborators: Rebecca Mignot-Mahdavi

Rebecca Mignot-Mahdavi is a Ph.D. candidate in Law at the European University Institute. Her research focuses on the extraterritorial use of combat drones against non-state actors. She is interested in understanding how and to what extent both the technology and the strategy of drone strikes against non-state actors exacerbate uncertainties in the law.

Project Collaborators: Emily Paddon Rhoads

Emily Paddon Rhoads is Assistant Professor of Political Science at Swarthmore College.
Her research analyses the impact of the increased prominence of human rights in the theory and practice of armed conflict as well as civilian agency in contemporary conflict. She is the author of "Taking Sides in Peacekeeping: Impartiality and the Future of the United Nations" (Oxford University Press, 2016) and several articles on civilian self-protection, humanitarianism and peacekeeping

Project Collaborators: Emily Ruben Reike

Dr Ruben Reike is a Post-Doctoral Research Fellow at the European University Institute, working on the ERC project: "Individualisation of War: Reconfiguring the Morality, Law, and Politics of Armed Conflict". In the context of this research project, Ruben is part of the Accountability Team, which studies challenges and dilemmas arising from efforts to operationalise accountability for criminal acts undertaken in the course of war.

Project Collaborators: Maja Spanu

Dr Maja Spanu joined Homerton College at the University of Cambridge as a Junior Research Fellow in International Relations in 2016. Before that, she was a post-doctoral Research Associate within the ERC-funded project "Individualisation of War" at the European University Institute, Italy, whilst teaching at Sciences Po Paris, France. She received her Ph.D. in Political and Social Sciences from the European University Institute in 2015.

Project Collaborators: Emily Paddon Rhoads

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Project Administrator: Martina Selmi

Tasks and responsibilities
- Supporting the Principal Investigator in project management
- Acting as interface between project team and ERC grant requirements
- Dealing with project-related administrative matters
- Organising project conferences and workshops
- Supporting the financial reporting
- Developing and maintaining the project website

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Working languages: Italian, English, French