Collegium Politicum,
Aula Baszkiewicza
University of Warsaw

International Conference

„Legal Architecture of Humanitarian Action”

+ Citizens' Dialogue "EU humanitarian challenges"

with participation of:

Androulla Kaminara
Director, Dir-C, DG ECHO, European Commission

and Joost Herman
President of Network on Humanitarian Action

Humanitarian Action at the Crossroads of National and International Law

Humanitarian Action and International Crimes

Humanitarian Action and International Organization

Humanitarian Action and Special Regimes

6th - 7th December 2018

Faculty of Political Science and International Studies
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"Legal Architecture of Humanitarian Action"
6-7 Dec. 2018,
Aula Baszkiewicza, Collegium Politicum, University of Warsaw

Network on Humanitarian Action and University of Warsaw event in cooperation with the European Commission Representation in Poland

Right to humanitarian assistance is nowadays considered to be one of basic human rights. Many states and organizations, including United Nations, stress importance of access to humanitarian assistance in case of armed conflicts and in other types of crises. Despite international efforts, population of some regions or even whole states continues suffering, deprived of access to basic resources and cut from external aid. Humanitarian workers become too frequently victims of different types of attacks, but on the other hand – they are sometimes perpetrators of assaults against local people, thus provoking additional threats and crises.

During the conference we will focus on identification of main challenges in organization of humanitarian action from the perspective of international and national law. We will discuss such issues like: reality of contemporary UN operations, responsibility of international organisations, including African Union, role of terrorist groups, IDPs crisis, Haiti and Rohingya crisis, impact of climate change and many others. Among speakers are specialists from leading Polish universities as well as from Brussel, Groningen, Bochum, Jerusalem.

The conference includes also Citizens' Dialogue "EU humanitarian challenges" with Androulla Kaminara, Director, DG ECHO, European Commission and Joost Herman, President of Network on Humanitarian Action.

Citizens'Dialogue "EU humanitarian challenges"with Androulla Kaminara, Director, DG ECHO, European Commission and Joost Herman, President of Network on Humanitarian Action.

ANDROULLA KAMINARA

Androulla Kaminara is the Director for Africa, Asia, Latin America, Caribbean and Pacific in the Directorate-General for European Civil Protection and Humanitarian Aid Operations (ECHO) of the European Commission since July 2016.

Androulla was previously Principal Adviser and Head of Task Force "Knowledge, Performance and Results" in the Directorate-General for International Cooperation and Development – EuropeAid - of the European Commission from 2014-16.

From 2012-13 she was the European Union Fellow at the European Studies Centre of St.Antony's College, Oxford University and for 2013-2014 the EU Academic Visitor at the same center.

From 2008 to 2012, she was the Head of the European Commission Representation in Cyprus and from 2006 to 2008, Androulla was the Director for Quality of Operations in EuropeAid.

She holds a B.Sc (Hons.) in Geology and Physics (King's College, Univ. of London), a MSc in Management Science (Imperial College, Univ. of London) as well as Maîtrise in International Politics (Université libre de Bruxelles – Brussels).

JOOST HERMAN

Joost Herman studied history and international law in Leyden University, received his doctorate at the Faculty of Law in Utrecht University and started to work in Groningen University in 1995 (Department of International Relations and International Organisation). Nowadays, as full professor in Globalisation Studies and Humanitarian Action he is chairman of the International Relations Department and director of two research institutes, on Humanitarian Action and on Globalisation Studies. Interdisciplinary, interfaculty and international co-operation are key words in all his activities. The latter is exemplified by having been elected President of the NOHA Association 2014-2020, a global network of approximately 30 universities devoted to contemporary international humanitarian action. Universitas Gadjah Mada is a long standing partner in this network and since December 2016 acts as pivot in the then created NOHA Global South East Asia network. Joost Herman's research interests are: international humanitarian law and humanitarian research methodology.

MAGDA PACHOLSKA

Magda Pacholska has recently submitted her Ph.D. dissertation in Law at the Hebrew University of Jerusalem. Her doctoral work concerning the *United Nations' responsibility for aiding and assisting human rights and IHL violations in the context of peacekeeping* was conducted as part of the Human Rights under Pressure interdisciplinary research training group in cooperation with the Freie Universität Berlin. She is an Expert Rapporteur with Oxford Reports on International Law, particularly on issues related to peace operations and international responsibility. In 2015, her article on the *Crime of Attacking Peacekeepers* was awarded the Journal of International Criminal Justice Prize.

United Nations Contemporary 'Offensive and Stabilization' Operations and their Implications on Humanitarian Action

The changing nature of global armed conflicts has forced the United Nations (UN) peacekeeping operations to evolve significantly over the years. As the intra-state civil wars between government forces and organized armed groups became the most prevalent type of armed conflict, the 'extension of state authority' emerged as a core function of UN missions. While UN peacekeepers may have been tasked with assisting the host State with restoring stability for decades, these activities were usually not conducted until after the warring parties agreed to an at least tentative cessation of hostilities. That allowed peacekeepers to maintain impartiality, which over the years evolved to denote an obligation to implement the mandate in an "unbiased and even-handed manner."

That has changed recently. Contemporary UN peace operations are increasingly frequently mandated to support the host governments against its adversaries through the offensive use of force in the midst of ongoing hostilities. The new type of missions, labeled sometimes in the contemporary literature as 'offensive and stabilization' operations, obliterate the principle of impartiality, the cornerstone of UN peacekeeping. The inherent risk of partiality the new operation carry has serious political and practical consequences for humanitarian action. On the political front, it may result in subsuming humanitarian action to broader political objectives of the host government. That was arguably recently the case in Somalia, where the Special Representative of the UN Secretary-general insisted on humanitarian aid to be channeled through the partner government in order to legitimize it. From the practical perspective, in turn, the mere perception of UN peacekeepers' partiality has serious security reverberations for all humanitarian aid actors affiliated under the 'cluster' system under the leadership of the UN Humanitarian Coordinator, a frequent practice in highly insecure environments. As concluded by the 2011 study commissioned by the UN Integration Steering Group, "it is evident that how UN humanitarian actors are perceived is influenced by the manner in which the UN political or peacekeeping component is perceived". Recent developments from a range of conflicts in which the UN effectively took sides, and its adversaries targeted humanitarian workers as the UN's soft underbelly — ranging from Somalia, the Democratic Republic of the Congo, to South Sudan — seem to corroborate this finding.

Troublesome as the UN peace operations' cooperation with local or national authorities in the midst of ongoing hostilities might be, it is likely to remain a feature of UN peacekeeping for the foreseeable future. It is thus of vital importance to map and examine the consequences it might have for humanitarian action. This is what this contribution aims to explore.

BARTŁOMIEJ KRZAN

Professor Bartłomiej Krzan – University professor at the Department of International and European Law, Faculty of Law, Administration and Economics, University of Wrocław, and lecturer at the German-Polish Law School at the Humboldt University Berlin; MA in Law (2004), MA in International Relations (2005), Ph.D. in International Law (2008), Habilitation in Law (2014); various research stays abroad including at the Lauterpacht Centre for International Law, University of Cambridge (2010) and Walther Schücking Institut für Internationales Recht, Kiel (2011-2012); visiting professor at the University of Regensburg (2013); fields of interest: international responsibility, the law of international organizations (esp. UN), international criminal law, external relations of the EU.

Responsibility of international organizations for peace-keeping operations: ARIO, Blue Helmets, Haiti and beyond...

The paper deals with international responsibility for peace-keeping operations. Its aim is to scrutinize the modalities for holding the participating actors (UN, other organizations, troop-contributing states) accountable through the lenses of the International Law Commission's Articles on Responsibility of International Organizations. Despite many compelling similarities, the latter Articles are to a lesser extent rooted in international practice and cannot be easily comparable to their predecessor, i.e. the Articles on State Responsibility for Internationally Wrongful Acts. Of course, many different fora have also decided to deal with the topic, and they have been also referred to. Still, despite all those attempts, the gap in the accountability of international organizations may very often be noticed, with the outbreak of cholera in Haiti serving as one of the most telling examples.

It is generally accepted that organizations equipped with international legal personality are capable of having obligations under international law and being responsible when such obligations are breached. Particular attention needs to be paid to the question of attribution, with the respective discrepancies in the jurisprudence of both international and domestic courts. Especially in peacekeeping activities, it is very often difficult to determine to which entity the conduct of an international force should be attributed, as peacekeeping forces are normally constituted of national contingents of States but directed by an international organization.

Generally, the conduct of organs or agents of an international organization in the performance of their functions shall be considered an act of that organization under international law, whatever position held in respect of the organization. The attribution of conduct to the organization does not exclude responsibility of a (troop contributing) State. Many controversies have arisen out of the formulation of Art 7. ARIO and the respective reliance on the effective control test to be decisive for attributing to an organization the conduct of an organ of a State or an organ or agent of an international organization that has been placed at the disposal of another international organization. Here, it may be questioned whether such position is in conformity with the not-too-uniform jurisprudence of the European Court of Human Rights (cf. Behrami and Saramati, Al-Jedda and subsequent decisions). Multiple attribution is also an option here, as well as even a more controversial situation of attributing responsibility arising out of conduct attributed to another entity (as contrasted to the independent responsibility based on the 'own' conduct).

This paper does not aim to offer a definitive answer to the responsibility question. Much more modestly, its objective is to analyse the solutions available and assess, to a possible extent, their suitability for properly addressing the challenges arising in the course of peacekeeping activities.

STÉPHANE KOLANOWSKI

holds a Law Degree and a Master in Laws (LL.M.) in Public International Law. He joined the ICRC Legal Division (Geneva) in 1997, and in 1999 he participated in the build-up of the ICRC Delegation to the EU, NATO and the Kingdom of Belgium, a Delegation in which he is still working today as the Senior Legal Adviser. He is responsible for following relevant legal developments in EU and NATO policies and operations and for promoting and disseminating International Humanitarian Law for several audiences. Since 2013, Stéphane is visiting professor at the College of Europe.

When parties to armed conflict are labelled 'terrorist groups': new challenges to humanitarian action - an analysis in the context of the EU regulatory framework

International Humanitarian Law (IHL) foresees for rights and obligations of the belligerents. It also provides for rights and obligations for those who are not directly taking part in the hostilities, as well as for the impartial humanitarian organizations who can offer their services. Nowadays, in a number of non-international armed conflicts (NIAC), some organized non-state armed groups are labelled by States or International Organizations as "terrorist groups". This might, sometimes, be for valid reasons, but this labelling brings consequences for the humanitarian action.

Indeed, in the global context of counter-terrorist legislations, two elements appear to potentially hamper both the delivery of humanitarian assistance, as well as the protective work carried out by impartial humanitarian organizations.

The first one is linked to the incentive that could be given to organized non-State armed groups to respect IHL when they are a party to an armed conflict. Indeed, even if in a NIAC, the mere fact of taking up the weapons against the State armed forces can be punished under the domestic criminal law, Additional Protocol II ask for the broadest possible amnesty to be granted to those having fought according to IHL rules. Being it because of that particular rule, or because of the need to reach peace, this rule is traditionally quite widely implemented. The problem with the counter-terrorist legislations is that, if strictly applied, they will cut all these incentive to respect IHL as the compliance with that body of norms would have no effect on the criminal prosecutions against the member of that non-Stated armed group labelled as terrorist. No amnesty would then be possible for them.

The second one is affecting directly the impartial humanitarian organizations in their daily work. Indeed, the humanitarian actors have to be able to travel to places under the authority of these organized non-State armed groups, to have contact with them to ensure access to the affected population, to provide the member of these groups with medical assistance, if need be, or to assist the civilians in that particular area. These activities, which are carried out with all parties to armed conflicts, are becoming criminal activities under counter-terrorism legislations. There is here, obviously, an incompatibility between the mandate given to impartial humanitarian organizations and some aspects of counter-terrorism legislations.

In his contribution, the speaker will detail these problems and look at ways of overcoming them, taking as an example the EU Directive on the fight against terrorism (2017). He will also touch upon the sanctions (or restrictive measures) as far as they can affect the delivery of humanitarian action and provide for an analysis of how the EU is addressing these issues in order the preserve the integrity of IHL and principled humanitarian action while fighting terrorism.

JOOST HERMAN

Joost Herman studied history and international law in Leyden University, received his doctorate at the Faculty of Law in Utrecht University and started to work in Groningen University in 1995 (Department of International Relations and International Organisation). Nowadays, as full professor in Globalisation Studies and Humanitarian Action he is chairman of the International Relations Department and director of two research institutes, on Humanitarian Action and on Globalisation Studies. Interdisciplinary, interfaculty and international co-operation are key words in all his activities. The latter is exemplified by having been elected President of the NOHA Association 2014-2020, a global network of approximately 30 universities devoted to contemporary international humanitarian action. Universitas Gadjah Mada is a long standing partner in this network and since December 2016 acts as pivot in the then created NOHA Global South East Asia network. Joost Herman's research interests are: international humanitarian law and humanitarian research methodology.

Interlocking and interblocking domestic and international legal frameworks concerning humanitarian action

In humanitarian crisis situations more often than not one can discern a rather complex case of legal pluralism. National, international legal and quasi-legal regimes strive for validity and priority. The effects of these regimes become tangible through the acts of those that are carriers of those regimes. Vagueness, competition if not outright incompatibility showcases the lack of a much needed hierarchical and comprehensible system.

Much chance of progressive change for the better is not to be expected. At the international level the different international legal regimes put together do not form a coherent whole. Also, more codification has only led to more incoherence. At the national level on the other hand, the traditional dominance of legal positivist perspectives on the validity of national law persists. For how long, no one knows, since the 'invasion' of international norms into national legal systems, weaken the legal positivist dominance in the validity issue.

In the before mentioned narrative, local norms are often disregarded and belittled both from the international as from the national perspective. However, case-studies have shown that especially in those Low and Middle Income countries as it were bottom up legal regimes are in existence, local norms that local leaders through custom have intertwined national law (in most LMIC imported from / imposed by the West) with age old norms and rules to do justice to the social identity of these local communities. The call from the WHS in 2016 to put people first and respect local communities make it worthwhile to explore whether the humanitarian normative regime should be the first to see whether better intertwining their codified belief systems with local customs and norms would, in the end, enhance effectiveness of international humanitarian action.

DOROTA HEIDRICH

Dorota Heidrich, PhD – graduate of Institute of International Relations and of Institute of Regional and Global Studies at the University of Warsaw, earned her PhD in Humanities in the field of Political Science in 2004 from the University of Warsaw. Assistant professor at the Institute of International Relations (IRR), University of Warsaw, since October 2016 – Deputy Director of the IRR. Main research areas include: forced migration (with special attention to IDPs); international criminal justice; transitional justice; international organizations (governmental and non – governmental). Author and co-author of publications on forced migration, transitional justice, criminal justice, international organizations.

Humanitarian access to IDPs – persisting challenges in an unwelcoming legal environment

Humanitarian access to internally displaced persons (IDPs) largely depends on the nature of situation in which the displacement has occurred. It may prove to be especially difficult in the context of armed conflicts, situations of generalized violence and massive human rights violations. Internal displacement is an inherent characteristic of all these circumstances, and the numbers of IDPs has always exceeds the number of refugees who manage to leave the state in question. The number of IDPs worldwide has exceeded 30 million in 2017 . With the continuation of bloody conflicts and human rights violations in such countries as Syria, Iraq, Yemen, DRC these numbers are expected to grow for the whole of 2018. As the 2018 Global Report on Internal Displacement shows, „peacebuilding initiatives and ceasefires failed to prevent new displacement in Colombia (...) and Ukraine". Increasing risks resulting from natural and man-made disasters worsen the overall picture and yet humanitarian access to IDPs has been hindered by the fact that IDPs remain under the sovereign control of the states of their nationality or residence. The 1998 Guiding Principles on Internal Displacement remain the only universal document that puts together norms applicable to the protection of and assistance to IDPs, though a non-legally binding one. Regional instruments (e.g. African Union Kampala Convention on IDPs) and introduction of norms on IDPs into domestic legal systems have raised hopes that the international community would finally find ways to regulate the plight of IDPs. However, as recently observed, states have become less cooperative in international forums and IDPs protection has not been that much on the agenda of international institutions as it used to be in 1990s and early 2000s. The scope of the analysis is to briefly discuss binding and non-binding regulation on IDPs and to see into the possible actions of the international community on behalf of IDPs to assure unhindered humanitarian access to the millions in need around the world.

PATRYCJA GRZEBYK

Dr. hab. Patrycja Grzebyk (University of Warsaw) - field of research - International Humanitarian Law, International Criminal law, Human Rights Law and Use of Force Law. Author of numerous publications, including the monographs: *Cele osobowe i rzeczowe w konfliktach zbrojnych w świetle prawa międzynarodowego*, Scholar 2018; *Pomoc humanitarna w świetle prawa i praktyki*, Scholar 2016 (co-editor with Elżbieta Mikos-Skuza); *Criminal responsibility for the crime of aggression*, Routledge 2013; *Odpowiedzialność karna za zbrodnię agresji*, WUW 2010. She is a deputy director and academic coordinator of the Network on Humanitarian Action at the University of Warsaw.

Denial of humanitarian assistance as international crime – the role of International Criminal Law in securing humanitarian action

The affected State "is obliged to ensure the protection of persons and provision of disaster relief assistance in its territory, or in territory under its jurisdiction or control" while the other states when there is a request of eternal assistance on behalf of the affected State "shall expeditiously give due consideration to the request and inform the affected State of its reply" (see International Law Commission, Draft articles on the protection of persons in the event of disasters, 2016).

Despite those obligations there are examples of states which denied or extremely limited external assistance for political reasons (Myanmar, Syria) and in consequence they condemned their citizens for death. On the other side, despite repeated requests on behalf of the affected states, international community in some cases did not react in sufficient way to diminish results of humanitarian crisis, humanitarian aid was blocked and humanitarian workers were killed.

Denial to accept humanitarian aid or efforts to stop humanitarian assistance in particular states, including killing humanitarian workers, can be qualified as international crimes covered by the jurisdiction of the International Criminal Court as well as of national courts (as international and national law crimes).

The possible qualification of the mentioned above actions/omissions ranges from war crimes (in case of armed conflict) through crimes against humanity (when civilian population is affected in widespread or systematic manner) to genocide when there is a special intent to eliminate particular national, ethnic, racial or religious group. The ICC statute introduced also a special category of war crimes against humanitarian workers or medical staff.

The aim of the presentation is to:

- assess possibility of classification as international crimes limitation or denial to accept or provide humanitarian assistance
- assess possibility to prosecute individuals for limitation or denial of humanitarian assistance before the International Criminal Court
- indicate cases before the ICC which referred to such responsibility
- in addition, the consequences of classification of the mentioned above actions/omissions as international crimes for other (than International Criminal Law) international law regimes will be discussed, in particular the question of legality of use of force to stop this kind of international crimes will be discussed.

KAROLINA WIERCZYŃSKA

Karolina Wierczyńska (dr. habil.), an Associate Professor at the Institute of Law Studies of the Polish Academy of Sciences, is the Managing Editor of the *Polish Yearbook of International Law* and the Editor of a blog devoted to questions of international law (przegladpm.blogspot.com). Recently she co-authored (with Andrzej Jakubowski) an article *Individual Responsibility for Deliberate Destruction of Cultural Heritage: Contextualizing the ICC Judgment in the Al-Mahdi Case*, Chinese Journal of International Law, issue 4, December 2017, pp. 695-721; also co-edited books *Fragmentation vs. the Constitutionalisation of International Law, A practical inquiry*, Routledge 2016 (together with Andrzej Jakubowski) and *The Case of Crimea's annexation under international law, scholar 2017* (together with Władysław Czapliński, Rafał Tarnogórski, Sławomir Dębski). Her latest monograph is focused on the admissibility of a case before the ICC: *Przesłanki dopuszczalności wykonywania jurysdykcji przez Międzynarodowy Trybunał Karny. Studium Międzynarodowoprawne*, Scholar 2016. Her professional interests are focused on international criminal law, human rights, and international responsibility.

International responses to Rohingya crisis

The latest exodus of almost a million of Rohingya people from Myanmar to Bangladesh (which has become one of the fastest growing refugee crises in the world), connected with enormous atrocities committed against this Muslim minority in Myanmar calls for a complex international response along with undertaking of activities of a different legal and factual nature, remaining in the scope of various international institutions like the Office of the United Nations High Commissioner for Refugees, the Human Rights Council or the International Criminal Court.

Nowadays, international community must answer the question whether it is possible to build an effective system of response for such a massive crisis, subsequently whether it is possible to respond for a key needs of Rohingya community while those needs include the most basic ones as access to water, fuel, blankets, through psychological help, enhanced protection of women and children from sexual exploitation, the need for the creation of the conditions for the safe return of Rohingya refugees from Bangladesh to their places of origin, to international responsibility of the perpetrators of crimes against those people.

In support of these needs, the international community has rapidly scaled up its operations, deciding to inter alia:

- Establish fact-finding mission to collect evidence,
- Establish "independent mechanism to collect, consolidate, preserve and analyse evidence of the most serious international crimes and violations of international law committed in Myanmar since 2011",
- Provide joint-response for humanitarian crisis,
- Prosecute perpetrators of the crime before the ICC, etc.

All those actions are necessary to provide a proper response although some states are sabotaging the actions of international community like China which (by using a veto) has blocked attempts to address Myanmar's abusive treatment of the Rohingya at the United Nations Security Council, or Indian police which deported some Rohingya members to Myanmar for their illegal entry to India, what violated international law, specifically the principle of non-refoulment. Without solidarity of states and international community the actions implementing by the latter will never form the effective and sufficient international response.

AGATA HELENA SKÓRA

Agata Helena Skóra - research areas: International Criminal Law, Humanitarian Law, and Human Rights Law. Harvard Human Rights Program Fellow at the International Center for Transitional Justice Burma Program, and at the Office of the Co-Investigating Judges in the Extraordinary Chambers in the Courts of Cambodia. Worked at European Court of Human Rights and International Criminal Tribunal for Rwanda. Fellow at Max Planck Institute for Comparative Public Law and International Law, and iCourts Copenhagen. Her current PhD research at The Institute of Law Studies of the Polish Academy of Sciences, focuses on prosecuting members of ISIS for the crimes committed on territory of Syria and Iraq.

Documenting sexual violence in armed conflicts - special needs and protection of vulnerable victims in the humanitarian assistance setting - the case of ISIS

Sexual violence is prevalent in armed conflict, whether of internal or international character. The issue is whether the needs of the vulnerable sexual crimes victims are met when documenting violence in armed conflict.

Terrorist organization Islamic State of Iraq and al-Sham has been so far the most creative and organized in creating a public policy for implementing sexual violence into their operations. The astounding suffering of women subjected to rapes and sexual slavery is very often documented for the purposes of bringing on criminal proceedings against the perpetrators. Telling the story of what happened is also a part of the process the victims go through when dealing with the trauma of atrocities committed against them. The victims' interviews are most of the time conducted in a humanitarian setting. In a situation when a vulnerable victim, finally has escaped the perpetrator and is receiving humanitarian assistance, she (or he) is approached by an organization asking for an interview. That might be a UN agency, but also an NGO or a researcher realizing their own agenda. There is an ongoing discussion among the international law scholars and practitioners concerning the expertise, or rather lack thereof, of persons attempting to document international crimes in various armed conflict settings. In the case of the sexual violence victims, especially those who were the hands of ISIS, the bar for adequate training for the interviewers should be of very high standards.

Throughout the past years the Independent International Commission of Inquiry on the Syrian Arab Republic and the United Nations Assistance Mission for Iraq has interviewed many vulnerable victims of sexual violence. It work is reflected in reports written as a result of their inquiries. This work product, aside the interviews documentation, might be used in the future by the III M - Mechanism for Syria in order to prepare case files for potential prosecutions. Alongside the UN agencies, NGO's workers, journalists and researchers are collecting data and interview the victims.

One might hope that an interviewer would have a proper training to interview a victim in a way that does not re-traumatize her. At the same time for the whole exercise not to be futile, and the interview to be of use for the purpose of the actual prosecution, specific elements of the crimes must be included in the interview record. Accordingly, an interviewer should have requisite knowledge of the law, training on how to conduct such interviews, additionally to the legal training he or she has received in their national jurisdiction, knowledge of the cultural setting from which the victim comes from, and psychological predispositions to be able to deal with the secondary trauma.

Another aspect of the conducting interviews of vulnerable victims, often forgotten, is the use of the interpreters and their qualifications for assisting in the interviews with vulnerable victims.

In the light of the above, it follows that there is a need for a creation of universal minimum standard guidelines for qualifications of the interviewers and for interviewing the sexual violence victims during or in the aftermath of armed conflict that would be used by every interviewer in the humanitarian assistance setting.

MAREK JAN WASIŃSKI

Dr hab. Marek Jan Wasiński, (University of Łódź, Poland). He researches in public international law and international protection of human rights in Africa. Author of *The African Charter on Human and Peoples' Rights: The Normative Pillar of the African Regional Human Rights System* (University of Lodz Press, 2017, in Polish). He has provided legal expertise for the civil society in Mozambique (2014-2015, Comissão de Justiça e Paz e Integridade da Criação). Expert on the law of Sub-Saharan states before Polish Courts and member of the African Society of International Law.

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The African Union and legal instruments for prevention of humanitarian crises deriving from unconstitutional changes of government

1. The rationale behind the following analysis rests upon two general observations. Both are well proven and uncontested in principle.

2. The first one relates to the overall democratic governance shortfall in Africa. In particular, the deficit relates to widespread manipulations in order to extend tenures by incumbent officials, to common rejections of elections' results and to coups d'Etat against a democratically elected governments. The practice creates conducive circumstances for humanitarian crises in the region.

3. The second observation justifies a view that the African Union (AU), that is the Pan-African international organization promoting democratic principles and institutions, attempts to counteract the problem by fostering good governance and democracy. In particular, the Constitutive Act of the AU prima facie proves that the paradigm of sovereign constitutional autonomy and non-intervention in domestic affairs, once prevailing on the continent, has been abandoned. It has been replaced with the vision of an integrated and politically united continent with mechanisms for prevention and resolution of conflicts at all levels (i.e. domestic, subregional and regional).

4. Both observations leads to the core research problem: Whether the AU Peace and Security Architecture contains necessary substantive, institutional and procedural components to prevent humanitarian crises deriving from unconstitutional changes of government?

5. The paper addresses the issue starting with the general outline of the relevant institutional and procedural framework established under principal regional treaties (i.e. The Constitutive Act of the AU; The Protocol Relating to the Establishment of the Peace and Security Council of the African Union; The African Charter on Democracy, Elections and Governance).

Against this backdrop, the paper presents the recent practice (since the entry into force of the The African Charter on Democracy, Elections and Governance in 2012) and discusses several factors constraining effective prevention of humanitarian crises deriving from unconstitutional changes of government in Africa.

Bottom-line remarks summarize the key points of the analysis.

PRZEMYSŁAW OSÓBKA

Dr. Przemysław Osóbka (Kujawy and Pomorze in Bydgoszcz, Institute of Law) - fields of research are Public International Law, International Humanitarian Law, Human Rights Law and legal aspects of Climate Change. Author of numerous publications, including the monographs: *Systemy konstytucyjne państw Oceanii*, Wydawnictwo Sejmowe 2012; *Systemy konstytucyjne Andory, Liechtensteinu, Monako i San Marino*, Wydawnictwo Sejmowe 2008 and articles, for example *International responsibility of states on climate change consequences in the frame of public international law*, Wydawnictwo UJ, Kraków 2018. Member of Polish Group of International Law Association (ILA).

Climate change and humanitarian assistance. Responsibility of international organizations in Oceania

In the Oceania there are both sovereign states (Fiji, Kiribati, Micronesia, Nauru, Palau, Papua New Guinea, Samoa, Tonga, Tuvalu, Vanuatu, Marshall Islands and Solomon Islands), as well as dependent territories belonging to the United States (Guam, Northern Mariana Islands, American Samoa, Midway and Wake), New Zealand (Niue, Tokelau and Cook Islands), France (New Caledonia, French Polynesia, Wallis and Futuna), as well as to Australia (Norfolk) and the United Kingdom (Pitcairn).

While dependent territories may count on protectors supporting them on many issues, the states that have gained independence have to deal with many political, economic, social and environmental challenges by themselves.

Amongst the latter, the consequences of climate change that particularly affect small island states in Oceania are particularly worrying. One of them is climatic deterritorialization, which as a result of the rise in the level of Pacific waters causes the unstoppable loss of territories by sovereign states.

This makes the questions concerning the continuity of state institutions and citizenship which M. Gerrard and G. Wannier asked a few years ago are relevant up-to-date. Will the state whose territory will be flooded by water still be a state? What will happen to its exclusive economic zone? Which rights will be granted to its citizens if they are forced to leave the sunken state and find themselves in the territory of another state? These are just some of the questions that have not yet been answered in public international law.

In order to be able to effectively address the above-mentioned challenges, the small island states of Oceania must, among others, independently develop effective legal mechanisms that can become the tools of work for effectively operating state institutions and support their functioning in the international dimension.

The creation of modern constitutional systems was particularly important, but only the first step in this respect for the countries of this part of the world gaining sovereignty in the 20th century. The second no less important was the creation of international organizations

Intergovernmental organizations formed in Oceania, according to the methodology of the Yearbook of International Organizations, can be classified as regional organizations with limited membership. They are organizations in which membership and activity are limited to a group comprising at least three neighboring states, possibly at least three independent international bodies.

Their initial characteristics referring to both missions, functions, strategic goals and priorities of current operations allow to distinguish the intergovernmental intergovernmental organizations of a political, environmental, economic and cultural-scientific nature.

The responsibility assumed by international organizations in the area of Oceania includes both the obligation to provide assistance in situations of armed conflict, activities related to humanitarian aid, crisis management, supporting sustainable development and creating conditions conducive to the increase of political stability in this part of the world.

In recent years, environmental issues related to the consequences of climate change have become one of the most important political and economic problems faced by international organizations in Oceania. They are the subject of consideration in this article.

ELŻBIETA MIKOS-SKUZA

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Role of soft law in humanitarian action with particular emphasis on IHL soft law

There is limited binding international law on humanitarian action, and there are no new treaties adopted at international level, yet a variety of soft law documents have been developed that play an essential role in this field. An international conference on "Legal Architecture of Humanitarian Action" provides an excellent occasion to reflect on the role of non-binding standards in the provision of humanitarian assistance despite their limited enforceability and voluntary application.

Despite terminological dilemma regarding the "soft law" concept, one can not ignore a plethora of soft law instruments (guidelines, standards, codes of conduct, statements, recommendations, resolutions, pledges, deeds of commitment, etc.) that have had an impact on both states' and non-state actors' conduct of humanitarian action. Among them there are both "regulatory" documents that attempt at influencing states and non-state actors and "voluntary" ones that don't contain any implied legal obligation. In some cases, soft law is used as an interpretative tool that can both expand and restrict the scope of existing regulations.

In the field of International Humanitarian Law, there are different levels of soft law commitments by different actors that should be taken into account:

- United Nations General Assembly Resolutions
- United Nations Security Council Resolutions
- World Humanitarian Summit 2016 Commitments
- Other Commitments adopted by States at international fora
- International Red Cross and Red Crescent Conferences documents and pledges
- International Committee of the Red Cross initiatives and Interpretative Guidances
- San Remo Manuals
- Other instruments

Their potential legal nature must be determined on a case-by-case basis – as filling a void in the absence of treaty law and / or as a pretext for interpretative struggles. It is crucial for a better understanding of how soft law shapes and affects a current state of International Humanitarian Law and helps to critically question certain doctrinal beliefs.

HANS-JOACHIM HEINTZE

Academic career:

1977	Dr. jur. University of Leipzig
1982/83	Visiting Scholar Johns Hopkins University, SAIS, Washington, D.C.
1984	Dr. jur. habil. University of Leipzig
1988	Scholarship of the Max Planck Institute of International Law, Heidelberg
1989	Scholarship, Ruhr University Bochum
1991-1995	Senior Researcher, Ruhr University Bochum, Research Project on the Peaceful Use of Outer Space (together with the University of Hamburg and the Deutsche Anstalt für Luft- und Raumfahrt; funded by DFG)
Since 1995	Editor of the scientific quarterly "Humanitäres Völkerrecht - International humanitarian law"
2001-2005	President of the International Association for the Study of the World Refugee Problem (observer status at the UN and CoE)
2005-2006	Member of the Working Group on the Iraqi Constitution of the EU Institute for Security Studies, Paris
2002	Member of the OSCE Election Observation Team in Bosnia-Hercegovina, Tusla
2001-2008	Head of the Marie Curie Training Site in Bochum, head of the EDEN Programme (funded by EU)
2001-2004	Member of the US-European-Chinese Research Project on Autonomy (funded by Ford Foundation)
1997-2002	Cooperation with the OSCE High Commissioner on National Minorities, The Hague
2005	2007 Member of the German-French Government Expert Commission on the Rights of Indigenous Peoples
2007/2008	Executive Director of the Institute
2008	Member of the Board of the European Regional Master in Sarajewo
2010	Member of the Board of the NGO IALANA (Lawyers Against Nuclear War)
2012	NOHA (Network on Humanitarian Action) Director for Germany Visiting Scholar Columbia University and Fordham University New York
2014	Director of the EMA Programme Human Rights and Democratization, Venice
2016	Editor of the On-Line Journal "International Humanitarian Action" with Springer International, New York
2018	Editor of the journal "International Humanitarian Law"

Legal issues of the access to the victims of armed conflict and natural disaster

„Access" in IHL and in peace time

- Access: an issue of IHL and of the law of peace
- Access: an issue of sovereignty
  - Concept of humanity
  - Are non-state actors bound by the law?
- Access under IHL
  - In int'l armed conflicts
    - GC IV: Art. 59
      - In occupied territories only?
      - Issue of reciprocity
    - AP I: Art. 70
  - In non-int'l armed conflicts
    - AP II
- Access under IHL
  - Prohibited weapons: Example of Chemical Weapons
    - SC Res. 2118
      - Access of inspectors
      - Role of non-state actors
- Access under the law of peace
  - Access in the events of disasters
    - Concept of disasters
    - Concept of humanity
    - Relief actions
  - Role of sovereignty
    - Affected State
    - International community
    - Obligation to cooperate
    - arbitrary withholding
- Conclusion